

COLLEGE OF MASSAGE THERAPISTS OF ONTARIO

DRAFT PROPOSED CHANGES TO THE PROFESSIONAL MISCONDUCT REGULATIONS OF CMTO'S GENERAL REGULATION

Table Outlining Proposed Changes and Rationales

Table Row Number	Current Language	Proposed Language	Rationale
	<b>PART VIII PROFESSIONAL MISCONDUCT</b>	<b>PART VIII PROFESSIONAL MISCONDUCT</b>	
	<b>26.</b> The following are acts of professional misconduct for the purposes of clause 51 (1) (c) of the Health Professions Procedural Code:	<b>26.</b> The following are acts of professional misconduct for the purposes of clause 51 (1) (c) of the Health Professions Procedural Code:	
1.	<b>ADVERTISING</b> 1. Advertising or permitting advertising with respect to the member's practice in contravention of the regulations under the Act.	<b>ADVERTISING</b> 1. Advertising or permitting advertising with respect to the member's practice in contravention of the regulations under the Act.	
2.	<b>RECORDS</b> 2. Allowing any person to examine a client health record or giving any information, copy or thing from a client health record to any person except as required or allowed by law.	<b>RECORDS</b> 2. <del>Allowing any person to examine a client health record or giving any information, copy or thing from a client health record to any person except as required or allowed by law.</del> <b>Failing to keep confidential personal health information or other personal information concerning a client, except with the consent of the client or the client's authorized representative or as permitted or required by law.</b>	Updated language to make the intent clearer and use language consistent with other health Colleges' Regulations.
3.	3. Failing to provide copies from a client health record for which the member has primary responsibility, as required by the regulations under the Act.	3. <b>[Repeal]</b>	Registrants must provide access to records in accordance with the Personal Health Information Protection Act, 2004. A failure to do so would be professional misconduct under paragraph 43 (contravening a law)
4.	4. Failing to make arrangements with a client for the transfer of the client's records in the care of the member,	4. Failing to make arrangements with a client for the transfer of the client's records in the care of the member, i. when the member retires from practice,	

	<p>i. when the member retires from practice,</p> <p>ii. when the member changes office location and the client requests that the records be transferred, or</p> <p>iii. when requested to do so by the client.</p>	<p>ii. when the member changes office location and the client requests that the records be transferred, or</p> <p>iii. when requested to do so by the client.</p> <p>4.1.Failing to keep records as required by any applicable regulations or in accordance with the standards of practice of the profession or a published standard of the College.</p> <p>4.2.Falsifying a record relating to the member’s practice.</p> <p>4.3.Failing, without reasonable cause, to provide a report or certificate relating to an examination or treatment performed by the member, within a reasonable time, to the client or their authorized representative after a client or their authorized representative has requested such a report or certificate.</p> <p>4.4Signing or issuing, in the member’s professional capacity, a document that the member knows or ought to know contains a false or misleading statement.</p>	<p>The paragraphs that were formerly under the heading “Record Keeping” have been moved up to the Records section as it’s not necessary to have a section on “Records” and a separate section on “Record Keeping”. Current paragraph 26. Added “by any applicable regulations or in accordance with the standards of practice of the profession or a published standard of the College.” to provide further clarity regarding expectation.</p> <p>Current paragraph 27.</p> <p>Current paragraph 28.</p> <p>Current paragraph 29 with “ought to know” added.</p>
	<b>THE PRACTICE OF THE PROFESSION AND THE CARE OF, AND RELATIONSHIP WITH, CLIENTS</b>	<b>THE PRACTICE OF THE PROFESSION AND THE CARE OF, AND RELATIONSHIP WITH, CLIENTS</b>	
5.	5. Contravening a term, condition or limitation imposed on the member’s certificate of registration.	5. Contravening a term, condition or limitation imposed on the member’s certificate of registration.	Some conditions are on all members’ certificates by virtue of the Registration Regulation. The word “imposed” may suggest that this only applies to TCLs that a committee imposed.
6.	6. Contravening a standard of practice of the profession or a published standard of the College, or failing to maintain the standard of practice of the profession.	6. Contravening, <b>by act or omission</b> , a standard of practice of the profession or a published standard of the College, or failing to maintain the standard of practice of the profession.	<p>The proposed language is clearer to the membership what they’re being held to.</p> <p>It is important for massage therapists to be held accountable to the same standard, in terms of professional misconduct, as other health professionals as this enables broader consistency in health professional accountability. This language is more consistent with other health colleges with recently approved regulations and the Ministry likes the language to be consistent amongst health colleges.</p>
7.	7. Doing anything to a client for a therapeutic, preventative, palliative, cosmetic or other health-related purpose in a situation in which a consent is required by law, without such a consent.	7. Doing anything to a client for a therapeutic, preventative, palliative, cosmetic or other health-related purpose <b>except</b> , <b>i. with the informed consent of the client or the client’s authorized representative, or</b> <b>ii. as required or authorized by law. in a situation in which a consent is required by law, without such a consent.</b>	Updated language to make acting without consent the exception. Similar language is used in other health College’s Regulations.

