

**COLLEGE OF MIDWIVES
OF ONTARIO**



Sexual Abuse Prevention Plan

*December 1994
Amended February 8, 1995*

Statement of Philosophy

The College of Midwives of Ontario maintains that sexual abuse within a client-midwife relationship is unacceptable and will not be tolerated. The College of Midwives is committed to prevention of such behaviour through education of its members and establishing deterrents through administration of a Disciplines process that reflects the seriousness of the violation. The College of Midwives acknowledges the potential vulnerability of clients and strives to provide a reporting process that is accessible and sensitive to their needs.

The College of Midwives of Ontario supports zero tolerance of all forms of abuse. The College of Midwives, however, stresses that zero tolerance does not preclude professional supportive behaviour that may include physical contact that is nurturing or helpful and therefore, acceptable to the client.

The midwife-client relationship is based on mutual trust and respect; any act of abuse is a betrayal of that trust. The College will investigate and act upon all complaints or reports of inappropriate behaviour.

ACTIONS:

- Develop brochure for clients/public

Brochure is in development: will include information about College's procedures for handling complaints, including allegation of sexual abuse (the College has a policy that complaints of sexual abuse will not go to mediation), discipline procedures, alternate dispute resolution, and College's philosophy statement on sexual abuse.

- Develop information package for members

Package to include: "Statement of Philosophy on Sexual Abuse," definitions of sexual abuse (Bill 100), information on reporting sexual abuse (appendix 1), College complaints procedures relating to allegation of sexual abuse (appendix 2), penalties as prescribed in Regulated Health Professions Act (appendix 3), College of Midwives regulations and standards relating to sexual abuse (appendices 4, 5).

- Develop and implement training on sexual abuse for staff and Council members

An important focus of this training must be for those who have contact with individuals complaining of sexual abuse or who are involved in investigating and adjudicating cases of this nature.

- Develop and implement a prevention program for members

Program will include a presentation/workshop at Annual General Meeting of midwives' professional association. Development of guidelines for professional behaviour will be a part of this workshop.

Ongoing aspects of prevention plan will include articles in College newsletter which address issue of sexual abuse, College standards and professional behaviour, and provision of information on workshops, conferences and articles relevant to issue of sexual abuse.

- Liaise with the educational program to ensure that a formal course on the issue of sexual abuse is included in the curriculum

Council members on faculty with midwifery educational program have taken this issue to curriculum review; a course will be included in third year curriculum.

CONCLUSION:

The College of Midwives is still developing internal processes for Complaints and Disciplines procedures; this provides us with the opportunity to consider the issue of sexual abuse as we create our policies.

We have a number of programs to develop more fully, such as training for staff and Council members. We will be pursuing this in the near future to arrange for a training session to be presented by outside experts. We also have standards which have only recently been developed that provide clear direction regarding professional behaviour. (See CMO Philosophy of Midwifery Care, Code of Ethics, and Professional Misconduct regulation.)

An important issue that we have raised in the past and will be pursuing with interested groups and individuals, as well as members, is that of mandatory reporting and its possible effects on professional working relationships (appendix 6). Related to this issue is that of the interpretation of another health professional's behaviour; the midwifery profession in Ontario has evolved with a feminist perspective and this may affect a midwife's view of another professional's behaviour. These issues will be explored more fully and discussed with members.

APPENDICES

1. Reporting Sexual Abuse.
2. Complaints Investigation Process.
3. Regulated Health Professions Act Penalties.
4. Regulation Made Under the Midwifery Act, 1991: Professional Misconduct.
5. Code of Ethics.
6. Brief to the Standing Committee on Social Development: Bill 100.

APPENDIX 1

Reporting Sexual Abuse

- All registrants are required to report knowledge of sexual abuse by another registrant of the College of Midwives or another College.
- Third party reports are accepted and kept on file but they will not trigger an investigation unless the client initiates a formal complaint.
- Anyone reporting in good faith will be immune from civil liability for making a report.
- When the College receives two or more reports, the evidence will be automatically reviewed to determine whether an investigation is justified.
- All sexual abuse complaints will be formally investigated and will not go through alternative dispute resolution.
- The safeguards for due process from the registrant will be maintained.

