

# Professional Conduct Professional Misconduct

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### *Professional Misconduct*

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## Introduction

Nursing is a self-regulating profession. This means that the government has delegated to the profession the authority to regulate itself for the purpose of protecting the public.

In Ontario, under the authority of the *Regulated Health Professions Act, 1991*, (RHPA) and the *Nursing Act, 1991*, the College of Nurses of Ontario (CNO) regulates the practice of nursing to protect the public interest. The Ontario Regulation 799/93, hereafter referred to as the Regulation, arises from these Acts and defines professional misconduct for Registered Nurses (RNs) and Registered Practical Nurses (RPNs).

As part of its self-regulating role, CNO sets and enforces standards of practice to which nurses must adhere in order to provide the public with safe, effective and ethical nursing care. Professional misconduct is an act or omission that is in breach of these accepted ethical and professional standards of conduct.

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

Acts that constitute a breach or abuse of the nurse-client relationship are considered professional misconduct, as is conduct that demonstrates a lack of integrity. In other words, a nurse's conduct that is harmful in any way, or that undermines or detracts from the professional caring relationship with and for the client, is not consistent with expected professional standards.

Although the provisions of the Regulation provide some guidance, nurses need to use judgment at all times in assessing what would be professional misconduct. Ultimately, it is a nurse's own responsibility to know what does and does not constitute professional conduct and misconduct.

## How CNO deals with professional misconduct

Acts of professional misconduct may result in an investigation by CNO, followed by disciplinary proceedings. As set out in the legislation, CNO investigates all complaints about nurses. CNO also receives mandatory reports of termination of nurses from employers. When the information reported discloses reasonable and probable grounds to believe that the nurse has committed an act of professional misconduct or is incompetent, the executive director may initiate an investigation.

## Definitions of Professional Misconduct: Rationale and Discussion

The definitions of professional misconduct found in the RHPA are given below. To assist nurses in understanding the types of conduct that are defined as professional misconduct, the regulatory clauses (in bold) have been grouped under headings, and explanations have been provided.

### Failure to maintain the standards of practice

Nurses are expected to adhere to the standards of practice in carrying out their professional responsibilities. These standards are the reasonable expectations placed on nurses by CNO and by the profession to ensure that nurses provide responsible, safe and adequate care to clients. Professional misconduct occurs when these standards are breached.

#### 1. **Contravening a standard of practice of the profession or failing to meet the standard of practice of the profession.**

### Discussion

CNO's standards of practice consist of three key components: professional standards, practice expectations, and legislation and regulations. Nurses are accountable for practising in accordance with these standards. All standards of practice:

- provide a guide to the knowledge, skills, judgment and attitudes that are needed to practise safely;

- describe what each nurse is accountable and responsible for in practice;
- represent performance criteria against which all nurses may be compared by consumers, employers, colleagues and themselves; and
- interpret nursing's scope of practice to the public and other health care professionals.

A complete list of CNO standards of practice documents can be obtained from CNO.

If a standard of care is not specifically addressed in CNO documents, the standard of care is drawn from nursing theory, clinical experience, and research and nursing literature, as well as relevant CNO standards.

The following clauses identify breaches of specific standards of practice.

**2. Delegating a controlled act set out in subsection 27(2) of the *Regulated Health Professions Act*, in contravention of Section 5 of the *Nursing Act*.**

### Discussion

As part of the duty to ensure client safety, the nurse must ensure that she/he has the necessary knowledge, skill and judgment to provide nursing care in her/his area of practice.

Delegation is the transfer of authority to a person who is otherwise not authorized to perform a procedure within one of the controlled acts authorized to nursing. The person may be a member of another profession regulated under the RHPA, a member of a profession not regulated under the RHPA or a member of the public.

For more information about delegation of controlled acts, see CNO's *Scope of Practice Standard*.

**3. Directing a member, student or other health care team member to perform nursing functions for which he/she is not adequately trained or that he/she is not competent to perform.**

### Discussion

Nurses may be placed in situations in which they are expected to direct others to perform acts for which these individuals do not have the necessary knowledge, skill and judgment. This carries the potential for jeopardizing client safety. When directing another individual to perform an act, a nurse remains accountable for ensuring that the person whom she/he directs and supervises has the knowledge, skill and judgment to perform the functions competently and safely. For more information about the accountability of nurses in relation to teaching, delegating, assigning and supervising unregulated care providers, see *Working with Unregulated Care Providers*. CNO's practice guideline *Supporting Learners* explains the accountability of nurses in settings where nursing students obtain practical experience providing client care.

