

October 1, 2010

**DRAFT PROFESSIONAL MISCONDUCT REGULATION  
UNDER THE CHIROPODY ACT, 1991  
TO REPLACE THE EXISTING REGULATION**

1. In this Regulation,

"advertisement" includes any message expressed in any language and communicated in any medium to anyone in circumstances where a reasonable person would perceive the message as one which could influence the recipient's choice, opinion or behaviour;

"associated member" means a member who engages or engaged in the practice of chiropody as the employee of a principal member or who provides chiropody services to a principal member's patients at that member's office as an independent contractor;

"chiropody services" means professional services, products or devices provided within the scope of practice of chiropody;

"committee" includes a panel of a committee;

"designation" means the title chiropodist for a member who holds a certificate of registration as a chiropodist and podiatrist for a member who holds a certificate of registration as a podiatrist;

"principal member" means

- (a) a member with whom an associated member practises or practised as an employee or independent contractor, or

- (b) a member with whom a member engages or engaged in the practice of chiropractic as a partner;

"service agreement" means an agreement to provide chiropractic services for a patient that are not insured services under the *Health Insurance Act* on a basis other than fee for service or where the responsibility for payment is with a person other than the patient or the patient's guardian.

- 2. The following are acts of professional misconduct for the purposes of clause 51(1)(c) of the Health Professions Procedural Code:
  - 1. Contravening a term, condition or limitation existing on the member's certificate of registration.
  - 2. Knowingly permitting, counselling or assisting another member to contravene a term, condition or limitation existing on that member's certificate of registration.
  - 3. Failing to maintain a standard of practice of the profession.
  - 4. Doing anything to a patient without consent for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose in a situation in which a consent is required by law.
  - 5. Delegating a controlled act authorized under this Act unless there is a regulation under the Act specifically permitting such delegation.
  - 6. Authorizing a person employed or engaged within the member's practice, to perform a procedure that is within the scope of practice of chiropractic

but which is not a controlled act, without first ensuring that the person is competent to perform that procedure safely and effectively.

7. Abusing a patient.
8. Practising the profession while the member's ability to do so is impaired by any substance.
9. Permitting, counselling or assisting an associated member or partner to practise the profession in circumstances where the member knew or ought to have known that the associated member or partner's ability to do so was impaired by any substance.
10. Prescribing or administering drugs for an improper purpose or improperly using the authority to prescribe or administer drugs.
11. Discontinuing, without reasonable cause, chiropody services that are needed, other than services provided under a service agreement, unless,
  - i. the patient requests the discontinuation,
  - ii. alternative services are arranged, or
  - iii. the patient is given a reasonable opportunity to arrange alternative services.
12. Breaching the terms of an agreement between the member and a hospital, nursing home or other facility or agency through or on behalf of which the member provides chiropody services to the public.

13. Engaging in the practice of chiropractic while the member has a conflict of interest as described in section 3.
14. Giving information about a patient to a person other than the patient or his or her authorized representative except with the consent of the patient or his or authorized representative or as required by law.
15. Failing, without reasonable cause, to satisfy the terms of a service agreement or any arrangement for a patient respecting the provision of chiropractic services.
16. Failing to ensure that a service agreement with a patient
  - i. is written;
  - ii. is maintained in or available as part of the patient record;
  - iii. identifies the person or persons entitled to professional services under it and the professional services to which they are entitled;
  - iv. specifies particulars of all payments to be made under it including the person responsible for making the payments;
  - v. states the period of time it will be in force; and
  - vi. specifies the obligations of the parties in the event that the member is unable to provide the services covered by the agreement, including the obligation to make further payments and the application of payments previously made.