APPENDIX 2

Complaints Investigation Process

A) Initial contact with the complainant

In the vast majority of the cases, the initial contact with the complainant of sexual abuse/impropriety will occur over the telephone. Whenever possible, all such telephone calls should be directed to the co-registrar.

B) Meeting with the co-registrar

Should the complainant wish to meet with a member of the registrarial staff, such meeting shall be arranged by the co-registrar and shall take place in accordance with the following criteria:

- The meeting will take place in a setting in which the complainant's privacy may reasonably be expected to be respected (such meeting place need not necessarily be located at the College's office);
- The complainant's consent will be obtained for the presence of any additional College personnel;
- The complainant will be advised prior to the meeting that she may bring other persons of her choosing to the meeting if she wishes, such as friends, counsellors (including legal counsel if desired) and interpreters;
- The co-registrar will offer to assist the complainant to draft any submissions required by the College's complaint or discipline processes.

C) Follow-up with the midwife alleged to have committed the sexual abuse/impropriety

Following the meeting with the complainant (or following the initial contact with the complainant should the complainant decline a meeting), the co-registrar will notify the midwife alleged to have committed the sexual abuse/impropriety and, in some cases, arrange a visit her clinic by herself or an investigator. The co-registrar or the

investigator will present the midwife with the allegations made by the complainant and will attempt to obtain any information which she feels is relevant to the matter. A report will be drafted by the co-registrar or investigator which shall be provided to the appropriate committee investigating the matter.

The midwife alleged to have committed the sexual abuse/impropriety will be notified by the co-registrar as promptly as reasonably possible following the meeting with the complainant or the initial contact with the complainant if the complainant declined the offer to meet with the co-registrar.

Collection of Sexual Abuse/Impropriety Data

The co-registrar shall maintain, in a systematic fashion, a record of all complaints or reports of sexual abuse and/or impropriety which come to the attention of the board, including:

- a) The names and addresses of all complainants or reporters of sexual abuse/impropriety.
- b) The names and registration numbers of all midwives alleged to have committed the sexual abuse/impropriety.
- c) A description of all reported incidents, including date and location.
- d) The disposition of the complainant or report of sexual abuse/impropriety, including the steps taken in the investigation, the outcome of the investigation and any disciplinary activity which ensued, including penalties assigned to the midwife.

APPENDIX 3

Regulated Health Professions Act Penalties

The *Regulated Health Professions Act* defines the penalties for a member who has been found guilty of professional misconduct by sexually abusing a client. The panel of the Discipline Committee shall do the following:

- 1) Reprimand the member.
- 2) Revoke the member's certificate of registration if the sexual abuse consisted of, or included, any of the following:
 - (i) sexual intercourse;
 - (ii) genital to genital, genital to anal, oral to genital, or oral to anal contact;
 - (iii) masturbation of the member by, or in the presence of, the client;
 - (iv) masturbation of the client by the member;
 - (v) encouragement of the client by the member to masturbate in the presence of the member.

The foregoing penalties are in addition to the other penalties which a panel of the Discipline Committee may order, which include:

- 1) Requiring the member to pay a fine not more than \$35,000 to the Minister of Finance;
- 2) Requiring the member to pay all or part of the College's legal costs and expenses, the College's costs and expenses incurred in the investigation of the matter, and the College's costs and expenses incurred in conducting the hearing; and
- 3) Requiring the member to reimburse the College for funding provided for the client under the program for therapy and counselling.

Further, an application for reinstatement by the person whose certificate of registration was revoked for sexual abuse of a client shall not be made earlier than five years after the revocation.