**4. Failing to inform the member's employer of the member's inability to accept specific responsibility in areas where specific training is required or where the member is not competent to function without supervision.**

### Discussion

To ensure that standards of practice are maintained, a nurse must recognize and acknowledge the limitations in her/his knowledge, skill and judgment. The nurse cannot assume duties and responsibilities unless she/he is able to perform them in a safe and skilled manner. The nurse should discuss her/his professional limitations with the employer, identify those areas of practice that she/he is competent to carry out and those areas in which she/he needs additional education, experience or supervision. The nurse is also expected to assist the employer in identifying other individuals who may be competent to carry out the task that the nurse cannot perform without training or assistance, or to suggest any other available resources.

**5. Discontinuing professional services that are needed unless:**

- the client requests discontinuation;
- alternative or replacement services are arranged; or

- the client is given a reasonable opportunity to arrange alternative or replacement services.

### Discussion

This clause addresses the issue of abandoning clients. Nurses are expected to provide safe, effective and ethical care. Because of their commitment to clients, nurses act in the best interests of clients according to the clients' wishes and the nursing standards of practice. Consequently, nurses may not abandon or neglect clients to whom they have made a commitment to provide care. For example, a nurse who provides care in the community should notify her/his employer if she/he is unable to make scheduled visits to clients in their homes to enable alternative arrangements to be made.

In some circumstances, nurses may wish to withdraw from providing care because their personal values are in conflict with clients' decisions about care or treatment. Nurses are advised to clarify their personal values before accepting employment in practice settings where the types of care provided may create an ethical dilemma for the nurse. For example, a nurse employed in a practice setting that provides birth control counselling and services for women may experience a conflict of values when the client is a very young teen. In this situation, the nurse may need to make arrangements for another nurse to provide the required nursing care. If no other caregiver can be arranged, the nurse must provide the immediate care required.

In situations in which nurses have contracted with clients to provide care or services, the nurse must continue to provide care for the safety and well-being of the client, except when the client requests that the service be discontinued, the nurse arranges for alternative or replacement services, or the nurse notifies the client that service will be discontinued and the client is given reasonable opportunity to arrange alternative or replacement services. For more information, see CNO's *Discontinuing or Declining to Provide Care* practice standard.

### Working while impaired

Mood-altering substances can impair the judgment and ability of nurses and jeopardize client and public safety.

## 6. Practising the profession while the member's ability to do so is impaired by any substance.

### Discussion

Nurses have a commitment to clients to practise safely. Clients trust that they will not be exposed to health care providers whose abilities may be impaired by drugs or alcohol. It is the professional obligation of the nurse whose judgment may be impaired by mood-altering substances to withdraw from client care to ensure that client safety is not jeopardized. Nurses suffering from substance abuse need to seek help.

Though not included in this subsection, clause 25 of the Regulation makes it incumbent upon nurses to report to the appropriate authority the impairment of another nurse or health care provider who is providing client care, to prevent harm to clients and ensure that the standards of the profession are maintained.

### Abusive conduct

Any abusive conduct by a nurse toward a client is inconsistent with the fundamental professional obligations of the nurse. Such conduct is not tolerated by the public, CNO or the profession.

## 7. Abusing a client verbally, physically or emotionally.

### Discussion

Abusive conduct is interpreted broadly to include acts or omissions that cause or may cause physical or emotional harm to a client. Abusive conduct may consist of physical, non-physical, verbal or non-verbal behaviour toward a client; it includes neglect and conduct that may be reasonably perceived by the client or others to be of a sexual or otherwise demeaning, exploitative, derogatory or humiliating nature. Such behaviour or remarks include, but

are not limited to, sarcasm, swearing, racial slurs, teasing and the use of an inappropriate tone of voice. In addition, the nurse must not behave in a manner that demonstrates disrespect for the client, and that is perceived by the client and others to be emotionally abusive. Such behaviour includes, but is not limited to, sarcasm, retaliation, intimidation, manipulation, teasing or taunting, insensitivity to the client's culture and insensitivity to the client's preferences with respect to sexual orientation and family dynamics.

The use of excessive force or inappropriate physical conduct amounts to physical abuse and constitutes an abuse of authority and power over the client. A nurse must not exhibit behaviour toward a client that may be perceived by the client or others to be violent or to inflict physical harm. Examples of such behaviour include, but are not limited to, hitting, pushing, slapping, shaking, using force, using restraints unnecessarily or inappropriately, and handling a client in a rough manner.

Failure to meet the basic needs of clients who are unable to meet these needs themselves is considered neglect. Neglect is considered abuse and includes, but is not limited to, the withholding of care necessities such as food, medication and needed aids or equipment.

It is important to note that the definition of abusive conduct does not require that a nurse has an intent to harm the client. When the actions of a nurse are abusive, whether or not she/he intended them to be so, the conduct is still considered abusive.

For a more detailed discussion of abuse, refer to CNO's *Therapeutic Nurse-Client Relationship* practice standard.

