

# mandatory reporting



College of  
Medical Radiation  
Technologists of  
Ontario

Ordre des  
technologues en  
radiation médicale  
de l'Ontario

## What you must know about...

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### *Introduction*

Mandatory reporting refers to the obligation under the *Regulated Health Professions Act, 1991* (RHPA) and the Health Professions Procedural Code (the Code) for members of the College of Medical Radiation Technologists of Ontario (CMRTO or the College), employers and facility operators to file written reports to the College in a number of circumstances as outlined here. In this publication, “members” refers to all members of the CMRTO; that is, members in all of the five specialties: radiography, radiation therapy, nuclear medicine, magnetic resonance and diagnostic medical sonography.

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 regulatory role to protect the public from harm.

As health professionals, members also have mandatory duties to report information to named officials or agencies under other pieces of provincial legislation. For example, Section 125(1) of the *Child, Youth and Family Services Act, 2017* outlines the public and professional’s duty to report a child in need of protection if they have 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 members 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 medical radiation and imaging technologists.

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***Importance of departmental policies re: reporting***

Reporting of sexual abuse, professional misconduct, incompetence and incapacity by members, employers and facility operators can be complex and sensitive. Facility operators and department managers are encouraged to develop policies that help guide individual health professionals 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.

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***Reporting by members***

***Sexual abuse***

The College publishes a more detailed description of its program to prevent sexual abuse, and the expectations of members under the RHPA and the Code with respect to suspected sexual abuse, in its *What you must know about ... sexual abuse*.

It is mandatory under the RHPA for a member to file a written report to the College if the member has reasonable grounds, obtained in the course of their 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 members to file a written report of sexual abuse of a patient, unless the member 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 Code, and can lead to severe penalties.

***Professional negligence and malpractice***

Under section 85.6.2 of the Code, a member must file a written report to the College if the member has had a finding of professional negligence or malpractice made against them. These findings are made by a court in a civil proceeding or lawsuit. They often result in an award of damages by the court (usually monetary compensation for loss or injury). The College is required to post the court's finding of professional negligence or malpractice against the member on the public register.

### ***Offences, charges and bail conditions***

Under section 85.6.1 of the Code, a member must file a written report to the College if the member has been found guilty of an offence or pleads guilty to an offence. An offence is a breach of law that is prosecuted in a court. This includes all findings or admissions of guilt, including but not limited to offences under the Criminal Code, the *Health Insurance Act* and other federal and provincial laws. Members are required to report all findings or admissions of guilt, including those made in other jurisdictions and those for which the member may have received a pardon.

The Registrar will review the report made by the member and determine whether to conduct further investigation into the incident. For example, if the offence is related to the practice of the profession or a member's suitability to practise.

Under section 85.6.4 of the Code, a member must file a written report to the College if the member has been charged with an offence. The report must contain information about every bail condition or other restriction imposed upon, or agreed to, by the member in connection with the charge.

### ***Other professional memberships and findings***

Under section 85.6.3 of the Code, a member must file a written report to the College if the member is a member of another body that governs a profession inside or outside of Ontario. A member shall also file a written report to the College if there has been a finding of professional misconduct or incompetence made against the member by another body that governs a profession inside or outside of Ontario.

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### ***Reporting by employers, facilities and others***

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

- terminates the employment of a member, for reasons of professional misconduct, incompetence or incapacity
- revokes, suspends or imposes restrictions on the privileges of a member, for reasons of professional misconduct, incompetence or incapacity

- dissolves a partnership, a health profession corporation or association with a member, for reasons of professional misconduct, incompetence or incapacity

The person also has an obligation to file a report if the member resigns from their employment to avoid the actions defined above.

Under section 85.2 of the 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

Health information custodians also need to be aware of their reporting obligations under the *Personal Health Information Protection Act, 2004* (PHIPA). Health information custodians are required to report certain actions taken in response to privacy breaches to the College. Under PHIPA, a privacy breach is the unauthorized collection, use, disclosure, retention or disposal of personal health information.

If a health information custodian takes any disciplinary action against a member because of that member's unauthorized collection, use, disclosure, retention or disposal of personal health information, the health information custodian must file a report with the College. This includes where a health information custodian suspends or terminates a member's employment or restricts a member's privileges. It also includes where a member resigns to avoid such actions.