8.	8. Abusing a client, verbally or physically.	8. Abusing a client, verbally, <del>or</del> physically, <del>psychologically or emotionally.</del>	The proposed language is more consistent with other health Colleges with recently approved regulations.
9.	9. Practising the profession while the member's ability to do so is impaired by any substance.	9. Practising the profession while the member's ability to do so is impaired <del>by any substance.</del> <b>or adversely affected by any substance, condition or dysfunction which the member knows or ought to know impairs or adversely affects their ability to practice safely.</b>	The proposed language is more consistent with other health colleges with recently approved regulations and is clearer in its intent. Focusing on use of substances only does not address the underlying issue(s) or other conditions that may impact a registrant's ability to practice.
10.	10. Discontinuing professional services that are needed unless, i. the client requests the discontinuation, ii. alternative services are arranged, iii. the client is given a reasonable opportunity to arrange alternative services, or iv. the client is abusive, and the member has made all reasonable attempts to arrange alternative services.	10. Discontinuing professional services that are needed unless, i. the client requests the discontinuation, ii. alternative services are arranged, <b>or</b> iii. the client is given a reasonable opportunity to arrange alternative services, <del>or</del> <del>iv. the client is abusive, and the member has made all reasonable attempts to arrange alternative services.</del>	Subparagraph iv is likely not required as all situations are likely covered by i, ii and iii. If a client was abusive, that would be considered in whether the client was given a "reasonable" opportunity to arrange alternative services.
11.	11. Practising the profession while the member is in a conflict of interest.	11. <del>Practising the profession while the member is in</del> <b>Acting in a professional capacity while in</b> a conflict of interest.	The proposed language is clearer in its intent and is more consistent with other health colleges with recently approved regulations.
12.	12. Breaching an agreement with a client relating to professional services for the client or fees for such services.	12. Breaching an agreement with a client relating to professional services for the client or fees for such services.	
13.	13. Receiving any form of benefit from the practice of massage therapy while under suspension 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.	13. [Repeal] <b>13.1 Practising the profession while the member's certificate of registration has been suspended.</b>	Shifting the focus towards the risk that needs to be mitigated (practicing while suspended). If "practising while suspended" (proposed paragraph 13.1) is added, paragraph 13 is no longer necessary and does not require specific mention.
14.	14. Employing or otherwise benefiting from a suspended member with respect to the practice of massage therapy 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.	14. [Repeal]	If "practising while suspended" (proposed paragraph 13.1) and "Permitting, counselling or assisting any person who is not a member to hold himself or herself out as a member of the profession" (proposed paragraph 20.3) are added, this paragraph is longer necessary.
15.	15. Failing to maintain the member's practice premises in a safe and sanitary manner.	15. Failing to maintain the member's practice premises in a safe and sanitary manner.	
16.	16. Failing to reveal the exact nature of a secret remedy or treatment used by the member following a request to do so by a client, a client's representative or the College.	16. [Repeal]	Recommend repealing this paragraph. Clients should be aware of the ingredients contained in a remedy, but there may be instances in which a registrant may not want to divulge the specific composition of a remedy and this would not have a harmful impact on the client.

