

## Jurisprudence of Pharmacy

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## Agenda

- Health Professions Regulation
- Register & Protected Titles
- Code of Ethics
- Complaints/ Investigation Process
- Discipline Process
- Fitness to Practise Process
- Sexual Abuse Prevention

## Health Professions Regulation

## Who is regulated?

- Regulated Health Professions Act, 1991
- Profession-specific legislation

## Listing Regulated Professions

- Audiology and Speech-Language Pathology
- Chiropractic
- Chiropractic
- Dental Hygiene
- Dental Technology
- Dentistry
- Denturism
- Dietetics
- Massage Therapy
- Medical Laboratory Technology
- Medical Radiation Technology
- Medicine

## More Regulated Health Professions

- Midwifery
- Nursing
- Occupational Therapy
- Opticianry
- Optometry
- Pharmacy
- Physiotherapy
- Psychology
- Respiratory Therapy

## Soon To Be Self-Regulating (with own College)

- Homeopathy
- Kinesiology
- Naturopathy
- Psychotherapy and Registered Mental Health Therapy
- Traditional Chinese Medicine

## Now Part of OCP

- Pharmacy Technicians

## Mandate of OCP

- *“To serve and protect the public interest...”*



## Implementation of Mandate

- Setting entrance to practice requirements
- Developing standards of practice
- Assuring continuing quality in the practice of pharmacists, pharmacy technicians and pharmacies
- Enforcing the standards through investigation and discipline of members

## The Register and Protected Titles

### The Register

- Legislation and by-laws mandate what information the College **must** keep about members, and what it is **allowed** to tell the public about members through the register (available on College website)
  - Current terms & conditions
  - Findings of hearings stay on the public register indefinitely, with very few exceptions
  - Findings of sexual abuse stays on the public register forever
- Trend is toward “transparency”
  - information should be public unless there is a good reason for it NOT to be (e.g. residence phone numbers)

## Protected Titles

- pharmacist
- pharmaceutical chemist
- apothecary (the person; this is not a protected title for a store)
- druggist
- pharmacy technician

## Code of Ethics

## What is the Code of Ethics?

- A set of principles that form the basis of ethical conduct of members\*
- Provides members with guidance as to how to exercise professional judgment

\*Members are defined as pharmacists, registered pharmacy students, interns and pharmacy technicians.

## Why do members need to practice ethically?

- To engender the trust of the public
- To maintain the reputation of the profession
- To deliver excellent care
- To protect the public interest
- **To retain the ability to self govern**

## Principle One

*The patient's well-being is at the centre of the member's professional and/or business practices.*

- Patient trusts member to act in *patient's* interest
- Each member develops professional relationship with each patient (within scope)
- Patient is encouraged to participate in decisions about his/her health – right to “self-determination”

## Principle Two

*The member exercises professional judgment in the best interest of the patient (consistent with scope of practice) to meet the patient's needs.*

## Principle Three

*Each member preserves the confidentiality of information about individual patients acquired in the course of his or her professional practice and does not divulge this information except where authorized by the patient or required by law, or to protect patient or another person from harm.*

## Confidentiality

- Technician leaves computer screen accessible
- Husband requests copies of wife's records
- Physician calls to request patient's drug history
  - professional judgment in emergency situations/ circle of care
- Patient divulges information about child abuse
- Police ask questions about a patient's medication
- Police present a warrant for narcotic records for a patient
- College requests patient records

## Personal Health Information Protection Act, 2004

- applies to the collection, use and disclosure of personal health information by health information custodians as of November 1, 2004
- contains specific rules on how health care practitioners may collect, use, retain, disclose and dispose of personal information
- See website of Information & Privacy Commissioner: [www.ipc.on.ca](http://www.ipc.on.ca)

## Circle of Care: Permitted Disclosure

- *Circle of Care: Sharing Personal Health Information for Health-Care Purposes*
  - Brochure created by Information & Privacy Commissioner
  - Describes when health information custodians can assume a patient's *implied consent* to collect, use or disclose personal health information

## Complaints about privacy

- *A patient receives a vial with a label partially detached. She peels back the label and finds another label that lists a different patient's name, medication and dosage.*
  - what issues does this raise for the pharmacy, pharmacist and pharmacy technician?

## Principle Four

*Each member respects the autonomy, individuality and dignity of each patient and provides care with respect for human rights and without discrimination. No patient shall be deprived of access to pharmaceutical services because of the personal convictions or religious beliefs of a member. Where such circumstances occur, the member refers the patient to a pharmacist who can meet the patient's needs.*

## March 2001 – Council position

Objecting pharmacists have a responsibility to participate in a system designed to respect a patient's right to receive pharmacy products and services.

