

Draft

Table of Suggest Revisions (May 15, 2019)

ONTARIO REGULATION 854/93

PROFESSIONAL MISCONDUCT

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

Current Regulation	Possible Amendments	Comments
1. Failing to abide by any term, condition or limitation imposed on the member's certificate of registration.	Contravening, by act or omission, a term, condition or limitation on the member's certificate of registration.	The addition of "by act or omission" makes it clear that a member does not have to take a positive action to be in contravention of the Misconduct Regulation. This will re-occur in other recommended amendments.
2. Failing to maintain the standards of practice of the profession.	Contravening, by act or omission, a standard of practice of the profession or failing to maintain the standards of practice of the profession.	The addition of "by act or omission" makes it clear that a member does not have to take a positive action to be in contravention of the Misconduct Regulation.
3. Delegating a controlled act, except to a person who is acting under the supervision of a member and who is, <ul style="list-style-type: none"> i. a student attending a course of study leading to a diploma or degree in denturism at an institution recognized by the Registration Committee, or ii. a candidate who is eligible to participate in entry-to-practice examinations, and whose application for a certificate of registration has not been finally refused by the Registration Committee. 	Delegating a controlled act, unless the member appropriately supervises the delegatee, the delegation is appropriate in all of the circumstances and the member takes reasonable measures to ensure that the delegatee has the knowledge, skills and judgment to perform the procedure.	The current language only addresses students (and students in the examination process). Under section 29 of the RHPA certain individuals are exempted from the controlled acts – including students – so these delegation provisions are not required. This section reads: Exceptions

Current Regulation	Possible Amendments	Comments
		<p>29 (1) An act by a person is not a contravention of subsection 27 (1) if it is done in the course of,</p> <p>(b) fulfilling the requirements to become a member of a health profession and the act is within the scope of practice of the profession and is done under the supervision or direction of a member of the profession;</p> <p>These suggested changes amend the language, so it addresses the skills of the delegatee and the responsibility of the member to ensure proper delegation.</p> <p>The College will develop a policy or guidance document that will provide indicators to assist the Member as to how such delegation should occur.</p>
<p>4. Abusing a patient verbally or physically.</p>	<p>Abusing a patient or a patient’s representative verbally, physically, psychologically or emotionally.</p>	<p>The first amendment modernizes the language to reflect that members have a responsibility to a representative of a patient.</p> <p>The second amendment expands and clarifies the types of abuse that are captured by this provision.</p>
<p>5. Practising the profession while the member’s ability to do so is impaired by alcohol, drugs or any other substance.</p>	<p>Practising the profession while the member’s ability to do so is impaired or is adversely affected by any condition or dysfunction which the member knows or ought to know impairs or adversely affects his or her ability to practise the profession.</p>	<p>This expands the criteria for impairment of a member’s judgement.</p>
<p>6. Discontinuing denturist services to a patient without adequate reason unless,</p>	<p>6. Discontinuing denturist services to a patient that are needed unless the</p>	<p>The phrase “discontinuation would reasonably be regarded by members as</p>

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<p>i. the member has entered into an agreement to provide denturist services and the period specified in the agreement has expired, or the member has given the patient five working days' notice of the member's intention to discontinue the services agreed upon,</p> <p>ii. the services are no longer required,</p> <p>iii. the patient requests the discontinuation,</p> <p>iv. the patient has had a reasonable opportunity to arrange for the services of another member, or</p> <p>v. alternative services are arranged.</p>	<p>discontinuation would reasonably be regarded by members as appropriate having considered,</p> <p>i. the member's reasons for discontinuing the services,</p> <p>ii. the condition of the patient,</p> <p>iv. the patient has had a reasonable opportunity to arrange for the services of another member, or</p> <p>v. the availability of alternative services.</p>	<p>appropriate" captures a large range of reasons and gives the members and the ICRC discretion.</p> <p>The change from "without adequate reason" to "would reasonably be regarded by members as appropriate" provides better guidance to the ICRC and Discipline Committees.</p> <p>The recommended new "i" will address the deleted "i", "ii" and "iii".</p>
<p>7. Failing to fulfil the terms of an agreement with a patient, except in accordance with paragraph 6.</p>	<p>Failing, without reasonable cause, to fulfil the terms of an agreement with a patient or a patient's authorized representative relating to professional products or services for the patient or fees for such products or services.</p>	<p>Adding "a patient's authorized representative" modernizes the language to reflect the fact that patient's may have a representative. This will occur again throughout.</p> <p>This makes it clear that the agreement must relate to professional services. Further, given the suggested changes to paragraph 6, this paragraph should not reference that paragraph.</p>
<p>8. Practising the profession while the member is in a conflict of interest.</p>	<p>Acting in a professional capacity while in a conflict of interest.</p>	<p>This expands the conflict of interest paragraph to include any professional activity (e.g., publishing articles, providing continuing education presentations).</p>
<p>9. Giving confidential information about a patient to a person other than the patient</p>		<p>No change suggested.</p>

