



College of
Midwives
of Ontario

Ordre des
sages-femmes
de l'Ontario

Guide on Mandatory & Permissive Reporting

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Introduction

The purpose of this guide is to outline circumstances where midwives, employers, and operators of facilities where midwives hold privileges or appointments are required to file a mandatory report with the College, under the *Regulated Health Professions Act (RHPA)*¹, the College's *Registration Regulation* and College by-laws.

Filing a mandatory report ensures that the public remains protected and midwives practise with the necessary competence and skill required by the College. No action or proceeding can be brought against any person that files a mandatory report in good faith.²

This guide also outlines additional reporting obligations (to persons or organizations external to the College) under other pieces of legislation and common law. It further discusses instances where reporting to the College is permissive (i.e. there is no legal requirement to report but midwives may do so).

This guide does not provide an exhaustive list of midwives' legal responsibilities and is not a substitute for legal advice regarding reporting obligations.

1. Mandatory Reporting by Midwives

This section outlines the reports that midwives are required to make under the RHPA, the College's *Registration Regulation* and College by-laws.

1.1 Sexual Abuse

A midwife should file a report if the midwife has reasonable grounds to believe another midwife or any other regulated health care professional of any College (including those outside of Ontario) has sexually abused³ a client or patient,⁴ and the midwife obtained this information in the course of practising the profession.⁵ The reasonable grounds could arise even if the midwife did not personally observe the sexual abuse. For example, if a client tells the midwife details of being abused by another midwife or health care professional of another health college, it would likely constitute reasonable grounds. The duty to report does not apply if the midwife does not know the name of the midwife or health care professional of another health college who would be the subject of the report.⁶

If the midwife files the report because of reasonable grounds obtained from the midwife's client, the midwife must use their best efforts to advise the client of the midwife's requirement to file a report before doing so.⁷ The midwife does not require consent from the client to file the report, however the midwife must obtain written consent from the client (or the client's authorized representative in cases of an incapable person) to include the client's name in the report.⁸

¹ S.O. 1991, c. 18.

² *Ibid* at s. 85.6 of the *Health Professions Procedural Code*, Schedule 2 to the RHPA.

³ For more information on what constitutes sexual abuse, please see the College's Guideline on Reporting Sexual Abuse.

⁴ *Supra* note 2, s. 85.1(1).

⁵ *Ibid* at s. 85.1(1) and s. 85.2(1).

⁶ *Ibid* at s. 85.1(2).

⁷ *Ibid* at s. 85.1(3).

⁸ *Ibid* at 85.3(4).

A report must be filed in writing to the Registrar of the College of the health professional who is the subject of the report.⁹ For example, if a client tells a midwife that they were sexually abused by their family physician, the midwife should file a report to the College of Physicians and Surgeons of Ontario.

The report must be filed within 30 days unless the person who is required to file the report has reasonable grounds to believe that the health professional will continue to sexually abuse the client or others, or there is an urgent need for intervention, in which case the report must be filed immediately.¹⁰

The report must contain:

- the name of the person filing the report;
- the name of the health professional who is the subject of the report;
- an explanation of the alleged sexual abuse;
- if the person is filing the report in relation to a particular client, the name of the client, only if the client consents in writing. If the client is incapable, the client's representative can provide consent on their behalf.¹¹

1.2 Charges and Associated Conditions/Restrictions

A midwife is required to file a report in writing with the Registrar if they have been charged with an offence. The report must include information about every bail condition or other restriction imposed on, or agreed to, by the midwife in connection with the charge.¹²

The report must be filed as soon as reasonably possible after the midwife receives notice of the charge, bail condition or restriction.¹³

The report must contain:

- the name of the midwife filing the report;
- the nature of, and a description of, the charge;
- the date the charge was laid against the midwife;
- the name and location of the court in which the charge was laid or in which the bail condition or restriction was imposed on or agreed to by the midwife;
- every bail condition imposed on the midwife as a result of the charge;
- any other restriction imposed on or agreed to by the midwife relating to the charge; and
- the status of any proceedings with respect to the charge¹⁴

The report cannot contain any information that violates a publication ban.¹⁵

⁹ *Ibid* at s. 85.3(1).

¹⁰ *Ibid* at s. 85.3(2).

