

mandatory reporting



College of
Medical Radiation
Technologists of
Ontario

Ordre des
technologues en
radiation médicale
de l'Ontario

What you must know about...

Introduction

Mandatory reporting refers to the obligation under the *Regulated Health Professions Act* (RHPA) and the Health Professions Procedural Code for medical radiation technologists (MRTs), employers and facility operators to file written reports to the College in a number of circumstances as outlined here.

Mandatory reporting is considered an essential professional obligation because it is the best means of ensuring that instances of professional misconduct, incompetence, professional negligence, sexual abuse or concerns regarding incapacity are brought to the attention of the College. It is the responsibility of the College to review or investigate any report in the context of its self-regulatory role to protect the public from harm.

As health professionals, MRTs may also have mandatory duties to report information to named officials or agencies under other pieces of provincial legislation. For example, Section 72 of the *Child and Family Services Act* outlines the public and professional's duty to report a child in need of protection if he or she has reasonable grounds to suspect abuse as defined under that Act. These Acts also define to whom health professionals are required to report.

However, this publication is focused solely on the duties that MRTs must fulfill to report actions and behaviours to the College and reports to the College that may be required to be made by others regarding MRTs.

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**Importance of
Departmental Policies re:
Reporting**

Reporting of sexual abuse, professional misconduct, incompetence and incapacity by MRTs, employers and facility operators can be complex and sensitive. Facility operators and department managers are encouraged to develop policies that help guide individual MRTs in how they are to handle these situations.

In particular, the policies should define who is responsible within the organization for preparing the report for filing with the College Registrar.

Reporting by MRTs

Sexual Abuse

The College publishes a more detailed description of its program to prevent sexual abuse, and the expectations of MRTs under the RHPA and the Health Professions Procedural Code with respect to suspected sexual abuse, in its *What You Must Know About . . . Sexual Abuse*.

However, it is mandatory under the RHPA for an MRT to file a written report to the College if the MRT has reasonable grounds, obtained in the course of his or her practice, to believe that a patient has been sexually abused by any member of the CMRTO or by any member of another health regulatory college.

It is compulsory for MRTs to file a report of sexual abuse of a patient, unless the MRT does not know the name of the member who would be the subject of the report. In fact, failure to do so when there are reasonable grounds to believe the abuse has occurred is an offence under the Health Professions Procedural Code, and can lead to severe penalties.

Professional Negligence and Offences

Under section 85.6.2 of the Health Professions Procedural Code, an MRT must file a written report to the College if the MRT has had a finding of professional negligence or malpractice made against him or her. These findings are made by a court in a civil proceeding or lawsuit. They often result in an award of damages by the court. The College is required to post the court's finding of professional negligence or malpractice against the MRT on the public register.

Under section 85.6.1 of the Health Professions Procedural Code, an MRT must file a written report to the College if the MRT has been found guilty of an offence. A person may be found guilty of an offence if the person breaches a provincial law (e.g. *Healing Arts Radiation Protection Act*) or a federal law (e.g. Criminal Code of Canada). The Registrar will review the report made by the MRT and determine whether to conduct further investigation into the incident. For example, if the offence is related to the practice of medical radiation technology or an MRT's suitability to practise.

***Reporting by Employers,
Facilities and Others***

Under section 85.5 of the Health Professions Procedural Code, a report must be sent to the College by a person whenever a person:

- Terminates the employment of a practitioner, *for reasons of professional misconduct, incompetence or incapacity*
- Revokes, suspends or imposes restrictions on the privileges of a practitioner, *for reasons of professional misconduct, incompetence or incapacity*
- Dissolves a partnership, a health profession corporation or association with a practitioner, *for reasons of professional misconduct, incompetence or incapacity*

The person also has an obligation to file a report if the practitioner resigns to avoid the actions defined above.

Under section 85.2 of the Health Professions Procedural Code, a report must be sent to the College by a person who operates a facility whenever that person:

- Has reasonable grounds to believe that a member who practises at the facility is incompetent, incapacitated or has sexually abused a patient

***Determining
Professional Misconduct,
Incompetence,
Incapacity, or
Sexual Abuse***

Sometimes members of the College have difficulty determining what constitutes *professional misconduct, incompetence or incapacity*.