Current Regulation	Possible Amendments	Comments
<p>or his or her authorized representative except with the consent of the patient or his or her authorized representative or as required by law.</p>		
<p>10. Making a misrepresentation to a patient including a misrepresentation respecting a remedy, treatment, device or procedure.</p>		<p>No change suggested.</p>
	<p>Making a claim respecting a treatment, device or procedure other than a claim that can be supported as reasonable professional opinion.</p>	<p>NEW</p>
	<p>Performing a controlled act that the member is not authorized to perform.</p>	<p>NEW: Clearly this is not specifically required (as breaching the RHPA is set out below) but it may be an effective way of reinforcing the message.</p>
<p>11. Performing a controlled act that has been delegated to the member unless the delegation is authorized by the regulations.</p>	<p>Performing a controlled act that has been delegated to the member unless the member has the knowledge, skill and judgment to perform the delegated controlled act.</p>	<p>This better reflects that delegation should only occur if the delegator or delegatee has the necessary skills, knowledge or judgment.</p> <p>The College will develop a policy for assisting denturists in determining if they have the knowledge, skills or judgment to perform a controlled act and the appropriateness of accepting delegation of a controlled act.</p>
<p>12. Using or having in the member's office premises dental instruments or equipment, other than instruments or equipment appropriate to the practice of denturism, unless, i. a dental surgeon practises dentistry in the same office premises, or</p>	<p>12. Using or having in the member's office premises dental instruments or equipment, other than instruments or equipment appropriate to the practice of denturism, unless, i. a dental surgeon practises dentistry in the same office premises, or</p>	<p>The Registrar can consider these requests and provide a response to the member in a timely manner. The current dental instrument approval process is not an effective use of College resources. The Registrar will use specified criteria, as approved by the Executive Committee, to consider these requests consistently.</p>

Current Regulation	Possible Amendments	Comments
<p>ii. the member has obtained the consent of the Executive Committee.</p>	<p>ii. the member has obtained the consent of the Registrar.</p>	
<p>13. Using or having in the member's office a drug as defined in subsection 117 (1) of the <i>Drug and Pharmacies Regulation Act</i> other than,</p> <p>i. drugs or anaesthetics prescribed for the personal use of the member, or</p> <p>ii. drugs in the exclusive custody of a dental surgeon practising dentistry in the same office premises.</p>		<p>No change suggested.</p>
	<p>Providing or attempting to provide services or treatment that the member knows or ought to know to be beyond the member's knowledge, skill or judgment.</p>	<p>NEW</p>
<p>14. Failing to refer to a dental surgeon or a physician a patient who has an apparent intra oral condition that the member recognizes or ought to recognize is outside the scope of practice of denturism.</p>	<p>Failing to advise a patient or the patient's authorized representative to consult another member of a health profession within the meaning of the <i>Regulated Health Professions Act, 1991</i>, where the member knows or ought to know that the patient requires a service that the member does not have the knowledge, skill or judgment to offer or is outside the scope of practice of denturism.</p>	<p>This reflects the fact that a denturist may encounter a patient that needs to consult with a RHP other than a physician or dentist and should give that advice.</p>
<p>15. Permitting, assisting or counselling any person to perform a controlled act except in accordance with the <i>Regulated Health Professions Act, 1991</i>, an Act listed in Schedule 1 to that Act and the regulations under those Acts.</p>	<p>Permitting, assisting or counselling any person,</p> <p>i. who is not a member to represent themselves as such, or</p> <p>ii. to perform a controlled act which the person is not</p>	

Current Regulation	Possible Amendments	Comments
	authorized or does not have the knowledge, skill and judgment to perform.	
15. Permitting, assisting or counselling any person to perform a controlled act except in accordance with the <i>Regulated Health Professions Act, 1991</i> , an Act listed in Schedule 1 to that Act and the regulations under those Acts.		No change suggested.
16. Practising denturism in a public place or in a vehicle or other movable contrivance without the approval of the Executive Committee.		No change suggested.
17. Recommending or providing unnecessary denturist services.	Recommending or providing denturist services that the member knows or ought to know are unnecessary or ineffective.	
18. Using a term, title or designation other than one authorized by the Act or the regulations, or as provided in section 2.	Inappropriately using a term, title or designation in respect of the member other than one authorized by the Act or the regulations.	See below where we recommend removing section 2.
	Inappropriately using a term, title or designation indicating or implying a specialization in the profession where the use of the term, title or specialty designation is not authorized by the College	NEW: See below where we recommend removing section 2.
	Practising the profession or offering to provide professional services using a name other than the member's name as entered in the register.	NEW
19. Failing to maintain records as required by the regulations.	Failing to keep records respecting the member's patients or practice as required	Members are required to maintain both patient and practice records (such as

