



College of
Midwives
of Ontario

Ordre des
sages-femmes
de l'Ontario

Guide on Mandatory Reporting Obligations

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Introduction

The purpose of this guide is to outline circumstances where members (including practice partners and associates), employers of members and operators of facilities where members practice are required to file a report with the College, under the *Regulated Health Professions Act* (RHPA)¹. It also outlines additional reporting obligations under common law.

Filing a report ensures that the public remains protected and members practise with the necessary competence and skill required by the College.

No action or proceeding can be brought against any person that files a report in good faith.²

1. Reporting by Members

1.1 Sexual Abuse

A member should file a report if the member has reasonable grounds to believe another member of the same or different College has sexually abused³ a client or patient⁴ unless the member does not know the name of the member who would be the subject of the report.⁵ If the member files the report because of reasonable grounds obtained from one of the member's clients, the member must use their best efforts to advise the client of the requirement to file a report before doing so.⁶

A report must be filed in writing to the Registrar of the College of the member who is the subject of the report.⁷

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 member 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.⁸

The report must contain:

- the name of the person filing the report;
- the name of the member 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.⁹

¹ S.O. 1991, c. 18.

² *Ibid*, 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*, s. 85.1(2).

⁶ *Ibid*, s. 85.1(3).

⁷ *Ibid*, s. 85.3(1).

⁸ *Ibid*, s. 85.3(2).

⁹ *Ibid*, s. 85.3 (3).

1.2 Offences

Members are required to file a report in writing to the Registrar if the member has been found guilty of an offence by a court after June 3, 2009, as soon as reasonably practicable¹⁰ but no later than 14 days.¹¹

The report must contain:

- the name of the member filing the report;
- the nature of, and description of the offence;
- the date the member was found guilty of the offence;
- the name and location of the court that found the member guilty of the offence; and
- the status of any appeal initiated respecting the finding of guilt¹²

Furthermore, the report cannot contain any information that violates a publication ban.¹³

1.3 Charges and Associated Conditions/Restrictions

Members are required to file a report in writing with the Registrar if the member has been charged with an offence. The report must include information about every bail condition or other restriction imposed on, or agreed to, by the member in connection with the charge.¹⁴

The report must be filed as soon as reasonably possible after the member receives notice of the charge, bail condition or restriction.¹⁵

The report must contain:

- the name of the member filing the report;
- the nature of, and a description of, the charge;
- the date the charge was laid against the member;
- 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 member;
- every bail condition imposed on the member as a result of the charge;
- any other restriction imposed on or agreed to by the member relating to the charge; and
- the status of any proceedings with respect to the charge¹⁶

The report cannot contain any information that violates a publication ban.¹⁷

¹⁰ *Ibid*, s. 85.6.1(1).

¹¹ 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>

¹² *Supra*, note 2, s. 85.6.1(3).

¹³ *Ibid*, s. 85.6.1(4).

¹⁴ *Ibid*, s. 85.6.4(1).

¹⁵ *Ibid*, s. 85.6.4(2).

¹⁶ *Ibid*, s. 85.6.4(3).

¹⁷ *Ibid*, s. 85.6.4(4).

A member must file an additional report if there is a change in the status of the charge or bail conditions.¹⁸

1.4 Professional Negligence & Malpractice

Members are required to file a report in writing with the Registrar if there has been a finding of professional negligence or malpractice made against the member by a court.¹⁹

The report must be filed as soon as reasonably possible, after the member receives notice of a finding made against the member.²⁰

The report must contain:

- the name of the member filing the report;
- the nature of, and a description of the finding;
- the date that the finding was made against the member;
- the name and location of the court that made the finding against the member; and
- the status of any appeal initiated respecting the finding made against the member²¹

Additionally, the report cannot contain any information that violates a publication ban.²²

1.5 Other Professional Memberships & Finding of Professional Misconduct or Incompetence

A member is required to advise the Registrar of the College in writing if the member is a member of another body that governs a profession inside or outside of Ontario.²³

A member is required to report if they have a finding of professional misconduct or incompetence in relation to the practise of midwifery, or any other profession, in any jurisdiction.²⁴

The Report must be filed with the Registrar as soon as reasonably possible, after the member receives notice of the finding made against the member.²⁵

The Report must contain:

- the name of the member filing the report;
- the nature of, and a description of, the finding;
- the date that the finding was made against the member;
- the name and location of the body that made the finding against the member; and
- the status of any appeal initiated respecting the finding made against the member.²⁶

¹⁸ *Ibid*, s. 85.6.4(6).