¹¹ *Ibid* at s. 85.3 (3).

¹² *Ibid* at s. 85.6.4(1).

¹³ *Ibid* at s. 85.6.4(2).

¹⁴ *Ibid* at s. 85.6.4(3).

¹⁵ *Ibid* at s. 85.6.4(4).

A midwife must file an additional report if there is a change in the status of the charge or bail conditions.¹⁶

1.3 Offences

A midwife is required to file a report in writing to the Registrar if they have been found guilty of an offence by a court after June 3, 2009, as soon as reasonably practicable¹⁷ but no later than 14 days.¹⁸

The report must contain:

- the name of the midwife filing the report;
- the nature of, and description of the offence;
- the date the midwife was found guilty of the offence;
- the name and location of the court that found the midwife guilty of the offence; and
- the status of any appeal initiated respecting the finding of guilt¹⁹

The report cannot contain any information that violates a publication ban.²⁰

1.4 Reporting on Settlements and Judgments of Civil Law Suits

A midwife is required to report to the Registrar on the settlement of a civil law suit with respect to the midwife's professional activities, whether actual or potential, or the midwife becoming subject to a judgment in any civil law suit in respect of such activities, within 30 days of the event occurring, whether in Ontario or in any other jurisdiction.²¹

1.5 Reporting on Coroner's Inquest Proceeding or Verdict

A midwife is required to report to the Registrar if their conduct becomes or is the subject of a coroner's inquest proceeding or verdict, within 30 days of the event occurring, whether in Ontario or in any other jurisdiction.²²

1.6 Professional Negligence & Malpractice

A midwife is required to file a report in writing with the Registrar if there has been a finding of professional negligence or malpractice made against the midwife by a court.²³

The report must be filed as soon as reasonably possible, after the midwife receives notice of a finding made against the midwife.²⁴

The report must contain:

¹⁶ *Ibid* at s. 85.6.4(6).

¹⁷ *Ibid* at s. 85.6.1(1).

¹⁸ College's General By-Law, Article 14.06, Available Online: <http://www.cmo.on.ca/wp-content/uploads/2015/07/General-By-Law-20161.pdf>

¹⁹ *Supra*, note 2, s. 85.6.1(3).

²⁰ *Ibid* at s. 85.6.1(4).

²¹ s. 10 (1) (viii) Registration Regulation (O.Reg. 168/11) under the *Midwifery Act*, S.O., 1991, c. 31.

²² *Ibid* at s. 10 (1) (vi)

²³ *Supra*, note 2, s. 85.6.2(1).

²⁴ *Ibid* at s. 85.6.2(2).

- the name of the midwife filing the report;
- the nature of, and a description of the finding;
- the date that the finding was made against the midwife;
- the name and location of the court that made the finding against the midwife; and
- the status of any appeal initiated respecting the finding made against the midwife²⁵

The report cannot contain any information that violates a publication ban.²⁶

1.7 Other Professional Memberships & Finding of Professional Misconduct or Incompetence

A midwife is required to report to the Registrar in writing if the midwife is a member of another body that governs a profession inside or outside of Ontario.²⁷

A midwife is required to report to the Registrar in writing if they have a finding of professional misconduct or incompetence in relation to the practice of midwifery, or any other profession, in any jurisdiction.²⁸

The report must be filed with the Registrar as soon as reasonably possible, after the midwife receives notice of the finding made against the midwife.²⁹

The report must contain:

- the name of the midwife filing the report;
- the nature of, and a description of, the finding;
- the date that the finding was made against the midwife;
- the name and location of the body that made the finding against the midwife; and
- the status of any appeal initiated respecting the finding made against the midwife.³⁰

The report cannot contain any information that violates a publication ban.³¹

A midwife who files a report must file an additional report if there is a change in status of the finding made against the midwife as a result of an appeal.³²

1.8 Additional Information Pursuant to By-Laws

A midwife is required to report additional information to the College pursuant to Article 14.05 of the College's General By-Law.³³ This includes reporting information relating to any complaint against the midwife or any investigation of the midwife in process by

²⁵ *Ibid* at s. 85.6.2(3).

²⁶ *Ibid* at s. 85.6.2(4).

²⁷ *Ibid* at s. 85.6.3(1).

