



College of
Midwives
of Ontario

Ordre des
sages-femmes
de l'Ontario

Professional Misconduct Guide

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Introduction

The College of Midwives of Ontario (“the College”) regulates midwifery in the public interest under the authority of the *Regulated Health Professions Act* (“RHPA”)¹ and the *Midwifery Act*.² The Professional Misconduct Regulation³ is derived from these Acts and defines professional misconduct for registered midwives in Ontario.

The College sets out and enforces professional standards of practice that midwives are required to adhere to in order to provide the public with safe, effective and ethical care. Professional misconduct is an act or omission that is in breach of these standards and any other legal, ethical and midwifery standards.

The Professional Misconduct Regulation lists recognized types of professional misconduct. These are based on a framework provided by the Ministry of Health and Long-Term Care and are consistent with professional misconduct provisions for other health professions regulated by the RHPA.

The purpose of this guide is to enhance midwives’ understanding of the provisions of the Professional Misconduct Regulation. However, the information provided is not meant to exhaustively define all instances of professional misconduct. Midwives are expected to use their judgment in assessing what would constitute professional misconduct in their daily practise of midwifery.

This guide also does not constitute legal advice.

How the College Addresses Professional Misconduct

A complaint or report about the conduct of a member is addressed by the College’s Inquiries, Complaints and Reports Committee (ICRC). The ICRC investigates the facts and then determines how a complaint or other concern should be dealt with. It can take no action, take informal action (e.g. direct the midwife to engage in remediation activities or caution the midwife) or take formal action by referring the concern to the Discipline Committee for a full hearing.

A finding of professional misconduct by the Discipline Committee may result in one or more of the following:

- a reprimand
- terms, conditions or limitations placed on a midwife’s certificate of registration
- suspension of a midwife’s certificate of registration
- revocation of a midwife’s certificate of registration

The Professional Misconduct Regulation defines professional misconduct that is first applied by the ICRC and then, if there is a referral, by the Discipline Committee.

Definitions of Professional Misconduct

The Professional Misconduct Regulation provisions are grouped into headings below, under which explanations are provided.

1. **Contravening by act or omission, a term, condition or limitation imposed on the member’s certificate of registration.**

As a self-regulated profession, midwives must respect the College’s authority to

¹ S.O. 1991, c. 18.

² S.O. 1991, c. 31.

³ *Ibid.*, O. Reg. 388/09.

regulate the profession in the public's interest.

Terms, conditions and/or limitations are placed on a member's certificate of registration to protect the public.

A *term* is a requirement that must be satisfied on an ongoing basis. For example, the Discipline Committee may order that a midwife only practise while under supervision for a certain period of time.

A *condition* is a factor that must be fulfilled in order for another factor to occur. For example, the Fitness to Practise Committee may order a midwife to attend therapy for substance abuse before the midwife can return back to practice.

A *limitation* is a restriction that is placed on a midwife's certificate of registration. For example, the Discipline Committee may order that a midwife not perform external cephalic version for a certain period of time.

Conditions and limitations can either be for a specified period of time (e.g. until the midwife successfully completes certain remedial training) or for an indefinite period of time (e.g. the midwife cannot consume any alcohol).

Failing to comply with a term, condition, or limitation demonstrates a midwife's disregard for the authority of the College and may indicate that the midwife is ungovernable.

2. Failing to maintain a standard of practice of the profession.

The College's standards of practice describe the College's mandatory

requirements regarding a midwife's practice and conduct to help the midwife achieve the best outcomes for their clients and the public.

The College's standards of practice can be obtained from the College.⁴ If a standard of care is not addressed in College documents, the standard of care can be drawn from midwifery theory, community standard, clinical experience, clinical research and midwifery literature.

The Professional Misconduct Regulation identifies breaches of specific standards of practice.

3. Doing anything to a client for therapeutic, preventative, palliative, diagnostic, cosmetic or other health related purpose in a situation in which consent is required by law, without such consent.