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		equipment servicing logs and spore testing logs).
20. Falsifying a record of the examination or treatment of a patient or otherwise relating to the member's practice.		No changes suggested.
21. Failing, without reasonable cause, to provide a report or certificate relating to an examination or treatment performed by the member, within thirty days of a request from the patient or his or her authorized representative.	Failing, without reasonable cause, to provide a report or certificate relating to an examination or treatment performed or recommended by the member within thirty days of a request from the patient or his or her authorized representative.	Sometimes, patients or their insurance companies will request pre-approval or pre-determination information prior to starting treatment.
22. Signing or issuing, in the member's professional capacity, a document that the member knows or ought to know is false or misleading.		No changes suggested.
23. Failing to make arrangements with a patient for the transfer of the patient's records when, _____ i. _____ the member ceases practice, or _____ ii. _____ the patient requests the transfer.	Remove.	This is no longer required given the suggested amendments to paragraph 34.
24. Submitting an account or charge for services that the member knows or ought to know is false or misleading.		No changes suggested.
25. Failing to disclose all relevant fees before providing services when requested to do so by the patient.	Failing to advise a patient or a patient's authorized representative, before providing services of the fee to be charged for the service or of any penalties that will be charged for late payment of the fee.	This change will mean that members must disclose the fees without the patient having to request the fees (including any late fees).
26. Charging a fee that is excessive or unreasonable in relation to the services performed.	Charging a fee that is excessive or unreasonable in relation to the services performed or products provided.	This ensures that excessive fees for products are included. The College cannot explicitly define what "excessive" means but we can

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		provide guidelines for what could be considered “excessive”.
<p>27. Failing to itemize an account for professional services, using terminology understandable to a patient,</p> <p>i. if requested to do so by the patient or the person or agency who is to pay, in whole or in part, for the services, or</p> <p>ii. if the account includes a commercial laboratory fee.</p>	<p>Failing to itemize, in terminology understandable to a patient, an account for professional services in a format that sets out each item charged, including, but not limited to, professional fees, products, services and applicable taxes.</p>	<p>This change requires members to always provide itemized receipts, regardless of the circumstances and regardless of whether the patient requests an itemized receipt. This is in accordance with the Standard of Practice: Record Keeping. Professional services include professional fees (i.e. laboratory fees, denturism services etc.).</p>
<p>28. Failing to issue a receipt when requested to do so.</p>	<p>Remove.</p>	<p>This paragraph is no longer required given the changes to paragraph 27 above.</p>
<p>29. Selling or assigning any debt owed to the member for professional services, but a member may retain an agent to collect unpaid accounts and may accept payment for professional services by a credit card.</p>	<p>Selling or assigning any debt owed to the member for professional products or services, but a member may accept payment for professional products or services by a credit card.</p>	<p>This clarifies that products are included.</p>
<p>30. Failing, while providing denturist services, to carry professional liability insurance in the minimum amount of \$1,000,000 for each occurrence or failing, when requested by the College, to provide proof of carrying such insurance.</p>		<p>No changes suggested.</p>
<p>31. Accepting an amount in full payment of a fee or account that is less than the amount submitted by or on behalf of the member to a third party payer unless the member has made reasonable efforts to collect the balance or has obtained the written consent of the third party payer.</p>		<p>No changes suggested.</p>
	<p>Permitting the advertising of the member or his or her practice in a manner that is false or</p>	<p>NEW</p>

Current Regulation	Possible Amendments	Comments
	misleading or that includes statements that are not factual and verifiable.	
	Using or permitting the use of a testimonial from a patient, former patient or other person in respect of the member's practice	NEW
<p>32. Contacting or communicating, directly or indirectly, with a person, either in person or by telephone, in an attempt to solicit patients.</p>	<p>Contacting or communicating, directly or indirectly, with a person, either in person or by telephone, in an attempt to solicit patients.</p> <p>Soliciting or permitting the solicitation of an individual in person, by telephone, electronic communications or other means unless,</p> <p>i. the person who is the subject of the solicitation is advised, at the earliest possible time during the solicitation, that,</p> <p>A. the purpose of the communication is to solicit use of the member's professional services, and</p> <p>B. the person may elect to end the solicitation immediately or at any time during the solicitation if he or she wishes to do so, and</p> <p>ii. the communication ends immediately if the person who is the subject of the solicitation so elects.</p>	<p>This is a reflection of the College trying to balance the right of the public not to be pestered but not interfere with the profession's ability to advertise and seek out business.</p>

