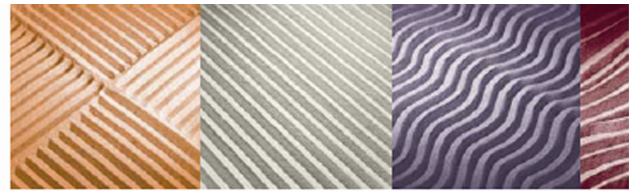


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COMMUNIQUÉ FOR THE HEALTH INDUSTRY

SIGNIFICANT CHANGES TO ONTARIO'S *REGULATED HEALTH PROFESSIONS ACT, 1991* IN EFFECT

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Key Points

A number of significant amendments to the *Regulated Health Professions Act, 1991* (RHPA) will come into effect on June 4, 2009. These changes will result in the following:

- (1) Expansion of mandatory reporting requirements for:
 - (a) Regulated health professionals subject to the RHPA, who will now be required to report
 - Offences for which they have been found guilty
 - Professional negligence and malpractice claims against them
 - (b) Facility operators (such as hospitals, clinics and long-term care homes) who will now be required to make a report where they have reasonable grounds to believe that a regulated health professional practising at the facility is
 - Incompetent
 - Incapacitated
- (2) Increased information being available to the public through each College's website
- (3) Significant changes to the regulatory College's investigatory process

Health industry clients who employ, privilege or otherwise use the services of regulated health professionals should ensure their management and staff are familiar with these changes and understand how they are applicable to the health facility's specific circumstances.

On June 4, 2009, significant changes to the *Regulated Health Professions Act, 1991* will come into effect pursuant to amendments made by the *Health Systems Improvement Act, 2007* ("HSIA"). The HSIA (formerly Bill 171) received Royal Assent on June 4, 2007. The implementation of the changes to the RHPA were delayed so as to allow time for the systems and processes necessary to support the changes to be put into place.

The RHPA provides the framework for most of Ontario's regulated health professions. The RHPA is omnibus legislation, and includes a detailed Health Professions Procedural Code ("the

Code”). There are also associated profession-specific acts for each of the regulated health professions. The Code establishes a regulatory college (“College”) for each health profession which is responsible for regulating the practice of the profession and which has a duty to serve and protect the public interest.

The changes to the *RHPA* can be broadly categorized as:

- Amendments to mandatory reporting requirements;
- Changes to the information available to the public through the College register; and
- Changes to the College investigations process.

These amendments will impact regulated health professionals who are members of a regulatory College under the *RHPA* (“members”); employers that employ or offer privileges to or associate in partnership or otherwise with members for the purpose of offering health services (“employers”), and persons who operate facilities where members practice, such as hospitals, long-term care homes and independent health facilities (“facility operators”).

This *Communiqué* focuses on the implications these amendments will have for health industry employers and facility operators who employ, privilege or otherwise work with regulated health professionals.

(1) Mandatory Reporting Requirements

The Code imposes a number of mandatory reporting requirements on members, employers and facility operators. On June 4, 2009, there will be an expansion of those reporting requirements for members and facility operators.

Facility Operators

In addition to the existing obligation to report sexual abuse of a patient by a member, facility operators will now be required under the new amendments to make a report to a member’s regulatory College if they have reasonable grounds to believe that the member is incompetent or incapacitated. Such a report must be filed within 30 days after the obligation to report arises. The facility operator must report immediately where there are reasonable grounds to believe that the incompetence or incapacity of the member is likely to expose a patient to harm or injury.

Members

Regulated health professionals will continue to be required to make a report if the member has reasonable grounds, obtained in the course of practising the profession, to believe that another member of the same or a different College has sexually abused a patient. Under the new amendments, members are not independently required to make a report for incompetence or incapacity.

Members will also be required to self-report to their College where they have been found guilty of an offence or where professional negligence or malpractice findings have been made against them.

Employers

Employers will continue to be required to report professional misconduct, incompetence or incapacity by a member to the member’s College where:

- the employer, for reasons of professional misconduct, incompetence or incapacity, terminates the employment relationship; revokes, suspends or imposes restrictions on the privileges of the member; or dissolves a partnership, corporation or association with the member; or
- the member resigns, or voluntarily relinquishes privileges, before any of the above actions are taken against the member.

