Mandatory Reporting for Kinesiologists, Employers and Facility Operators

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Introduction

Kinesiologists, and those who employ or work with them, have obligations to report certain important information to the College of Kinesiologists of Ontario and/or other bodies. This is known as mandatory reporting. Mandatory reporting ensures that the College becomes aware of and can investigate incidents of possible professional misconduct, incompetence or incapacity, which help protect the public.

By ensuring that kinesiologists and their employers are aware of their reporting obligations, the public can have greater confidence in professional regulation. The *Regulated Health Professions Act, 1991* (RHPA) describes the circumstances in which a mandatory report is required and what must be reported.

Protection for reporters

Reporters are protected against liability under the RHPA when making a mandatory report, even if the allegations are proven to be false. Kinesiologists, employers and facility operators do not need to have proof of the conduct they are reporting; they only need reasonable suspicion.

Fulfilling the mandatory reporting requirements is not only a legal duty, but an ethical one. While the College understands that making a report about another regulated health professional is difficult, it is necessary to ensure that concerning behaviour is dealt with appropriately and prevented. Making a mandatory report is about putting the interests of patients/clients first.

What must be reported?

Sexual abuse

Sexual abuse of a patient/client by a regulated health professional is a serious matter. It is an abuse of power and breach of trust that can have devastating consequences for victims. It is crucial that all

regulated health professionals, employers and facility operators know and recognize what constitutes sexual abuse so that it can be reported.

Sexual abuse is defined in the RHPA as:

(a) *Sexual intercourse or other forms of physical relations between the member and the patient*
(b) Touching of a sexual nature of the patient by the member
(c) Behaviour or remarks of a sexual nature[1] by the member towards the patient

Any sexual relationship with a patient/client during the professional relationship, even if the patient/client consents, is sexual abuse because of the power the regulated health professional holds. If a kinesiologist becomes aware that another kinesiologist or another regulated health professional is in a relationship with a patient/client (and in some cases a former patient/client), they must report it to the relevant college. The reporter only needs to have a reasonable suspicion, not proof that the abuse occurred.

When a patient/client discloses information about the conduct of another regulated health professional, it is unlikely that they will use words like "sexual abuse". They may be vague in their details and only imply that they felt something was done that was inappropriate. Kinesiologists must be keen listeners and sensitive to patients/clients who might be gauging whether or not their own feelings around the experience was/is valid, or to take the onus off themselves to make a complaint. Kinesiologists should always listen and take seriously what a patient/client is telling them and potentially probe for more information, particularly the identity of the regulated health professional the patient/client is referring to, in a supportive manner. However, kinesiologists are not to evaluate or screen the information for validity. Once the report is made, the onus is on the College to investigate.

The reporter must make best efforts to inform the patient/client of their reporting obligations and attempt to gain consent to use the patient's/client's name in the report. Consent should be obtained in writing and kept on file. If the patient/client does not consent, a report must still be made to the appropriate college without the patient's/client's name. In many sexual abuse cases, the patient/client is reluctant to provide consent immediately. However, it can be obtained after the report is made. Lack of consent should not stop the kinesiologist, employer or facility operator from making the report.

Kinesiologists, employers and facility operators need to take this reporting obligation seriously as the College relies on this information to protect the public. It is important to understand what constitutes sexual abuse and to be able to identify when it may be happening, keeping in mind that sexual abuse often does not start with overt actions on the part of the abuser. A regulated health professional who has a patient/client disclose potential abuse, and who does not take appropriate action, further undermines that patient/client's trust in the healthcare system.

[1] "Sexual nature" is an action, behaviour or remark that is not motivated by clinical needs.

Regulated health professionals, employers and facility operators face potential investigation and substantial fines for failure to make a report. The fine for not making a report of suspected sexual abuse is $50,000 for individuals and $200,000 for corporations. Where there is information to believe a regulated health professional or a professional corporation did not make a mandatory report of sexual abuse, the registrar will initiate an investigation.

The College recognizes that the prospect of making a mandatory report about potential sexual abuse is very difficult. Kinesiologists are urged to contact the College if they require guidance as to how to recognize abuse and make a report.

Terminations, restrictions, investigations

Employers and facility operators are required to report if they terminate, suspend or otherwise restrict the practice of a regulated health professional for reasons of suspicion of professional misconduct. Terminations in this context are not be confused with terminations with or without cause, which are legal terms associated with employment law.

Employers or facility operators are also required to report if they investigate the practice or conduct of a regulated health professional for reasons of suspicion of professional misconduct, incompetence or incapacity. Investigations can include audits, inquiries, examinations, etc.

Learn more about reports related to terminations, restrictions and/or investigations.