17. Failing, without reasonable cause, to provide the services under a service agreement, unless,
  - i. the period specified by the agreement has expired, or
  - ii. the patient is given at least five business days notice of the member's intention to discontinue the services.
18. Failing to reveal the exact nature of a remedy or treatment used by the member within a reasonable period of time after receiving a patient's request to do so.
19. Making a misrepresentation about a drug, substance, product, remedy, treatment or device.
20. Providing treatment to a patient where a reasonably prudent member ought to have known that the provision of the treatment would be ineffective, unnecessary or detrimental to the patient or would be inappropriate to meet the needs of the patient.
21. Selling a product or chiropody device to a patient unless it is required for the prevention, treatment or management of a disease, disorder or dysfunction of the foot.
22. Failing to advise the patient to consult with an appropriate regulated health professional where a reasonably prudent member ought to have recognized that a patient suffers from a condition that was beyond the member's competence

23. Treating or attempting to treat a condition that the member ought to have recognized was beyond the member's competence.
24. Failing to take reasonable steps to prevent an associated member or partner from committing or repeating an act of professional misconduct or incompetence in the principal member's or partner's office.
25. Using a name other than the member's name, as set out in the register, in the course of providing or offering to provide chiropody services.
26. Failing to use, after the member's name, the member's designation in the course of providing or offering to provide chiropody services.
27. Publishing, displaying, distributing, using, causing or permitting, directly or indirectly, the publication, display, distribution or use of any advertisement related to a member's practice which
  - i. as a result of its content or method or frequency of dissemination, would be reasonably regarded by members as likely to demean the integrity or dignity of the profession or bring the profession into disrepute;
  - ii. includes information that,
    - (a) is false, misleading, fraudulent, deceptive, ambiguous or confusing or likely to mislead or deceive the public, because in context it makes only partial disclosure of relevant facts,
    - (b) is not relevant to the public's ability to make an informed choice which, without limiting the generality of the

foregoing, shall include a reference to a drug or particular brand of equipment used to provide chiropody services or an endorsement by any person or organization; or

- iii. is not verifiable by facts or can only be verified by a person's personal feelings, beliefs, opinions or interpretations; or
  - iv. makes comparisons that would be reasonably regarded as suggestive of uniqueness or superiority over another practice or member.
- 28. Appearing in or permitting the use of the member's name in an advertisement that is for a purpose other than the promotion of the member's own practice, if the advertisement implies or could be reasonably interpreted as implying that the professional expertise of the member is relevant to the subject matter of the advertisement.
  - 29. Subject to section 4, contacting, directly or indirectly, a potential patient by any means of individualized communication in a manner which would be reasonably perceived as an attempt to solicit patients.
  - 30. Failing to keep records as required by the regulations or as required by the standards of practice of the profession.
  - 31. Falsifying a record relating to the member's practice.
  - 32. Failing, without reasonable cause, to provide within a reasonable time, a report or certificate relating to an examination or treatment performed by the member to the patient or his or her authorized representative after a patient or his or her authorized representative has requested such a report or certificate.

33. Signing or issuing in the member's professional capacity a certificate, report, prescription or other document
  - i. that contains a false or misleading statement, or
  - ii. without taking reasonable measures to ascertain the accuracy of its contents, or
  - iii. for a person who has not been examined by the member.
34. Submitting an account or charge for chiropractic services that the member ought to have known contained false or misleading information.
35. Charging a fee or an amount that is excessive in relation to the chiropractic services provided.
36. If the patient or the patient's authorized representative so requests, failing to notify the patient or the patient's authorized representative of the fees or amounts to be charged for the member's chiropractic services prior to rendering them.
37. Failing to provide a statement of account to a patient upon the completion of chiropractic services.
38. Accepting an amount in full payment of an account or charge that is less than the full amount of the account or charge submitted by the member to a third party payer, unless the member has made reasonable efforts to collect the balance from the patient or has the written consent of the third party payer.