- A pharmacist is permitted to decline providing certain pharmacy products or services if it appears to conflict with the pharmacist's view of morality or religious beliefs and if the pharmacist believes that his or her conscience will be harmed by providing the product or service. Objections should be conveyed to the pharmacy manager, not the patient.
- The individual pharmacist must insure an alternate source, to enable the patient to obtain the service or product that they need. Any alternate means must minimize inconvenience or suffering to the patient or patient's agent.

## Other Principles

- acting with honesty and integrity
- commitment to continuous competence improvement
- collaboration with the multidisciplinary health team
- enable other members to practise in accordance with high standards of professional practice

## Investigation Process

Complaints and non-complaint matters

## Screening Committee: "ICRC"

### Inquiries, Complaints and Reports Committee

- Receives and reviews official complaints
- Receives and reviews other information about member-specific issues, including reports for termination, incompetence, and incapacity
- As of June 4, 2009, this committee replaced the Complaints Committee and took over some functions of the Executive Committee

## ICRC

- Inquiries, Complaints and Reports Committee
  - is a panel of 3 to 5 members chosen from a larger Committee
  - consists of some pharmacists, pharmacy technicians & some public (non-pharmacist) members
  - conducts a paper review of results of investigation
  - may direct further investigation
  - decides on appropriate disposition

## Complaint Investigations

- What do people complain about?
  - dispensing errors
  - rudeness
  - unmet needs and concern for public welfare
  - dispensing without authority
  - labelling errors
  - unauthorized reduction in quantity
  - insurance fraud
- Must be about pharmacy practice

## ICRC & Complaints

- How does the College investigate a complaint?
  - Shares copy of complaint and documentation with the member or Designated Manager (if no member specified)
  - Provides the member with their prior decisions history
  - Gathers all relevant information
  - Gives the member the right to respond in writing within 30 days
  - Shares copy of member's response with complainant
  - Investigates within 150 days



## ICRC & Complaints

#1 question asked by pharmacists when they are notified that they have been complained about?



## ICRC & Complaints

Is my name going to be published in the next edition of Pharmacy Connection?



## ICRC & Complaints

#2 question asked by pharmacists when they are notified that they have been complained about?



## ICRC & Complaints

Do I need a lawyer?



## What can the ICRC do?

- take no action
- issue advice, reminders, or written caution
- require member's attendance for an oral caution
- require member to do a specified continuing education or remediation program
- invite member to undertake (promise) to do something
- refer to Discipline Committee with specified allegations of professional misconduct or for incompetence
- appoint another ICRC panel to inquire into the health of a member
  - this ICRC panel can refer to Fitness to Practise Committee

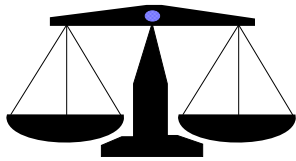
## ICRC & Complaints: HPARB

- For complaint matters, both the complainant and the member have the right to request a review by an independent board
  - HPARB (Health Professions Appeal and Review Board)
  - Deals with requests for review from all health regulatory college ICRCs

## ICRC & non-Complaint matters

- Other than complaints, what do people inform the College about?
  - e.g. employer reports termination or suspension of a member because of misconduct, incompetence or incapacity
  - e.g. member reports criminal charges against them
- What does the ICRC do?
  - appoints an investigator if reasonable and probable grounds exist to think that the member has committed professional misconduct
  - conducts health inquiries if appropriate

## Discipline Proceedings



## Discipline Committee

- The Discipline Committee
  - has approximately 25 members from which a panel is appointed
  - panel usually consists of 3 pharmacists/pharmacy technicians and 2 public members
  - hears matters referred by screening committees:
    - ICRC as of June 4, 2009
    - Accreditation Committee (about pharmacies)
    - Formerly the Complaints and Executive Committees

## Professional Misconduct

- Four types in the RHPA:
  - guilty of an offence relevant to suitability to practice
    - theft, fraud, forgery, other
  - guilty of professional misconduct in another jurisdiction or by another College
  - guilty of sexually abusing a patient
  - guilty of professional misconduct (as defined by Regulation 681/93 to the *Pharmacy Act*)

## Professional Misconduct Regulation: Examples

- Contravening a term, condition or limitation
- Failing to maintain a standard of practice
- Abusing a patient (verbally or physically)
- Practicing while impaired
- Failing to keep records, or falsifying records
- Charging an excessive fee
- Contravening the DPRA or other law
- Soliciting business from potential patients
- Restricting patients' choice of pharmacist
- Influencing patient to change his/her will
- Allowing pharmacy to be used for unlawful purpose
- Refusing entry to inspector
- Offering gifts or inducements
- Engaging in conduct that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional

## Incompetence

If a member's professional care of a patient displayed a lack of knowledge, skill or judgment for the welfare of the patient 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

## Discipline Hearings

- At a hearing, the Panel hears evidence and decides:
  - What happened? (facts)
  - Is that professional misconduct? (law)
  - If it is professional misconduct, what should happen? (appropriate penalty)

