

KEEPING CURRENT

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The *Protecting Patients Act, 2017* – The Essentials for Regulated Health Professionals

By Lad Kucis

On May 30th, 2017, the *Protecting Patients Act, 2017* (the “**Act**”) received Royal Assent in the Ontario legislature, which resulted in amendments to various health care related legislation, including the *Regulated Health Professions Act, 1991* (the “**RHPA**”).

The following are some of the key changes to the RHPA¹ that all regulated health professionals (“**health professionals**”) need to be aware of:

1. **Expansion of Conduct Resulting in Mandatory Revocation**

In the past, health professionals faced a mandatory revocation penalty if they were found guilty of “sexual abuse of a patient” and the conduct in question involved certain frank sexual acts. As a result of the amendments made by the Act, this list has been expanded to include:

- touching of a sexual nature of a patient’s genitals, anus, breasts, or buttocks; and
- other conduct of a sexual nature prescribed in regulations.

2. **Suspensions are Now the Minimum Penalty for Sexual Abuse**

The Act establishes that if a health professional is found guilty of “sexual abuse of a patient”, the minimum penalty to be ordered is a suspension. Please keep in mind, however, that if the conduct involves frank sexual acts or touching of a sexual nature, as described above, the penalty is a mandatory revocation.

3. **Interim Suspensions can be Imposed Immediately**

In the past, a health professional could not be suspended on an interim basis unless they were

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1. This Legal Bulletin only sets out some of the changes made to the RHPA. For a full listing of all changes, please review the *Protecting Patients Act, 2017*, in its entirety.

referred to the Discipline Committee on charges of professional misconduct and/or incompetence. The Act provides that a health professional can now be suspended as soon as their health regulatory college (the “College”) receives a complaint or commences a s.75 investigation. However, such interim suspensions can only be imposed if the Inquiries, Complaints and Reports Committee (the “ICRC”) of the College believes that the conduct or behaviour of the health professional is likely to put patients at risk.

4. Establishment of Minimum Cooling-Off Period re Sexual Relations With Patients

The Act establishes that health professionals will have to wait a minimum of one year before commencing a sexual relationship with a former patient, although their College is permitted to extend this period. As an aside, it is also important to keep in mind that in certain cases, it is never permissible to initiate a sexual relationship with a former patient.

5. Additional Information on Public Registers

Although the Colleges have made by-law changes over the past few years which have expanded the types of information that are posted on their respective Public Registers, the Act requires that the following information must now be posted by all Colleges:

- a notation of every caution;
- a notation of any specified continuing education or remediation program;
- a copy of the specified allegation for every matter referred to the Discipline Committee that has not been fully resolved; and
- a notation and synopsis of any

acknowledgments and undertakings in relation to allegations of professional misconduct or incompetence which have been provided to the ICRC or the Discipline Committee and that are in effect.

6. Gender-Based Restrictions

Colleges are no longer permitted to impose gender-based restrictions on a health professional’s certificate of registration, such as prohibiting a health professional from treating patients of a certain gender. This changes a long-standing practice where such restrictions would, on occasion, be imposed on health professionals charged with offences of a sexual nature.

7. Reporting Offences

Health professionals will have to file a report with their College if they have been charged with an offence, such as a criminal offence. In addition, the report must also include any bail conditions or other restrictions imposed to or agreed upon in relation to the charge.

8. Reporting of Other Professional Memberships and Findings

Health professionals will be required to advise their College in writing if they are a member of another body that governs a profession either inside or outside of Ontario. In addition, they will also have to file a report with their College if a finding of professional misconduct or incompetence has been made against them by such bodies.

9. Increased Fines for Failure to Report Sexual Abuse

The Act has significantly increased the fines for health professionals and facility operators who fail to report sexual abuse of a patient.



10. Withdrawal of Complaints Now Permitted

The Act provides that College Registrars may withdraw complaints about a health professional at the request of the complainant, as long as the ICRC has yet to take any action.

As you can see, the above changes are significant and health professionals must become well aware of this new legal landscape. As always, if a health professional is faced with a complaint or any other College matter, it is essential that they obtain the assistance of experienced legal counsel.

About the Author

Lad Kucis is the Co-Chair of the Health Law Group at Gardiner Roberts LLP and is recognized by *Best Lawyers in Canada (Health Care Law)*. As part of his health law practice, he provides advice and representation to health professionals regarding all types of College matters. **He can be reached by telephone at 416.864.3114 or by email at lkucis@grllp.com.**

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