Under the *Health Care Consent Act*⁵ all midwives are legally required to obtain informed consent from their clients regarding any treatment provided, including for the purposes identified in this provision.

Examples include:

- Therapeutic: providing iron supplements to a client with low hemoglobin levels
- Preventative: applying warm compresses to a client's perineum during labour
- Palliative: Creating a more comforting environment for a newborn baby at the end of life
- Diagnostic: ordering an ultrasound for a client

⁴ Available Online: <http://www.cmo.on.ca/quality-assurance/standards-of-practice/>

⁵ S.O., 1996, Chapter 2.

Obtaining informed consent involves informing a client of the following:

- The nature of the treatment
- Expected benefits
- Material risks⁶
- Material side effects⁷
- Alternative courses of action
- Likely consequences of not having the treatment⁸

Consent to treatment can be written or oral, either express or implied.⁹ Consent must be given voluntarily¹⁰ and can be withdrawn at any time.¹¹

If a client is not capable of making a treatment decision, consent must be obtained from a substitute decision-maker.¹²

Informed consent is not required in a clinical emergency, when the client is incapable of making a treatment decision and there is insufficient time to ask a substitute decision-maker.¹³ However, emergency treatment cannot proceed if it is contrary to a client's expressed wish while the client was capable of making a decision.¹⁴

4. Delegating a controlled act in contravention of the Act, the Regulated Health Professions Act, 1991, or the regulations under either of those Acts.

Delegation is a formal process by which a midwife, who is both competent and authorized to perform a controlled act, delegates the performance of a controlled act to another individual who is otherwise not authorized by legislation to perform it. This other individual may be a member of another profession regulated under the RHPA, a member of an

unregulated profession or a member of the public.

A midwife can only delegate controlled acts authorized to them under the *Midwifery Act* and the Controlled Acts Regulation under the RHPA.¹⁵ A midwife cannot, for example, perform the controlled act of placing an instrument, hand or finger into an artificial opening into the body on their own authority. It follows that midwives cannot also delegate this controlled act to other health care providers.

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.

Abuse includes acts or omissions that cause physical or emotional harm to a client. Abusive conduct may involve physical, non-physical, verbal or non-verbal behaviour toward a client.

The midwife-client relationship is based on mutual trust and respect; any act of abuse is a betrayal of that trust.

Midwives should not make remarks or act in a way that is or can be perceived as being hurtful, demeaning or humiliating. Examples include using hurtful, sarcastic and authoritarian words, passing negative judgment on a client's choice for treatment, harassing, intimidating or teasing a client, and demonstrating insensitivity to a client's culture, sexual orientation, or family dynamics.

A midwife should not inflict physical harm upon a client or engage in

⁶ "Material" refers to information that a reasonable person, in the patient's position, would find to be important when making decisions about treatment.

⁷ See note 6.

⁸ *Supra* note 5, s. 10(3).

⁹ *Ibid.*, s. 10(4).

¹⁰ *Ibid.*, s. 11(1).

¹¹ *Ibid.*, s. 14.

¹² *Ibid.*, s. 13(c)(ii).

¹³ *Ibid.*, s. 25(2).

¹⁴ *Ibid.*, s. 25(3)(e).

¹⁵ *Supra* note 1, O. Reg. 107/96.

behaviour that may be perceived as violent. Examples include hitting, slapping, shaking, and using force.

A midwife cannot engage in a sexual relationship with a client. Doing so would constitute sexual abuse under the RHPA.¹⁶

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.

Any substance or condition that impairs the judgment and abilities of a midwife can jeopardize the safety of clients and the public.

Midwives should regularly assess themselves to ensure that they are capable of providing safe and competent care to their clients and should seek help if suffering from substance abuse, illness or another condition.

If a midwife's judgment or ability is impaired, they have the responsibility to withdraw from providing client care.

7. Prescribing, dispensing or selling drugs for an improper purpose.

Midwives' ability to prescribe drugs is set out in the Designated Drugs Regulation¹⁷ under the *Midwifery Act*.

