

# Incapacity

A process guide



COLLEGE OF NURSES  
OF ONTARIO

ORDRE DES INFIRMIÈRES  
ET INFIRMIERS DE L'ONTARIO

THE STANDARD OF CARE.

## Introduction

The College of Nurses of Ontario (the College) is the regulatory body for the nursing profession in Ontario. Its mandate is to regulate the profession in the public interest. Despite the word "College", it is not an educational institution. Rather, the College registers individuals who are qualified to practise nursing in Ontario, supports nurses in their practice, and assesses reports about nursing care from the public, nurse employers and facilities about nursing care.

The vast majority of nurses provide the public with high quality care. But, what should you do if you believe a nurse in your employ is not practising safely due to a physical or mental health issue? This guide explains the process for reporting a nurse who may be incapacitated.

## What is the purpose of mandatory reporting of incapacity?

Mandatory reporting ensures that the College is alerted when there is a genuine concern that a nurse is not practising safely. It allows the College to take action to protect the public, using innovative approaches that help the nurse return to safe nursing practise.\*

A report does not constitute a finding that the nurse who is the subject of the report is incapacitated. Only the College's Fitness to Practise Committee can conclude whether a nurse is incapacitated. The College will assess every mandatory report of incapacity, but not every report will result in a hearing before the Fitness to Practise Committee. The provincial government legislates a mandatory reporting framework for all regulated health professions in the *Regulated Health Professions Act, 1991*.

## Who is required to report?

The person who operates the facility is required to make a report when he or she has reason to believe that a nurse is incapacitated. The College encourages facilities to develop procedures and guidelines for staff on how the facility will meet its reporting obligations.

A report about a nurse's potential incapacity must be made in writing to the College's Executive Director within 30 days. If there is concern that the member poses a continued risk, the report must be filed immediately.

## What is incapacity?

In the regulation of health care professionals, the definition of "incapacity" has a special legal meaning. It is not the same as the medical or layperson meaning.

There are two essential components to the College's definition of incapacity:

1. the nurse must have a physical or mental condition or disorder; and
2. the condition or disorder must warrant some restrictions on the nurse's practice or that he or she not be permitted to practise.

The Fitness to Practise Committee may find a nurse is incapacitated when she or he has a health condition that impairs the ability to provide care to a degree that the Committee finds it necessary to restrict the nurse's practice. Or, the Committee may find it necessary to remove the nurse from practice to protect clients.

Most nurses recognize when a health condition is affecting their practice and take appropriate action. For example, when a nurse takes time off from work to deal with personal issues and there is no concern about client safety, the College does not expect a report to be filed.

Incapacity most commonly arises in cases of mental health or addiction disorders. These can cloud judgment, and impair a nurse's ability to recognize the health condition and that its affecting her or his practice. The College expects a mandatory report to be made only when a current health condition is accompanied by concerns about safe practice or a need for ongoing monitoring.

When making a report of incapacity to the College, include:

- the name of the person filing the report;

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\*Refer to the *Mandatory Reporting* guide for more information.

- the name of the nurse who is the subject of the report; and
- an explanation of the alleged incapacity, including:
  - the nature of the condition,
  - any behavioural observations made by clients, colleagues and supervisors,
  - a list of restrictions on the nurse’s practice if such restrictions are in place, or the basis for the facility operator’s belief that restrictions are warranted, and
  - the diagnosis (if available).

### **What does the College do when it receives a report of incapacity?**

The College’s Executive Director reviews the report along with any information about the nurse the College may have previously received. The Executive Director assesses the level of risk posed to the public and determines an appropriate regulatory response, which may include an inquiry into the concerns about the nurse’s health.

If the Executive Director believes that the nurse may be incapacitated, a Panel of the Inquiries, Complaints and Reports Committee (ICRC) conducts an inquiry. The nurse will be notified of the inquiry and asked to provide any relevant information. The nurse can also provide a written response. The Panel will review the information and make further inquiries as necessary. If, after its review, the Panel has reasonable and probable grounds to believe that the nurse may be incapacitated, the nurse may be directed to attend an independent health assessment. Health care professionals with expertise in specialized areas, such as mental health or addiction disorders, conduct the independent health assessment.

When the independent assessor meets with the nurse, he or she will ask the nurse about her or his current health and health history. The assessor may ask the nurse to participate in laboratory testing. If the assessor ascertains that the nurse has a physical and/or mental condition that is affecting her or his practice, the assessor will identify the treatment and monitoring required to safely return the nurse to practice.

The ICRC Panel will again review all information and, if sufficiently concerned about the risk to

the public, will refer the nurse to the Fitness to Practise Committee. The Panel may also direct the Executive Director to impose an interim order of suspension or restrictions until the Fitness to Practise Committee concludes the matter. A formal determination that a nurse is incapacitated is made only after a hearing in which the nurse has had a full and fair opportunity to participate.

### **What happens after a referral to the Fitness to Practise Committee?**

The College will notify the nurse when there has been a referral to the Fitness to Practise Committee. Upon referral, a notation is made on the Register.

There are two routes for addressing Fitness to Practise referrals—agreement or formal hearing. The majority of matters are resolved by agreement. To resolve by agreement, the nurse acknowledges that she or he is incapacitated (as per the legal definition mentioned previously). The College will then work with the nurse and health providers to craft an agreement that includes appropriate restrictions on the nurse’s practice. If the matter is not resolved by an agreement, the nurse will have a full and fair opportunity to participate in a formal hearing before a Fitness to Practise Panel.

### **What happens if a nurse is found to be incapacitated?**

A nurse who is found to be incapacitated may be required to comply with appropriate medical treatment before returning to practice. It is likely that the nurse will have restrictions placed on her or his practice and require monitoring on returning to practice.

The nurse is responsible for abiding by the restrictions that have been ordered. The College will be in regular contact with the nurse, the nurse’s health care team and the nurse’s employer(s) to meet the ultimate objective of the incapacity process: the nurse’s healthy return to safe nursing practice.

Visit the College’s website at [www.cno.org/employers](http://www.cno.org/employers) for more information about the incapacity process and how to make a report. Further assistance can be provided by the College’s investigator-on-call at [investigations-intake@cnomail.org](mailto:investigations-intake@cnomail.org) or by phone at 416 928-0900; toll-free 1 800 387-5526, ext. 6988.



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101 Davenport Rd.  
Toronto, ON  
M5R 3P1  
[www.cno.org](http://www.cno.org)  
Tel.: 416 928-0900  
Toll-free in Ontario: 1 800 387-5526  
Fax: 416 928-6507  
E-mail: [cno@cnomail.org](mailto:cno@cnomail.org)