Although not addressed in this subsection, it is the responsibility of all nurses to intervene to prevent or stop abusive behaviour of a client by a nurse or another health care provider, and to report such incidents to either her/his employers, CNO or an appropriate authority. A discussion of what constitutes an "appropriate authority" is discussed in clause 25.

### Theft

Trust is one of the cornerstones of the nurse-client relationship. Honesty is an essential ingredient in ensuring that client trust is maintained and that the client's vulnerable position is not abused by the nurse. In addition, nurses are in a position of trust with their employer. It is important that nurses not abuse this trust.

### 8. Misappropriating property from a client or workplace.

#### Discussion

Nurses have an obligation to maintain commitments that they acquire as regulated health professionals. This means keeping promises, being honest and meeting implicit or explicit obligations toward their clients, their employers and others. Dishonesty will destroy the nurse-client relationship regardless of the level of knowledge, skill and judgment of the nurse. Theft from an employer and, in particular, misappropriation of drugs, is a frequent subject of discipline hearings. Nurses usually have access to drugs, equipment and supplies in their workplace, but must not abuse their position simply because the property is readily accessible or available. Misappropriating any type of property in general, and from clients in particular, will not be tolerated. It undermines the trust relationship that the client and employer have with the nurse.

### Failure to obtain informed consent and breach of confidentiality

Clients are entitled to make decisions regarding their health. Nurses must respect and advance a client's right to make his/her own decisions, which should be based on an understanding of the best health information available. Health information is confidential and, except in specified circumstances, must not be disclosed without the consent of the individual client.

### Failure to obtain client consent

### 9. Doing anything to a client for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health-related purpose in a situation

**in which consent is required by law, without such a consent.**

### Discussion

This provision highlights the principle of client choice and the requirement for informed consent to treatment. Client consent is required for nursing care; it is not limited to medical interventions performed by physicians.

Obtaining consent from clients must be in accordance with current legislation. CNO's document *Consent* provides an overview of the relevant legislation and outlines the steps to obtaining client consent.

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

A client is capable of making a treatment decision if he/she is able to understand the information that is relevant to making a decision concerning the treatment and is able to appreciate the reasonably possible consequences of a decision or lack of decision. There is no age threshold — the question is whether a specific client is capable of making a decision at a specific time about a specific treatment proposal.

For a client to give informed consent, he/she must be given information that a reasonable person in the same circumstances would require to make a decision about the treatment, alternative courses of action, the expected effects, risks and side effects in each case, and the consequences of not having the treatment. Also, the client's questions about the proposed treatment must be answered.

Consent is best obtained by the person proposing the treatment because that person has the knowledge and judgment relevant to the proposed procedure and the individual client.

Consent can be written or oral, expressed or implied. Consent must be given voluntarily and can be withdrawn at any time.

The only time that informed consent is not required is in a clinical emergency, when the client is incapable of making a treatment decision and there is insufficient time to ask the substitute decision-maker. Emergency treatment cannot proceed, however, if the health care practitioner is aware that the client expressed a wish while capable to refuse or withdraw consent to treatment.

### Breach of confidentiality

**10. Giving information about a client to a person other than the client or his/her authorized representative except with the consent of the client or his/her authorized representative or as required or allowed by law.**

### Discussion

Client health information is held in confidence by health professionals. Disclosure of this information can occur only with the consent of the client or the client's representative, or when authorized by law. This requirement does not, however, restrict the ability of the nurse to contact other health care professionals to ensure continuity of client care and enable the nurse to carry out client care within a multidisciplinary setting.

The duty to keep client information confidential is not restricted to health information. It relates to any client information obtained as part of the nursing relationship. The duty of confidentiality outlives the professional relationship and continues indefinitely after the nurse has ceased to care for the client. The duty may not apply to information that is in the public knowledge or domain, but a nurse should guard against participating in, or commenting on, speculation concerning the client's health. Such speculation could not only be perceived as a breach of the client's confidence, but may also unintentionally escalate into actual unauthorized disclosure.

In some instances, nurses learn information that, if not revealed, will result in serious harm to the client or another person or persons. In such situations, nurses need to consult with the health team and

with a legal adviser and, if appropriate, report the information to the person or the institution concerned. In most circumstances, the client or the substitute decision-maker should be told of the need to disclose the information and be given the opportunity to take action. Some legislation, for example, the *Child, Youth and Family Services Act, 2017*, also requires that nurses reveal confidential information to others. For more information, refer to the *Confidentiality and Privacy — Personal Health Information* practice standard.

The *Documentation* and *Code of Conduct practice standards* contain additional information regarding confidentiality.

## Failure to share information with client

### 11. Failing to reveal the exact nature of a secret remedy or treatment used by the member following a client's request to do so.