²⁸ *Ibid* at s. 85.6.3 (2).

²⁹ *Ibid* at s. 85.6.3(3).

³⁰ *Ibid* at s. 85.6.3(4).

³¹ *Ibid* at s. 85.6.3(5).

³² *Ibid* at s. 85.6.3(7).

³³ *Supra*, note 18.

another regulatory body, inside or outside of Ontario, and the outcome of the complaint or investigation.³⁴

In addition, in relation to any hospital, birth centre and health facility in Ontario where a midwife has privileges, a midwife must report the date that each privilege was granted, restricted, suspended, revoked, resigned or otherwise terminated.³⁵

Midwives are expected to review Article 14 of the General By-Law for additional reporting requirements.³⁶

1.9 Consequences for Failing to Report

When a member fails to make a mandatory report, they may become subject to a fine under legislation.

When the College becomes aware of a failure to report, this information is provided to the Registrar who will consider the information and determine the appropriate course of action. This may include education about mandatory reporting obligations or the beginning of a registrar's investigation. Each case is treated seriously and on a case-by-case basis.

2. Mandatory Reporting by Employers and Others

This section applies to employers or others and outlines the reports that they are required to make under the RHPA.

Relevant Definitions:

Employer

A person who terminates the employment or revokes, suspends or imposes restrictions on the privileges of a member or who dissolves a partnership, a health profession corporation or association with a member for reasons of professional misconduct, incompetence or incapacity³⁷. This includes practice partners and midwives who manage birth centres. Midwives who are associates or locums of a midwifery practice do not have the same mandatory reporting obligations as they do not meet the definition of employer as set out in the RHPA.

Others

“Others” refers to business associates or any other person who participates in any kind of partnership with a midwife for the purpose of offering health services but does not include a midwifery practice associate. It should be noted that a “business associate” is any person who participates in any kind of partnership with a midwife for the purpose of offering health services³⁸ but is not a midwifery practice associate.

In the section below “others” and “other person” are used interchangeably.

³⁴ *Ibid* at s. 14.05 (b).

³⁵ *Ibid* at s. 14.05 (f).

³⁶ *Supra* note 32.

³⁷ *Supra* note 2, s. 85.5(1).

³⁸ *Supra* note 2, s. 85.5.(3).

Professional Misconduct, Incompetence or Incapacity

Professional misconduct refers to any inappropriate act or omission that would potentially result in disciplinary action.³⁹

Incompetence refers to when a midwife's professional care of a client displays a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates that the midwife is unfit to continue to practise or that the midwife's practice should be restricted.⁴⁰

Incapacity refers to a midwife suffering from a physical or mental condition or disorder that makes it desirable in the interests of the public that the midwife's certificate of registration be subject to terms, conditions or limitations or that the midwife no longer be permitted to practice.⁴¹

Voluntary Restriction of Practice

A voluntary restriction includes any limitation on the midwife's practice and can occur where a midwife enters into an agreement with a practice to restrict some aspects of practice. Examples include:

- Practising under some form of supervision or mentoring (not including a College-imposed restriction or condition such as a new registrant condition or supervised practice).
- Limiting the activities or procedures that the midwife can perform (e.g. refraining from performing venipuncture or vaginal exams, not prescribing or administering drugs that fall within a midwife's authority, not seeing a certain category of clients).

Investigation

An investigation is any inquiry, review, audit or examination by or on behalf of an employer or other person to assess whether there are concerns related to the conduct/competence/capacity of a midwife.

For example, if a partner midwife is concerned that a midwife may have inadequately assessed clients and a chart audit is conducted to determine whether this concern is valid, that partner midwife is conducting an investigation. Random chart audits for the purpose of quality improvement practices do not constitute an investigation.

2.1 Reporting on Termination/Revocation/Suspension or Restrictions on Privileges of Midwives

A person who terminates the contract or revokes, suspends or imposes restrictions on the privileges of a midwife or who dissolves a partnership, a health profession corporation or association with a midwife for reasons of professional misconduct, incompetence or incapacity shall file with the Registrar within 30 days of the termination, revocation, suspension, imposition or dissolution a written report setting out the reasons.⁴²

³⁹ See the *Professional Misconduct Regulation*, 388/09 under the *Midwifery Act*, S.O. 1991, c. 31 and the College's Professional Misconduct Guide (January 2018).

