

**ONTARIO REGULATION 681/93**  
**PROFESSIONAL MISCONDUCT**

**0.1** In this Regulation,

“sell” includes distribute, give away, supply or offer to sell, distribute, give away or supply, and “sale” has a corresponding meaning.

**1. (1)** The following are acts of professional misconduct for the purposes of clause 51 (1) (c) of the Health Professions Procedural Code.

THE PRACTICE OF THE PROFESSION AND THE CARE OF, AND RELATIONSHIP WITH, PATIENTS

1. Contravening a term, condition or limitation imposed on the member’s certificate of registration.
2. Failing to maintain a standard of practice of the profession.
3. Failing to advise a patient or a patient’s authorized representative to consult another member of a health profession within the meaning of the *Regulated Health Professions Act, 1991*, where the member knows or ought to know that the patient requires a service that the member does not have the knowledge, skills or judgment to perform.
4. Performing a service in the course of practising the profession that the member knows or ought to know he or she does not have the knowledge, skills or judgment to perform.
5. Abusing a patient, emotionally, verbally or physically.
6. Practising the profession while the member is under the influence of a substance, or is suffering from a condition, dysfunction, disorder or circumstance, that the member knows or ought to know impairs or adversely affects his or her ability to practise.
7. Dispensing, selling or prescribing a drug, administering a substance, or piercing a patient’s dermis, for an improper purpose.
8. Discontinuing professional services that are needed unless the discontinuation would reasonably be regarded by members as appropriate having regard to,
  - i. the member’s reasons for discontinuing the services,
  - ii. the condition of the patient,
  - iii. the availability of alternative services, and
  - iv. the opportunity given to the patient to arrange alternative services before the discontinuation.
9. Practising the profession while in a conflict of interest in contravention of section 3.

10. Breaching an agreement with a patient or a patient's representative relating to professional services for the patient or fees for such services.
11. Failing to supervise appropriately a person whom the member is professionally or legally obligated to supervise.

#### REPRESENTATIONS ABOUT MEMBERS

12. Inappropriately using a term, title or designation in respect of the member's practice.
13. Inappropriately using a term, title or designation indicating or implying a specialization in the profession.
14. 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.

#### RECORD KEEPING AND REPORTS

15. Failing to keep records as required respecting the member's patients or practice.
16. Falsifying a record relating to the member's patients or practice.
17. 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.
18. Failing to keep confidential personal health information or other personal information concerning a patient, except with the consent of the patient or the patient's authorized representative or as permitted or required by law.
19. Accessing a record relating to a patient without a legitimate professional reason to do so.

#### BUSINESS PRACTICES

20. Submitting an account or charge for services or products that the member knows or ought to know is false or misleading.
21. Charging a fee or amount that is excessive in relation to the service or product provided.
22. Entering into any agreement that restricts a person's choice of a pharmacist without the consent of the person.

## MISCELLANEOUS MATTERS

23. Contravening the Act, the *Drug and Pharmacies Regulation Act*, the *Regulated Health Professions Act, 1991*, the *Narcotics Safety and Awareness Act, 2010*, the *Drug Interchangeability and Dispensing Fee Act*, the *Ontario Drug Benefit Act* or the regulations under those Acts.
24. Permitting, consenting to or approving, either expressly or by implication, any act that contravenes Part VIII of Ontario Regulation 58/11 in respect of advertising of drug services of or by a pharmacy.
25. Soliciting or permitting the solicitation of an individual unless,
  - i. the person who is the subject of the solicitation is advised, at the earliest possible time during the communication, that,
    - A. the purpose of the communication is to solicit use of the member's professional services, and
    - B. the person may elect to end the communication immediately or at any time during the communication if he or she wishes to do so, and
  - ii. the communication ends immediately if the person who is the subject of the solicitation so elects.
26. Contravening any federal, provincial or territorial law or any municipal by-law
  - (i) with respect to the distribution, purchase, sale, dispensing or prescribing of any drug or product, the administering of any substance, or the piercing of the dermis,
  - (ii) whose purpose is to protect or promote public health, or
  - (iii) that is otherwise relevant to the member's suitability to practise.
27. Influencing a patient to change his or her will or other testamentary instrument.
28. Returning to stock or again selling or dispensing a Schedule I drug, or any drug that requires refrigeration, that was previously sold or dispensed.
29. Dispensing, selling or compounding a drug, or administering a substance, that the member knows or ought to know is not of good quality or does not meet the standards required by law, or, in the case of a drug, does not contain a substance that the drug is meant to contain.
30. Engaging in unlawful conduct in or around, or permitting unlawful conduct in, the premises in which a pharmacy is located, including an offence pursuant to the *Criminal Code* (Canada) or the *Controlled Drugs and Substances Act* (Canada).
31. Permitting, consenting to, approving, counselling or assisting, whether expressly or by implication, the commission of an offence under any Act relating to the practice of pharmacy or the sale of drugs.
32. Permitting, counselling or assisting, whether expressly or by implication, any member to contravene, or to practise in a manner that is inconsistent with, a term, condition or limitation on that member's certificate of registration.
33. Permitting, counselling or assisting a person who is not a member to represent himself or herself as a member or to perform a controlled act that the person is not authorized to perform.