Midwives are not authorized to dispense or sell drugs.

Any drugs prescribed by a midwife to a client must be in relation to the clinical care being provided to a client and in the client's best interests.

A midwife should not prescribe drugs to a client to obtain a personal advantage, whether financial or otherwise. This constitutes a conflict of interest and puts client safety at risk.

8. Discontinuing professional services respecting a client unless one of the following occurs:

i. the client requests the discontinuation

Midwives must respect a client's choice and support their client's decision-making process. A midwife must discontinue professional services respecting a client at the client's request. Failure to do so would result in failing to respect a client's informed choice decision with respect to treatment.

ii. alternative services acceptable to the client are arranged.

In the event a client or midwife chooses to discontinue midwifery care, the midwife must arrange for alternative services that are acceptable to the client. For example, a midwife can refer a client to another health care practitioner and send the client's records to that practitioner with the client's consent.

iii. there is no longer a relationship of trust and confidence between the midwife and the client is given a reasonable opportunity to arrange alternative services

There are many reasons for which a relationship of trust and confidence between a midwife and client can break down. For example, a client could perceive a midwife as misrepresenting events during birth, which can negatively affect the client's continuing trust in the midwife.

¹⁶ *Health Professions Procedural Code*, Schedule 2 to RHPA, s.1(5). For further information on preventing

sexual abuse, see the College's "[Sexual Abuse Prevention Policy](#)".

¹⁷ *Supra* note 2, O. Reg. 884/93.

A breach of trust may also exist from a midwife's perspective. For example, a client could make inappropriate remarks or comments about the midwife, causing the midwife to feel unsafe or unconfident in continuing to provide care.

Once a breach of trust is found to exist in a midwife-client relationship, a midwife may not be able to continue to provide safe care, in which case it is the midwife's responsibility to terminate care in a timely fashion, while allowing the client a reasonable opportunity to arrange for alternative services.

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. Midwives are responsible for ensuring clients understand the parameters within which safe care can be provided, as defined by midwifery standards of practice.

Clients may choose care that is outside midwifery standards of practice. For example, a client may decline care that the midwife considers essential for the provision of safe care, or the client may request care that the midwife is unable to safely manage.

The College's Standard, *When a Client Chooses Care Outside Midwifery Standards of Practice*¹⁸ allows a midwife to discontinue care in such circumstances (provided it is a non-emergency situation and the client is not in the course of labour or an urgent situation).

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.

If a midwife discontinues the provision of midwifery care within a community, it is important for the midwife to give ample notice of closure to each client for whom the midwife has primary responsibility, within a reasonable amount of time. For example, a practice may close or a midwife may leave a practice.

Examples of providing notice include placing signs in the office place/practice and individual communication with clients. This is necessary to allow clients time to seek alternate care.

In addition, former clients need to know where their midwifery record is so it can be accessed for future care or other reasons. The information within a client record is confidential and proper transfer or storage in a manner known by clients is essential.

10. Failing without reasonable cause to provide to a client continuity of care in accordance with the standard of practice of the profession.

Continuity of midwifery care is achieved when a relationship of trust develops over time between midwives and their clients.

The College's requirements regarding continuity of care specify that clients must have 24-hour access to midwifery care or where midwifery care is not available, to suitable alternate care known to each client.

There are very limited and exceptional circumstances that would prevent midwives from providing 24-hour access to this care. Factors such as poor

¹⁸ (January 1, 2014) Available Online: <https://www.ontario.ca/laws/regulation/g30884>

scheduling or poor communication amongst midwives would not constitute reasonable cause for failing to provide continuity of care.

11. Failing without reasonable cause to provide services to a client during labour and child birth in the setting chosen by the client.

Midwives must recognize clients as primary decision-makers in their health care and support them in choosing the most appropriate setting for their birth.

Failing to provide services to a client during labour and child birth in the setting chosen by the client without reasonable cause would violate the client's informed choice for place of birth.

