



Mandatory Reports New Requirements

Richard Steinecke, LL.B.
Counsel for the College of Dietitians of Ontario

As of June 4, 2009, the *Regulated Health Professions Act, 1991 (RHPA)*, the legislation that governs Ontario's health regulatory Colleges, changed significantly. Although many of these changes relate to College processes, some have a direct impact on members. In the last *résumé*, changes to the register and the new Inquiries, Complaints and Reports Committee were discussed. This article summarizes changes to mandatory reporting having an impact on Registered Dietitians.

CURRENT REQUIREMENTS

Under the current RHPA, members and facility operators are required to advise the registrar of a college when they have reasonable grounds to believe that one of their members has sexually abused a patient. For example, if a client reports during the course of an assessment or treatment that a health practitioner touched them sexually or "made a pass" at them, the dietitian must report this information to the registrar of the college of the other practitioner. The report must be in writing and contain the pertinent details. However, the name of the patient cannot be revealed unless the patient agrees in writing to this disclosure.

Similarly, employers, partners or associates are required to advise the appropriate college registrar when they terminate the employment or association with a health practitioner for reasons of professional misconduct, incompetence or incapacity. For example, if a member terminates the partnership with a colleague because the colleague has stolen something from a patient, the member must report the colleague's behaviour to the appropriate registrar. Again the report must be in writing. In this case, so long as the conduct did not involve sexual abuse, the reporting member

can, and probably should, include the name of the affected patient in the report even without the patient's consent.

NEW REQUIREMENTS

The existing mandatory reporting requirements will remain in place. However, as of June 4, 2009, the reporting obligations for members and facility operators expanded significantly. Each dietitian should be aware of these new responsibilities.

Members Self-Reporting of Offences

Members should not "self-select" which offences they believe are relevant or worthy of a report; that determination will be made by the College. The intent of this self-reporting requirement is that all offences be reported to the College, and the College will then sort out which offences are worthy of further inquiry. If the finding raises no apparent concerns, such as a traffic offence that does not involve dishonesty or impairment, the College will simply file the report. If the finding raises concerns about the member's suitability to practise the profession, for example, a criminal conviction for fraud, the College will investigate the matter to determine if some regulatory action, such as remediation or discipline, should be taken.

Since 1993, Registered Dietitians are also reminded that it has been professional misconduct to "fail to report incidents of unsafe practice or unethical conduct of dietitians". (*Professional Misconduct Regulation, #16*).

Members Self-Reporting of Findings of Professional Negligence

In addition, members are required to file a report with their own College if there has been a finding of professional

negligence or malpractice made against them by a court. These findings occur in civil proceedings or law suits. For example, a finding of professional negligence by a court that a member fell below the accepted standard of practice of the profession, and thereby harmed a patient, has to be reported. Where appropriate, the College may inquire into these findings. However, unlike offences, the College must post all findings of professional negligence and malpractice in the public register which is now required to be online.

These self-reporting obligations are not retroactive. There will be no duty to report findings made by a court before June 4, 2009.

These new provisions are a self-reporting obligation only. Other practitioners do not have to make a report if they become aware of a finding made against someone else. Although, in some circumstances, a member may conclude they have an ethical obligation to notify the College of a serious court finding.

Facility Operators

The *Regulated Health Professions Act* does not define the word "facility". However, given the public interest purpose behind this amendment, it most likely means any physical premises where registered health care practitioners work. In addition to the existing requirement to report sexual abuse and submitting "termination" reports, facility operators must now also report a member who is incompetent or incapacitated. If the registered health practitioner is not fired or otherwise terminated, but is restricted in their practice at the facility, or sent for treatment or remediation, a mandatory

report must be made.

To fully understand this new reporting obligation, facility operators need to have a clear understanding of how "incompetence" and "incapacity" are defined by the RHPA. Incompetence refers to a significant demonstration of a lack of knowledge, skill or judgment towards a patient. Incapacity generally refers to mental or substance abuse illness that impairs the practitioner's judgment.

TERMINATION REPORTS

Registered Dietitians and facility operators need to be aware of the the existing termination mandatory reporting obligation and the new facility mandatory reporting obligation, which work together, as follows:

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

Please note that the section on mandatory reporting in Chapter 3 of the *Jurisprudence Handbook for Dietitians in Ontario* (2008), has been updated. Revised Chapter 3 is available on the College website at www.cdo.on.ca > Resources: Publications

Membership Renewal Due October 15, 2009

The online renewal portal will be open from August 15 to October 15, 2009.

Please make sure that your contact information is updated, including any changes in your email.

To update your profile, log on to your *Member Home Page* at www.cdo.on.ca.