

COLLEGE OF MIDWIVES OF ONTARIO

DRAFT PROPOSED CHANGES TO PROFESSIONAL MISCONDUCT REGULATION

| Current Language | Proposed Language 2016 | Rationale |
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| <p>Acts of professional misconduct</p> <p>1. The following are acts of professional misconduct for the purposes of clause 51 (1) (c) of the Health Professions Procedural Code:</p> | <p>Acts of professional misconduct</p> <p>1. The following are acts of professional misconduct for the purposes of clause 51 (1) (c) of the Health Professions Procedural Code:</p> | |
| <p>1. Contravening, by act or omission, a term, condition or limitation imposed on the member’s certificate of registration.</p> | <p>1. Contravening, by act or omission, a term, condition or limitation imposed on the member’s certificate of registration.</p> | |
| <p>2. Failing to maintain a standard of practice of the profession.</p> | <p>2. Contravening, by act or omission, a standard of practice of the profession or a published standard of the College, or failing to maintain the standard of practice of the profession.</p> | <p>The proposed language is clearer to the membership what they’re being held to.</p> <p>It is important for midwives to be held accountable to the same standard, in terms of professional misconduct, as other health professionals as this enables broader consistency in health professional accountability. This language is more consistent with other health colleges with recently approved regulations and the Ministry likes the language to be consistent amongst health colleges.</p> |
| <p>3. Doing anything to a client for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health related purpose in a situation in which consent is required by law, without such consent.</p> | <p>3. Doing anything to a client for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health related purpose in a situation in which consent is required by law, without such consent, except</p> <p>i. with the informed consent of the client or the client’s authorized representative; or</p> <p>ii. as required or authorized by law.</p> | <p>The proposed language is clearer and is more consistent with other health colleges with recently approved regulations.</p> |

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| 4. Delegating a controlled act in contravention of the Act, the <i>Regulated Health Professions Act, 1991</i> , or the regulations under either of those Acts. | 4.[Repeal] | The current provision 37 already addresses this: “Contravening, by act or omission, the Act, the Regulated Health Professions Act, 1991 or the regulations under either of those Acts.” |
| 5. Abusing a client, verbally, physically, psychologically or emotionally, or taking unfair advantage of a client as a result of the member’s position in the midwife-client relationship. | 5. Abusing a client or a client’s authorized representative , verbally, physically, psychologically or emotionally, or taking unfair advantage of a client as a result of the member’s position in the midwife-client relationship. | All health care providers have this potential dynamic with clients/patients, so it’s not necessary to highlight this specifically as professional misconduct for midwives. The proposed language is more consistent with other health colleges with recently approved regulations. |
| 6. Practising the profession while under the influence of any substance, or while suffering from illness or other dysfunction which the member knew or ought to have known would impair the member’s ability to practise. | 6. Practising the profession while under the influence of any substance, or while suffering from illness or other dysfunction which the member knew or ought to have known would impair the member’s ability to practise. the member’s ability to do so is impaired or adversely affected by any condition or dysfunction which the member knows or ought to know impairs or adversely affects the member’s ability to practise the profession. | The proposed language is more consistent with other health colleges with recently approved regulations and is clearer in its intent. It also uses gender inclusive language. |
| 7. Prescribing, dispensing or selling drugs for an improper purpose. | 7.Prescribing, dispensing or selling drugs a drug or a substance for an improper purpose. | The proposed language is more consistent with the language specified in the RHPA and the <i>Controlled Drugs & Substances Act</i> . |
| 8. Discontinuing professional services respecting a client 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. | 8.Discontinuing professional services respecting a client 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. | A challenge for the College has been navigating what constitutes a breach in trust or confidence that justifies discontinuing a client’s care as mentioned in this provision. Although this clause may highlight a current midwifery philosophy – the importance of developing and maintaining trusting client-midwife relationships to ensure good care - it may not be necessary or appropriate to continue to include this within the Professional Misconduct Regulation. No other primary health care provider has this stipulation within their Professional Misconduct Regulation. In addition, other Canadian |

