

BRIEFING NOTE

TO: Council

FROM: Amy Stein, General Counsel

DATE: May 28, 2018

SUBJECT: Legislative Update

Purpose:

To provide Council with a summary of newly enacted regulations and proclamations under the *Regulated Health Professions Act*.

On May 30, 2017, the Ontario Government passed Bill 87, the *Protecting Patients Act*, which resulted in significant amendments to the *Regulated Health Professions Act* ("RHPA") and its Schedule 2, the *Health Professions Procedural Code* ("Code"). The legislation was largely aimed at protecting patients from sexual abuse by health professionals and improving transparency.

A number of the Bill 87 amendments went into force immediately on May 30, 2017, while others only come into force upon proclamation. Various amendments also require that regulations be passed in order for them to be effective in practice.

On May 1, 2018, the Ontario Government passed three new regulations and proclaimed a number of provisions into force. The following is a summary of the newly enacted regulations and proclamations.

SUMMARY OF NEW REGULATIONS AND PROCLAMATIONS

Regulations

1. O. Reg. 260/18: Patient Criteria Under Subsection 1(6) of the Health Professions Procedural Code

This regulation defines "patient" for the purposes of the sexual abuse provisions of the Act, including the new section introduced by Bill 87 to the *Health Professions Procedural Code* that, once proclaimed into force, will bar any sexual contact between a member and a former patient for at least one year after that person ceases to be a patient.

Under the new regulation, an individual will be a patient for the purposes of subsection 1(6) of the Code if ANY of the following criteria are met:

- a) The member has charged, or received payment for a health care service provided to the individual (either directly or through a third party);
- b) The member has contributed to the individual's health record/file;
- c) The individual has consented to a health service recommended by the member; or
- d) The member prescribes a drug to the individual.

The regulation goes on to state that a person will NOT be a patient for the purposes of the Code where ALL of the following criteria are met:

- a) A sexual relationship exists between the member and the individual; and
- b) The member provides emergency or health care services to the individual, or services that are “minor in nature”; and
- c) The member has taken reasonable steps to transfer care where such opportunity to do so exists.

2. O. Reg. 261/18: Information Prescribed Under Subsection 23(2) of the Health Professions Procedural Code

This regulation prescribes additional information that Colleges are now required to post to the public register, as follows:

- a) Charges and convictions under the *Criminal Code* (Canada);
- b) Charges and convictions under the *Controlled Drugs and Substances Act*;
- c) Conditions of release (i.e. bail conditions) relating to a criminal charge or conviction, or a *Controlled Drugs and Substances Act* charge or conviction;
- d) Disciplinary findings made by any regulator or licensing authority in any jurisdiction; and
- e) Any registrations or licenses to practice in any jurisdiction.

Colleges are only required to post information that is known to the College. The regulation expressly prohibits the College from posting any information that could identify an individual other than the member. The College is furthermore prohibited under the *Code* from posting information that would violate a publication ban.

The College’s public register is in the process of being updated to permit the College to post the prescribed information.

3. O. Reg. 262/18: Prescribed Offences – Health Professions Procedural Code

This regulation prescribes a number of offences under the *Criminal Code* that now require mandatory revocation of a member’s certificate of registration upon a finding of professional misconduct. All of the prescribed offences are crimes of a sexual nature.

Under the new regulation, if a member is found by a discipline committee to have engaged in professional misconduct, and the professional misconduct finding includes that the member was found guilty of certain offences under the *Criminal Code*, the discipline committee must reprimand the member and revoke the member’s certificate of registration. The member would furthermore be barred from applying for reinstatement for one year from the date of revocation.

The prescribed offences that now result in mandatory revocation under this regulation are as follows:

- 151 – Sexual interference (person under 16)
- 152 – Invitation to sexual touching (person under 16)
- 153 – Sexual exploitation (person age 16-18)

- 153.1 – Sexual exploitation of a person with 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
- 273 – Aggravated sexual assault

Proclamations

In addition to the foregoing regulations, the Ministry has proclaimed the following provisions amended by Bill 87 into force effective May 1, 2018:

1. Provision regarding the definition of “patient” for the purposes of the sexual abuse provisions of the RHPA. Pursuant to the amended definition of “patient”, a person now remain a “patient” for the purposes of the sexual abuse provisions of the RHPA for a least one year after ceasing to be a patient (RHPA s. 1(6)).
2. Provision regarding production orders for third party records in discipline hearings involving allegations of sexual abuse, and guaranteed standing to witnesses who are the subject of these orders (Code s. 42.2).
3. Provisions regarding the College’s obligations with respect to funding for therapy and counselling, including amended eligibility criteria and provisions concerning timing of access to the funding, college regulation-making authority to establish cessation of eligibility, provisions regarding other coverage and the college’s right of recovery of funds from members (Code s. 85.7).
4. Amended statement of purpose for Sexual Abuse Provisions, which aligns with amended eligibility criteria for funding for therapy and counselling (Code s. 1.1),
5. Provision regarding reporting by members of licenses and registration in other jurisdictions (Code s. 85.6.3).
6. Provision regarding reporting by members of charges and bail conditions (Code s. 85.6.4).