However, there are circumstances in which a midwife may have reasonable cause to refuse to provide midwifery services to a client in a setting of their choice. For example, a midwife may have multiple clients in labour and not enough midwives and/or second birth attendants within the practice to ensure at least one primary midwife and a back-up midwife or second birth attendant be present to attend to a client that wants to give birth at home. In such a case, the midwife may transport the client to a hospital to ensure there are at least two trained individuals at the birth, (i.e. by using a labour and delivery nurse as the second birth attendant) to ensure safe delivery and care.

12. Practising the profession while the member is in a conflict of interest.

A conflict of interest exists when a midwife's personal interests improperly influences their professional judgment to act in a manner that is contrary to the best interests of a client.

Personal interests can be monetary or may provide other benefits to the midwife or others the midwife has a relationship with, such as relatives or friends.

The following are examples of acting in a conflict of interest:

- Soliciting business from clients for a relative's baby store, without disclosing the nature of the relationship with the store owner, providing alternate options and reassuring the client that choosing another store would not affect their care
- Lending money to or borrowing money from clients
- Delaying urgent care to one client in favour of another due to non-health care considerations
- Influencing a client's choice regarding place of birth due to personal bias and/or interest as opposed to providing an informed choice conversation regarding birthplace options
- Referring a client to a practitioner that compensates the midwife for referrals as opposed to a practitioner that would be best for the client

Midwives should always be cognizant of the power imbalance in the midwife-client relationship and the trust that the public places in the midwifery profession to act in its best interests.

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.

Midwives have the obligation to preserve client confidentiality, which includes all client information (i.e. any information that identifies the client), including

personal health information. Disclosure of client information can only occur with consent of the client or the client's authorized representative. For example, a midwife would not be able to disclose client information to an obstetrician during the client's pregnancy if the client has declined to consult with that obstetrician.

However, this requirement does not restrict the ability of midwives to contact other health care professionals to ensure continuity of client care. For example, a midwife is permitted to share a client's personal health information with an obstetrician that assumes the client's care during an emergency in which client consent cannot be sought.

Midwives may also be required by law to disclose client information. For example, a midwife that suspects a child is in need of protection must report this to a Children's Aid Society (CAS).

Midwives may also be authorized by law to disclose client information. For example, a midwife that has sold their practice is permitted to transfer client files, provided that all clients of the practice have been given reasonable notice of the transfer and have not requested that their files be withheld from the transfer.

The duty of confidentiality between a midwife and client continues indefinitely.

This provision does not prohibit a midwife from sharing information about a client's case with others outside of a client's circle of care (i.e. with those who are not providing care to the client) as long as the midwife does not disclose the client's name or any information that would specifically identify the client.

14. Providing services or treatment to a client where the member knew or ought to have known that the services or treatment would be ineffective, unnecessary or deleterious to the client or inappropriate to meet the needs of the client.

Midwives must act in the best interests of a client. This involves using one's clinical judgment to ensure that all care provided is safe and appropriate.

For example, if a midwife administers intrapartum antibiotics to a client that is known to be allergic to those antibiotics, the midwife would be putting that client at risk.

Midwives must always use their clinical judgment and good faith in providing services and treatments to meet a client's needs. In the event a midwife is unsure of the best way to proceed, the midwife can consult with other colleagues or health care practitioners, as necessary.

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 judgment.

Providing or attempting to provide services or treatment that is outside of a midwife's knowledge, skills or judgment puts the client's health and safety at risk.

For example, a midwife who does not have the appropriate knowledge and skills to perform an External Cephalic Version (ECV) to move a baby from a breech position to a cephalic position should refer the client to another care provider competent to perform this procedure. If the midwife wishes to provide care to such clients in the future, it is expected that the midwife obtain the necessary knowledge and skills to do so.