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| | <p>that are needed unless the discontinuance would reasonably be regarded by members as appropriate having regard to,</p> <ul style="list-style-type: none"> i. the member's reasons for discontinuing the services, ii. the condition of the client, iii. the availability of alternate services, and iv. the opportunity given to the client to arrange alternate services before the discontinuation. | <p>midwifery regulators that share a similar philosophy (e.g. CMBC) do not include this clause in their definition of professional misconduct.</p> <p>The proposed language is more consistent with other health colleges with recently approved regulations and CMBC's definition of professional misconduct. Clause ii addresses the concern of abandoning a client while in labour and/or other situations where immediate care is indicated.</p> |
| 9. Discontinuing professional services provided to a community or a group of clients without reasonable cause, unless adequate notice has been given or adequate alternative arrangements for services have been made. | <p>9. Discontinuing professional services provided to a community or a group of clients without reasonable cause, unless adequate notice has been given or adequate alternative arrangements for services have been made. Where a member closes the member's practice, failing to take reasonable steps to give appropriate notice of the closure to each client for whom the member has primary responsibility.</p> | <p>This language clarifies what the expectations are when a member closes their practice.</p> <p>The proposed language is more consistent with other health colleges with recently approved regulations and is arguably clearer with respect to the expectations of a member closing their practice. It also uses gender inclusive language.</p> |
| 10. Failing without reasonable cause to provide to a client continuity of care in accordance with the standard of practice of the profession. | 10.[Repeal] | Provision 2 addresses failing to maintain standards, which includes the Continuity of Care standard. |
| 11. Failing without reasonable cause to provide services to a client during labour and child birth in the setting chosen by the client. | 11.[Repeal] | This concern is adequately addressed in provision 2. Offering choice of birthplace to clients is a current standard of the profession. |
| 12. Practising the profession while the member is in a conflict of interest. | <p>12. Practising the profession while the member is in a conflict of interest. Acting in a conflict of interest while acting in a professional capacity.</p> | The proposed language is clearer in its intent and is more consistent with other health colleges with recently approved regulations. |
| 13. Giving information about a client to a person other than the client or the client's authorized representative except with the consent of the client or the client's authorized representative or as required or authorized by law. | 13. Giving information about a client to a person other than the client or the client's authorized representative except with the consent of the client or the client's authorized representative or as required or authorized by law. | |
| 14. Providing services or treatment to a client where the member knew or ought to have known that the services or | <p>14. Providing services or treatment to a client where the member knew or ought to have 14. Recommending or providing services or treatment to a client where the member knew or ought to have</p> | Recommending a treatment that a member knows is inappropriate is just as concerning as |

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| <p>treatment would be ineffective, unnecessary or deleterious to the client or inappropriate to meet the needs of the client.</p> | <p>known that the member knows or ought to know is inappropriate, ineffective, unnecessary or deleterious. to the client or inappropriate to meet the needs of the client.</p> | <p>providing the treatment, should the client accept the recommendation.</p> <p>The proposed language is clearer in its intent and is more consistent with other health colleges with recently approved regulations.</p> |
| <p>15. Providing or attempting to provide services or treatment that the member knows or ought to have known was beyond the member’s knowledge, skills or judgement.</p> | <p>15. Providing or attempting to provide services or treatment that the member knows or ought to have known was know is beyond the member’s knowledge, skills or judgement judgment.</p> | <p>Minor grammar and spelling edit.</p> |
| <p>16. Inappropriately using a term, title or professional designation in respect of the member’s practice.</p> | <p>16. Inappropriately using a term, title or professional designation in respect of the member’s practice.</p> | <p>A designation can encompass non-professional designations as well.</p> |
| <p>17. Using a name other than the member’s name as set out in the register, in the course of providing or offering to provide professional services.</p> | <p>17. Using a name other than the member’s name as set out in the register, in the course of providing or offering to provide professional services. Practising the profession or offering to provide professional services using a name other than the member’s name as entered in the register.</p> | <p>The proposed language is more consistent with other health colleges with recently approved regulations and is clearer in its intent.</p> |
| <p>18. Providing false or misleading information or documents to the College or any other person with respect to the member’s professional qualifications.</p> | <p>18. Providing false or misleading information or documents to the College. or any other 18.1 Providing false or misleading information to any person with respect to the member’s professional qualifications.</p> | <p>Dividing this provision into 2 separate provisions makes it clearer in its intent and the language is more consistent with other health colleges with recently approved regulations.</p> |
| <p>19. Falsifying a record relating to the member’s practice.</p> | <p>19. Falsifying a record relating to the member’s practice.</p> | |
| <p>20. Failing, without reasonable cause, to provide a report or certificate relating to an examination or treatment performed by the member to a client or the client’s authorized representative within a reasonable time after the client or the client’s authorized representative has requested such a report or certificate.</p> | <p>20. Failing, without reasonable cause, to provide a report or certificate relating to an examination or treatment performed by the member to a client or the client’s authorized representative within a reasonable time after the client or the client’s authorized representative has requested such a report or certificate.</p> | |

