

Mandatory Reporting

A process
guide

for

employers, facility operators and nurses



COLLEGE OF NURSES
OF ONTARIO

ORDRE DES INFIRMIÈRES
ET INFIRMIERS DE L'ONTARIO

THE STANDARD OF CARE.

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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 name “college,” it is not a school. Rather, the College registers individuals qualified to practise nursing in Ontario, supports nurses in their practice, and assesses reports about nursing care from nurse employers and facility operators.

This document explains the purpose of mandatory reporting, how the College addresses reports, and what outcomes you can expect from making a report to the College.

What is the purpose of mandatory reporting?

Mandatory reporting ensures that the College is alerted if there is a concern that a nurse is not practising safely. It allows the College to take action to protect the public and use innovative approaches to help rehabilitate the nurse when necessary.

A report does not constitute a finding of professional misconduct, sexual abuse, incapacity or incompetence against the member who is the subject of the report. Only a Panel of the College’s Discipline Committee or Fitness to Practise Committee can make such a conclusion.

All regulatory health professionals are subject to mandatory reporting. The Ontario government has legislated a mandatory reporting framework in its *Regulated Health Professions Act, 1991*.

What does the College do when it receives a report?

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

Not every report will require the College to make a formal investigation and hearing. For example, an investigation may not be necessary if the facility has imposed ongoing monitoring and restrictions on the nurse’s practice, and these measures

provide sufficient public protection. Likewise, an investigation may be unnecessary if the nurse is participating in activities that demonstrate improvement in their practice, and the employer is closely monitoring the member’s progress.

If the College initiates an investigation, the nurse will be asked to provide a written response to the College’s Inquiries, Complaints and Reports Committee. If the committee is sufficiently concerned about risk to the public, the nurse will be referred to a hearing before a Discipline or Fitness to Practise Committee panel. The panel will make a formal determination of professional misconduct, incompetence or incapacity only after a hearing in which the nurse has had a fair and full opportunity to participate.

A nurse who is found to have committed professional misconduct may be required to pay a fine or attend for a reprimand. They may be monitored while practising or be suspended from practice. In the most serious cases, a panel has the authority to revoke a nurse’s Certificate of Registration.

A nurse who is found to be incapacitated may be required to comply with appropriate medical treatment before returning to practice. A nurse found to be incompetent may be required to complete additional education or training. In both situations, it is likely that the nurse will have restrictions on their practice, and will require monitoring upon returning to practice.

Who is required to report?

1. Facility operators

Facility operators at organizations where nurses practise are required to report to the College when there is reason to believe that a nurse has sexually abused a client, or is incompetent or incapacitated.

The College defines a facility operator as the individual who operates a facility where one or more nurses practise. Since most organizations employ nurses directly, a facility operator and nurse employer are typically the same person. There are situations, however, when this is not the case. For example, let’s say Nurse A is employed by an acute care hospital. Nurse B practises at the same hospital but is employed by a nursing agency.

The College expects the acute care hospital, as the facility operator, to report Nurse A or Nurse B to the College if either nurse seems incapacitated or incompetent, or may have sexually abused a client. The reporting obligation is not based on the employment relationship. Rather, it's based on the facility operator's direct knowledge of the concern.

The person who operates the facility—not staff members—is required to make the report. The College encourages facilities to develop procedures and guidelines so staff members can support the facility in meeting its reporting obligations.

Once a facility has determined that it has a reporting obligation, the report must be made to the College's Executive Director in writing within 30 days. The report must be filed immediately if there is a concern that the nurse poses a continued risk.

To assist facilities and employers in filing a report regarding a nurse, the College developed the Mandatory Report Form. The College asks facility operators and employers to use this form when making a report. You can download the form at www.cno.org/employers. Mail or fax the completed form along with any supporting documentation to the College.

2. Employers

Employers are required to report the termination of a nurse's employment or privileges for reasons of professional misconduct, incompetence or incapacity.

By alerting the College of concerns about a member's practice, employers support the College's mandate of protecting the public interest. When a nurse's employment is terminated or a nurse leaves before the employer can address the outstanding concerns, the nurse's practice and/or conduct is no longer being monitored. Once aware of the concerns, the College can assess the report in relation to any other information it has about the nurse.

An employer must also file a report if they intended to terminate the nurse's employment, but the nurse resigned first. When, following a grievance, an employer accepts a resignation in lieu

of termination, or makes another agreement with the nurse, the employer continues to have a legal obligation to report to the College.

