

# Protecting Patients Act, 2017 passed by the Government

June 1, 2017

On May 30, 2017, Bill 87, *Protecting Patients Act, 2017* (the Act), was passed by the government. The Act amends the *Regulated Health Professions Act, 1991* (the RHPA) and five other health-related Acts. The Act addresses a number of the recommendations of the Task Force (Task Force) of the Minister of Health and Long-Term Care (the Minister) on the Prevention of Sexual Abuse of Patients and the *Regulated Health Professions Act, 1991*.

This article is an update of a previous [Client Bulletin on Bill 87](#). Since publication of the previous Client Bulletin, Bill 87 was amended by the Standing Committee on the Legislative Assembly, third reading of the Bill was carried and the Bill received Royal Assent. Some of the provisions of the Act came into force on Royal Assent. Others come into force on proclamation and are not yet in force.<sup>1</sup>

This article provides the highlights of the amendments made to the RHPA made by the Act. The amendments made to Bill 87 by the Standing Committee on the Legislative Assembly are shown as underlined text.

This article addresses the following:

- expanded powers of the Minister to make regulations
- definition of patient
- increased information on the register
- interim suspensions
- expanded list of acts constituting sexual abuse and other conduct that must result in mandatory revocation
- mandatory suspension as a new minimum penalty for sexual abuse
- elimination of gender-based restrictions
- expanded duty to report
- increased fines for failure to report sexual abuse

## Expanded Powers of the Minister to Make Regulations<sup>2</sup>

The Act provides a number of new matters with respect to which the Minister is or will be authorized to make regulations. The most significant of them relate to the governance of the committees required by the *Health Professions Procedural Code* (the Code)<sup>3,4</sup> and the panels of those committees (statutory committees). The statutory committees include those committees that make decisions about registration of applicants (Registration Committee), screen complaints and reports (Inquiries, Complaints and Reports Committee), and hold hearings related to professional misconduct and incompetence (Discipline Committee) and incapacity (Fitness to Practise Committee). Once the relevant provisions of the Act are in force, the Minister will have the power to determine the composition of every statutory committee, and the qualification, selection, appointments and terms of office of members of every statutory committee. The Minister will also have the power to determine the composition of panels of the Registration, Inquiries, Complaints and Reports (ICRC), Discipline and Fitness to Practise Committees and the quorum for panels of

those committees. Together with other amendments that are being made to the *Code*, it is clear that the intention is for the Minister's regulations to determine the governance of these statutory committees and their panels. Important policy issues related to the governance of these statutory committees and their panels, such as the role of professional and public members on these committees and panels, are not set out in the *Code* but will be left to Minister's regulations.

### Definition of Patient<sup>5</sup>

"Sexual abuse" of a patient is currently defined in the *Code*. However, the meaning of "patient" is not currently defined. Once the relevant provisions of the Act are in force, the word "patient", in relation to an act of sexual abuse, will be defined to include any individual who was a member's patient within one year from the date on which the individual ceased to be the member's patient. Health regulatory Colleges will be authorized to make a regulation that would make the period longer than one year. In addition, the Minister will have the power to make a regulation to establish criteria that would be used to determine whether an individual was a member's patient in relation to any allegation of sexual abuse. These amendments are intended to provide a time period during which sexual contact between a regulated health professional and a former patient would constitute sexual abuse.

### Increased Information on a Health Regulatory College's Register<sup>6</sup>

Each College currently maintains a register about its members and, in some cases, former members on its website. The Act provides that additional information is to be made available on the register of each health regulatory College. This additional information includes:

- where a member is deceased, the name of the deceased member of the College, and where known, the date of death
- a notation of every caution<sup>7</sup>
- a notation of any specified continuing education or remediation program (SCERP)<sup>8</sup>
- a copy of the specified allegations for every matter referred to the Discipline Committee and that has not been finally resolved
- a notation and synopsis of any acknowledgements and undertakings provided to the College in relation to professional misconduct or incompetence before the ICRC or Discipline Committee and that are in effect

The Minister may also make regulations to require that additional information be added to the register.

The Code requires that the result of every discipline or incapacity proceeding be available on a College register. In accordance with the Act, the "result" of a discipline proceeding means the finding of professional misconduct or incompetence, the grounds for the finding, a synopsis of the decision and the order made. If no finding is made, the register is to include a notation to that effect and the reason. In accordance with the Act, the "result" of an incapacity proceeding means the finding of incapacity and the order.

The Act does not have any specific provision which permits the information added to the register, such as cautions or SCERPs, to be removed from the register after a certain period of time, other than the result of a discipline hearing where no finding was made. In that case, the result will be removed after a 90 day period unless the member requests otherwise within that period. The Act also does not have a process to allow a member to apply to remove this additional information.

### Interim Suspensions<sup>9</sup>

Prior to the amendments made by the Act, the ICRC could make an interim order to suspend or impose terms, conditions or limitations on a member's certificate of registration but only after an allegation of professional misconduct, incompetence or incapacity had been referred for a hearing. As a result of the Act, the ICRC has the power to make such an interim order at any time following the receipt of a complaint or following the appointment of an investigator, or once a panel of the ICRC has been established to inquire into whether a member is incapacitated. The ICRC is able to make such an order if, in the case of a matter concerning professional misconduct or incompetence, it is of the opinion that the conduct of the member exposes or is likely to expose a member's patients

to harm or injury, or in the case of a matter concerning incapacity, it is of the opinion that the member's physical or mental state exposes or is likely to expose a member's patients to harm or injury.

There is often a delay (sometimes substantial) between the date on which a member is found to have committed professional misconduct and the date upon which a panel of the Discipline Committee determines the appropriate penalty. The Act provides that a panel of the Discipline Committee must make an interim suspension order after it makes a finding of professional misconduct where the conduct which the member committed will result in mandatory revocation. (See section 5 of this article.)