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| 21. Signing or issuing, in the member’s professional capacity, a document that the member knew or ought to have known contained a false or misleading statement, or signing a blank form. | 21. Signing or issuing, in the member’s professional capacity, a document that the member knew or ought to have known contained knows or ought to know contains a false or misleading statement, or signing a blank form. | Minor grammar edit |
| 22. Failing to keep records as required by the regulations. | 22. Failing to keep records as required by the regulations in accordance with the standards of the profession. | The College does not have a record-keeping regulation, but rather a standard. |
| 23. Failing to make arrangements with a client or the client’s authorized representative for access to or for transfer of the records of the client in the possession of the member to another member when requested to do so by the client or authorized representative. | 23. Failing, without reasonable cause, to make arrangements with a client or the client’s authorized representative for to provide access to or to transfer a client’s record to another member or health care provider when requested to do so by the client or the client’s authorized representative. | The proposed language is clearer in its intent and is more consistent with other health colleges with recently approved regulations. |
| 24. Breaching an agreement with a client relating to professional services for the client. | 24. Breaching an agreement with a client relating to professional services for the client. | |
| 25. Submitting an account or charge for services that the member knew or ought to have known was false or misleading. | 25. Submitting an account or charge for services that the member knew or ought to have known was knows or ought to know is false or misleading. | Minor grammar edit |
| 26. Permitting, counselling or assisting in the submission of a false or misleading account or charge to a client. | 26. Permitting, counselling or assisting in the submission of a false or misleading account or charge to a client. | |
| 27. Charging a fee that is excessive in relation to the service provided. | 27. Charging a fee that is regarded by members as excessive in relation to the service provided. | The proposed language makes it clear whose definition of “excessive” members are being held to. The term “excessive” is used as the threshold by other health Colleges. Although many of the following provisions do not reflect how midwifery is currently funded, we propose to continue to include them in the event of unforeseen changes in the funding model. |
| 28. Breaching an agreement with a client relating to fees for professional services. | 28. [Repeal] | This provision is adequately addressed in provision 24. |

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| 29. Failing to inform the client or the client's authorized representative of the fee to be charged for services before the commencement of the services. | 29. Failing to inform the client or the client's authorized representative of the fee to be charged for services before the commencement of the services. | |
| 30. Failing to itemize an account for fees charged by the member or the member's practice for professional services provided 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. | 30. Failing to itemize an account for fees charged by the member or the member's practice for professional services provided 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. | The proposed language is more consistent with other health colleges with recently approved regulations. |
| 31. Selling or assigning a debt owed to the member for professional services. (This does not prohibit the use of credit cards to pay for professional services.) | 31. Selling or assigning a debt owed to the member for professional services. (This does not prohibit the use of credit cards to pay for professional services.) | |
| 32. Conferring, requesting or receiving a benefit in relation to the referral of a client. | 32. Conferring, requesting or receiving a benefit in relation to the referral of a client. | |
| 33. Charging a fee or accepting payment from a client respecting services which have been paid for by the Ministry of Health and Long-Term Care. | 33. Charging a fee or accepting payment from a client respecting services which are paid for by the Ministry of Health and Long-Term Care. | |
| 34. Charging for midwifery services on a fee for service arrangement. | 34. Charging for midwifery services on a fee for service arrangement. | <p>Fee-for-service is a payment model where services are unbundled and paid for separately. The health care provider receives a fee for each specific service such as an office visit, test, procedure, or other health care service. It can give an incentive to provide more treatments because payment is dependent on the quantity of care, rather than quality of care. It can also create a potential financial conflict of interest for clients, where they choose not to take a test because they have to pay for it separately.</p> <p>For clients that are not residents of Ontario, they may have to pay out of pocket for services. They however should be paying a block fee for each visit and the procedures/tests performed during this visit vs. for each element of care within the visit, i.e. fee for listening to Fetal Heart Rate,</p> |