Reports must be made within 30 days of the termination or resignation of the nurse, and must contain the:

- reason(s) for the termination; or
- reason(s) for intending to terminate if the member resigned before the employer could take action.

3. Nurses

A nurse is a member of the College. A nurse is required to file a report to the appropriate regulatory college if they believe that another health care professional has sexually abused a client.

Also, a nurse must self-report to the College if she or he:

- has been found guilty of any offence in any jurisdiction;
- has a finding of professional negligence and/or malpractice;
- has been charged with any offence in any jurisdiction;
- has a finding of professional misconduct, incompetence or incapacity, or any similar finding in relation to the practice of nursing or any other profession in any jurisdiction; and/or
- is the subject of a current investigation, inquiry or proceeding for professional misconduct, incompetence or incapacity or any similar investigation or proceeding in relation to the practice of nursing or any other profession in any jurisdiction.

The College expects nurses to self-report a finding or the initiation of a proceeding in another jurisdiction within 30 days.

To assist nurses in self-reporting, the College has developed the Self-Reporting Form. The College asks nurses to use this form when making a self-report. The form is available at www.cno.org/docs or by phoning the Customer Service Centre at 416 928-0900 or 1 800 387-5526. Mail or fax the completed form along with any supporting documentation to the College.

4. Health information custodians

The *Personal Health Information Protection Act* sets out mandatory reporting obligations for health information custodians. A “health information custodian” is defined as anyone who is authorized to collect, use, retain and disclose a patient’s personal health information.

A health information custodian must file a report to the College when a nurse who is under their employ resigns or is terminated, suspended or subject to disciplinary action as a result of the unauthorized collection, use, disclosure, retention or disposal of a patient’s personal health information.

Reports must be made within 30 days of the termination, resignation or disciplinary action. They must contain:

- details of the privacy-related incident; and
- details of the suspension, disciplinary action, termination or resignation, as applicable.

Definitions of required reports

1. Sexual abuse

In the regulation of health care professionals, the term “sexual abuse” has a specific legal meaning. It is not the same meaning as the criminal act of sexual assault, which refers to a sexual act without consent. Rather, sexual abuse in the regulatory context occurs when a health care professional:

- has physical sexual relations with a client;
- touches, in a sexual manner, the client's genitals, anus, breast or buttocks;
- touches a client in a sexual manner;
- behaves in a sexual manner with a client; and/or
- makes remarks of a sexual nature to a client.

Any sexual relationship with a client, even if consensual, is considered abusive because a health care professional is in a position of power by virtue of their professional knowledge and skill. When health care professionals meet their personal needs in what should remain a professional relationship, clients are vulnerable to harm.

The facility operator or nurse who reports an incident of suspected sexual abuse must make their best effort to inform the client of the need to notify the appropriate regulatory college. The report can include the name of the client only if the client (or

the client’s representative, if the client is incapable) has consented in writing. If the client has not consented in writing, the client’s name must not be included in the report.

When you file a report of sexual abuse to the College, the report must contain:

- your name;
- the name of the nurse who is the subject of the report; and
- a description of the alleged sexual abuse.

Fines may be imposed if a person or a facility fails to make a mandatory report relating to sexual abuse. Individuals may be fined up to \$50,000 while corporations may be fined up to \$200,000.

2. Incompetence

The definition of incompetence includes the following three key components:

1. it must relate to the nurse’s professional care of a client;
2. the nurse must display a lack of knowledge, skill or judgment; and
3. any deficiencies must demonstrate that the nurse is unfit to continue to practise, or that their practice should be restricted.

A nurse is incompetent if their client care shows such significant and repeated deficiencies in knowledge, skill or judgment that the nurse’s practice must be restricted to ensure client safety.

Not every mistake or breach of the College’s practice standards means that a nurse is incompetent. Rather, incompetence is demonstrated by poor insight, or gaps in comprehension or application of basic nursing principles. A lack of appreciation for the seriousness of potential outcomes for clients who receive substandard care can also demonstrate incompetence.

If there are concerns of this nature, the facility operator typically initiates close monitoring, restrictions on practice and remedial activities to ensure client safety. For example, a nurse may not be allowed to practise without direct supervision until the deficiencies are addressed. In such a situation, the College expects the facility operator to make a report.

When you make a report of incompetence to the

College, include the following information:

- your name;
- the name of the nurse who is the subject of the report; and
- a description of the alleged incompetence.

The description should include:

- the nature of the concerns that gave rise to the report;
- a list of any restrictions that are in place or that are the basis for the facility operator's belief that restrictions are warranted; and
- any learning or performance improvement plans to address the concerns.