¹⁹ *Ibid*, s. 85.6.2(1).

²⁰ *Ibid*, s. 85.6.2(2).

²¹ *Ibid*, s. 85.6.2(3).

²² *Ibid*, s. 85.6.2(4).

²³ *Ibid*, s. 85.6.3(1).

²⁴ *Ibid*, s. 85.6.3 (2).

²⁵ *Ibid*, s. 85.6.3(3).

²⁶ *Ibid*, s. 85.6.3(4).

The report cannot contain any information that violates a publication ban.²⁷

A member who files a report must file an additional report if there is a change in status of the finding made against the member as a result of an appeal.²⁸

1.6 Professional Misconduct, Incompetence or Incapacity of a Partner or Associate Midwife

Members are required to report to the College regarding the competency, conduct or capacity of a partner or associate midwife.

There are two conditions that have to be met before a report must be made:

1. Restriction/Dissolution

There must be the dissolution of a partnership, health profession corporation or association with a midwife.²⁹

2. Conduct / Competence / Capacity

The dissolution of a partnership, health profession corporation or association with the midwife must be related to the professional misconduct, competence or incapacity of the midwife.³⁰

“Related to”

Where the dissolution is “related to” the conduct/competence/capacity of the midwife, a report must be made. The legislative phrase is broad and indicates that the conduct/competence/capacity concern does not have to be the sole reason for the restriction or dissolution. So long as the conduct/competence/capacity concern reasonably appears to be a material factor in the dissolution decision or action, a report must be made.

“Professional Misconduct, Incompetence or Incapacity”

Professional misconduct refers to any inappropriate act or omission that would potentially result in disciplinary action.³¹

Incompetence refers to a lack of knowledge, skill or judgment in respect of a client that would likely involve regulatory intervention if known by the College.³²

Incapacity typically refers to an illness that has the potential to affect a midwife’s judgment, such as an addiction or certain mental illnesses.³³

²⁷ *Ibid*, s. 85.6.3(5).

²⁸ *Ibid*, s. 85.6.3(7).

²⁹ *Ibid*, s. 85.5(1).

³⁰ *Ibid*.

³¹ See the College’s Professional Misconduct Guide (January 2018) Available Online: <http://www.cmo.on.ca/wp-content/uploads/2018/01/Professional-Misconduct-Guide.pdf>

³² *Supra* note 1, s. 52.

³³ *Ibid*, s. 2(1).

The report must be filed in writing with the Registrar of the College within 30 days of the dissolution.³⁴

The report should contain:

- the name and contact information of the member filing the report;
- the name of the member 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.

1.7 Member Resigns or Voluntarily Restricts their Practice or Privileges

If a member resigns or voluntarily restricts their practice or privileges and a practice partner or associate midwife has reasonable grounds to believe that the resignation or restriction is related to the member'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.³⁵

Where the resignation or restriction takes place during the course of or as a result of an investigation conducted by or on behalf of a practice partner or associate into allegations of professional misconduct, incompetence or incapacity on part of the member, the practice partner or associate 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.³⁶

“Reasonable Grounds”

Reasonable grounds exist where there is more than mere suspicion that the resignation/restriction is related to the event. For example, an unanticipated retirement by the midwife when a concern is raised about his or her conduct/competence/capacity would generally constitute reasonable grounds.

“Reasonable grounds to believe” is an objective test. For example, if a person assumes that the resignation/restriction was related to the conduct/competence/capacity concern, a report must still be made even though the midwife denies the connection. Similarly a report must still be made even though the person who should be making the report does not believe that the midwife actually did anything wrong. Subjective opinions do not have a place in determining whether a report should be made.

