

Policy on Reporting Apparently Criminal Behaviour to the Police

Background

The CDHO is expressly authorized to disclose otherwise confidential information about a Registrant to the police for the purpose of assisting or initiating a criminal investigation.¹ There have been recent discussions about how the transparency and public interest role of the CDHO should apply to the making of such reports to the police. This policy formalizes the outcomes of those discussions. This policy will be reviewed and updated as experience at the CDHO and other regulators evolve.

Policy

This policy recognizes that there are fundamental, but competing, principles applicable to the decision of whether, when and how the CDHO should disclose information to the police. These principles include the following:

- The CDHO always acts in the public interest.
- The CDHO's primary role is to regulate the dental hygiene profession in the public interest. This regulatory role is independent of the criminal justice system.
- However, the CDHO has access to information which other public interest entities, including the criminal justice system, may not be aware. Possessing this information places a burden on the CDHO to consider disclosing it to the criminal justice system. That disclosure, as noted above, is expressly recognized by the *RHPA*.
- In determining if and when such disclosure should be made, the CDHO has to balance the competing risks of harm, including the harm to:
 - The public if criminal conduct is not addressed;
 - The informant (often, in this context, being the client) who may not always wish to be involved in the criminal justice system and who may have shared sensitive personal information with the CDHO with an expectation that the information will be used only for regulatory purposes;
 - The CDHO process which may be impeded by the priority often ascribed to the criminal justice system or may be challenged for making such disclosure; and
 - The Registrant who may undergo stress and a loss of privacy by involvement in the criminal justice system, particularly where the concerns are later discovered to be unfounded.

¹ Clause 36(1)(e) of the *Regulated Health Professions Act*.

- To be an effective regulator, the CDHO must maintain the confidence of the public as well as the profession. Public expectations of regulators are constantly changing. For example, today the public expects the CDHO to be transparent as to whether, when and how the CDHO will report apparently criminal behaviour to the police.
- Holding Registrants accountable for apparently criminal behaviour both at the CDHO and through the criminal justice system may offer greater protection to the public than the CDHO alone dealing with such concerns internally by regulatory measures.

To promote the consistent and informed application of the above principles, the Registrar will be responsible for determining whether, when and how a report of apparently criminal behaviour will be made to the police.

Criteria for Determining Whether a Report Will Be Made to the Police

In determining whether it is appropriate to report apparently criminal behaviour to the police, the Registrar shall apply, along with any other relevant considerations arising from the circumstances of the particular case, the following criteria:

- **Relevance to the public interest.** Whether there was or is an ongoing risk of harm to the public as a result of the apparent behaviour.
- **The nature of the alleged offence.** Whether the allegations include apparent behaviour that would put the public at ongoing risk, such as dishonesty, breach of trust, exploitation or abuse.
- **The frequency of the alleged offence.** Whether the apparent behaviour occurred more than once.
- **The circumstances of the matter.** How recently the event took place; the potential impact of making the report on the Registrant; the strength of the evidence supporting the concerns.
- **Risk of damage to the reputation of the CDHO.** Whether not reporting the apparent behaviour might result in a lack of public trust in the CDHO or whether future harm might result from the apparent behaviour that might have been averted or minimized had the CDHO reported the apparent behaviour.
- **Wishes of the informant / client.** While not the sole consideration, the wishes of the informant / client of the apparent behaviour should be taken into account. For example, has the informant / client deliberately chosen not to engage the criminal justice system? Would the disclosure violate the informant's / client's reasonable expectation of privacy? This consideration might affect when and how the report is made (later in the CDHO process when the information is otherwise public) rather than whether the report is made.

Criteria for Determining When and How a Report Will Be Made to the Police

In deciding when and how to make a report to the police, the Registrar, in consultation with legal counsel, shall apply the above criteria and the following additional criteria:

- **The risk of disruption to the CDHO's regulatory process which can occur in a number of ways.** For example: if the police interview witnesses before the CDHO does and advise witnesses not to speak to anyone else, including the CDHO. In some circumstances, making the report can create an appearance of bias on the part of the CDHO, a Committee or staff, which is one of the reasons that the Registrar is assigned to decide whether, when and how to make a report.

- **Fairness to the informant / client or Registrant.** Where feasible, the Registrar shall consult with the informant / client prior to making a report particularly if the report is made before the information is otherwise public. While it is not appropriate for the Registrar to consult with the Registrant as to whether or not to make a report to the police, the Registrar shall consider any response the Registrant has provided to the concerns. In addition, the Registrar shall notify the Registrant that a report has been made unless doing so could jeopardize the police investigation.
- **Legal challenges to the CDHO for making the disclosure.** In order to protect the privacy of the informant / client and the Registrant and to remain as neutral as possible, the Registrar shall consider how much information will be included in the report and shall minimize the expressions of opinion. In most cases the report should be made in writing. The Registrar shall carefully consider the implications of any requests by the police for more information and may in appropriate cases ask the police to obtain a search warrant.

Given the above criteria, the Registrar will typically make any report to the police after the CDHO has conducted at least a preliminary investigation into the concerns. In urgent cases, the Registrar can make the report earlier in the process. In some cases the criteria for making a report may not be met until after the CDHO has completed its regulatory process (e.g., some reports may not be made until after a discipline hearing has been completed).

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