39. Failing to itemize an account for chiropody services,
  - 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
  - ii. if the account includes a fee in relation to the provision of a product or chiropody device required for the prevention, treatment or management of a disease, disorder or dysfunction of the foot.
40. Failing to explain, if requested to do so by the patient or the patient's authorized representative, the chiropody services provided and the fees or amounts charged for each service using terminology understandable to the patient.
41. Selling, assigning, pledging or encumbering any debt owed to the member for chiropody services, products or devices where the security interest would permit the holder to enforce collection of money owed by a patient or to contact the member's patients to attempt to collect these monies.
42. Accepting a credit card to obtain payment for chiropody services unless the provider of the credit card agrees to rely solely on the provider's agreement with the credit card holder or the credit card sales slip, and not on the patient records, to enforce payment.
43. Subject to section 5, engaging in any form of fee splitting or income sharing with any person other than
  - i. an associated member;
  - ii. a principal member;

- iii. the member's partner; or
  - iv. a health profession corporation which holds a certificate of authorization issued by the College.
44. Where the member agrees to provide chiropody services on a fee-for-service basis and accepts payment in advance of completion of the chiropody services, failing to
- i. provide the patient with full particulars of all payments to be made;
  - ii. ensure that the agreement with the patient specifies the obligations of the member and the patient in the event that the member is unable to complete the chiropody services, including the obligation to make further payments and the application of payments previously made; and
  - iii. record the information specified in clauses (a) and (b) in the patient record.
45. Directly or indirectly benefiting from the practice of chiropody while the member's certificate of registration is suspended.
46. Knowingly permitting, counselling or assisting another member to benefit either directly or indirectly from the practice of chiropody while that member's certificate of registration is suspended.
47. Permitting, counselling or assisting another member to engage in the practice of chiropody when the member ought to have known that the other member's certificate of registration was suspended or revoked.

48. When an associated member and a principal member cease to engage in practice with each other or when a partnership of principal members dissolves, failing to provide to any patient who requests it the business address and telephone number of the member's associated member or partner, provided the member has or could reasonably obtain the information.
49. Failing to make arrangements with a patient for the transfer of the patient record or a copy thereof when
  - i. the member ceases to practise, or
  - ii. the patient requests the transfer.

#### **MISCELLANEOUS MATTERS**

50. Contravening the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts.
51. Contravening a federal, provincial or territorial law, a municipal by-law or a by-law or rule of a hospital or a public hospital within the meaning of the *Public Hospitals Act*, a nursing home or other long-term care facility or agency relevant to the provision of chiropody services to the public.
52. Influencing a patient, directly or indirectly, to change his or her will or other testamentary instrument.
53. Failing to reply appropriately and within thirty days to any written inquiry from the College, including its Registrar, or a committee of the College.

54. Failing to take reasonable steps to ensure that any information provided by or on behalf of the member to the College, including any committee of the College, is accurate.
55. Providing false or misleading information to the College including any committee of the College.
56. Failing to comply with an order of any committee of the College.
57. Knowingly permitting counselling or assisting another member in failing to comply with an order of any committee of the College.
58. Failing to abide by a written undertaking given by the member to the College, including any committee of the College, or to carry out a written agreement entered into with the College, including a committee of the College.
59. Failing to pay a fee or amount owed to the College after reasonable notice of payment due has been given.
60. Where a member is a director or officer of a health profession corporation which has been issued a certificate of authorization by the College, failing to ensure that the College is notified promptly, in writing,
  - i. of any change to the practice location of the health profession corporation,
  - ii. of any change to the member shareholders of the health profession corporation, including particulars of the date of change and the name and registration numbers of each new member shareholder and each member who ceased to be a shareholder, and