Current Regulation	Possible Amendments	Comments
33. Contravening by act or omission the Act, the <i>Regulated Health Professions Act, 1991</i> , or the regulations under either of those Acts.		No changes recommended.
34. Contravening a federal, provincial or territorial law or a municipal by-law relevant to the member's suitability to practise.	Contravening, by act or omission, a federal, provincial or territorial law or a municipal by-law if, <ul style="list-style-type: none"> i. the purpose of the law is to protect or promote public health, or ii. the contravention is relevant to the member's suitability to practise. 	This captures laws related to public health, not just suitability to practice (e.g., PHIPA, public health requirements for health facilities). This profession does have instances where Public Health has issued closures due to infection concerns. Whether it is municipal public health bylaws or the Health Promotion and Protection Act concerns, our experience is that this is a common and standard public safety provision.
35. Influencing a patient to change his or her will or other testamentary instrument.	Influencing a patient or the patient's authorized representative to change the patient's will or other testamentary instrument.	
36. Directly or indirectly benefiting from the practice of denturism while the member's certificate of registration is suspended unless full disclosure is made by the member to the College of the nature of the benefit to be obtained and prior approval is obtained from the Executive Committee.		No change suggested.
	Practising the profession while the member's certificate of registration has been suspended.	NEW
37. Participating in an arrangement that would result in a member or former member committing the act of misconduct described in paragraph 36.		No changes suggested.

Current Regulation	Possible Amendments	Comments
38. Failing to abide by a written undertaking given by the member to the College or failing to carry out an agreement entered into with the College	Failing to carry out or abide by an undertaking given by the member to the College or breaching an agreement entered into with the College	
	Failing to advise a person, when requested, of their right to file a complaint with the College, or failing to provide contact information for the College, when requested.	NEW
	Failing to comply with an order of a panel of the College.	NEW: This broader language will capture other orders of any panel.
39. Failing to attend an oral caution of the Complaints Committee or an oral reprimand of the Discipline Committee.	Failing to attend an oral caution of the Inquiries, Complaints and Reports Committee or an oral reprimand of the Discipline Committee.	Updates the name of the Complaints Committee.
40. Failing to co-operate with a representative of the College upon production of an appointment in accordance with section 76 of the Health Professions Procedural Code and to provide access to and copies of all records, documents and things that are relevant to the investigation.	Remove.	This is already addressed by section 76(3.1) of the Code.
41. Failing to co-operate with a representative of another College upon production of an appointment in accordance with section 76 of the Health Professions Procedural Code and to provide access to and copies of all records, documents and things that are relevant to the investigation		No change suggested.
42. Failing to permit entry at a reasonable time and to co-operate with an authorized representative of the College conducting an inspection and examination of	Remove.	This is likely a hold over from when the College had an “inspection” program (which it no longer appears to use).

Current Regulation	Possible Amendments	Comments
the member's office, records, equipment or practice.		
43. Failing to take all reasonable steps to ensure that any information provided by or on behalf of the member to the College is accurate.		No changes suggested.
44. Failing to reply appropriately in writing within thirty days to any written communication from the College that requests a response.	Failing to reply appropriately within 30 days to any written inquiry or request from the College.	
45. Failing to pay a fee or amount owed to the College, including an amount under section 53.1 of the Health Professions Procedural Code, after reasonable notice of the payment due has been given to the member.		No changes suggested.
46. Where a member engages in the practice of denturism with another member, failing to prevent another member from committing an act of professional misconduct or incompetence unless the member did not know and, in the exercise of reasonable diligence, would not have known of the other member's misconduct or incompetence.		No change suggested.
	Failing to promptly report to the College an incident of unsafe practice by another member if the member has reasonable and probable grounds to believe that such an incident has occurred.	NEW
47. Engaging in conduct or performing an act, relevant to the practice of denturism, that, having regard to all the circumstances, would reasonably be regarded by members		No changes suggested.

Current Regulation	Possible Amendments	Comments
<p>as disgraceful, dishonourable, unethical or unprofessional.</p>		
	<p>Engaging in conduct that would reasonably be regarded by members as conduct unbecoming a member of the profession.</p>	<p>NEW</p>
<p>2. (1) A member shall not use a name or title other than his or her name as set out in the register in the course of providing or offering to provide denturist services, unless the name or title, ———— (a) ——— reasonably refers to and describes the location of the practice; ———— (b) ——— has been approved by the Executive Committee; and ———— (c) ——— is accompanied by the name of the member, as set out in the register. O. Reg. 854/93, s. 2 (1). ———— (2) When a member practises denturism in association or in partnership with one or more other members and uses a name or title approved under subsection (1), the member shall notify the College within thirty days of a change in the association or partnership.</p>	<p>Remove.</p>	<p>The current clinic name approval process is not an effective use of College resources. The climate has shifted toward right-touch regulation, including regulation based on risk to the public. Reviewing clinic names is not a front and centre activity of the Executive Committee.</p>