



RNAO comments on proposed regulations under the RHPA

Submission to the Ministry of Health and
Long-Term Care – Health Workforce
Planning and Regulatory Affairs Division

March 22, 2018



Summary of RNAO Recommendations

Recommendation 1. Expand on the definition of “patient” in the RHPA regulations, keeping in line with the Minister’s Task Force Report recommendations.

Recommendation 2. Proceed with the proposed approach to regulations, which will add criminal findings as well as disciplinary findings by professional colleges to the register.

Recommendation 3. Avoid listing sexual offences in regulations, which may inadvertently create a loophole for offenders. Instead draft an overarching statement, which would capture any inappropriate behaviour of a regulated professional towards a patient.

Recommendation 4. Create a new centralized regulatory body and independent tribunal to oversee all cases of alleged sexual abuse of patients by members of a professional college, with the minister’s oversight to sustain accountability, as outlined in the minister’s task force report.

Introduction

The Registered Nurses' Association of Ontario (RNAO) is the professional association representing registered nurses (RN), nurse practitioners (NP), and nursing students in all settings and roles across Ontario. Since 1925, RNAO has advocated for healthy public policy, promoted excellence in nursing practice, increased nurses' contributions to shaping the health system, and influenced decisions that affect nurses and the public they serve.

RNAO welcomes this opportunity to provide feedback on the proposed new regulations under the *Regulated Health Professions Act, 1991* in support of legislative changes made under *Bill 87*.¹ RNAO had previously commented on *Bill 87 – Protecting Patients Act, 2017* when it was brought before the Ontario legislature in the spring of 2017. Our written submission and speaking notes can be accessed on our website.^{2 3}

Regulation 1: Criteria defining who is a patient, for the purpose of sexual abuse

RNAO supports the Ministry of Health and Long-Term Care's (MOHLTC) approach to clarifying the definition of "patient" by using the terms contained in the common law, as a first step. We urge the MOHLTC to refer to the Minister's Task Force Report entitled *To Zero: Independent Report of the Minister's Task Force on the Prevention of Sexual Abuse of Patients and the Regulated Health Professions Act, 1991*,⁴ and subsequently expand on the definition of a "patient" in regulations.

As stated in RNAO's written submission to the Standing Committee on the Legislative Assembly, the definition of "patient" needs to be standardized across the professions and not be limited to the start and end of the formal treatment period. This definition ignores the authority, respect, and trust that society has in our health-care professionals and the health system as a whole. RNAO recommends using the language and definition of a patient outlined in the Minister's Task Force Report as follows:

“‘patient’ means an individual who at any time has received, or is receiving, health care from a member, or has been assessed by the member, or is otherwise under, or assigned to, the care of the member, including psychotherapy delivered through a therapeutic relationship or counseling for emotional, social, educational or spiritual matters delivered through a confidential treatment context”.⁵

Recommendation 1. Expand on the definition of “patient” in the RHPA regulations, keeping in line with the Minister’s Task Force Report recommendations.

Regulation 2: Additional information required on the College register

RNAO supports adding criminal findings of guilt as per the Criminal Code of Canada or the *Controlled Drugs and Substances Act*, in addition to all criminal charges in effect, to all regulatory colleges registers. Although most colleges currently post information in regards to disciplinary findings by their professional regulatory or licensing authorities, formalizing this in regulations will create consistency between the colleges. It will also increase transparency and empower patients when seeking care from a regulated health-care provider.

Recommendation 2. Proceed with the proposed approach to regulations, which will add criminal findings as well as disciplinary findings by professional colleges to the register.

Regulation 3: Setting out offences that result in mandatory revocation of a certificate of registration

Consistent with RNAO's best practice guidelines^{6 7 8} and ongoing advocacy against sexual violence,^{9 10 11} RNAO supports the strictest sanctions possible in the movement towards zero tolerance of sexual abuse by a health-care provider.

RNAO supports using sexual offences outlined under the Criminal Code of Canada to draft regulations, which would result in the mandatory revocation of a member's license. Our concern is that the use of a list in regulations may inadvertently exclude some acts, which are also inappropriate in the patient-provider relationship, creating a loophole that may permit a health-care professional to continue to practise even if accused of committing a sexual offence against a patient.

Recommendation 3. Avoid listing sexual offences in regulations, which may inadvertently create a loophole for offenders. Instead draft an overarching statement, which would capture any inappropriate behaviour of a regulated professional towards a patient.

If the government is committed to achieving zero tolerance, it needs to take immediate action and make real changes in the pursuit of that goal. For this reason, we reiterate our recommendations^{12 13} for the creation of a new centralized regulatory body and independent tribunal to oversee all cases of alleged sexual abuse of patients by members of a professional college, with the health minister's oversight to sustain accountability, as outlined in the Minister's Task Force Report.¹⁴

Recommendation 4. Create a new centralized regulatory body and independent tribunal to oversee all cases of alleged sexual abuse of patients by members of a professional college, with the minister's oversight to sustain accountability, as outlined in the minister's task force report.

Conclusion

Ontarians place a great amount of trust in our health system and the health-care professionals from whom they seek assistance in times of need and vulnerability. Despite this, we hear stories of abuse by health-care providers, and inadequate responses from regulatory colleges. When health-care professionals are accused of committing a sexual offence against a patient, yet are allowed to practise in their respective field, the system in place has failed to uphold its mandate. The failure to pursue and punish the perpetrators of patient abuse must end if we want to restore faith in our health-care system.

Thank you for the opportunity to provide feedback in the pursuit of ending sexual abuse of patients by regulated health-care professionals.

References:

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- ¹⁰ RNAO. (2008). Position Statement: Violence Against Nurses – 'Zero' Tolerance for Violence Against Nurses and Nursing Students. Retrieved from: <http://rnao.ca/policy/position-statements/violence-against-nurses>.
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- ¹³ RNAO. (2017). RNAO's Response to Bill 87: Protecting Patients Act, 2016 Speaking Notes. Retrieved from: http://rnao.ca/sites/rnao-ca/files/Bill_87_speaking_notes- April_2017.pdf.
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