- iii. if the member ceased to be a director or officer of the health profession corporation, including the date the member ceased to be a director or officer of that health profession corporation.
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- 61. Where a member is a shareholder of a health profession corporation which has been issued a certificate of authorization by the College, failing to notify the College immediately, in writing, if the member ceases to be a shareholder of that health profession corporation, including the date upon which the member ceased to be shareholder of that health profession corporation.
  - 62. Refusing to allow an authorized representative of the College to enter during business hours any premises in which the member carries on the practice of chiropody for the purpose of inspecting or investigating the member's practice, records or equipment or for any other purpose authorized by the Act or a regulation under the Act.
  - 63. Failing to co-operate with a representative of another College on production of an appointment under section 75 of the Health Professions Procedural Code of the *Regulated Health Professions Act, 1991* or to provide access to or provide copies of a record, document, or thing that may be reasonably required for the purposes of an investigation under the Health Professions Procedural Code of the *Regulated Health Professions Act, 1991*.
  - 64. Engaging in conduct or performing an act in the course of practising the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

3. (1) In this section,

"benefit" means any incentive or inducement of more than nominal value, whether direct or indirect, and includes a rebate, credit or gift but does not include a reasonable discount based on volume or prompt payment offered in the ordinary course of business;

"member's health profession corporation" means a health profession corporation which has been issued a certificate of authorization by the College and in which the member is a shareholder;

"related corporation" means a corporation wholly or substantially owned or controlled by the member or a related person and includes a member's health profession corporation;

"related person" means 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, namely:

1. child or spouse of a child
2. grandchild or spouse of a grandchild
3. parent or spouse of a parent
4. grandparent or spouse of a grandparent
5. sibling or spouse of a sibling,

and in respect of the definition of related person,

"child" has the meaning ascribed to it under the *Family Law Act, Ontario*,

"parent" has the meaning ascribed to it under the *Family Law Act, Ontario*, and

"spouse" includes the spouse as defined under the *Family Law Act, Ontario* as well as a person with whom the person is living in a conjugal relationship outside of marriage.

- (2) Subject to subsection (4), a member has a conflict of interest
- (a) where a reasonable person knowing the relevant facts would conclude or perceive that the exercise of the member's professional judgment is or 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; and
  - (b) where the member or related person or 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 a member's professional judgment or influencing or impeding a member's ability to engage in the practice of chiropody in an ethical manner or in accordance with the standards of practice of the profession.
- (3) Notwithstanding any other provision in this section, a member shall be deemed to have a conflict of interest where the member or related person or related corporation directly or indirectly,
- (a) enters into any agreement respecting a lease or use of premises or equipment related to the member's practice under which any amount payable by or to a member or a related person or related corporation is related to the amount of fees or amounts charged by the member;

- (b) accepts or receives a benefit by reason of the referral of a patient to any other person;
  - (c) offers, makes or confers a benefit to a person by reason of the referral of a patient to the member or a related corporation;
  - (d) offers, makes or confers a benefit to a patient other than,
    - i. an adjustment in the fee or amount that would otherwise be charged by the member or a related corporation with regard to that patient, or
    - ii. the provision to the patient, at no charge, of chiropody devices or products or supplies of a nominal value to be used in maintaining or promoting well-being or foot care; and
  - (e) accepts, makes or confers a benefit in respect of a drug, device or product, including those intended to be dispensed to patients.
- (4) Subject to subsection (5), no conflict of interest shall arise under clause (a) of subsection (2) if the member,
- (a) discloses his or her financial interest to the patient in advance of providing the service; and
  - (b) maintains the standards of practice of the profession relating to the service.
- (5) A member shall not be required to disclose his or her financial interest in the member's health profession corporation in order to obtain the benefit of subsection (4) provided that the fact that the member engages in practice within a health profession corporation is made known to the patient.

4. The sending of an announcement announcing the commencement or change in location of an associated member's or partner's practice to patients treated by the associated member or partner, provided that the announcement contains only information that is reasonably necessary to enable a patient to determine the location and nature of the practice of the associated member or partner, does not constitute the solicitation of the principal member's patients.
  
5. Paragraph 43 of section 2 shall not be interpreted as prohibiting a member from engaging an agent to collect monies owed to the member on terms which permit the agent to retain a portion of any amount collected.