#### Discussion

Clients are entitled to know the precise nature of any secret remedy or treatment used by the nurse to treat the client. Clients need information about their treatments or proposed treatments to make appropriate and informed health care decisions. Secret information needs to be revealed to the client for the nurse to obtain informed consent from the client.

### 12. Failing to advise the client to obtain services from another health professional when a member knows or ought to know that a client has a condition that is outside the member's scope of practice, or within the member's scope of practice but outside the member's competence to treat.

#### Discussion

Nurses must ensure that their ability to provide nursing care to clients is consistent with the clients' needs. A nurse has the responsibility to direct a client to another health care provider when the nurse is unable to adequately meet the health care needs of the client. Nurses with independent practices have a particular responsibility to direct

clients to other health care providers when they cannot adequately meet the client's health care needs.

## Inadequate documentation and record keeping

Accurate and adequate health records must be created and maintained as an integral part of the services provided by nurses to clients. Health records are the means by which information about the client is communicated and continuity of care is maintained. Records also demonstrate nurses' accountability and answer questions about the care given. Records may also be used as risk-management tools and for research purposes.

CNO's practice standard *Documentation* provides a complete outline of the expectations for record keeping.

### 13. Failing to keep records as required.

#### Discussion

Clients have the right to expect that accurate and adequate records about their health care are kept by their health care practitioners. This ensures that care requirements are communicated to others and that continuity of care can be facilitated. Health professionals, including nurses with independent practices, are required to provide the clients or their representatives with reports or certificates relating to examinations or treatments, on request. The development of the reports or certificates may rely, in part, on nurses' documentation. This documentation must be accurate and complete, in accordance with the standards of the profession and with documentation requirements and practices of the particular facility.

### 14. Falsifying a record relating to the member's practice.

#### Discussion

This clause of professional misconduct applies to a nurse's responsibility to ensure that the recording of her/his actions is accurate. Accurate documentation is necessary for client safety because it reflects important health and clinical data. Inaccurate



documentation or failure to document may put the client's health in jeopardy. Falsification of a record inhibits the ability of CNO to examine the nurse's practice as part of an investigation because such an examination depends on the availability of accurate health records and documentation.

**15. Signing or issuing, in the member's professional capacity, a document that the member knows or ought to know contains a false or misleading statement.**

**Discussion**

A document signed or issued by a nurse in her/his professional capacity is relied on by others who place their trust in its integrity. Being party to false or misleading information is dishonest and breaches the public's trust in the profession.

**Misrepresentation**

Information about a nurse's qualifications and abilities cannot be misrepresented. It is the responsibility of the individual nurse to represent the truth about her/his qualifications and abilities.

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

**Discussion**

Clients must be able to identify and distinguish among various health care providers, as well as between regulated and unregulated health care practitioners. When representing themselves to the public, nurses must use only authorized terms, titles or designations. Using unauthorized terms, titles or designations is dishonest and abuses a client's trust, and may lead clients to believe that nurses have qualifications or abilities that are exaggerated or lacking entirely.

**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 services within the scope of practice of the profession, except where the use of another name is necessary for personal safety and provided the employer and CNO have been made aware of the pseudonym and the pseudonym is distinctive.**

**Discussion**

A client and others are entitled to know the name of a nurse who provides the client with health care services, so that the nurse can be properly identified. Because identification of a nurse allows the client to hold the nurse accountable for the nurse's professional conduct, nurses should not expect to be able to maintain anonymity. Accountability is an essential feature of effective regulation of the profession. CNO recommends that a nurse's name tag includes the first and last name and category of registration.

Some nurses may have reasonable grounds to be concerned for their safety and well-being if their full name is disclosed to clients. In such instances, pseudonyms may be used, provided that the employer is aware of the pseudonym, and CNO is able to identify the member through the employer.

Nurses are encouraged to work with their employers who have specific accountabilities with respect to workplace harassment and workplace violence. A member may request to CNO to remove from the register their place of employment to preserve safety.

**Failure to meet legal/professional obligations**

Nurses have a commitment to help regulate nursing to protect the public interest. Nurses also have a commitment to the profession of nursing. It is in the interest of the public that the profession evolve in response to changes in health care and society.

Being a member of the profession brings with it the respect and trust of the public. To continue to deserve this respect, nurses have a duty to participate in, and promote the growth of, the profession; to uphold the standards of the profession and to conduct themselves in a manner that is becoming to the profession.

The following clauses defining professional misconduct clearly set out the legal obligations of nurses in complying with CNO's directives or requirements.