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***Determining professional misconduct, incompetence, incapacity or sexual abuse***

Sometimes members 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 Government of Ontario's website, <https://www.ontario.ca/laws/regulation/930855>).

Both incompetence and incapacity are defined in the Code. Incapacity occurs when a member "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 member'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 Code and includes: sexual intercourse or other forms of physical sexual relations; touching of a sexual nature; and behaviour or remarks of a sexual nature. For more detailed information please refer to *What you must know about ... sexual abuse*.

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### ***Filing a report***

#### ***Reporting by members***

Sections 85.6.1 and 85.6.2 of the Code set out the following requirements for a report made by a member 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 member is required to file an additional report if the status of the finding changes as a result of an appeal.

Section 85.6.4 of the Code sets out the following requirements for a report regarding charges and bail conditions:

- the report must be in writing and be filed as soon as reasonably practicable after receiving notice of the charge, bail condition or restriction
- the report must include the name of the member filing the report, the nature of, and a description of, the charge, the date the charge was laid against the member, the name and location of the court in which the charge was laid or in which the bail condition or restriction was imposed on or agreed to by the member, every bail condition imposed on the member as a result of the charge, any other restriction imposed on or agreed to by the member relating to the charge, and the status of any proceedings with respect to the charge

The member is required to file an additional report if there is a change in the status of the charge or bail conditions.

Section 85.6.3 of the Code sets out the following requirements for a report made by a member regarding other professional memberships and findings:

- the report must be in writing and be filed as soon as reasonably practicable after the member receives notice of the finding made against the member
- the report must include the name of the member filing the report, the nature of the finding, a description of the finding, the date that the finding was made against the member, the name and location of the body that made the finding against the member, and the status of any appeal initiated respecting the finding made against the member

The member is required to file an additional report if there is a change in the status of the finding made against the member as the result of an appeal.

#### ***Reporting by employers, facilities and others***

Section 85.3 of the 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 members 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
- 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 their name being included in the report
- if a member is required to file a report of sexual abuse because of reasonable grounds obtained from one of their patients, the member must use their best efforts to advise the patient of the requirement to file the report before doing so

Section 85.5 of the 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
- 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 for the termination of employment, revocation, suspension or imposition of restrictions on privileges or dissolution of the partnership, health profession corporation or association

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 Code is given legal protection from an action or other proceeding against them for doing so.

Section 17.1 of PHIPA sets out the following requirements for a report filed by a health information custodian in response to the unauthorized collection, use, disclosure, retention or disposal of personal health information by a member:

- a report must be filed with the College within thirty days after the termination of employment, revocation, suspension or imposition of restrictions on privileges or if the employee resigns and the health information custodian has reasonable grounds to believe that the resignation is related to an investigation or other action by the custodian with respect to the alleged unauthorized collection, use, disclosure, retention or disposal of personal health information by the member.

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## **Conclusion**

In summary, CMRTO members must file a report with the CMRTO Registrar when:

- they have been found guilty, or have pleaded guilty, to an offence
- they have been charged with an offence, including information about any bail conditions or restrictions connected with the charge
- a finding of professional negligence or malpractice is made against them
- the member is a member of another body that governs a profession inside or outside Ontario
- a finding of professional misconduct or incompetence is made against the member by another body that governs a profession inside or outside Ontario
- they have reasonable grounds, obtained in the course of their practice, to believe that a patient has been sexually abused by a member of the CMRTO or by any member of another health regulatory college

Employers, facilities and others must file a report with the CMRTO Registrar when:

- the employment of a member is terminated, revoked or suspended for reasons of professional misconduct, incompetence or incapacity, or if the member resigns to avoid such action, or restrictions are imposed on the privileges of a member for reasons of professional misconduct, incompetence or incapacity, or if the member resigns to avoid such action
- they dissolve a partnership, a health profession corporation or association with a member for reasons of professional misconduct, incompetence or incapacity, or if the member resigns to avoid such action
- a person who operates a facility has reasonable grounds to believe that a member who practises at the facility is incompetent, incapacitated or has sexually abused a patient
- if a health information custodian takes any disciplinary action against a member because of that member's unauthorized collection, use, disclosure, retention or disposal of personal health information