34. Failing to co-operate with a duly appointed inspector of the College conducting an inspection pursuant to the *Drug and Pharmacies Regulation Act*.
  35. Failing to respond within a reasonable time to a written or electronic communication from the College that asks for a response.
  36. Failing to comply with an order made by a committee or panel, or by the chair of a committee or panel, of the College.
  37. Failing to appear before a panel of the Inquiries, Complaints and Reports Committee to be cautioned.
  38. Breaching or failing to carry out or abide by an undertaking given to, or an agreement entered into with, the College, any of its committees or the Registrar.
  39. Practising the profession while the member's certificate of registration is under suspension.
  40. Engaging in conduct or performing an act relevant to the practice of pharmacy that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.
  41. Engaging in conduct unbecoming a member.
- (2) A member shall be deemed to have committed an act of professional misconduct if the governing body of a health profession in a jurisdiction other than Ontario (a) has made a finding against the member of incompetence, or (b) has made a finding against the member that is similar to incompetence or professional misconduct and the finding is based on facts that would, in the opinion of the College, be grounds for a finding of incompetence as defined in section 52 of the Code or would be an act of professional misconduct as defined in the Code or the Act or in the regulations under the Act.
  - (3) A member shall be deemed to have committed an act of professional misconduct if,
    - (a) the governing body of a health profession in a jurisdiction other than Ontario has provided records to the College evidencing that an allegation of professional misconduct or incompetence or a similar allegation has been made against the member and he or she has entered into an agreement or compromise with the governing body in order to settle the matter without a finding of misconduct or incompetence or a similar finding being made;
    - (b) the College is satisfied that the records are authentic, accurate and complete; and
    - (c) the act or omission that is the subject of the allegation would, in the opinion of the College, be an act of professional misconduct as defined in the Code or the Act or in the regulations under the Act, or would constitute incompetence as defined in section 52 of the Code.

**2.** In this section and in section 3,

“benefit” means any incentive or inducement of more than nominal value, whether direct or indirect, and includes a rebate, credit or gift;

“child” means a child within the meaning of the *Family Law Act*;

“parent” means a parent within the meaning of the *Family Law Act*;

“related corporation” means a corporation wholly or substantially owned or controlled, whether directly or indirectly, by a member or a related person of the member;

“related person” means a member and any person who has one of the following relationships to the member or to the spouse of the member, whether based on blood, marriage, common-law or adoption:

1. A child or the spouse of a child.
2. A grandchild or the spouse of a grandchild.
3. A parent or the spouse of a parent.
4. A grandparent or the spouse of a grandparent.
5. A sibling or spouse of a sibling;

“spouse” means,

- (a) a spouse as defined in section 1 of the *Family Law Act*, or
- (b) either of two persons who live together in a conjugal relationship outside marriage.

**3. (1)** Subject to subsections (2) to (5), a member is in a conflict of interest,

- (a) where a reasonable person knowing the relevant facts would conclude or perceive that the action of the member in relation to the prescribing, dispensing, selling or compounding of a drug, the administration of a substance or the piercing of a patient’s dermis, was adversely influenced or would likely have been adversely influenced by the financial interests of the member or of a related person or a related corporation;
  - (b) where the member or a related person or a related corporation enters into an arrangement or agreement which a reasonable person knowing the relevant facts would conclude or perceive would likely have the effect of adversely influencing the exercise of the member’s professional judgment or influencing or impeding the member’s ability to engage in the practice of pharmacy in an ethical manner or in accordance with the standards of practice of the profession;
  - (c) where the member or a related person or a related corporation enters into an arrangement or agreement which a reasonable person knowing the relevant facts would perceive as directly or indirectly influencing or encouraging a prescriber to promote the services of the member or a pharmacy to a patient; or
  - (d) where the member or a related person or a related corporation,
    - (i) accepts or receives a benefit by reason of the referral of a patient to any other person,
    - (ii) offers, makes or confers a benefit to a person by reason of the referral of a patient to the member or a pharmacy, or
    - (iii) offers, makes or confers a benefit to a patient in relation to the sale of a drug or the provision of professional pharmacy services other than,
      - (A) an adjustment in the fee or amount that would otherwise be charged with regard to that patient for that drug or that professional pharmacy service, or
      - (B) the provision to a patient, at no charge, of an item of a nominal value, to be used in maintaining or promoting well-being or health.
- (2) No conflict of interest arises under subclause (1) (d) (i) or (ii),
- (a) solely as a result of a referral by the member to a related person or a related corporation where,
    - (i) no direct benefit is received by the member, and
    - (ii) the nature of the relationship between the member and the related person or related corporation is fully disclosed to the patient at the time of the referral; or
  - (b) solely as a result of a referral to a member from a related person or a related corporation where,
    - (i) no direct benefit is conferred by the member, and
    - (ii) the nature of the relationship between the member and the related person or related corporation is fully disclosed to the patient prior to the member providing pharmacy services.

(3) No conflict of interest arises as a result of the rent payable in respect of the lease of premises in which the member provides professional pharmacy services if the rent charged is normal and customary for the type of premises and the geographical area in which the premises are located.

(4) No conflict of interest arises under clause (1) (a) by virtue of the member or a related person or a related corporation having a financial interest in the manufacturer, vendor or supplier of a drug or substance if,

- (a) the fact of the proprietary interest is appropriately disclosed to the patient prior to the member providing pharmacy services in relation to the drug or substance; or
- (b) the manufacturer, vendor or supplier of the drug or substance is a corporation, the shares of which are publicly traded through a stock exchange, and fewer than 25 per cent of the shares of the corporation are owned or controlled by the member, a related person or a related corporation, or any combination of them.

(5) No conflict of interest arises under clause (1) (a) or (b) by virtue of a member or a related person or a related corporation accepting or receiving from a manufacturer, vendor or supplier of drugs or substances, a reasonable discount based on volume or prompt payment offered in the ordinary course of business, or such other benefit as is specifically permitted by an Ontario statute or regulation.