## Contravention of statutory or CNO requirements

### 18. Contravening a term, condition or limitation on the member's Certificate of Registration.

#### Discussion

Self-regulation and responsible governing require nurses to honour their commitment to the profession. Terms, conditions or limitations are imposed on a member's certificate to protect the public. Failing to fulfil terms may jeopardize public safety. The failure to comply with a term, condition or limitation on the Certificate demonstrates a lack of respect to the regulating body, indicates the nurse's ungovernability and constitutes professional misconduct.

### 19. Contravening a provision of the *Nursing Act*, the *Regulated Health Professions Act* or the regulations under either of those Acts.

#### Discussion

The professional misconduct regulation must not be seen as an exhaustive list of the types of conduct that are unacceptable. Contravention of any provision of the legislation that regulates the practice of nursing is also considered a category of professional misconduct.

Nurses need to be aware of the applicable legislation to appreciate the full extent of the professional expectations of nurses.

For example, regulations found in part IV of the *Nursing Act* identify the expectations of nurses regarding participation in the Quality Assurance (QA) Program. The regulation for QA states that every nurse shall maintain records relating to participation in Reflective Practice in accordance with the standards of practice of CNO.

Failure to perform in accordance with the requirements of the regulations for Quality Assurance would, therefore, be considered professional misconduct.

### 20. Failing to appear before a Panel of the Complaints Committee to be cautioned.

#### Discussion

The Complaints Committee reviews investigations of complaints about nurses' practice. Following the review of the investigation, one of the options available to the Complaints Committee is to require the nurse to meet the Committee in person for an oral caution. In these situations, the Complaints Committee believes that, in the interest of public safety, the nurse must directly hear the Committee's concerns about her/his practice. This face-to-face meeting is one of the ways that CNO exercises its authority to regulate the profession. Failing to appear before the Committee to be cautioned demonstrates disrespect for self-governance and professional commitments and, therefore, amounts to an act of professional misconduct.

### 21. Failing to comply with an order of a Panel of the Discipline Committee or an order of a Panel of the Fitness to Practise Committee.

#### Discussion

The Discipline Committee conducts hearings regarding allegations of professional misconduct and incompetence. The Fitness to Practise Committee conducts hearings to determine whether a nurse is incapacitated.

When a finding is made by either of these committees, the committee members have the authority to make orders that affect a nurse's ability to practise. The committees may order limits or conditions to be placed on a nurse's practice or that a nurse's registration be suspended or revoked. The orders reflect the committees' findings and their mandate to protect the public interest through the regulation of nursing.

Failing to comply with orders of these committees demonstrates a nurse's lack of respect for CNO's role in governing the practice of nursing for the protection of the public and constitutes professional misconduct.

## 22. Failing to cooperate in a CNO investigation.

### Discussion

As members of a self-regulating profession, nurses are required to cooperate with CNO's investigations. When nurses carry out their professional obligation to cooperate with an investigation, they are helping fulfil CNO's mandate to protect the public interest.

Cooperating with a CNO investigation means that nurses who have knowledge of an incident that is being investigated must disclose all relevant information and fully cooperate with the investigator. Cooperating requires that the nurse provide oral and/or written responses to inquiries by CNO's investigators, as well as access to any relevant documents. Failing to fully cooperate with an investigation demonstrates a lack of professional behaviour and constitutes professional misconduct.

When a nurse is under investigation, the Complaints Committee or the Executive Committee requests that the nurse submit a response to the matters under investigation. Although nurses are not required to submit a response, they are encouraged to demonstrate professional accountability to the public by doing so.

## 23. Failing to take reasonable steps to ensure that the requested information is provided in a complete and accurate manner when a member is required to provide information to CNO pursuant to the regulations under the Act.

### Discussion

CNO is required by regulation to collect certain information regarding its membership in order to carry out its function of protecting the public interest. Nurses are required to take reasonable steps to ensure that the requested information is provided in a complete and accurate manner. The nature of the information collected by CNO is for four general purposes:

1. *To maintain a Public Register to provide the public with information about individual nurses.* This information includes the telephone number and address of the nurse's current employer, as well as any findings of professional misconduct, incompetence or incapacity.
  2. *To permit CNO to monitor findings against members of professional misconduct, incompetence or incapacity in nursing in other jurisdictions, as well as findings of professional misconduct, incompetence or incapacity in relation to another health profession that the member may be practising.* Other required information includes details of a nurse's conviction of a criminal offence or an offence under the *Narcotic Control Act* or the *Food and Drug's Act*. This information must be provided when a nurse applies to become a member of CNO and on an ongoing basis while the nurse is a member of CNO.
  3. *To allow CNO to monitor the quality of nursing practice through the QA Program.* The QA regulation requires that every nurse maintain records relating to participation in Reflective Practice, ongoing education, practice and professional development in accordance with the standards of practice of CNO. The regulation also gives the Quality Assurance Committee the authority to request submission of a member's records to the Committee for review.
  4. *To allow CNO to collect statistical information relating to nurses' professional characteristics and activities.* The nature of the information requested may include areas of practice, length of nursing practice and professional activities and memberships.
- 24. Failing to:**
- **abide by a written undertaking given by the member to CNO; or**
  - **carry out an agreement entered into with CNO.**

### Discussion

Nurses may enter into a *written undertaking* or *agreement* with CNO in certain circumstances. For example, this may occur as a result of an investigation into a nurse's practice.