16. Inappropriately using a term, title or professional designation in respect of the member's practice.

Clients must be able to identify registered midwives from other regulated health care practitioners, such as nurses or non-regulated care providers, such as doulas. The use of consistent, appropriate and clear titles helps the public know who they are dealing with and prevents confusion.

Only midwives can use the term "midwife" or any variation of that title, such as "registered midwife" or "RM".

If a midwife has another professional designation, they must be cognizant of using a title associated with that designation in front of clients. For instance, midwives cannot use the title "Doctor" in a clinical setting, even if they have earned a doctoral degree, such as a Ph.D. However, they are free to use that title in other settings where there are no clients (e.g. socially or while teaching).

In addition, while holding dual titles, midwives must ensure that they are registered at both colleges (e.g. if a midwife calls themselves a naturopath, that midwife must be registered with both the College of Midwives and the College of Naturopaths).

Furthermore, midwives cannot use a misleading title or designation, such as referring to an educational degree that they do not have.

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.

A client is entitled to know the name of the midwife that provides the client with health care services. This identification allows the client to hold the midwife

accountable for the midwife's professional conduct. It also allows clients and members of the public to verify the registration status of a midwife. Moreover, the College needs to be able to identify a midwife if a complaint or report is made to the College.

As a result, a midwife must use the name that is set out in the College's public register. If the midwife changes their name, they must notify the College and their clients of this at the earliest opportunity.

18. Providing false or misleading information or documents to the College or any other person with respect to the member's professional qualifications.

Midwives are responsible for representing the truth about their qualification and abilities.

In addition, as part of their commitment to self-regulation, midwives must respect the College and conduct themselves in a manner that is becoming of the profession.

As a result, a midwife must not provide false or misleading information about their professional qualifications to the College.

For example, midwives must not lie about or use false documents to support their professional qualifications upon registering with the College.

Midwives must also not provide false or misleading information to any other person, such as clients and the public, with respect to their professional qualifications. This includes how midwives represent their qualifications through professional marketing (e.g. on websites, pamphlets, while networking, etc.)

19. Falsifying a record relating to the member's practice.

Midwives have the responsibility to ensure that the recording of their actions is accurate, in accordance with the College's *Recordkeeping Standard*.¹⁹ This ensures that important health information is accurately captured to enable the provision of safe care to a client.

In addition, the College relies on a midwife's record to examine the midwife's practice in the event of a complaint or report. Therefore, it is important that the record accurately reflects the midwife's actions.

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 report or certificate.

Clients need to receive necessary information in a timely manner. Reports or certificates may be required for employment/insurance matters, or even legal proceedings. Delays or refusals to provide such reports in a timely manner could seriously disadvantage the client.

In addition, if a client needs a report to hold the midwife accountable for their decisions, the client would be unable to do so if the report was withheld from them. Midwives must remain accountable to their clients.

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.

A document that is signed by a midwife in their professional capacity must, to the midwife's best knowledge, contain accurate information. For example, a midwife should not initial a record that contains a misrepresentation of events that occurred at a birth.

In addition, a midwife should not sign a blank form, for this can facilitate acts of fraud.

22. Failing to keep records as required by the regulations.

Under the General Regulation²⁰ to the *Midwifery Act*, a midwife is required to maintain records with respect to a variety of matters, such as quality of care evaluations, peer case reviews, and continuing education and professional development. Midwives should familiarize themselves with these requirements to ensure their practices are conforming to the regulation.

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.

Under the *Personal Health Information Protection Act (PHIPA)*,²¹ a client has the general right to access their personal health information, which includes the results of examinations or treatment, such as an ultrasound report, within a reasonable amount of time. Pursuant to PHIPA, a midwife should answer a client's request for personal health information within 30 days and if a

¹⁹ (January 2013) Available Online: http://www.cmo.on.ca/wp-content/uploads/2015/07/Record-Keeping-Standard-for-Midwives_JANUARY-2013.pdf

²⁰ *Supra* note 2, O.Reg. 335/12.

