Health Professionals, Regulatory Reporting and Investigation

Josh Liswood
jliswood@millerthomson.com
416.595.8525

Lisa Spiegel
lspiegel@millerthomson.com
416.596.2122
1. REPORTING
   – Sources of mandatory reporting obligations
   – What must be included in a mandatory report
   – Failures to make a mandatory report
   – Pending changes to mandatory reporting requirements
2. INVESTIGATIONS
   - The hospital’s independent duty to investigate
   - Due process obligations
   - Sharing of information
Reporting - Sources of Mandatory Reporting Obligations

Public Hospitals Act, s. 33

Where,

(a) the application of a physician for appointment or reappointment to a medical staff of a hospital is rejected by reason of his or her incompetence, negligence or misconduct;

(b) the privileges of a member of a medical staff of a hospital are restricted or cancelled by reason of his or her incompetence, negligence or misconduct; or

(c) a physician voluntarily or involuntarily resigns from a medical staff of a hospital during the course of an investigation into his or her competence, negligence or conduct,

the administrator of such hospital shall prepare and forward a detailed report to The College of Physicians and Surgeons of Ontario, R.S.O. 1990, c. P.40, s. 33
Reporting - Sources of Mandatory Reporting Obligations

Health Professions Procedural Code, Schedule 2 to the *Regulated Health Professions Act, 1991*, ss. 85.1-85.6.2

S. 85.1 - Reporting by members of regulated health professionals if there are reasonable grounds to believe another member of a same or different College *sexually abused* a patient.
Reporting - Sources of Mandatory Reporting Obligations

Health Professions Procedural Code, Schedule 2 to the *Regulated Health Professions Act, 1991, ss. 85.1-85.6.2*

S. 85.2 - Reporting by facilities

A person who operates a facility where one or more members practice shall file a report in accordance with section 85.3 if the person has reasonable grounds to believe that member who practices at the facility is incompetent, incapacitated or has sexually abused a patient.
Health Professions Procedural Code, Schedule 2 to the *Regulated Health Professions Act, 1991*, ss. 85.1-85.6.2

S. 85.2 - Reporting by facilities

Definitions of:

- “Facility”
- “Incapacitated”
- “Incompetence”
Reporting - Sources of Mandatory Reporting Obligations

Health Professions Procedural Code, Schedule 2 to the *Regulated Health Professions Act, 1991*, ss. 85.1-85.6.2

S. 85.2 - Reporting by facilities

What constitutes “reasonable grounds to believe…”?
S. 85.5 - Reporting by employers, etc.

A person who terminates the employment or revokes, suspends or imposes restrictions on the privileges of a member or who dissolves a partnership, a health profession corporation or association with a member for reasons of professional misconduct, incompetence, or incapacity shall file with the Registrar within 30 days after the termination, revocation, suspension, imposition or dissolution a written report setting out the reasons.

* Acts of professional misconduct vary by College
S. 33 of the *Public Hospitals Act* requires that a **detailed report** be filed by the administrator of the hospital to the registrar of the CPSO.
S. 85.3(3) HPPC - Reporting by members and facility operators are required to include:

• Name of person filing report;
• Name of the member who is the subject;
• Explanation of alleged sexual assault, incompetence or incapacity;
• If the grounds of report are related to a particular patient, the name of that patient (unless there is no consent in relation to a report on sexual abuse).
It is an offence to fail to make a mandatory report. (ss. 93(1)(2) of HPPC)

A failure to make a mandatory report could have regulatory implications for a regulated health professional.

The HPPC provides for immunity for mandatory reports made in good faith. (s. 85.6)
Changes expanding the mandatory reporting obligations arising out of the *Public Hospitals Act* and the HPPC are pending and awaiting proclamation.
PHA will require a report to be made to the CPSO when

- A physician resigns from a medical staff of a hospital or restricts his or her practice within a hospital and the administrator of the hospital has reasonable grounds to believe that the resignation or restriction, as the case may be, is related to the competence, negligence or conduct of the physician.
HPPC will require a report to be made to CPSO when:

A member resigns, or voluntarily relinquishes or restricts his or privileges or practice and

• the employer or person who offers privileges has reasonable grounds to believe that the resignation, relinquishment or restriction is related to the member’s professional misconduct, incompetence or incapacity; or

• where the resignation, relinquishment or restriction takes place during the course of, or as a result of, an investigation into professional misconduct, incompetence or incapacity conducted by or on behalf of the employer or person who offers privileges.
Investigations

Do hospital’s have an independent duty to investigate if there is a concurrent College investigation?
How does an investigation become an investigation under the *Public Hospitals Act*?

What are the due process obligations?
Investigations

What information can be shared between a hospital and regulatory College?
Questions?

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