## Discipline Hearings

- who is a party?
- panel has no prior knowledge or involvement
- open (most) vs. closed
- uncontested (most) vs. contested
- costs

## Penalties

- What kinds of penalties can the Discipline Committee order?
- For members:
  - reprimand (given in open hearing)
  - suspension
  - terms, conditions or limitations on Certificate of Registration
  - fine payable to the province, up to \$35,000
  - revocation of Certificate of Registration
  - for sexual abuse, repayment of the victims fund

## Penalties

- For Pharmacies:
  - Revocation of Certificate of Accreditation
  - Suspension
  - fine up to \$100,000

## Fitness to Practise Proceedings

## Health Inquiries

- *Incapacity* means:
  - suffering from a physical or mental health problem so that a restriction of practice is appropriate to protect the public
    - e.g. substance use
    - e.g. mental illness
- Issue may be raised by:
  - Mandatory report, self-report, other

## Process of Inquiries

- If Registrar has *reasonable grounds to believe* that member is incapacitated
  - obtain health history and information
  - ICRC may appoint a panel to conduct further inquiries (“Health Inquiry Panel” = “HIP”)
  - HIP may order an assessment of member by an independent medical examiner
  - HIP may refer to Fitness to Practise Committee

## Fitness to Practise Committee

- Health Inquiry Panel may refer the matter to the Fitness to Practise Committee for a hearing
- Hearing is confidential, closed to the public, and not punitive
- Fitness to Practise Committee decides whether member is incapacitated, and if so what appropriate restrictions to impose on member’s practice

## Professionals Health Program

- On behalf of College, carries out monitoring of restrictions imposed by Fitness to Practise Committee
- Also available directly and anonymously to pharmacists, pharmacy technicians, pharmacy students, their co-workers and families
- Early intervention for stress and other difficulties which could lead to incapacities
- <http://www.phpoma.org/>

## Sexual Abuse Prevention

## Patient Relations Program

- RHPA requires each College to design measures to prevent and/or deal with sexual abuse of patients, including:
  - (a) Educational requirements for members
  - (b) Guidelines for the conduct of members with their patients
  - (c) Training for College staff
  - (d) The provision of information to the public

## RHPA: Definition of Sexual Abuse

- “Sexual abuse” of a patient by a member means
    - (a) Sexual intercourse or other forms of physical sexual relations between the member and the patient;
    - (b) Touching, of a sexual nature, of the patient by the member; or
    - (c) Behaviour or remarks of a sexual nature by the member towards the patient
- Exception: “sexual nature” does not include touching, behaviour or remarks of a clinical nature appropriate to the service being provided. This exception is not very relevant to pharmacy practice.

## Scenario

*A pharmacist dispenses medication from time to time to a pharmacy technician working in the same pharmacy. The pharmacist and technician start dating.*

## What to do?

## Mandatory Report of “Sexual Abuse” of a Patient (s. 85.1)

- A member shall file a report to the College...
  - if the member has reasonable grounds to believe...
  - obtained in the course of practicing the profession...
  - that another member of the same or a different College...
  - has sexually abused a patient.
- Good faith “reporter” is protected against lawsuits
- **Fine for failing to report:** up to \$25,000 for a first offence; up to \$50,000 for a second or subsequent offence

## How to report Sexual Abuse

- In writing within 30 days (unless imminent risk to victim)
- To the Registrar of the member’s College
- Giving your name, name of member being reported on, and explanation of the alleged sexual abuse
- Give the name of the patient only if he/she has consented

## Mandatory Penalties for finding of professional misconduct for sexual abuse of a patient

- Reprimand
- Revoke if category (a) or (b) of definition of sexual abuse (i.e., sexual intercourse or touching)
  - Cannot apply for reinstatement for five years
- May order that funding be provided to the patient/victim for therapy and counselling

## Sexual abuse vs. *harassment*

- Sexually harassing conduct towards a co-worker is not “sexual abuse” per RHPA
  - BUT, it could still result in complaint of professional misconduct (to the College), sexual discrimination (to the Human Rights Tribunal), or a lawsuit (to court), etc.
- February 1995: “The Ontario College of Pharmacists regards any act of abuse or harassment of a patient, customer, **staff person and/or colleague**, as unacceptable and such actions may constitute professional misconduct and/or criminal offence. Furthermore, ignoring harassment or abuse is equal to condoning the abuser’s actions and further harming the victim.” [emphasis added]



## Conclusion: Jurisprudence

- The ethical application of the law
- Members must recognize that laws govern the way they practice, including:
  - *Pharmacy Act*
  - *Regulated Health Professions Act*
  - *Personal Health Information Protection Act*
- For more information: [\*\*www.ocpinfo.com\*\*](http://www.ocpinfo.com)