Conduct of others

Kinesiologists are required to promptly report incidents of unsafe practice by other kinesiologists. If the unsafe practice would be considered professional misconduct, the kinesiologist should report it to the appropriate source. This may be the College, an employer or a facility operator.

Incompetence and incapacity

A regulated health professional is considered to be incompetent if his/her *"professional 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"*. Incompetence is not necessarily demonstrated by one mistake, but by a repetition or pattern of deficiencies that places patients/clients at risk of harm.

Incapacity is defined in the RHPA as a regulated health professional who is suffering from a physical or mental condition or disorder that requires his/her practice to be restricted or suspended in the interest of public safety. It is important to note the two aspects of the definition: first, the existence of a recognized physical or mental condition or disorder, and second, the fact that such a condition or disorder requires restricted or suspended practice. A regulated health professional may not be considered incapacitated if they have a condition or disorder that they are successfully coping with and not posing a risk of harm to patients/clients. Employers or facility operators should be supportive of regulated health professionals with disabilities and be mindful of their duty to accommodate under human rights and other employment related legislation.

Employers and/or facility operators must report incompetence or incapacity. The College's Professional Misconduct Regulation specifies that kinesiologists must promptly report any incidents of unsafe practice. Where unsafe practice is a result of suspected incapacity or incompetence, kinesiologists should report the issue to the appropriate source.

Other reporting obligations

Other legislation exists that obligates certain professionals to report abuse. Kinesiologists who are providing services to children or the elderly have an obligation to report child abuse as per the *Child and Family Services Act, 1990* and elder abuse as per the *Long-Term Care Homes Act, 2007.* Kinesiologists should be aware of other legislation relevant to their practice.

Learn more about reporting obligations regarding suspected child abuse or neglect.

Self-reporting (Kinesiologists)

Guilty of an offence

Kinesiologists have a duty to report to the College if they have been found guilty of *any* offence in *any* jurisdiction. Kinesiologists must report within 30 days of the finding. If a kinesiologist has been pardoned, or received an absolute or conditional discharge instead of a conviction, the matter must be reported to the College.

Finding of professional negligence or malpractice

Kinesiologists must report to the College if they have been sued and a civil court has found them liable for professional negligence or malpractice.

Finding or proceeding by another regulatory body[2]

Kinesiologists are required to inform the College of whether they are regulated in another profession inside or outside of Ontario. A kinesiologist must report to the College if they are the subject of a regulatory proceeding by another regulatory body inside or outside of Ontario. Kinesiologists are required to report the matter whether the proceeding is on-going or a finding has been made. For example, if a kinesiologist has been referred to discipline by another health regulatory college in Ontario, they must make the report at the time of the referral, not at the conclusion of the matter at a disciplinary hearing.

How and when to report

Sexual abuse, incompetence and incapacity

[2] These reporting obligations currently exist in the College's By-Laws, but new legislative amendments will come into effect at a later date that will make them enforceable under the RHPA. However, the College's By-Laws expand this duty by requiring kinesiologists to report if they are the subject of a regulatory proceeding; therefore, kinesiologists would be expected to make a report, in some instances, before a finding. See the Mandatory Reporting Checklist for further details. Under the By-laws, kinesiologists are also to report if they are the subject of an incapacity proceeding. The RHPA will not specify this.

These reports must be filed with the applicable college within 30 days of the information being discovered, or immediately if the reporter has grounds to believe that the regulated health professional is an on-going threat to patients/clients.

The report must be addressed to the registrar of the college and must include the following:

(a) the name of the person filing the report;

(b) the name of the regulated health professional who is the subject of the report;[3]

(c) An explanation of the alleged sexual abuse, incompetence or incapacity; and

(d) If the report is related to a particular patient/client of the regulated health professional who is the subject of the report, the name of that patient/client if they consent to disclosing their name.

Self-reporting

For all self-reporting obligations, kinesiologists must report within 30 days of receiving notice of the finding.

The self-report must include the following information:

(a) the name of the kinesiologist filing the report;

(b) the nature of, and a description of, the offence or finding;

(c) the date the kinesiologist was found guilty of the offence or the date the finding was made;

(d) the name and location of the court that found the kinesiologist guilty of the offence or the governing body that made the finding; and

(e) the status of any appeal.

Failure to report

It is considered professional misconduct if a kinesiologist fails to report any of the above information. If the College becomes aware of such a failure, the College can investigate. Failure to make a mandatory report is an offence punishable with a fine of up to $50,000.00 for a first offence.

Where information becomes available that a kinesiologist or professional corporation has failed to make a mandatory report where the practice or conduct at issue is considered serious and a substantial risk to the public, the registrar will initiate an investigation.

[3] If the kinesiologist, employer or facility operator does not know the name of the regulated health professional who is the subject of the report, they should attempt to ascertain the professional's identity. However, if the patient/client is unable to identify the professional, there is no duty to report.