⁴⁰ *Supra* note 1, s. 52.

⁴¹ *Ibid* at s. 1(1).

⁴² *Supra* note 2, s. 85.5(1).

A hospital that restricts the ability of midwives to practise to full scope for reasons that are unrelated to conduct, competence, or capacity, is not considered a restriction of privileges for the purpose of this section. For example, a hospital could decide that a new midwife on staff must manage a certain number of labour inductions under the supervision of a more senior midwife before that midwife can manage them on their own authority. In such a case, the hospital would not be required to make a report to the Registrar regarding such a restriction of the midwife's privileges. However, if an individual midwife once had full scope privileges and then was later restricted from managing labour inductions due to concerns raised regarding their conduct, competence, or capacity, then this would be considered a restriction of privileges that would require a report to be made to the Registrar.

The report should contain:

- the name and contact information of the person filing the report;
- the name of the midwife who is the subject of the report;
- the basis of the concerns underlying the report

It is also encouraged that any relevant documents be provided.

2.2 Midwife Resigns or Voluntarily Restricts their Practice or Privileges

If a midwife resigns or voluntarily restricts their practice or privileges and an employer or other person has reasonable grounds to believe that the resignation or restriction is related to the midwife's professional misconduct, incompetence or incapacity, that person must file a written report with the Registrar within 30 days, setting out the grounds upon which that person's belief is based.⁴³

Reasonable grounds exist where there is more than mere suspicion that the resignation/restriction is related to the event. For example, if a person raises concerns with a midwife falsifying documents in a client's midwifery record and the midwife immediately resigns after such concerns are raised, this could constitute reasonable grounds for an employer or other person to file a mandatory report. Similarly, if a midwife was noticed on an occasion to be smelling of alcohol and having poor motor skills while providing care to a client and resigned a day after another midwife raised concerns with her conduct, then this may constitute reasonable grounds for an employer or other person to file a mandatory report to the College regarding the resignation being related to the midwife's potential misconduct or incapacity.

It should be noted that not all instances or signs of illness constitute reasonable grounds to file a mandatory report. For example, if a midwife is experiencing mental illness and resigns, the illness itself does not provide reasonable grounds to make a report. However, if a midwife is experiencing mental illness and resigns after making several clinical errors that can be reasonably perceived to be a result of mental illness while caring for clients, then there may be reasonable grounds to file a mandatory report based on the resignation being related to incapacity.

⁴³ *Ibid* at s. 85.5(2)1.

Where the resignation or restriction takes place during the course of or as a result of an investigation conducted by or on behalf of an employer or other person into allegations of professional misconduct, incompetence or incapacity on part of the midwife, the employer or other person must file with the Registrar, within 30 days after the resignation or restriction, a written report setting out the nature of the allegations being investigated.⁴⁴

It is recommended the report contain:

- a summary of the nature of the concern
- a description of the questionable conduct
- a list of individuals who witnessed the conduct
- any practice related policies or College professional standards that apply to the conduct
- any action taken by the practice partner or associate in response to the conduct

3. Mandatory Reporting by Facility Operators

This section applies to facility operators and outlines the reports that they are required to make under the RHPA.

Relevant Definitions:

Facility Operator

A person who operates a facility where one or more midwives practise.⁴⁵ A facility operator includes a midwife who owns and/or manages the property on which their practice operates. It also includes a midwife that manages a birth centre. In the event the facility operator is a midwife, they would have dual reporting obligations. For example, a midwife that manages an independent clinic space or birthing suite and provides a space for other midwives and their clients to use may be acting as a facility operator and, in such cases, would have mandatory reporting obligations.

Incompetence

Incompetence refers to when a midwife's professional care of a client displays a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates that the midwife is unfit to continue to practice or that the midwife's practice should be restricted.⁴⁶

Incapacity

Incapacity refers to a midwife suffering from a physical or mental condition or disorder that makes it desirable in the interests of the public that the midwife's certificate of registration be subject to terms, conditions or limitations or that the midwife no longer be permitted to practice.⁴⁷

⁴⁴ *Ibid* at s. 85.5(2)2.