²¹ S.O. 2004, c. 3, Sched. A.

midwife is unable to, a reason for the delay should be provided to the client.²²

Midwives should be mindful of the manner in which access is granted. For example, leaving a client's records unsecured in a mailbox outside of a midwifery practice would not be appropriate. Midwives should always ensure the safe and appropriate transfer of personal health information, in accordance with the requirements of PHIPA.

A midwife must also transfer records to another midwife upon a client's request. For example, if a client decides that they would like to pursue midwifery care at another practice and requests a transfer of their files to that practice, a midwife must do so.

There are very limited circumstances in which midwives are entitled to withhold personal health information from a client. Examples include if granting access would result in risk of serious harm to the client or another individual,²³ or another Act or court order prohibits disclosure to the client of the information in the record.²⁴ Midwives are encouraged to review the exceptions listed in PHIPA so they are aware of those instances in which they are justified in refusing a client's request to access a record of their personal health information.²⁵

24. Breaching an agreement with a client relating to professional services for the client.

Clients have a reasonable expectation that the terms of agreements with midwives for professional services will be honoured.

Midwives must respect the informed choices of their clients and may only refuse to provide care in accordance with legislation and College standards.

25. Submitting an account or charge for services that the member knew or ought to have known was false or misleading.

Midwives must submit an account or charge for services to the Ministry of Health & Long-Term Care's transfer payment agency (TPA) that is appropriate to the course of care that has been provided to a particular client.

For example, it would not be appropriate for a midwife to bill for a complete course of care if a client had only one prenatal visit.

26. Permitting, counselling or assisting in the submission of a false or misleading account or charge to a client.

Midwives must treat their clients in an ethical manner and cannot take financial advantage of them. Midwives should not permit, counsel or assist any of their colleagues to do the same.

27. Charging a fee that is excessive in relation to the service provided.

Midwives should ensure that all fees that are charged to clients are reasonable in relation to the service being provided. For instance, if a midwife chooses to charge fees for photocopying records, any associated administrative fee should be reasonable.

One way of determining the reasonableness of a fee is to check what fees other midwives or midwifery practices charge for the same service.

²² *Ibid.*, s. 55(3) and s. 55(4)(a).

²³ *Ibid.*, s. 52(1)(e).

²⁴ *Ibid.*, s. 52(1)(b).

²⁵ The PHIPA exceptions are listed in s. 51, 52 and 54(6).

28. Breaching an agreement with a client relating to fees for professional services. Any fees that are agreed to by a client must be respected by a midwife.

For example, if a practice changes their fees in relation to administrative matters, a midwife must notify clients of this change and continue to process requests that have already been made in accordance with the fee agreement at the time of the client's request.

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.

If there are any services offered by a midwife to a client which have a fee associated with them that is not covered by the government, a midwife has the responsibility to advise the client or their authorized representative of the fee prior to the service being provided.

For example, if a midwife provides a client with a birthing tub at a fee, the client should be advised of the fee prior to the midwife obtaining the birthing tub for the client's use.

In addition, midwives should be aware that some clients may be uninsured and have to pay for other health care services that are not funded by the government, including some lab tests, physician consultations and hospital stays. Midwives should always advise their clients of these fees in advance or assist their clients in obtaining this information.

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.

Clients are entitled to be fully informed of the particular components of any fees charged to them. In some cases, expenses may be covered by a client's insurance company and an itemization of fees would be required for insurance reimbursement.

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).

Selling or assigning a debt means turning the account over to a third party for collection. A midwife who does this would not be able to control the methods by which fees are collected.

Allowing the selling or assigning of debts conflicts with a midwife's commitment to the well-being of a client. Therefore, midwives must collect debts from a client directly.

Midwives can, however, accept credit card payments for any services rendered.

32. Conferring, requesting or receiving a benefit in relation to the referral of a client.

A midwife has a duty to refer clients to others where it is in the best interests of the client. A conflict of interest exists if a midwife refers a client to a certain practitioner for the purpose of receiving a benefit.