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| | | fee for drawing blood, fee for taking blood pressure, fee for checking fundal height, etc. |
| 35. 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 obligations of the midwife and the client if the relationship between them is terminated before all the services are provided. | 35. 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 obligations of the midwife and the client if the relationship between them is terminated before all the services are provided. | |
| 36. Charging a fee, in addition to a block fee described in paragraph 35, for an undertaking to be available to provide services to the client. | 36. Charging a fee, in addition to a block fee described in paragraph 35, for an undertaking to be available to provide services to the client. | |
| 37. Contravening, by act or omission, the Act, the <i>Regulated Health Professions Act, 1991</i> or the regulations under either of those Acts. | 37. Contravening, by act or omission, the Midwifery Act , the <i>Regulated Health Professions Act, 1991</i> or the regulations under either of those Acts. | The proposed language provides more clarity. |
| 38. Contravening, by act or omission, a federal, provincial or territorial law, a municipal by-law or a by-law or rule of a hospital within the meaning of the <i>Public Hospitals Act</i> or any other health care facility where a member provides professional services if, i. the purpose of the law, by-law or rule is to protect the public health and, ii. the contravention is relevant to the member's suitability to practise. | 38. Contravening, by act or omission, a federal, provincial or territorial law, a municipal by-law or a by-law or rule of a hospital within the meaning of the <i>Public Hospitals Act</i> or any other health care facility where a member provides professional services if, i. the purpose of the law, by-law or rule is to protect or promote the public health, and or ii. the contravention is relevant to the member's suitability to practise. | The proposed language is more consistent with other health colleges with recently approved regulations and is clearer in its intent. |
| 39. Failing to comply with an order or direction of a panel of any Committee of the College. | 39. Failing to comply with an order or direction of a Committee or a panel of a Committee of the College. | The proposed language is more consistent with other health colleges with recently approved regulations and is clearer in its intent. |
| 40. Failing to carry out an undertaking given to the College, the Registrar or any Committee of the College or breaching an agreement entered into with the College, the Registrar or any Committee of the College. | 40. Failing to carry out or abide by an undertaking given to the College, the Registrar or any Committee of the College or breaching an agreement entered into with the College, the Registrar or any Committee of the College . | The proposed language is more consistent with other health colleges with recently approved regulations and is clearer in its intent. |
| 41. Failing to provide a reply in writing to a written inquiry from the College within the time specified by the | 41. Failing to provide a reply appropriately reply in writing to a written inquiry from the College within the | The proposed language is more consistent with other health colleges with recently approved |

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| College, or within 30 days from the date of the College's written inquiry if no time is specified. | time specified by the College, or within 30 days from the date of the College's written inquiry if no time is specified. | regulations and is clearer in its intent. |
| 42. Failing to take reasonable steps to ensure that any information provided by or on behalf of the member to the College is accurate. | 42. Failing to take reasonable steps to ensure that any information provided by or on behalf of the member to the College is accurate. | |
| 43. Publishing or publicly making a statement the member knew or ought to have known was false or misleading. | 43. Publishing or publicly making a statement the member knows or ought to know is false or misleading. | |
| 44. Influencing a client or the client's authorized representative to change the client's will or other testamentary instrument. | 44. Influencing a client or the client's authorized representative to change the client's will or other testamentary instrument. | |
| 45. Engaging in conduct that would reasonably be regarded by members as conduct unbecoming a midwife. | 45. Engaging in conduct that would reasonably be regarded by members as conduct unbecoming a midwife a member of the profession. | The proposed language is more consistent with other health colleges with recently approved regulations and is clearer in its intent. |
| 46. Practising the profession while the member's certificate of registration has been suspended. | 46. Practising the profession while the member's certificate of registration has been suspended. | |
| 47. Engaging in conduct or performing an act or omission relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. O. Reg. 388/09, s. 1. | 47. Engaging in conduct or performing an act or omission relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. | |
| | 48. Failing to appropriately supervise a person whom the member is professionally obligated to supervise. | Provision included in other health colleges' Professional Misconduct Regulation. |
| | 49. Making a claim respecting a drug, substance, remedy, treatment, device or procedure other than a claim that can be supported as reasonable professional opinion. | Provision included in other health colleges' professional misconduct regulations. |
| | 50. Failing to make reasonable attempts to collaborate with a client's other relevant health care providers respecting the care of the client, where such collaboration is necessary for the client's health, unless the client refuses to consent. | Provision included in other health colleges' professional misconduct regulations. |

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| | 51. Failing to advise a client, a client’s authorized representative or a member of the public, when requested, of their right to file a complaint with the College. | Provision included in other health colleges’ professional misconduct regulations, but modified to use gender inclusive language. |
| | 52. Failing to promptly report to the College if the member has reasonable grounds to believe that another member has engaged in professional misconduct, is incompetent or is incapacitated. | Provision included in other health colleges’ professional misconduct regulations. The College plans to develop a document that discusses each provision of the Professional Misconduct Regulation to ensure it is clear to the membership what constitutes professional misconduct. |
| 2. Omitted (revokes other Regulations). O. Reg. 388/09, s. 2. | 2. OMITTED (REVOKES OTHER REGULATIONS). O. Reg. 388/09, s. 2. | |
| 3. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 388/09, s. 3. | 3. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 388/09, s. 3. | |