(2) Public Information

A number of Colleges already make certain member information available on their website. Beginning June 4, 2009, regulatory Colleges will be required to post their register of members on their website. In addition, new information will need to be included. As a result of the new amendments, the following information about members will, subject to some exceptions, now be available to the public via the College's websites:

- Members' qualifications and practice information;
- Court findings of professional negligence or malpractice made against the member, unless the finding is reversed on appeal;
- A notation of the member's resignation and agreement where a member resigns membership with his or her regulatory College during the course of a College investigation and agrees never to practise again in Ontario;
- Referrals to a College's Discipline Committee until the matter has been finally resolved;
- The result and a synopsis of the decision for every finding made against a member as a result of a disciplinary or incapacity proceeding; and
- Any other information required by a College's by-laws to be kept on the register.

The amendments also require that certain information, such as the results of any disciplinary or incapacity proceeding remain on the register indefinitely, except in specific circumstances identified in the legislation.

Health organizations that are entering into or renewing a working relationship with a regulated health professional should keep in mind that the information in the on-line register may not be completely up-to-date. Credentials and standing with the College should be verified directly through the professional's College.

(3) The College Investigation Process

The *HSIA* also amends the Code with respect to the College complaints process, including investigations. The amendments streamline the intake process with the introduction of an "Inquiries, Complaints and Reports" ("ICR") Committee. The ICR Committee assumes the investigative responsibilities of each College's Executive Committee (which conducts investigations that are not driven by a complaint), Boards of Inquiry (for incapacity concerns) and Complaints Committee (which reviews written complaints) and will function as a "single screening committee" under the College's complaints and investigations process. The Executive Committee, Boards of Inquiry and Complaints Committee will continue to exist and to perform other non-investigatory responsibilities.

The ICR Committee for each College will begin functioning as of June 4, 2009 and will receive all information, documents and reports concerning a member, no matter what the originating source (e.g. mandatory report by a facility, complaint, report from Coroner, etc.). In performing its investigatory functions, the ICR Committee may, as appropriate:

- obtain witness statements;
- obtain relevant documentation, including patient charts;
- obtain information from the member's colleagues, staff or others;
- request that the College Registrar appoint an investigator to further examine the practice of the member; and
- request revisions to the time requirements for College investigations, to allow (among other things) more thorough investigations.

Under the new amendments, the ICR Committee must have established timelines for disposition of a complaint, and will be required to communicate with the parties in circumstances where those timelines will not be met. The *HSIA* also amends the Code to formally allow for the use of alternative dispute resolution processes to resolve complaints.

If the subject of a complaint or report, a member must receive a copy of their available prior history with the College (e.g. records of previous complaints). The ICR Committee is also required to review and consider this prior history, including prior decisions dismissing a complaint or concern, when looking at new concerns. In limited circumstances, the complainant may also have access to the member's prior history.

The ICR Committee will also have significant new options for disposing of the matters it reviews. For example, the ICR Committee will be able to require members to complete specific continuing education or a remediation program to address practice concerns, and to require members to attend before it to be cautioned. The ICR Committee will also be able to refer members to the College's Discipline Committee or Fitness to Practise Committee, as appropriate; direct an undertaking; determine that no further action needs to be taken; or in limited situations where there is a risk of harm to patients, make an order for the Registrar to impose an interim suspension or interim terms, conditions and limitations.

It remains important for individuals and organizations who have been contacted by a College pursuant to an investigation to ensure they comply with their obligations regarding client privacy and confidentiality. We recommend that health industry clients develop a formal process for managing requests for information from regulatory Colleges, including confirming that the requesting party, in making such a request, is acting in accordance with authority granted under the *RHPA*.

Conclusion

The regulatory amendments create some significant changes to reporting obligations and College processes under the *RHPA*. We recommend that health industry clients familiarize themselves with these changes and update their policies and procedures in this respect.

Reporting requirements, for example, are subject to interpretation and are rarely clear cut. The individual or organization will need to exercise appropriate judgment to determine whether the reporting obligation is triggered. It is important to have supporting processes in place to assist decision making and to ensure that management and staff are aware of their obligations and comply accordingly.

Our health industry practice group would be pleased to provide you with further analysis and advice on the implications these changes may have for your organization, or how they are applicable in specific circumstances. Please also feel free to contact us for assistance with the development of policies and procedures, or for educational and informational materials, and educational sessions.

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