

Recent Changes to the Regulated Health Professions Act, 1991 (RHPA) and New Regulations to the RHPA

As of May 1, 2018, 3 new Regulations relating to the *Regulated Health Professions Act, 1991* (RHPA) came into force. The following is an explanation of the 3 new Regulations and where appropriate, reference to the Act itself.

Key Changes

- Definition of who is a patient for the purposes of sexual abuse;
- Immediate access to funding for patient counselling/therapy when sexual abuse is alleged;
- New mandatory reporting provisions, including the need to report any criminal or drug offences against a member;
- Expanding the instances that require s the mandatory revocation of a member's registration certificate

The Definition of 'Patient' (for the purposes of Sexual Abuse)

[O.Reg 260/18 - Patient Criteria Under Subsection 1(6) of the RHPA]

What has changed?

The RHPA now includes a specific definition of patient as it relates to sexual abuse. The definition of patient includes an individual who was a member's patient within **one year** from the date on which the individual ceased to be a member's patient. The Regulation also establishes criteria for determining when an individual will be considered a patient in relation to any allegation of sexual abuse.

The Details:

The Regulation says that an individual is a **patient** of a member if there is direct interaction between the member and the individual and **any** of the following conditions are met:

1. The member had charged or received payment from the individual or third party in respect of health care service provided;
2. The member has contributed to a health record or file for the individual
3. The individual has consented to the health care service recommended by the member;
4. The member has prescribed a drug for which a prescription is needed

The mandatory revocation provisions of the RHPA (below) outline specific instances of sexual abuse when a member’s certificate of registration will be revoked (see below).

What does this mean?

For the purposes of sexual abuse, a person is considered a patient of the member if any of the above has occurred within one year from the date on which the individual ceased to be the member’s patient. If a chiroprapist or podiatrist engages in any of these acts within the **one-year time frame** of discontinuing professional services with a patient, and their actions fall within the definition of sexual abuse in the Act [section 1(6), they will be subject to mandatory revocation of their licence and will no longer be entitled to practice. It does not matter if the patient consented to the sexual acts.

Note

An individual is **not** a patient of a member if all of the following conditions are satisfied:

i. There is, at the time the member provides the health care services, a sexual relationship between the individual and the member.	ii. The member provided the health care service to the individual in emergency circumstances or in circumstances where the service is minor in nature.	iii. The member has taken reasonable steps to transfer the care of the individual to another member or there is no reasonable opportunity to transfer care to another member.
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The definition of patient is somewhat confusing and has not yet been tested in a court of law. When that occurs, more clarity to the legislation will be able to be applied.

Additional Resources

Learn more about criteria in determining whether an individual is considered a patient:
<https://www.ontario.ca/laws/regulation/180260?search=e+laws>

Expansion of Mandatory Revocation

[O. Reg. 261/18 – Prescribed Offences and the RHPA]

What has Changed?

New regulation (O. Reg. 262/18) has expanded the mandatory revocation provisions of the RHPA where a member has been found guilty of a criminal offence.

The Details

The RHPA lists the following as causes for mandatory revocation of a member's license relating to sexual abuse (s.51 (5) 3):

- 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. Encouraging the patient to masturbate in the presence of the member.
- VI. Touching of a sexual nature of the patient's genitals, anus, breasts or buttocks.

O.Reg.262/18 of the RHPA has expanded the mandatory revocation provisions of a member's license to also include a finding of guilt for any the following offences under the **Criminal Code** of Canada:

- 151 – Sexual interference;
- 152 – Invitation to sexual touching;
- 153 – Sexual exploitation;
- 153.1 – Sexual exploitation of a person with a disability;
- 160(3) – Bestiality in the presence of or by a child;
- 162 – Voyeurism;
- 162.1 – Publication, etc., of an intimate image without consent;
- 163.1 – Child pornography;
- 170 – Parent or guardian procuring sexual activity;
- 171.1 – Making sexually explicit material available to a child;
- 172.1 – Luring a child;
- 172.2 – Agreement or arrangement – sexual offence against a child;
- 271 – Sexual Assault;
- 272 – Sexual assault with a weapon, threats to a third party or causing bodily harm; and
- 273 – Aggravated sexual assault.

Additional Resources

Learn more about offences resulting in mandatory revocation

<https://www.ontario.ca/laws/regulation/180262?search=e+laws>

What does this mean?

The meaning is clear – there are now more situations and circumstances where a member’s certificate of registration can be revoked.

Funding for Counselling and Therapy for Victims of Sexual Abuse

[Regulation 59/94 Funding for Therapy or Counselling for Patients Sexually Abused by Members]

What has Changed?

The criteria for **when** an individual is eligible for funding for therapy and counselling related to alleged sexual abuse by a regulated health professional has changed.

A patient alleging sexual abuse by a chiroprapist or podiatrist is now eligible for funding **when a complaint or report is made** to the College.

There is no longer a requirement that the patient or former patient must wait until a member is found guilty of sexual abuse by a Discipline panel. Regulation 59/94 deals with funding for patients sexually abused by members - **it is not new**.

What does this mean?

The College is required to have a program in place to provide funding for therapy or counselling to patients who have been sexually abused by a member.

The maximum funding available is equivalent to the amount that OHIP would pay for 200 half-hour sessions of individual outpatient psychotherapy, which amounts to approximately \$16,000.

Prior to the amendments to the RHPA in 2017, a person was only eligible for funding **after** a panel of the Discipline Committee found that the person, while a patient, was sexually abused by a member. The changes now allow individuals to access funding for therapy **as soon as** a complaint or report is made alleging that they were sexually abused by a member while a patient.

The period of time within which funding may be provided for a person in respect of a case of sexual abuse is five years from the day on which the person first received therapy or counselling or the day on which the person becomes eligible for funding under section 1b.

Additional Resources

Learn more about funding for victims of sexual abuse

<https://www.ontario.ca/laws/regulation/940059?search=e+laws>

Additional Information to be Published on the Public Register

[Regulation 261/18 Information Prescribed under Subsection 23(2) of the RHPA]

What has Changed?

The information that the College must include on the Public Register has been expanded. Pursuant to Regulation 261/18, there is increased information that must be reported by the member and added by the College to the public register.

The Details:

This new Regulation requires the College's public register to include the following prescribed information if known by the College:

1. A finding of guilt against a member under the Criminal Code or the Controlled Drugs and Substances Act;
2. Any currently existing conditions of release following a charge or subsequent finding of guilt under the Criminal Code or the Controlled Drugs and Substances Act;
3. Any findings of professional misconduct or incompetence made against a member by another regulatory body;
4. Registration with any other regulatory body that governs a profession inside or outside of Ontario

Members are required to provide the College with the following information as soon as reasonably practicable (RHPAs.85.6.3: s.85.6.4).

- Registration with any other regulatory body that governs a profession inside or outside of Ontario;
- Any findings of professional misconduct or incompetence made against a member by another regulatory body; and/or
- If the member has been charged with an offence, including any bail conditions or other restriction imposed in connection with the charges.

What does this mean?

These changes require more information to be posted on the public register if known to the College. Members are also required to report the above information to the College.

Additional Resources

Learn more about additions to the Public Register:

<https://www.ontario.ca/laws/regulation/180261?search=e+laws>

Please note: More information about the mandatory reporting obligations that arise from this particular Regulation is attached in the companion document entitled "New Mandatory Reporting Obligations."