⁴⁵ *Ibid* at s. 85.2(1).

⁴⁶ *Supra* note 1, s. 52.

⁴⁷ *Ibid* at s. 1(1).

3.1 Professional Misconduct/Incompetence & Sexual Abuse

A person who operates a facility where one or more regulated health professionals practise (such as an office or clinic) must file a report if they have reasonable grounds to believe that a regulated health professional who practises at the facility is incompetent, incapacitated or has sexually abused a client,⁴⁸ unless the person operating the facility does not know the name of the regulated health professional who would be the subject of the report.⁴⁹

A report must be filed in writing to the Registrar of the College of the health professional who is the subject of the report.⁵⁰

The report must be filed within 30 days unless the person who is required to file the report has reasonable grounds to believe that the regulated health professional will continue to sexually abuse the client or others, or that the incompetence or incapacity of the regulated health professional is likely to expose a client to harm or injury or there is an urgent need for intervention, in which case the report must be filed immediately.⁵¹

The report must contain:

- the name of the person filing the report;
- the name of the regulated health professional who is the subject of the report;
- an explanation of the alleged sexual abuse, incompetence or incapacity; if the grounds of the person filing the report are related to a particular client, the name of the client, only if the client consents. If the client is incapable, the client's representative can provide consent on their behalf⁵²

4. Additional Mandatory Reporting Requirements

There are additional reporting duties outside of the *Regulated Health Professions Act*, the College's *Registration Regulation* and College By-Laws.

The following list is not exhaustive and is not a substitute for legal advice regarding reporting obligations.

4.1 Duty to Report Child Abuse⁵³

Pursuant to the *Child, Youth and Family Services Act*, a person (this includes a person who performs professional or official duties with respect to children (such as a midwife) who suspects that any child is in need of protection must report this to Children's Aid Society (CAS).⁵⁴ This duty overrides all privacy and confidentiality duties and laws, including those under the *Personal Health Information Protection Act* (PHIPA).⁵⁵ No legal action can be

⁴⁸ *Ibid* at s. 85.2(1).

⁴⁹ *Ibid* at s. 85.2(3).

⁵⁰ *Ibid* at s. 85.3(1).

⁵¹ *Ibid* at s. 85.3(2).

⁵² *Ibid* at s. 85.3(3).

⁵³ For more information on reporting child abuse, please see the College's Guideline on Reporting Child Abuse.

⁵⁴ S.O. 2017, c. 14, s. 125(1).

⁵⁵ *Ibid* at s. 125(10).

taken against a person for making a report, unless the report is made maliciously or without reasonable grounds.⁵⁶

Midwives have the duty to report with respect to any child under the age of 16 (or who is 16 or 17 years old and under a child protection order).⁵⁷ This includes all children, including a child of a client, a child who is a client, or any other child.

However, midwives have a special responsibility to report information about pregnant children if the information was obtained while providing treatment or services to the pregnant child. Midwives may be fined up to \$5,000 for failing to make a report in this circumstance.⁵⁸

The duty to report is ongoing (for new information) even if a previous report was made respecting a child.⁵⁹ A person must make a report personally to Children's Aid Society.⁶⁰

A midwife must make a report if they have reasonable grounds to suspect any of the following:⁶¹

- The child has been or is at risk of harm.⁶²
- a child has been or is at risk of likely being physically harmed by a person having charge of the child (e.g., a parent or guardian), either directly or as a result of neglect or a pattern of neglect.⁶³
- a child has been or is at risk of being sexually molested or sexually exploited, either by a person having charge of the child, or by another person, if the person having charge of the child knows or should know of the risk of this happening and fails to protect the child.⁶⁴
- A person having charge of a child does not or cannot provide services or treatment to a child or does not or cannot consent to services or treatment for a child.⁶⁵

A report is also required where a child is not receiving services or treatment and:

- the child requires medical treatment to cure, prevent or alleviate physical harm or suffering;⁶⁶

⁵⁶ *Ibid.*

⁵⁷ *Ibid* at s. 125(4).

⁵⁸ *Ibid* at s. 125(9).

⁵⁹ *Ibid* at s. 125(2).

⁶⁰ *Ibid* at s. 125(3).

⁶¹ Midwives are expected to familiarize themselves with all instances under s. 125 of the *Child, Youth & Family Services Act*.