APPENDIX 4

January 1994

REGULATION MADE UNDER THE MIDWIFERY ACT, 1991

PROFESSIONAL MISCONDUCT

1. The following are acts of professional misconduct for the purposes of clause 51(1) (c) of the Health Professions Procedural Code.

The Practice of the Profession and the Care of, and Relationship With Clients

1. Contravening a term, condition or limitation imposed on the member's certificate of registration.
2. Contravening a standard of practice of the profession.
3. Doing anything to a client for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose in a situation in which a consent is required by law, without such a consent.
4. Delegating a controlled act in contravention of the Act, the Regulated Health Professions Act, 1991, or the regulations under either of those Acts.
5. Abusing a client, physically or verbally, or taking unfair advantage of the position of confidence and authority in relation to a client which the midwife has as a professional.
6. Practising the profession while under the influence of any substance, or while suffering from illness or other dysfunction which the member knows or ought to know impairs the member's ability to practise.
7. Prescribing, dispensing or selling drugs for an improper purpose.

8. Discontinuing professional services that are needed unless,
 - i. the client requests the discontinuation,
 - ii. alternative services acceptable to the client are arranged,
 - iii. there is no longer a relationship of trust and confidence between the midwife and the client and the client is given a reasonable opportunity to arrange alternative services, or
 - iv. the client requests services inconsistent with the standards of practice of the profession and the midwife has adhered to the standard of practice for discontinuing care in such circumstances.
9. Discontinuing professional services provided to a community or clientele without reasonable cause, unless adequate notice has been given or adequate alternative arrangements for services have been made.
10. Failing without reasonable cause to provide to a client continuity of care as defined in College practice guidelines.
11. Failing without reasonable cause to provide services to a client during labour and birth in the client's chosen birthplace.
12. Practising the profession while the member is in a conflict of interest.
13. Giving information about a client to a person other than the client or his or her authorized representative except with the consent of the client or his or her authorized representative or as required or allowed by law.
14. Breaching an agreement with a client relating to professional services for the client or fees for such services.
15. Inappropriately using a term, title or designation in respect of the member's practice.
16. Using a name other than the member's name as set out in the register, in the course of providing or offering to provide services within the scope of practice of the profession.

Record Keeping and Reports

17. Failing to keep records as required by the regulations.
18. Falsifying a record relating to the member's practice.
19. Failing, without reasonable cause, to provide a report or certificate relating to an examination or treatment performed by the member, within a reasonable time to the client or his or her authorized representative after a client or his or her authorized representative has requested such a report or certificate.
20. Signing or issuing, in the member's professional capacity, a document that the member knows contains a false or misleading statement.

Business Practices

21. Submitting an account or charge for services that the member knows is false or misleading.
22. Charging a fee that is excessive in relation to the services charged for.
23. Failing to inform the client of the fee to be charged for services before the commencement of the services.
24. Charging a fee or accepting payment from a client in respect of a service for which the member has been paid by the Ministry of Health.
25. Charging for midwifery services on a fee for service arrangement.
26. Charging a block fee without specifying,
 - i. the services covered by the fee,
 - ii. the amount of the fee,
 - iii. the arrangements for paying the fee,
 - iv. the rights and obligation of the midwife and the client if the relationship between them is terminated before all the services are provided.

27. Charging a fee, in addition to a block fee described in paragraph 26, for an undertaking to be available to provide services to the client.
28. Failing to itemize an account for professional services, if requested to do so by the client or the person or agency who is to pay, in whole or in part, for the services.