A *written undertaking* is a written promise from a nurse that she/he will carry out certain activities or meet specified conditions requested by a CNO committee. For example, a nurse may promise to the Complaints Committee that she/he will successfully complete a physical assessment study course.

An *agreement* is a written or unwritten arrangement between a nurse and CNO. For example, a nurse may enter into an agreement with the Fitness to Practise Committee that limits her/his ability to have access to or administer narcotics.

CNO accepts a nurse's written undertaking or enters into an agreement with the nurse based on the nurse's professional obligation to be accountable to CNO and, ultimately, to the public. Failure to comply with the terms of a written undertaking or an agreement with CNO is a breach of trust and constitutes professional misconduct.

### Failure to comply with reporting obligations

#### 25. Failing to report an incident of unsafe practice or unethical conduct of a health care provider to:

- the employer or other authority responsible for the health care provider; or
- CNO.

### Discussion

CNO requires nurses to report unsafe practice or unethical conduct of a health care provider to the appropriate authority.

In many situations, there may be unsafe practice or unethical conduct by a health care provider. Nurses should use their professional judgment to determine whether a situation must be reported.

The regulations do, however, provide guidance about certain situations that must be reported. For example, as outlined in clause 7, it is professional misconduct to abuse a client. Nurses have a responsibility to intervene to prevent or stop abusive behaviour to a client by a nurse or other health care provider, and to report the incident to either their employer or CNO.

It is also mandatory for nurses to report the sexual abuse of a client to CNO. Nurses who fail to report sexual abuse are liable for a fine of up to \$25,000 and may be charged with professional misconduct.

Reports of unsafe practice or unethical conduct must be made to the appropriate authority. Generally, the appropriate authority is the person who employs or supervises the health professional. In most cases, this is the employer. If the health professional practises independently, the incident should be reported to the college to which the individual belongs. Nurses may choose to report to both the employer and CNO. For information about making a report, please call CNO.

### Conflict of interest

The primary focus of the nurse's relationship with clients is meeting the clients' health care needs. A conflict of interest exists when a nurse's personal interests could improperly influence her/his professional judgment or conflict with her/his duty to act in the best interest of clients.

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

### Discussion

It is important to avoid situations in which there is the potential to use the nurse-client relationship for personal benefit. The personal benefit or interest of the nurse may be financial, but can also include the interests of the nurse's family members and causes or organizations for which the nurse solicits support. Personal interests can be monetary, including cash, gifts and rewards; or may provide other personal benefits to the nurse. Recommending that a client be treated in a particular facility, or by a particular

professional because of personal considerations, is a conflict of interest.

The nurse does not have to directly benefit from a situation to be in conflict of interest. A conflict of interest can occur when the personal interest concerns an individual related to the nurse. For example, a nurse soliciting business from clients for a relative's carpet cleaning business is a conflict of interest.

It is important to keep in mind the power imbalance in the nurse-client relationship and the trust that the public places in the nursing profession to act in its best interest. The practice standard *Therapeutic Nurse-Client Relationship* contains a detailed discussion of the use of trust and power in the relationship.

It is not acceptable for a nurse to use her/his registration status to promote personal interests such as commercial products or services. Endorsement occurs when the nurse inappropriately uses her/his credentials to lend credibility to a commercial product, product line or service. The endorsement of a product line or service without providing information about other options has the potential to mislead the public and compromise trust.

Knowingly denying or delaying more urgent care to one client in favour of another because of non-health care considerations is also a conflict of interest.

Nurses should never lend money to or borrow money from clients. This can create a situation in which the personal interests of the nurse could influence her/his professional judgment and ability to act in the client's best interest. The practice standard *Therapeutic Nurse-Client Relationship* contains a detailed discussion of this topic.

Nurses can only manage client property or finances if they have been authorized under the *Substitute Decisions Act* as an attorney or guardian of property. This rule does not apply to the management of property or finances belonging to the nurse's spouse, partner or relative. As well, the *Substitute Decisions*

*Act* does not permit health care providers to act as decision-makers for personal care for clients. This means that nurses cannot make decisions about personal care, admission to health care facilities or treatment on behalf of clients. The exception to this is if the nurse has been appointed by the court as the client's guardian under the *Substitute Decisions Act*. Nurses may, however, act as substitute decision-makers for relatives or friends.