⁶² *Ibid* at s. 125(1)1.

⁶³ *Ibid* at s. 125(1)2.

⁶⁴ *Ibid* at s. 125(1)3 and 4.

⁶⁵ *Ibid* at s. 125(1)5.

⁶⁶ *Ibid.*

- the child has suffered or is likely at risk of suffering emotional harm, demonstrated by serious anxiety, depression, withdrawal, self-destructive or aggressive behaviour or delayed development believed to be caused by action or inaction of the person having charge of the child;⁶⁷
- the child has a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development;⁶⁸ or if
- the child is under the age of 12, has killed or seriously injured another person or has caused serious damage to another person's property and services or treatment are needed to prevent a recurrence.⁶⁹

4.2 Duty to Warn

At common law, a person who has reasonable grounds to believe that another person is likely to cause severe bodily harm must warn the appropriate people (e.g. subjects of the threat and the police) of the risk. This duty applies to midwives and if the person who will likely cause harm is a client, the duty transcends confidentiality and privacy obligations that are otherwise owed to that client.⁷⁰

4.3 Births and Still Births

Live Births

Midwives attending the birth of a child must give notice of the birth within two business days to the Registrar General in the form approved by the Registrar General.⁷¹

Still-Births

Still-birth refers to "the complete expulsion or extraction from a person of a product of conception either after the twentieth week of pregnancy or after the product of conception has attained the weight of 500 grams or more, and where after such expulsion or extraction there is no breathing, beating of the heart, pulsation of the umbilical cord or movement of voluntary muscle."⁷²

Midwives attending a still birth must give notice of the still birth within two business days to the Registrar General in the form approved by the Registrar General.⁷³

Deaths

Midwives are required to immediately notify a coroner or police officer if there is reason to believe that an individual has died:

1. as a result of violence, misadventure, negligence, misconduct or malpractice;
2. by unfair means;

⁶⁷ *Ibid* at s. 125(1)6, 7, 8, & 9.

⁶⁸ *Ibid* at s. 125(1)10.

⁶⁹ *Ibid* at s. 125(1)12 & 13.

⁷⁰ The duty to warn was discussed in *Smith v Jones* [1999] 1 SCR 455.

⁷¹ s. 1(1) and (3) of Reg. 1094 under the *Vital Statistics Act*, R.S.O. 1990, c. V. 4.

⁷² *Ibid* the *Vital Statistics Act*, s. 1.

⁷³ *Ibid* at s. 19(1) and (3).

3. during pregnancy or following pregnancy in circumstances that might be reasonably attributed to the pregnancy;
4. suddenly or unexpectedly;
5. from disease or sickness for which the person was not treated by a legally qualified medical practitioner;
6. from any other cause than disease; or
7. under circumstances that may require investigation⁷⁴

The notification must include the facts and circumstances relating to the death.⁷⁵

4.4 Communicable and Reportable Diseases

Eyes of Newborn

When a midwife attends the birth of a child and is aware that an eye of the newborn child has become reddened, inflamed or swollen, within two weeks after birth of the child, the midwife must report in writing to the Medical Officer of Health⁷⁶:

- the name, age and home address of the child
- where the child is located, if not at home, and
- the conditions of the eye that have been observed⁷⁷

Reactions to Immunizations

Midwives must report when they recognize the presence of a reportable event while providing professional services to a person and are of the opinion that the reportable event may be related to the administration of an immunizing agent.⁷⁸

A “reportable event” includes:

- persistent crying or screaming, anaphylaxis or anaphylactic shock occurring within forty-eight hours after the administration of an immunizing agent;
- shock-like collapse, high fever or convulsions occurring within three days after the administration of an immunizing agent;
- arthritis occurring within forty-two days after the administration of an immunizing agent;
- generalized urticaria, residual seizure disorder, encephalopathy, encephalitis or any other significant occurrence occurring within fifteen days after the administration of an immunizing agent; or
- death occurring at any time and following upon a symptom described above⁷⁹

⁷⁴ s. 10 (1) of the *Coroners Act*, R.S.O. 1990, c. C37.

⁷⁵ *Ibid.*

⁷⁶ The Medical Officer of Health is different in every region. Midwives can locate theirs online by searching for the one that serves the region in which they practise.

