

OTLA Submission to College of Physicians and Surgeons of Ontario

Draft Policy: Reporting Requirements

August 6, 2024

The Ontario Trial Lawyers Association (OTLA) is pleased to provide input on the College of Physicians and Surgeons of Ontario's (CPSO) review of their Draft Policy: Reporting Requirements (Policy).

OTLA was formed in 1991 by lawyers acting for plaintiffs. Our purpose is to promote access to justice for all Ontarians, preserve and improve the civil justice system, and advocate for the rights of those who have suffered injury and losses as the result of wrongdoing by others, while at the same time advocating aggressively for safety initiatives.

Our mandate is to fearlessly champion, through the pursuit of the highest standards of advocacy, the cause of those who have suffered injury or injustice. Our commitment to the advancement of the civil justice system is unwavering.

OTLA's members are dedicated to the representation of wrongly injured plaintiffs across the province and country. OTLA is comprised of lawyers, law clerks, articling students and law students. OTLA frequently comments on legislative matters and has appeared on numerous occasions as an intervener before the Court of Appeal for Ontario and the Supreme Court of Canada.

PROPOSED AMENDMENTS TO LEGAL REPORTING REQUIREMENTS

Clarification of the Definition of Sexual Abuse

Under the heading *Sexual Abuse of Patients*, the definition of "sexual abuse" should include the language from section 1(3) of the Health Professions Procedural Code, Schedule 2 of the *Regulated Health Professions Act, 1991*, which states as follows:

Sexual abuse of a patient

1 (3) In this Code,

"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.

This amendment clarifies to physicians that sexual abuse, is not only physical touching, of a sexual nature, and sexual relations, but extends to behaviour or remarks of a sexual nature.

PROPOSED AMENDMENTS TO ADVICE TO THE PROFESSION: REPORTING REQUIREMENTS

Under the subheading '*What can I do if I suspect a patient is a victim of abuse?*', the advice refers to a patient experiencing abuse, i.e. elder abuse/intimate partner violence but is silent with respect

to sexual abuse by a regulated health professional. This section should be broadened to align with the Legal Reporting Requirements and include abuse by regulated health professionals. Reference should be made to section 1(3) of the *Health Professions Procedural Code*, Schedule 2 of the *Regulated Health Professions Act, 1991* to indicate that sexual abuse by a regulated health professional includes physical touching, of a sexual nature, and behaviour or remarks of a sexual nature.

Conclusion

OTLA appreciates the opportunity to be involved in this process and if you have any questions or require clarification, please do not hesitate to contact us.