

College of Physiotherapists of New Brunswick
ADVISORY NOTES # 1

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BILL 22: An Act Respecting Health Professionals

Overview Page

The Minister of Health and Community Services has introduced a Bill in the Legislature which in effect amends the *N.B. Physiotherapy Act*. Bill 22, entitled "An Act Respecting Health Professionals", was created by the Department of Health and Community Services, in consultation with health care providers, to ensure that the various private acts which govern health professionals include measures aimed at preventing and dealing effectively with sexual abuse of patients by health care professionals.

Fifteen different self-regulated health professions are covered by the proposed legislation with each chapter in the 250-page bill setting out amendments specific to each one of the professional groups. The amendments harmonize the complaints and discipline procedures of the various health professions affected by the legislation, and include specific provisions related to sexual abuse of patients by health professionals.

Chapter 12 of this bill deals with changes to the *Physiotherapy Act*.

Sexual Abuse Provisions

Sexual abuse is specified as a form of professional misconduct and means:

- sexual intercourse or other forms of physical sexual relations between a health care professional and a patient,
- touching of a sexual manner of a patient by a health care professional, or
- behaviour or remarks of a sexual nature by a health care professional towards a patient.

"Sexual nature" does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided. The proposed bill imposes a legal obligation on physiotherapists to report incidents of sexual abuse by other health care professionals. The failure to report sexual abuse of a patient by another health professional constitutes professional misconduct.

The public will have increased access to disciplinary information, but the access shall be greatest in cases involving sexual abuse. Any person who inquires about a physiotherapist or a former physiotherapist shall be entitled to access to a brief description of the nature of the misconduct, the Discipline Committee's findings and the penalty for an indefinite period if the physiotherapist was found to have sexually abused a patient.

The bill sets out measures the College of Physiotherapists of New Brunswick (CPTNB) must take to prevent sexual abuse of patients by physiotherapists including:

- education of members about sexual abuse,
- developing guidelines for the conduct of members with patients,
- providing information to the public respecting such guidelines, and
- informing the public as to the complaint procedure under the *Physiotherapists Act*.

General Disciplinary Provisions

Bill 22 introduces a number of changes to the disciplinary procedures of the CPTNB under the *Physiotherapists Act*, irrespective of the nature of the complaint.

The proposed bill provides for increased investigatory powers, including search and seizure prerogatives. An investigator may also apply to a judge of the Court of Queen's Bench for a search warrant. Questions have arisen regarding the effect of these increased powers on the confidentiality of patient records.

Another significant change to the *Physiotherapists Act* under the bill is the requirement to provide for public notice of all suspensions and revocations. Under the amendments, CPTNB will be required to publicly publish these decisions, including the physiotherapists' names. This information will also be available to the public upon request for a period of five years after the discipline decision, or indefinitely in the case of sexual abuse.

Who is affected by the new Act?

The following health professionals are affected by the new Act: opticians, denturists, dietitians, medical laboratory technologists, social workers, dentists, nurses, occupational therapists, optometrists, pharmacists, podiatrists, physiotherapists, nursing assistants, speech language pathologists, audiologists and psychologists. Physicians are not affected by the new Act, but the *Medical Act* is in the process of being amended. It is anticipated that amendments to the *Medical Act* will closely reflect the provisions of the new Act. One aspect of the new Act which will affect health professionals, including physiotherapists, relates to the mandatory reporting of sexual abuse.

What are my obligations?

1. Determine if you have "reasonable grounds to believe" that sexual abuse has occurred

The legislation imposes a legal obligation on health professionals, including physiotherapists, to report sexual abuse. More specifically, the new Act requires health professionals with "reasonable grounds to believe that another health professional has sexually abused a patient or client..." to report such suspected abuse.

1. (a) What does "reasonable grounds to believe" mean?

There is no precise definition of "reasonable grounds to believe." The answer will depend on the particular fact situation of each case, together with the actual information that the reporting health professional has observed and/or collected.

1. (b) How do I determine if I have "reasonable grounds?"

There are a number of questions one can ask to determine whether there are "reasonable grounds to believe" that a health professional has allegedly sexually abused a patient. First, look at the definition of sexual abuse. Do you know of any physical sexual relations that have occurred between the health professional and the patient? Have you observed any touching of a sexual nature by a health professional? What about remarks of a sexual nature between the health professional and a patient? Remember appropriate touching, behaviour or remarks of a clinical nature are permitted.

If you are able to answer yes to any of the three above-mentioned questions you may have "reasonable grounds to believe" that sexual abuse of a patient has occurred. This would lead to the second set of questions. Try to become an objective observer and to take yourself out of the situation. For example, if another health professional came to you and asked for your opinion based on your information, how would you respond? Would you suggest that there was sufficient information to satisfy the definition of sexual abuse?

Third, you may find it helpful to discuss the situation with someone else. If you work in an institutional setting, you should approach your immediate supervisor. If you cannot talk to a supervisor or require information in addition to that provided by your supervisor, you can contact the CPTNB for completely confidential advice.

Fourth, after having considered the factors listed above and any other relevant information, it is up to you to exercise your professional judgement and to decide whether you have "reasonable grounds to believe" that a health professional may have allegedly sexually abused a patient.

2. Make a Report

2. (a) To whom do I report?

Reports are to be in writing and sent to the CPTNB where the conduct of a physiotherapist is in question, or to the appropriate regulatory body when the situation involves another health care professional.

2. (b) When do I report?

Report to the professional body **within 21 days** of the date of the suspected abuse.

2. (c) What information am I required to report?

Physiotherapists with "reasonable grounds to believe that another health professional has sexually abused a patient or client..." must report the following information, in writing, to the regulatory body of the health professional:

- the name of the physiotherapist filing the report,
- the name of the health professional who is the subject of the complaint, and
- information relating to the alleged sexual abuse.

2. (d) What about the patient's name?

Before reporting, the patient involved should be advised of the filing of the report. Alternatively, the health professional filing the report must have made her or his best effort to advise the patient of the intention to file a report. **The report must not include the name of the patient or client who has been allegedly sexually abused except where written consent of the patient or the patient's representative has been obtained.**

2. (e) *How do I obtain the patient's consent?*

What are the policies and procedures of your agency with respect to obtaining written consent for medical care and/or treatment? When complying with the reporting obligations under the new *Act* it is important to consider and work within your agency's policies and procedures. The new *Act* is not a substitute process, it is a process which should be applied in conjunction with institutional policies and procedures.

2. (f) *What if a patient refuses to have his or her name included in your report?*

Without consent, the patient's name must not be included in the report. File the report without the name of the patient.

3. *When am I not obligated to report?*

You are not required to report when you do not know the name of the health professional who would be the subject of the report.

4. *What happens if I fail to report?*

A health professional failing to report a case of sexual abuse within 21 days of the date of the alleged incident is guilty of professional misconduct. Professional misconduct is grounds for disciplinary action by the regulatory body.

Summary of Obligations of Health Professionals

There is a legal obligation to report alleged sexual abuse of a patient within 21 days of the incident to the governing body of the health professional suspected of abuse (CPTNB for physiotherapists).

Reporting to the governing body must be made in writing and must include the name of the health professional who is the subject of the report and information relating to the alleged sexual abuse.

Before reporting, the patient involved should be advised of the filing of the report. Alternatively, the health professional filing the report must have made his or her best effort to advise the patient of the intention to file a report.

The patient's name must not be included in the report except with the written consent of the patient or the patient's representative.

The new legal obligations imposed on individual practitioners to report situations of sexual abuse involving patients do not serve as a substitute for agency policies and procedures for dealing with these matters.