⁷⁷ Communicable Diseases – General Regulation, R.R.O. 1990, Regulation 557 under the *Health Protection and Promotion Act*, R.S.O. 1990 c. H. 7.

⁷⁸ *Ibid*, *Health Protection and Promotion Act* at s. 38(3).

⁷⁹ *Ibid* at s. 38(3).

Midwives are required to report the reportable event to the Medical Officer of Health⁸⁰ of the health unit in which the professional services were provided within seven days.⁸¹

4.5 Health Card Fraud

Midwives are required to promptly report instances of health card fraud, involving an ineligible person (i.e. a person who is neither an insured person nor entitled to become one)⁸² to the General Manager of the Ontario Health Insurance Plan (OHIP).⁸³ This includes when:

1. An ineligible person receives or attempts to receive an insured service as if they were an insured person
2. An ineligible person obtains or attempts to obtain reimbursement by OHIP for money paid for an insured service as if they were an insured person
3. An ineligible person, in an application, return or statement made to OHIP or the General Manager, gives false information about his or her residency⁸⁴

Midwives are protected from proceedings being initiated against them in making such a report if they have not acted maliciously and the information on which the report is based is true.⁸⁵

4.6 Reporting Privacy Breaches⁸⁶

Reporting Requirements to Clients and the College

In the event personal health information is stolen or lost or if it is used or disclosed without authority, a midwife that has custody or control over that information must notify the client at the first reasonable opportunity and include in the notice that the client is entitled to make a complaint to the Privacy Commissioner.⁸⁷

Furthermore, midwives acting as health information custodians must give notice to the College if a midwife employed by them, who holds privileges with them, or who is affiliated with them has committed or is suspected of having committed an unauthorized collection, use, disclosure, retention or disposal of personal health information and if, as a result of such unauthorized action, disciplinary action is taken with respect to the midwife's employment, privileges or affiliation.⁸⁸ This also applies to cases where a midwife voluntarily relinquishes their privileges or resigns.⁸⁹ The report must be made within 30 days of the event occurring.⁹⁰

⁸⁰ See note 72.

⁸¹ *Supra* note 75.

⁸² *Health Insurance Act*, R.S.O. 1990, C.H.6, s. 43.1(3).

⁸³ *Ibid* at s. 43.1(1).

⁸⁴ *Ibid* at s. 43.1(2).

⁸⁵ *Ibid* at s. 43.1(7).

⁸⁶ Please see the College's *Guide on Compliance with Personal Health Information & Protection Act* for information on safeguarding personal health information. Available online: <https://www.cmo.on.ca/wp-content/uploads/2017/09/Guide-on-Compliance-with-PHIPA-Revised-September-17.pdf>

⁸⁷ *Personal Health Information Protection Act*, S.O. 2004, c.3, Sched A., s.12(2).

⁸⁸ *Ibid* at s. 17.1.

⁸⁹ *Ibid* at s. 17.1(2.2) and 17.1(5.2)

⁹⁰ *Ibid* at s. 17.1.

Notice must also be given to the College if the midwife acting as health information custodian is a medical officer of health of a board of health and circumstances similar to those described above arise involving a midwife who is employed to provide health care for the board of health and is an agent of the health information custodian.⁹¹

Notice to Commissioner

A midwife is required to notify the Information & Privacy Commissioner in the following instances:

- The midwife has reasonable grounds to believe that the personal health information in their custody or control was used or disclosed without authority by a person who knew or ought to have known that they were using or disclosing the information without authority
- The midwife has reasonable grounds to believe that the personal health information in their custody or control was stolen
- The midwife has reasonable grounds to believe that after an initial loss or unauthorized use or disclosure of personal health information in their custody or control, the personal health information was or will be further used or disclosed without authority
- The loss or unauthorized use or disclosure of the personal health information is part of a pattern of similar losses or unauthorized uses or disclosure of personal health information in the custody or control of the midwife
- The midwife is required to give notice to the College of an event described in the preceding section, “Reporting Requirements to Clients and the College” including those events involving an agent of the midwife, in relation to a loss or unauthorized use or disclosure of personal health information
- The midwife has determined that the loss or unauthorized use or disclosure of personal health information is significant after considering all relevant circumstances, including:
 - Whether the personal health information is sensitive
 - Whether the loss or unauthorized use or disclosure involved many individuals’ personal health information
 - Whether more than one health information custodian or agent was responsible for the loss or unauthorized use or disclosure⁹²