Miscellaneous Matters

29. Contravening the Act, the Regulated Health Professions Act, 1991 or the regulations under either of those Acts.
30. Contravening a federal, provincial, or territorial law, or a municipal by-law so as to prejudice the interests of a client.
31. Influencing a client to change his or her will or other testamentary instrument.
32. Engaging in conduct or performing an act, in the course of practising the profession, that, having regard to all circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

2. This Regulation comes into force on the day section 2 of the Act comes into force.

APPENDIX 5



January 1994

CODE OF ETHICS

Each midwife shall act, at all times, in such a manner as to justify public trust and confidence, to uphold and enhance the good standing and reputation of the profession, to serve the interest of society, and above all to safeguard the interests of individual clients.*

Each midwife is accountable for her practice, and, in the exercise of professional accountability, shall:

1. Always act in such a way as to promote and safeguard the well-being of clients, advocating their interests.
2. Clearly inform and educate clients and the public as to the role, function, standards and philosophy of midwifery practice.
3. Respect clients' right to informed choice.
4. Provide care which respects individuals' needs, values and dignity, and does not discriminate on the basis of language, culture, age, economic status, health status, sexual orientation, marital status, gender, geographic location, institutionalization, ability, race or religion.
5. Clearly inform clients and other health care practitioners of scope and limitations of midwifery practice.
6. Avoid any abuse of the privileged relationship which exists with clients. Such a relationship allows privileged access to the person, property or residence of the client as well as to personal practices or customs of the client.
7. Refrain from disclosing confidential information obtained in the course of professional practice without the consent of the client or a person entitled to act on her behalf, except where disclosure is required by law or by the order of a court.
8. Ensure that no action or omission on her part or within her sphere of influence is detrimental to the condition or safety of clients. A midwife will never engage in the practice of midwifery while the ability to perform any professional service is impaired by alcohol or a drug.

9. Openly acknowledge to clients and health care practitioners any conscientious objection or conflict of interest which may affect professional practice or the client's right to informed choice.
10. In addition to seeking consultation or referral in accordance with the standards of practice consult or refer when requested by the client or when the midwife finds assessment or treatment is not clear.
11. Assist clients to find appropriate alternate care if for any reason she finds herself unable to provide care.
12. Attempt to provide the best possible care under any circumstance. A midwife may not refuse to attend a client in the course of labour notwithstanding #9.
13. Build a professional reputation based upon her ability and integrity and only advertise professional services or make professional announcements according to local midwifery custom.
14. Avoid the use of professional qualifications in the promotion of commercial products, in order to maintain the independence of professional judgement on which clients rely.
15. Refuse to accept any gift, favour or hospitality which might be interpreted as either professional endorsement of a commercial product or seeking to obtain preferential consideration as a client.
16. Have regard to the environment of health care and its physical, psychological and social effects on clients, and to the adequacy of resources. Make known to appropriate persons or authorities any circumstances which could place clients in jeopardy.
17. Assume responsibility for reporting health care practitioners whose actions might endanger the safety of clients.
18. Take every reasonable opportunity to maintain and improve professional knowledge and competence.
19. Facilitate research in midwifery practice.
20. In the context of her knowledge, experience and sphere of authority, assist health

care practitioners and students to develop and maintain professional competence in accordance with their needs.

*A client is a woman with whom the midwife has a contractual relationship.

APPENDIX 6

January 1994

BRIEF TO THE STANDING COMMITTEE ON SOCIAL DEVELOPMENT - BILL 100

SUMMARY

The Transitional Council of the College of Midwives supports the need for legislation to prevent sexual abuse of patients by health professionals. The Council has a number of concerns regarding the legislation as well as recommendations that we wish to put forward.

The Council is concerned about the burdens placed on predominantly female professions such as midwifery to report instances of sexual abuse by other (often male) health professionals with whom they must have collegial relations in order to provide the best patient care. The Council recommends that in reporting instances of sexual abuse, the midwife's identity be protected at least during the investigation process; that each profession be required to undertake educational programs about sexual abuse; that each College have a mechanism for receiving anonymous complaints about their members and process for investigating College-initiated complaints; that the Ministry clarify how violations of the reporting obligation will be handled; and that appropriate and comprehensive services be provided to all survivors.

DISCUSSION

The transitional Council of the College of Midwives believes that it is critically important that legislation addressing sexual abuse by health care providers has been introduced. The Council supports the report of the Task Force on Sexual Abuse of Patients and its message to both health professionals and the public that sexual abuse in any form must not be tolerated.