“Investigation”

An investigation is any inquiry, review, audit or examination by or on behalf of a partner or associate to assess whether there are concerns related to the conduct/competence/capacity of a midwife. There does not need to be an official complaint and the investigation does not need to be authorized by legislation, such as an investigation conducted by the College.

³⁴ *Ibid*, s. 85.5(1).

³⁵ *Ibid*, s. 85.5(2)1.

³⁶ *Ibid*, s. 85.5(2)2.

For example, if a partner midwife is concerned that an associate midwife may have inadequately assessed clients and an informal chart audit is conducted to determine whether this concern is valid, that partner midwife is conducting an investigation. The act of informally investigating by chart audit does not trigger the duty to make a mandatory report. However, should the midwife in question resign from his or her position during the chart audit, a mandatory report is required.

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 CMO professional standards that apply to the conduct
- any action taken by the practice partner or associate in response to the conduct

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 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).

Voluntary “Restriction” of Privileges

An example of a voluntary “restriction” of privileges is when a midwife discontinues their hospital privileges.

1.8 Additional Personal Information

Members are required to report additional personal information to the College pursuant to Article 15.05 of the College’s General By-Laws.³⁷

2. Reporting by Hospitals, Clinics, Practice Partners, & Interdisciplinary Health Teams

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

A person who terminates the contract 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 incapacity shall file with the Registrar within 30 days after the termination, revocation, suspension, imposition or dissolution a written report setting out the reasons.³⁸

³⁷ Available Online: <http://www.cmo.on.ca/wp-content/uploads/2015/07/General-By-Law-20161.pdf>

³⁸ *Supra* note 2, s. 85.5(1).

A hospital or facility that restricts the ability of midwives to practice to full scope is not considered a restriction of privileges in the context of mandatory reports. However, if an individual midwife once had full scope privileges and then was later restricted from managing epidurals and/or augmentations, then this would be considered a restriction of privileges.

2.2 Reporting Where Member Resigns or Voluntarily Relinquishes Privileges

If an employer has reasonable grounds to believe that a voluntary resignation, restriction or relinquishment of privileges is related to the member's professional misconduct, incompetence or incapacity, the employer shall file with the Registrar within 30 days, a written report setting out the grounds upon which a person's belief is based.³⁹

Where the resignation, restriction or relinquishment takes place during the course of or as a result of an investigation conducted by or on behalf of the employer into allegations of professional misconduct, incompetence or incapacity on part of the member, the employer must file with the Registrar, within 30 days after the resignation, restriction or relinquishment, a written report setting out the nature of the allegations being investigated.⁴⁰

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 in response to the conduct

“Reasonable Grounds”

Reasonable grounds exist where there is more than mere suspicion that the termination of the employment contract or revocation, suspension or restriction of privileges is related to the event. For example, an unanticipated retirement by the midwife when a concern is raised about his or her conduct/competence/capacity would generally constitute reasonable grounds.

“Reasonable grounds to believe” is an objective test. For example, when a person assumes that the termination of the employment contract or revocation, suspension or restriction of privileges was related to the conduct/competence/capacity concern, a report must still be made even though the midwife denies the connection. Similarly a report must still be made even though the person who should be making the report does not believe that the midwife actually did anything wrong. Subjective opinions do not have a place in determining whether a report should be made.

“Investigation”

An investigation is any inquiry, review, audit or examination by or on behalf of an employer to assess whether there are concerns related to the

³⁹ *Ibid*, s. 85.5(2)1.

⁴⁰ *Ibid*, s. 85.5(2)2.

conduct/competence/capacity of a regulated health professional. There does not need to be an official complaint and the investigation does not need to be authorized by legislation, such as an investigation conducted by the College.

For example, if a hospital is concerned that a midwife may have provided insufficient care and performs an investigation to assess whether this concern is valid, the hospital is conducting an investigation. The act of conducting the investigation does not trigger a mandatory report. However, should the midwife whose conduct is in question resign from his or her position during the investigation, a mandatory report is required.