Annual Report to Commissioner

Beginning 2019, on or before March 1st of each year, a midwife is required to provide the Commissioner an electronic report that sets out the number of times in the previous calendar year that each of the following occurred:

- Personal health information in the midwife’s custody or control was stolen
- Personal health information in the midwife’s custody or control was lost
- Personal health information in the midwife’s custody or control was used without authority
- Personal health information in the midwife’s custody or control was disclosed without authority⁹³

⁹¹ *Ibid* at s. 17.1(3).

⁹² General Regulation (O.Reg. 329/04) under *PHIPA*, *ibid*, s. 6.3(1)

⁹³ *Ibid* at s. 6.4(1)

If there are no incidents that occurred relating to the above, midwives are still expected to report this to the Commissioner.

5. Permissive Reporting

Permissive reporting refers to those instances where midwives are not required to make a report under legislation or common law, but choose to do so. Midwives are reminded that bringing their concerns forward to the appropriate regulatory health college can assist in safeguarding the public and the public interest.

Health Professional Misconduct, Incompetence and Incapacity

Midwives can report conduct outside of the mandatory reporting circumstances described above, if they have reasonable grounds to believe that another midwife or regulated health professional is incompetent, incapacitated or has engaged in professional misconduct.

For example, if a practice partner witnesses another midwife to be arguing with clients, making inappropriate remarks regarding clients' appearances and failing to disclose information that is relevant to clients making decisions about their care, then the practice partner may choose to bring these concerns forward to the College, even if the midwife is not terminated for such conduct (in which case a mandatory report would be required). In addition, a midwife that is not a practice partner can also bring these concerns to the College's attention.

A midwife that witnesses inappropriate conduct displayed by a physician or nurse or other regulated health professional can bring their concerns forward to the appropriate health college. For example, concerns about the physician can be brought to the College of Physicians and Surgeons of Ontario and about the nurse to the College of Nurses of Ontario.

Summary of Mandatory Issues to Report

Issue to Report	All Midwives* (including Associate or Locum)	Employers & Others	Facility Operators	Who to Report To	Timeframe to Report
Professional Misconduct/ Incompetence			X	College Registrar	30 Days
Sexual Abuse	X		X	College Registrar	30 Days or Immediately (if likelihood of continuity)
Termination/ Restrictions on Privileges & Voluntary Resignation or Relinquishment of Privileges		X		College Registrar	30 Days
Restriction on Practice or Dissolution of Partnership, a Health Profession Corporation or Association with Midwife & Voluntary Resignation or Restriction on Practice		X		College Registrar	30 Days
Offences	X			College Registrar	As soon as possible
Charges and Associated Conditions/Restrictions	X			College Registrar	As soon as possible
Finding of Professional Negligence/ Malpractice	X			College Registrar	As soon as possible
Finding of Professional Misconduct,	X			College Registrar	As soon as possible

Incompetence and/or Incapacity in any Profession/ Jurisdiction					
Child Abuse	X	X	X	Children's Aid Society	Immediately
Likelihood of Severe Bodily Harm	X	X	X	Appropriate People	Immediately
Live Births/Still Births	X			Registrar General	2 Days
Death under Coroner's Act	X			Police officer or coroner	Immediately
Reportable Disease – Eyes of Newborn	X			Medical Officer of Health	2 Weeks
Reportable Disease – Immunization Reaction	X			Medical Officer of Health	7 Days
Health Card Fraud	X	X		General Manager of OHIP	As soon as possible
Privacy Breaches	X	X	X	Clients College Information & Privacy Commissioner	Immediately Immediately Immediately (Annual Report – before March 1 st each year)

College staff are available to provide information to assist the public, midwives, and practices in understanding mandatory and permissive reporting. For more information about making a report, please e-mail the Professional Conduct Department at conduct@cmo.on.ca or call 416.640.2252 ext. 224.



College of
Midwives
of Ontario

Ordre des
sages-femmes
de l'Ontario