



TRACEY TREMAYNE-LLOYD

tll@gardiner-roberts.com  
T: 416-369-4336  
F: 416-865-6636

## PATIENT ACCUSATIONS: HANDLE WITH CARE

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PICTURE THIS. You receive a call or letter from your regulating body, "the College", informing you that you have been accused of one of the following: improperly touching a patient in a sexual manner; falsely informing a patient that your treatments would cure his arthritis; or failing to provide a patient with a medically necessary service.

What is your next step - or should I say, your next breath?

Believe it or not, many physicians respond directly to the College on the telephone, they either deny the charge or make a feeble attempt at an explanation. What physicians should do is thank the College politely for the information, hang up and contact a lawyer or their local medical association.

## PROTECT PUBLIC

It is important to swallow that first impulse to tell all to the College or to attempt to mitigate the situation by providing reasons for a particular conduct. Physicians tend to believe the mandate of their College is to serve them, and to promote and protect their professional and political interests. But the mandate of the College (in every jurisdiction) is first and foremost to protect the public and enforce the law and corresponding regulations.

While College staff and administration are generally very helpful to College members, they are, in fact, not advocates for your side of an issue.

If you are faced with a problem similar to those outlined above, remember that the College is the last place you should telephone, write or visit. You could be acting against your own interests if you call the College to ask advice about how to proceed or expect the College staff to help you deal with the problem.

### **Gardiner Roberts LLP**

40 King Street West Suite 3100 Scotia Plaza Toronto, ON, M5H 3Y2  
T: 416.865.6600 F: 416.865.6636 [www.gardiner-roberts.com](http://www.gardiner-roberts.com)

## TAKE COMPLAINTS SERIOUSLY

Another mistake many physicians make is to treat complaints as frivolous. The patient making a complaint may indeed have no foundation on which to base the allegation, but this will be determined at a review before a complaints committee panel or a hearing. Take all complaints very seriously. Never respond to a complaint in an offhand manner. There may be rules, such as those recently enacted in Ontario, which open hearings to public disclosure at virtually every level. Your initial approach to an accusation is vital; it gives you the opportunity to set the tone your problem will take.

Get advice from a lawyer (or at least advice from your local medical association) before you speak with anyone concerning the accusation, no matter how ridiculous the allegation may seem. The need for this type of self-protective reaction becomes clear when you understand that you may end up with a public relations disaster if the matter is handled poorly in the initial stages – whether or not you ultimately defeat the complaint. For example, in Ontario, when the College chooses not to pursue a complaint the law says the complaint can appeal the disposition of the matter to a public tribunal known as the “Health Professions Board”. This board is a process which is now open to both the press and the public. Similar types of patient appeal mechanisms, for the price of a stamp, exist in other jurisdictions.

## OPEN HEARINGS

These hearings are currently not usually attended either by the press or the public in Ontario. Nonetheless, they are technically open and it may only be a question of time before interested in them.

Always ensure that the information contained in your file at the College’s complaints committee is appropriate. Even if the committee finds a complaint unmeritorious and thus refuses it, your personal and professional reputation could be destroyed if initial handling was inappropriate and thereafter exposed at the patient appeal levels.

Also, do not waste time feeling hurt because a patient has falsely accused you of some misdeed. Chances are that with the right representation and the appropriate professional response from day one, you will escape inappropriate accountability.

Whenever new laws or regulations are introduced concerning the medical profession, know your position. Lobby your College so they understand your concerns with the new laws. Make sure you are notified about any interpretations the College makes regarding the new provisions. Understand the issues and how they apply to your situation and practice preventive medicine—your career depends on it.

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