If a practitioner provides a benefit to a midwife, whether or not by the midwife's request, for referring a client, the midwife has a conflicting interest that is unprofessional. For example, if a midwife receives a financial benefit for making a referral to a particular practitioner and the midwife decides to refer the client to that practitioner as opposed to the practitioner that would be best for the client's needs, a conflict of interest exists.

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.

Midwifery services are free for all residents of Ontario, regardless of whether they are insured by OHIP. As a result, midwives cannot charge the client for the course of care that is provided to them.

If a client attempts to provide payment for such services, a midwife should decline and explain why.

34. Charging for midwifery services on a fee for service arrangement.

Midwives are paid on a “per client” basis through a contract with a TPA of Ontario’s Ministry of Health and Long-Term Care. This means that midwives are paid for a complete course of care as a package and are not paid separately for each visit. As a result, midwives cannot charge for services on a fee for service arrangement.

Midwives are also not allowed to charge midwifery services on a fee for service arrangement for self-paying clients and must bill for a complete course of care.

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.

A block fee is a flat fee charged for a predetermined set of uninsured services. Uninsured services are typically administrative services in relation to the client’s care that take a midwife’s time and resources. Examples include sick notes for work, copying and transferring

medical records and prescription refills over the phone.

If a client uses many uninsured services, a midwife can offer a block fee to the client. Offering a block fee can enable services to be provided in a more convenient and/or economical manner.

For example, a midwife may charge a block fee to a client for prescription refills over the phone. If so, a midwife must clearly specify what is covered by the fee (e.g. prescription refills over the phone until the end of client care), the fee amount, arrangements for paying the fee (e.g. the payment method and payment due date) and the rights and obligations of the midwife and client if the relationship is terminated before all the services are provided (e.g. is any portion of the block fee refundable in such an event).

Midwives are reminded that any fees charged must be reasonable, as described in provision #27.

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.

A midwife cannot charge a fee in addition to a block fee, to be available to provide services to a client.

For example, a midwife cannot charge a block fee for midwifery services to a non-resident of Ontario and charge a separate fee to be on call for the client’s birth.

In general, midwives cannot make their availability to provide insured or uninsured services to a client contingent on clients paying a fee.

Midwives must always prioritize clients on the basis of urgency and their best interests.

37. Contravening, by act or omission, the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those acts.

The Professional Misconduct Regulation does not comprise an exhaustive list of the types of conduct that are unacceptable. If a midwife contravenes any legislative provision that regulates the practice of midwifery, that is also considered professional misconduct.

Midwives must be aware of their obligations under legislation that govern their practice.

For example, failure to comply with a peer and practice assessment ordered by the Quality Assurance Committee as detailed under the General Regulation²⁶ to the Midwifery Act, could be considered as professional misconduct.

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 *Public Hospitals Act* 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.

In addition to College standards, midwives must adhere to any legislation, by-laws or rules that affect their professional practice.

For example, hospitals often have by-laws that include requirements for applications submitted in consideration of hospital privileges. A midwife may be asked to disclose information about their

conduct, such as information regarding any civil suit where the midwife is or was named as a defendant and there was a finding of negligence or battery. The midwife would be obligated to provide this information. Failure to do so would constitute professional misconduct.

39. Failing to comply with an order or direction of a panel of any Committee of the College.

Failing to comply with the orders of any panels of the College's committees demonstrates a midwife's disregard for the College's role in regulating midwifery for the protection of the public and constitutes professional misconduct.

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, Registrar or any Committee of the College.

Midwives may enter into an undertaking or agreement with the College in certain circumstances.

An undertaking is a promise from a midwife that they will carry out certain activities or meet specified conditions as requested by a College committee or the Registrar. For example, a midwife may undertake to restrict their practise pending the outcome of an investigation, as ordered by the Inquiries, Complaints and Reports Committee.

An agreement is a written or unwritten contract between a midwife and the College. For example, a midwife may enter into an agreement with the Fitness to Practise Committee that limits their ability to access or administer certain drugs.