3. Incapacity

In the regulation of health care professionals, the term “incapacity” has a specific legal meaning that is different from what is normally understood.

The definition of incapacity consists of the following two essential components:

1. the member must have a physical or mental condition; and
2. the condition must warrant that the member not be permitted to practise, or that their practice be restricted.

A nurse is incapacitated when they have a health condition that impairs their ability to provide care. The impairment must be of such a degree that the facility operator finds it necessary to restrict the nurse's practice or 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, a nurse may decide to take time off from work to deal with personal issues, and there is no concern about client safety. In such a situation, the College does not expect the facility operator to file a report.

Incapacity most commonly arises when a member is affected by a mental health or addiction disorder. These conditions can cloud judgment and impair the individual's ability to recognize that they have a health condition and that it's affecting their practice. The College expects a facility operator to make a report only when a current health condition is accompanied by concerns about unsafe

practice or there is a need for ongoing monitoring.

When you report a case of suspected incapacity, include the following information:

- your name;
- the name of the nurse who is the subject of the report; and
- a description of the alleged incapacity, including:
 - the nature of the condition or disorder;
 - any behavioural observations made by clients, colleagues and/or supervisors; and
 - a list of any restrictions you have placed on the nurse's practice (or the basis for your belief that restrictions are warranted).

4. Charged with an offence

An offence is a breach of law that is prosecuted in a court. This includes any offence in any jurisdiction.

5. Guilty of offence

The requirement includes all findings of guilt for any offence, including but not limited to offences under the *Criminal Code*, the *Food and Drugs Act*, and the *Controlled Drugs and Substances Act*, as well as offences under provincial laws.

Even if a nurse has been pardoned, or received an absolute or conditional discharge instead of a conviction, the nurse must still self-report to the College.

6. Finding of professional negligence or malpractice

Professional negligence or malpractice findings arise from circumstances in which clients sue health care professionals to receive compensation for substandard care. A nurse is required to self-report if a civil court has made a finding that the nursing care they provided was professionally negligent.

7. Proceeding in any jurisdiction

This term refers to circumstances in which a nurse is also a member of any other profession (such as a midwife or lawyer) in Ontario or any other jurisdiction, and is involved in a current investigation, inquiry or proceeding for professional misconduct, incompetence or incapacity or any similar investigation or proceeding, and that matter is not yet decided.

8. Finding in any jurisdiction

This term refers to circumstances in which a nurse is also a member of another profession in Ontario or any other jurisdiction, and a disciplinary or incapacity or similar proceeding has determined that they have committed professional misconduct, or is incompetent or incapacitated, or made any similar finding.

When you self-report a finding in another jurisdiction, the report must contain:

- your name;
- the nature and a description of the offence or finding;
 - the date the proceeding began and the finding was made;
 - the name and location of the court or regulatory body that is holding the proceeding or made the finding; and
 - the status of any appeal initiated about the finding made against you.

Nurses are required to file an additional report to the College if an appeal changes the status of a finding. This report must not contain information that violates any publication ban that a court imposed during the proceedings.

Summary of mandatory reporting obligations

Facility operators must report	Employers must report	Nurses must report	Health information custodians must report
<ul style="list-style-type: none"> ▪ the sexual abuse of a client by a health care professional; and ▪ a health care professional who is: <ul style="list-style-type: none"> ▸ incompetent, ▸ incapacitated. 	<ul style="list-style-type: none"> ▪ the termination of, or the intent to terminate, privileges or the employment of a nurse. 	<ul style="list-style-type: none"> ▪ the sexual abuse of a client by a health care professional. <p>As well, nurses must self-report:</p> <ul style="list-style-type: none"> ▪ A finding of guilt for any offence; ▪ If they have been charged with an offence in any jurisdiction; ▪ A finding of professional negligence or malpractice; ▪ If they are currently the subject of a proceeding in any other professional jurisdiction; and/or ▪ A finding in any other professional jurisdiction. 	<ul style="list-style-type: none"> ▪ the termination, resignation, suspension or other disciplinary actions in response to the unauthorized collection, use, disclosure, retention or disposal of personal health information.

College resources are available to address specific questions and assist with information that nurses, facility operators and employers may need to meet mandatory reporting requirements. For more information about making a report, e-mail the College’s Investigator-on-Call at investigations-intake@cno.org or phone 416 928-0900, ext. 6988; or 1 800 387-5526, ext. 6988. Nurse employers are encouraged to visit www.cno.org/employers.



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