In general, *professional misconduct* results from a failure to do something required by the practice of our profession or doing something which violates the legislation or standards of practice governing our profession. The means for assessing whether any conduct or action constitutes professional misconduct are the College's Standards of Practice and the legislation which governs the profession, including the professional misconduct regulation of the College (available on the College website, www.cmrto.org).

Both incompetence and incapacity are defined in the Health Professions Procedural Code. *Incapacity* occurs when a professional "is suffering from a physical or mental condition or disorder that makes it desirable in the interest of the public that the member's practice be subject to terms, conditions or limitations or that the member no longer be permitted to practise."

Incompetence occurs when a professional's care of a patient displays "a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates that the member is unfit to continue to practise or that the member's practice should be restricted."

Sexual abuse of a patient by a member is defined in the Health Professions Procedural Code and includes: sexual intercourse or other forms of physical sexual relations; touching of a sexual nature; behaviour or remarks of a sexual nature. For more detailed information please refer to *What You Must Know About . . . Sexual Abuse*.

Rules for Filing Reports

Section 85.3 of the Health Professions Procedural Code outlines in detail the processes and rules for persons operating a facility who are required to submit a report of incompetence or incapacity, as well as for persons operating a facility and MRTs who are required to submit a report of sexual abuse to the College Registrar. Here are some important points to remember:

- A report must be filed in writing with the Registrar of the College of the member who is the subject of the report. (Written reports should not be submitted by email since they must be signed)
- Usually reports must be filed with the appropriate College Registrar within thirty days after the obligation to report arises. However, if there are reasonable grounds to believe that sexual abuse of the same patient will continue or of other patients will occur, or that the incompetence or incapacity of the member will expose a patient to harm or injury, and there is urgent need for intervention, the report must be filed immediately
- The report must contain,
 - (a) the name of the person filing the report
 - (b) the name of the member who is the subject of the report
 - (c) an explanation of the alleged sexual abuse, incompetence or incapacity
- The report may only contain the name of the patient who may have been sexually abused if the patient consents in writing to his or her name being included in the report
- If an MRT is required to file a report of sexual abuse because of reasonable grounds obtained from one of his or her patients, the MRT must use his or her best efforts to advise the patient of the requirement to file the report before doing so

Section 85.5 of the Health Professions Procedural Code provides the following rules for submitting a report regarding termination of employment, revocation, suspension or imposition of restrictions on a practitioner's privileges or dissolution of a partnership, health profession corporation or association with a member, in each case, for reasons of professional misconduct, incompetence or incapacity:

- A report must be filed in writing with the Registrar of the College of the member who is the subject of the report. (Written reports should not be submitted by email since they must be signed)
- A report must be filed with the appropriate College Registrar within 30 days after the termination of employment, revocation, suspension or imposition of restrictions on privileges or dissolution of the partnership, health profession corporation or association
- A report must set out the reasons

A report should also contain full details of the concern including:

- A summary of the nature of the concern
- A description of the details of the conduct in issue
- A list of the individuals who witnessed the conduct
- A copy of the policies of the facility (or partner) that apply to the conduct
- The response of the practitioner to the concern
- The action taken by the facility (or partner)

A person filing a report in good faith under these provisions of the Health Professions Procedural Code is given legal protection from an action or other proceeding against him or her for doing so.

Sections 85.6.1 and 85.6.2 set out the following requirements for a report made by an MRT regarding a finding of guilt of an offence or finding of professional negligence or malpractice:

- The report must be in writing and be filed as soon as reasonably practical after the member receives notice of the finding of guilt or finding of professional negligence or malpractice
- The report must include the nature and description of the offence or finding, the date of the finding, name and location of the court which made the finding and a notation of any appeal

The MRT is required to file an additional report if the status of the finding changes as a result of an appeal.

What You Must Know About... Mandatory Reporting is also available on the College website www.cmрто.org.



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