3. Reporting by Facility Operators

3.1 Professional Misconduct/Incompetence & Sexual Abuse

A person who operates a facility where one or more members practise (such as an office or clinic) must file a report if they have reasonable grounds to believe that a member who practises at the facility is incompetent, incapacitated or has sexually abused a client,⁴¹ unless the person operating the facility does not know the name of the member who would be the subject of the report.⁴²

An example of a facility operator is a midwife who owns and/or manages the property on which their practice operates.

A report must be filed in writing to the Registrar of the College of the member who is the subject of the report.⁴³

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 member will continue to sexually abuse the client or others, or that the incompetence or incapacity of the member 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.⁴⁴

The report must contain:

- the name of the person filing the report;
- the name of the member who is the subject of the report;
- an explanation of the alleged sexual abuse, incompetence or incapacity; if the grounds of the person filing to 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 behalf⁴⁵

⁴¹ *Ibid*, s. 85.2(1).

⁴² *Ibid*, s. 85.2(3).

⁴³ *Ibid*, s. 85.3(1).

⁴⁴ *Ibid*, s. 85.3(2).

⁴⁵ *Ibid*, s. 85.3(3).

4. Additional Reporting Requirements

There are additional reporting duties outside of the *Regulated Health Professions Act* that require people to report child abuse to the Children's Aid Society and warn appropriate people in situations where there is a likelihood of severe bodily harm to a person.

4.1 Duty to Report Child Abuse

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).⁴⁶ This duty overrides all privacy and confidentiality duties and laws, including those under the *Personal Health Information Protection Act* (PHIPA).⁴⁷ No legal action can be taken against a person for making a report, unless the report is made maliciously or without reasonable grounds.⁴⁸

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).⁴⁹ 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 minors if the information was obtained while providing treatment or services to the pregnant minor. Midwives may be fined up to \$5,000 for failing to make a report in this circumstance.⁵⁰

The duty to report is ongoing (for new information) even if a previous report was made respecting a child.⁵¹ A person must make a report personally to Children's Aid Society.⁵²

A midwife must make a report if they have reasonable grounds to suspect any of the following:⁵³

- The child has been or is at risk of harm.⁵⁴
- 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.⁵⁵
- 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

⁴⁶ S.O. 2017, c. 14, s. 125(1).

⁴⁷ *Ibid*, s. 125(10).

⁴⁸ *Ibid*.

⁴⁹ *Ibid*, s. 125(4).

⁵⁰ *Ibid*, s. 125(9).

⁵¹ *Ibid*, s. 125(2).

⁵² *Ibid*, s. 125(3).

⁵³ Midwives are expected to familiarize themselves with all instances under s. 125 of the *Child, Youth & Family Services Act*.

⁵⁴ *Ibid*, s. 125(1)1.

⁵⁵ *Ibid*, s. 125(1)2.

having charge of the child knows or should know of the risk of this happening and fails to protect the child.⁵⁶

- 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.⁵⁷

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;⁵⁸
- 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;⁵⁹
- the child has a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development;⁶⁰ 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.⁶¹

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. subject 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.⁶²

⁵⁶ *Ibid*, s. 125(1)3 and 4.

⁵⁷ *Ibid*, s. 125(1)5.

⁵⁸ *Ibid*.

⁵⁹ *Ibid*, s. 125(1)6. 7. 8. & 9.

⁶⁰ *Ibid*, s. 125(1)10.

⁶¹ *Ibid*, s. 125(1)12 & 13.

⁶² *Smith v Jones* [1999] 1 SCR 455.

Summary of Issues to Report

Issue to Report	Members *	Hospitals, Clinics, Practice Partners & Interdisciplinary Health Teams	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 Member & Voluntary Resignation or Restriction on Practice	X				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, Incompetence and/or Incapacity in any Profession/ Jurisdiction	X			College Registrar	As soon as possible.
Child Abuse	X	X	X	Children's Aid Society	Immediately
Likelihood of Severe Bodily Harm	X	X	X	Appropriate People	Immediately

* In some cases, facility operators may also be midwives, in which case they would have dual reporting obligations. Likewise, in some cases, midwives may be also be practice partners, in which case they would

have dual reporting obligations.

College staff are available to provide information to assist the public, members, and practices in meeting mandatory reporting requirements. 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.



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