²⁶ *Ibid*, note 20.

A midwife has a professional obligation to be accountable to the College and the public. Failure to comply with an undertaking or agreement with the College demonstrates a disregard for the College's regulatory role and constitutes professional misconduct.

41. *Failing to provide a reply in writing to a written inquiry from the College within the time specified by the College, or within 30 days from the date of the College's written inquiry if no time is specified.*

A midwife must respect the College's role in regulating the profession in the public's interest. A midwife must respond to inquiries from the College within the times specified in this provision.

42. *Failing to take reasonable steps to ensure that any information provided by or on behalf of the member to the College is accurate.*

The College is required by regulation to collect certain information from members in order to protect the public interest.

The College uses this information to:

- 1) *Maintain its public register to provide information to the public about individual midwives.*

The information on the register includes the telephone number and address of the midwife's current practice and any findings of professional misconduct, incompetence or incapacity.

- 2) *Monitor findings against members.* Findings that are monitored include those of professional misconduct, incompetence or incapacity in midwifery in other jurisdictions, as well as findings of professional misconduct,

incompetence, or incapacity in relation to another health profession that the member may be practicing. Midwives are also obligated to disclose a finding of guilt for a criminal offence or any other offence.

- 3) *Monitor the quality of midwifery practice through the Quality Assurance Program.*

The General Regulation under the *Midwifery Act* gives the Quality Assurance Committee the authority to request submission of a member's records to the Quality Assurance Committee for review.²⁷

Midwives must ensure that any information provided to the College is complete and accurate. This includes information that is provided at the time of application to become a member of the College and on an ongoing basis after becoming a member.

43. *Publishing or publicly making a statement the member knew or ought to have known was false or misleading.*

Publishing or publicly making a false or misleading statement is dishonest and breaches the public's trust in the profession.

Midwives should exercise caution when reviewing any information that they plan to make public to ensure that it is accurate and not misleading.

For example, a midwife that has had their privileges suspended at a particular hospital should not advertise on their website that they can provide services at that hospital.

44. *Influencing a client or the client's authorized representative to change the*

²⁷ *Ibid*, s. 10(1) for Peer and Practice Assessments.

client's will or other testamentary instrument.

Sometimes midwives deal with clients who are in the midst of life-changing and end-of-life decisions. Such clients are vulnerable and may be unduly influenced by their midwife.

A midwife should not use the authority, influence and trust that is derived from the midwife-client relationship to influence the client or the client's authorized representative to do anything with the client's estate. Doing so would constitute a conflict of interest while practising the profession.

A midwife should also be aware of crossing boundaries with clients. A client's estate matters are not in relation to the care being provided by the midwife and should not be discussed. Midwives are expected to maintain appropriate boundaries to ensure that the care that is provided to clients is ethical and in their best interests.

45. Engaging in conduct that would reasonably be regarded by members as conduct unbecoming of a midwife.

This provision captures conduct that is not specifically stated in the provisions, but for which there would be a general consensus in the profession that such conduct or behaviour would be unbecoming of a midwife.

"Conduct unbecoming of a midwife" refers to conduct in a midwife's private life that brings discredit to the profession.

For example, the College could discipline a midwife who engaged in fraud outside of work, possessed child pornography at home, or made racist or sexist comments on social media.

46. Practising the profession while the member's certificate of registration has been suspended.

Midwives must demonstrate respect for the College's authority to regulate in the public's interest.

If the College suspends a midwife's certificate of registration, continuing to practise would put the public at risk and constitutes professional misconduct.

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.

This provision applies to a midwife's conduct while practising midwifery, for which there is no specific provision, but for which there would be a general consensus in the profession that such conduct or behaviour would be disgraceful, dishonourable or unprofessional.

For example, while there may not be a specific provision that states that a midwife cannot abuse a client's mother during a visit, it is reasonable to assume that other members of the profession would regard such conduct as disgraceful, dishonourable or unprofessional.



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