For more information, please review the proposed regulation for conflict of interest under the *Nursing Act*.

## **27. Influencing a client to change his/her will or other testamentary instrument.**

It is improper for a nurse to use the authority, influence and trust that is derived from the therapeutic nurse-client relationship to influence the client to do anything with his/her estate. This is an extension, and a specific illustration, of the prohibition against a nurse having a conflict of interest while practising the profession.

### **Inappropriate business practices**

The Canadian health care system is founded on the principle of the public's right to equal access to health care and services and on the elimination of financial barriers to health care. To ensure that this principle is preserved and that public access rights are protected, nurses who have an independent practice are required to carry out certain business practices.

A complete overview of the standards expected of nurses in independent practice can be found in CNO's *Independent Practice* guideline.

## **28. Submitting an account or charge for services that the member knows is false or misleading.**

### **Discussion**

The nurse is responsible for the accuracy of an account given directly to a client for services rendered. She/he must do so honestly and accurately.

**29. Failing to fulfil the terms of an agreement for professional services.**

**Discussion**

Clients have a reasonable expectation that the terms of agreements with nurses for professional services will be honoured. Failing to fulfil the terms of an agreement demonstrates unprofessional behaviour and may compromise a client's health.

**30. Charging a fee that is excessive in relation to the services for which it is charged.**

**Discussion**

It is unacceptable for a nurse to charge excessively for nursing services rendered. Generally speaking, in calculating a fee, the nurse should consider the nature and complexity of the matter, the time spent with or on behalf of the client and the cost of the materials. It is advisable to explain these considerations to a client prior to performing a service and to inform the client of the cost of the service before it is performed. It should be understood that a fee may be excessive even though it has been agreed to before the services are performed.

A useful way of determining the reasonableness of a fee is to check with other colleagues who provide the same service.

**31. Charging a block fee. A block fee is a fee for uninsured services that is the same regardless of how many services are performed. (*Not enforced*)**

**32. Charging a fee for an undertaking not to charge for a service or class of service. (*Not enforced*)**

**Discussion**

In September 1995, CNO Council voted to recommend that the regulation (clauses 31 and 32) regarding block fees be revoked and that, in the interim, the regulation will not be enforced.

**33. Charging a fee for an undertaking to be available to provide services to the client.**

**Discussion**

A nurse must not charge a fee to be available at any time to provide services to a particular client. Doing so contravenes the spirit of universal access to health care and provides those who have financial resources with an assurance for health services that others cannot get. Being on-call for a facility (e.g., in the OR) is not a breach of this clause, as the nurse is contracted to be on-call for any client who requires such services.

**34. Offering or giving a reduction for prompt payment of an account.**

**Discussion**

Universal health care principles mean that all clients must have equal access to health care. A reduction in fees for prompt payment of an account provides those clients with readily available funds with an advantage over other clients. This cannot be tolerated by the profession. Although payment for services rendered is appropriate, and interest can be charged on overdue accounts, nurses cannot reduce clients' fees for prompt payment.

**35. Failing to itemize an account for professional services:**

- **if requested to do so by the client or the person or agency who is to pay, in whole or in part, for the services; or**
- **if the account includes a commercial laboratory fee.**

**Discussion**

The client is entitled to be fully informed of particular components of the fees. This is often required for the client's insurance reimbursement.

**36. Selling or assigning any debt owed to the member for professional services. This does not include the use of credit cards to pay for professional services.**

### Discussion

Selling or assigning a debt means turning the account over to a third party for collection. The nurse who does this cannot control the methods used to collect fees.

Allowing the selling or assigning of debts detracts from the therapeutic relationship by conflicting with the nurse's commitment to the well-being of the client.

It is, however, appropriate for nurses to accept credit card payments for services rendered.

### Disgraceful, dishonourable and unprofessional conduct

Health professionals may conduct themselves in a number of ways, through professional practice or in the community, that could make them unsuitable to practise in a caregiving role.

#### 37. Engaging in conduct or performing an act relevant to the practice of nursing, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

### Discussion

Conduct that demonstrates lack of integrity; dishonesty; abuse of power, access and authority; or disregard for the welfare and safety of members of the public, is conduct that cannot be tolerated by a health profession. Every type of conduct that may be the subject of professional misconduct discipline proceedings cannot be defined. This clause addresses those acts of professional misconduct that are not defined in the earlier clauses.

Examples of conduct that have been or could be regarded by panels of the Discipline Committee as disgraceful, dishonourable or unprofessional include, but are not limited to:

- accepting sick pay from one facility (or Workplace Safety and Insurance Benefits) while working at another facility;

- falsifying a time sheet or pay card;
- failing to maintain the acceptable boundaries of a relationship with a client;
- falsifying research data;
- sleeping while on duty;
- accepting inappropriate gifts or borrowing money from clients;
- misrepresenting and enhancing credentials; and
- making racially degrading remarks toward or about an individual or a group of individuals.