#### **Expanded List of Acts and Other Conduct that Result in Mandatory Revocation<sup>10</sup>**

Prior to the amendments made by the Act, the *Code* provided a list of acts <sup>11</sup> (frank acts of sexual abuse) and mandated that, if a panel of the Discipline Committee finds that a member has engaged in sexual abuse involving any of these acts, the penalty must include revocation. This list has been expanded by the Act to include:

- touching of a sexual nature of the patient's genitals, anus, breasts or buttocks
- other conduct of a sexual nature prescribed in regulations made by the Minister

"Sexual nature" does not include touching or conduct of a clinical nature appropriate to the service provided.

The Act also adds other conduct that will result in mandatory revocation:

- if a member is found guilty of an offence relevant to suitability to practise and the offence is prescribed in a Minister's regulation
- if a member is found guilty of professional misconduct by another health regulatory College in Ontario or a health regulatory College in another jurisdiction and the conduct includes any of the frank acts of sexual abuse (as expanded by the Act)

#### **Mandatory Suspension as a New Minimum Penalty for Sexual Abuse<sup>12</sup>**

The Act provides that a panel of the Discipline Committee must suspend a member's certificate of registration where it makes a finding of sexual abuse unless the penalty ordered was revocation. For example, if the sexual abuse consisted only of behaviour or remarks of a sexual nature, the penalty must include, at a minimum, a suspension.

#### **Elimination of Gender-Based Restrictions<sup>13</sup>**

As a result of the Act, the ICRC will no longer be able to make interim orders that impose gender-based terms, conditions or limitations. This limitation on the ICRC's powers relates to all matters being considered and is not limited to sexual abuse. Similarly, a panel of the Discipline Committee will no longer be able to impose gender-based terms, conditions or limitations as a part of its penalty order. Again this is a general limitation and does not apply only to sexual abuse cases. In other words, where there is an allegation or finding of sexual abuse, neither the ICRC nor the Discipline Committee will be able to permit a regulated health professional to continue to practise on patients of one gender, even with supervision.

#### **Expanded Duty to Report<sup>14</sup>**

The Act will add a duty to report to the Registrar by a member if the member is charged with an offence and to include in the report all bail conditions and other restrictions imposed on, or agreed to, by the member.

The Act will also add a requirement for a member to advise the Registrar if they are a member of another regulated profession either

in or outside Ontario. If a member is found guilty of professional misconduct or incompetence by the other regulatory body, the member will have a duty to report the finding and other information to the Registrar.

### **Increased Fines for Failure to Report Sexual Abuse<sup>15</sup>**

The *Code* requires a member to file a report with the Registrar if that member has reasonable grounds, obtained in the course of practising the profession, to believe that another member of the same or different health regulatory College has sexually abused a patient. The *Code* also requires a person who operates a facility to file a report if the person has reasonable grounds to believe that a regulated health professional who practises at the facility has sexually abused a patient (and in other circumstances).

As a result of the Act, the fine for failure for a member to report sexual abuse is increased from not more than \$25,000.00 to not more than \$50,000.00. In the case of a person who operates a facility, the fine for failure to report sexual abuse is increased from not more than \$25,000.00 to not more than \$50,000.00, in the case of an individual, and, in the case of a corporation, from not more than \$50,000.00 to not more than \$200,000.00.

### **Conclusion**

This article is not intended to be a complete list of the amendments made to the RHPA by the Act nor an exhaustive description of each amendment. Some of the amendments came into force on Royal Assent. Others will only come into force on proclamation. A number of other important changes will also not be known until the Minister makes regulations. It should be noted that there are complex issues relating to the application of new legislation to circumstances or events that pre-date the new legislation. [One thing, however, is certain. The health regulatory Colleges need to consider how best to implement the amendments made by the Act.](#)

### **For More Information or Inquiries**

For more information or inquiries, please contact Debbie Tarshis at [dtarshis@weirfoulds.com](mailto:dtarshis@weirfoulds.com).

[1]This article is current as of May 30, 2017.

[2]The provisions related to the governance of the committees required by the Code and the panels of those committees described in this section 1 are not yet in force.

[3]The Code is Schedule 2 to the RHPA.

[4]The committees required by the Code are the Executive Committee, Registration Committee, Inquiries, Complaints and Reports Committee, Discipline Committee, Fitness to Practise Committee, Quality Assurance Committee and Patient Relations Committee.

[5]The provisions described in this section 2 are not yet in force

[6]The provisions described in this section 3 came into force on Royal Assent.

[7]A caution is an order of the ICRC requiring the member to attend before a panel of the ICRC to be cautioned.

[8]A SCERP is an order of the ICRC requiring the member to complete a specified continuing education or remediation program.

[9]The provisions described in this section 4 came into force on Royal Assent.

[10]The provisions described in this section 5 came into force on Royal Assent.

[11]s. 51. (5) If a panel finds a member has committed an act of professional misconduct by sexually abusing a patient, the panel shall do the following in addition to anything else the panel may do under subsection (2):

2. Revoke the member's certificate of registration if the sexual abuse consisted of, or included, any of the following,

i. sexual intercourse,

ii. genital to genital, genital to anal, oral to genital, or oral to anal contact,

- iii. masturbation of the member by, or in the presence of, the patient,
- iv. masturbation of the patient by the member,
- v. encouragement of the patient by the member to masturbate in the presence of the member.

[12]The provisions described in this section 6 came into force on Royal Assent.

[13]The provisions described in this section 7 came into force on Royal Assent.

[14]The provisions described in this section 8 are not yet in force.

[15]The provisions described in this section 9 came into force on Royal Assent.

*The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.*

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