Midwifery care is women-centred and consequently midwives may receive reports of sexual abuse by other health professions from their clients. Midwifery in Ontario has grown in response to women's requests for a different type of care and the relationship that has developed between midwives and clients is one of trust and collaboration. Midwives and their clients have often shared a critique of the health care system and

entered into a partnership to work towards changing this system.

Midwives have seen often enough, examples of degradation and insult to women that would constitute an offence under the legislation. Cumulatively, these practices result in an atmosphere that is degrading to women and it appears that disrespect, emotional abuse and disempowerment are entrenched in the health care system, most notably within reproductive care.

RECOMMENDATIONS

The Council does have a number of concerns regarding the legislation. The Council is concerned that the legislation places an unfair burden on predominantly female professions to report, on a case-by-case basis, allegations against predominantly male professionals with whom they are dependent for effective working relationships and with whom they are often in an unequal power relationship.

For many years midwives have worked to bring their profession into the mainstream of the health care system. This has included painstaking work with other professions to establish collegial relations. If a midwife's identity is not protected when she first reports an instance of sexual abuse, the midwife's ability to help and care for the client may be put at risk. The Council urges the Minister to take the necessary steps to ensure that women-centred professions and are not put at professional risk by these proposals and that patient care is protected.

To change attitudes and behaviour it is essential to begin with education. Therefore the Council believes it is unwise to rely solely on case-by-case reporting of sexual abuse to discourage and prevent this behaviour. Also, it is unclear how violations of violations of the reporting procedure will be dealt with.

The Council believes that the government has a responsibility to provide such social and health resources as are necessary to victims of sexual abuse. This responsibility exists, no matter who has perpetrated the abuse, whether family member, stranger or health professional. We recognize that some of the most effective treatment for sexual abuse victims are not currently covered by the health insurance plan and are not otherwise publicly funded, eg. native healing circles, private therapy.

Our concerns cause us to make five recommendations:

1. It is of utmost importance that the obligation on midwives to report claims of sexual abuse, which they have learned from their clients, be reframed in a way which provides the midwife anonymity during the investigation process and longer if at all possible.

2. The Council urges the Government to insist that each of the professions undertake educational programs in order to ensure that their members are well aware of the limits on their behaviour and the consequences for breaches of these limits. Universities and colleges which prepare students for the health professions should also include similar educational programs in their course curricula. Mechanisms should be in place to evaluate the effectiveness of such programs. In this way, compliance with a satisfactory standard of behaviour will not depend entirely on the case-by-case monitoring and reporting by the female professionals who work with more powerful male colleagues.
3. In the public interest, we further recommend that the Regulations include a mechanism for College-initiated complaints in order to allow the College to follow up on complaints received from individuals who do not wish to initiate formal proceedings against a health professional.

In addition, we recommend that each College be required to set up a system where it can receive and store informal or anonymous complaints against members where the complainant does not wish to proceed with a formal complaint at the time. In this way, the college will be in a position to exercise its own discretion with regard to the initiation of an investigation and possibly charges.

4. The Council requests that the Ministry clarify how violations of the reporting obligation will be dealt with. What may happen when a health professional does not report an offence that has come to her attention?
5. While we support the intent of the proposal that College-established compensation funds reimburse the provincial health plan for any costs associated with assistance to victims of sexual abuse by members of the particular health profession, we do not view this as sufficient to address the current needs of survivors. It is our recommendation that the government establish means to provide for comprehensive services to all survivors. Steps should be taken to ensure that these services are appropriate and are chosen by the survivor.

THE TRANSITIONAL COUNCIL OF THE COLLEGE OF MIDWIVES

The Transitional Council of the College of Midwives is the regulatory body for the midwifery profession in Ontario. The Council has been active in preparing standards of practice and regulations for the profession. Twelve members serve on the Council including five professional members and seven public members.