### Other grounds for professional misconduct

All of the above clauses of professional misconduct are contained in the Regulation. Section 51 of the *Health Professions Procedural Code*, however, provides other ways for a Panel of the Discipline Committee to find that a member's conduct constitutes professional misconduct.<sup>1</sup>

### Guilty of an offence

An offence that is relevant to a nurse's suitability to practise nursing amounts to professional misconduct.

#### S.51(1)(a)

**A panel shall find that a member has committed an act of professional misconduct if the member has been found guilty of an offence that is relevant to the member's suitability to practise.**

### Discussion

A finding of guilt for an offence that is relevant to the nurse's suitability to practise is behaviour that is considered harmful to the public, places the public's safety in jeopardy or threatens the trust the public needs to have in a nurse.

A Panel of the Discipline Committee may rely completely on the findings of the criminal courts in proving a criminal conviction. Examples of convictions that have been found relevant to a nurse's suitability to practise include:

- assault—sexual, aggravated or otherwise;
- attempted murder or murder;

<sup>1</sup> Schedule 2 to the *Regulated Health Professions Act, 1991*, and regulation 51(1) of the *Nursing Act, 1991*.

- theft;
- trafficking of illicit drugs; and
- conspiring to commit any of the above.

CNO is not concerned with the purely private life or extra-professional activities of a nurse that do not bring into question the nurse's professional integrity or competence.

In accordance with the Registration Regulation under the *Nursing Act, 1991*, nurses are required to provide CNO with details of any findings of guilt for any offence. This includes any offence in any jurisdiction, including but not limited to any criminal offence, as well as any offence under federal or provincial statute. You have been found guilty of an offence even if you have been pardoned, or received a condition or absolute discharge.

### Finding of professional misconduct in another jurisdiction

#### S.51.(1)(b)

**A panel shall find that a member has committed an act of professional misconduct if the governing body of a health profession in a jurisdiction other than Ontario has found that the member committed an act of professional misconduct that would, in the opinion of the panel, be an act of professional misconduct as defined in the regulations.**

#### Discussion

Some members of CNO are or have been members of other nursing regulatory bodies or another health profession. If a finding of professional misconduct regarding a nurse has been made by the other governing body, this act may also be considered to be professional misconduct by CNO. For this to occur, a Panel of the Discipline Committee must find that the act would be considered to be professional misconduct in Ontario.

The regulations regarding registration at CNO require nurses, as a condition of continuing membership, to provide information regarding past findings or current proceedings of professional mis-

conduct in Ontario in relation to another health profession, or in another jurisdiction in relation to the nursing profession or another health profession. Members are asked about involvement in such proceedings annually as part of the renewal process.

### Sexual abuse

#### S.51(1)(b.1)

**A panel shall find that a member has committed an act of professional misconduct if the member has sexually abused a patient.**

#### Discussion

Sexual abuse, as defined in the *Health Professions Procedural Code*, consists of one or more of the following types of conduct:

- sexual intercourse or other forms of physical relations between the member and client;
- touching, of a sexual nature, the client's genitals, anus, breast or buttocks;
- touching, of a sexual nature, of the client by the member; or
- behaviour or remarks of a sexual nature by the member toward the client.

Accordingly, sexual relations or any other type of physical relations are strictly forbidden. There can be no therapeutic value to such interaction; therefore, the action is in breach of the nursing principle to do no harm. Similarly, touching of a sexual nature is prohibited. However, if the touching is of a clinically appropriate nature that is supported by well-documented health presentations of the client, and conducted in an appropriate manner, it does not constitute sexual abuse. For example, touching a client's shoulder as part of an examination of a complaint of pain in that area may be appropriate if not attempted sexually or performed in a self-gratifying or emotionally stimulating manner. In a similar fashion, inquiring about a client's sexual history may be appropriate when relevant to his/her chief complaint, but will be considered to be sexual abuse when unrelated to the clinical presentation.

The practice standard *Therapeutic Nurse-Client Relationship* provides further information about



sexual abuse, including restrictions about engaging in a sexual relationship with clients or their significant others following termination of the nurse-client relationship.

***A nurse who has reasonable grounds to believe that a member of CNO or another college has sexually abused a client must report the abuse to the abusing member's College.*** A client's account to a nurse that he/she has been sexually abused by a member of a college constitutes reasonable grounds, and the nurse must report the alleged abuse to the appropriate college. ***Failure to report sexual abuse amounts to independent grounds for a finding of professional misconduct.***

**Notes:**

**Notes:**



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