17.	17. Making a claim respecting the utility of a remedy, treatment, device or procedure other than a claim which can be supported as reasonable professional opinion.	17. Making a claim respecting the utility of a remedy, treatment, device or procedure other than a claim which can be supported as reasonable professional opinion.	
18.	18. Inappropriately using a term, title or designation in respect of the member's practice.	18. Inappropriately using a term, title or designation in respect of the member's practice.	
19.	19. 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 massage therapy.	19. 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 massage therapy.	
20.	20. Failing to identify himself or herself, by name or certificate number, on the request of a client, a client's representative or another health professional.	<p>20. Failing to identify <del>himself or herself</del> <b>oneself</b>, by name or certificate number, on the request of a client, a client's representative or another health professional.</p> <p><b>20.1 Performing a professional service or treatment that the member knows or ought to know he or she does not have the knowledge, skill or judgment to perform.</b></p> <p><b>20.2 Failing to refer a client to a qualified medical practitioner where the member recognizes or ought to recognize a condition which requires medical examination.</b></p> <p><b>20.3 Permitting, counselling or assisting any person who is not a member to hold oneself out as a member of the profession</b></p>	<p>Consider this alternative wording instead of the current: "Treating or attempting to treat a condition beyond the member's competence" at current paragraph 45. Consistent with some other health Colleges.</p> <p>Moved up from "Miscellaneous" heading. Current paragraph 46.</p> <p>Added paragraph. Other health Colleges have similar paragraphs and it is clearer in its intent and the expectation vs. current paragraph 14.</p>
21.	21. Failing to pay any money owing to the College.	21. <b>[Repeal]</b>	Recommend moving this paragraph to the "Miscellaneous" section below, which has other paragraphs regarding conduct toward the College as it does not appear to fit under the heading regarding conduct toward clients. Proposed paragraph 50.
22.	22. Failing to take reasonable steps to ensure that any information provided by or on behalf of the member to the College is accurate.	22. <b>[Repeal]</b>	Recommend moving this paragraph to the "Miscellaneous" section below, which has other paragraphs regarding conduct toward the College as it does not appear to fit under the heading regarding conduct toward clients. Proposed paragraph 51 with updated language.
23.	23. Failing to reply appropriately or within a reasonable time to a written inquiry made by the College that requests a response.	23. <b>[Repeal]</b>	Recommend moving this paragraph to the "Miscellaneous" section below, which has other paragraphs regarding conduct toward the College as it does not appear to fit under the heading regarding conduct toward clients. Proposed paragraph 52.
24.	24. Failing to attend an oral caution of the Complaints Committee or an oral reprimand of the Discipline Committee.	24. <b>[Repeal]</b>	Recommend moving this paragraph to the "Miscellaneous" section below, which has other paragraphs regarding conduct toward the College as it does not appear to fit under

			the heading regarding conduct toward clients. Proposed paragraph 53 with updated language.
25.	25. Failing to permit entry at a reasonable time or to co-operate with an authorized representative of the College conducting an inspection or examination of the member's office, records, equipment or practice.	25. <del>[Repeal]</del>	Recommend moving this paragraph to the "Miscellaneous" section below, which has other paragraphs regarding conduct toward the College as it does not appear to fit under the heading regarding conduct toward clients. Proposed paragraph 54 with updated language.
	<b>RECORD KEEPING</b>	<del><b>RECORD KEEPING</b></del>	Moved paragraphs to "Records" section as it's not necessary to have under separate section.
26.	26. Failing to keep records as required.	26. <del>[Repeal]</del>	Moved to "Records" section and reworded. Proposed paragraph 4.1
27.	27. Falsifying a record relating to the member's practice.	27. <del>[Repeal]</del>	Moved to "Records" section. Proposed paragraph 4.2.
28.	28. Failing, without reasonable cause, to provide a report or certificate relating to an examination or treatment performed by the member, within a reasonable time, to the client or his or her authorized representative after a client or his or her authorized representative has requested such a report or certificate.	28. <del>[Repeal]</del>	Moved to "Records" section. Proposed paragraph 4.3.
29.	29. Signing or issuing, in the member's professional capacity, a document that the member knows contains a false or misleading statement.	29. <del>[Repeal]</del>	Moved to "Records" section and reworded. Proposed paragraph 4.4.
	<b>BUSINESS PRACTICES</b>	<b>BUSINESS PRACTICES</b>	
30.	30. Submitting an account or charge for services that the member knows is false or misleading.	30. Submitting an account or charge for services that the member knows or ought to know is false or misleading.  30.1. <del>Failing to take reasonable steps to ensure that any receipts, accounts or charges issued in the member's name or with the member's registration number are fair and accurate.</del>  30.2 <del>Signing or issuing a receipt for professional services unless the member provides the professional services.</del>	This is a common concern that comes up before the Inquiries, Complaints and Reports (ICRC) and Discipline Committee. Other health Colleges have a similar paragraph in their Professional Misconduct Regulation.  This is another common concern before the ICRC and Discipline Committee. Other health Colleges have a similar paragraph in their Professional Misconduct Regulation.
31.	31. Charging or accepting a fee or amount that is excessive or unreasonable in relation to the services performed.	31. Charging or accepting a fee or amount that is excessive or unreasonable in relation to the services performed.	
32.	32. Failing to post, in a location within the practice premises that is readily visible to members of the public, the fees for professional services provided by the member.	32. Failing to post, in a location within the practice premises that is readily visible to members of the public, the fees for professional services provided by the member.	

33.	33. Charging a fee in excess of the posted fees, without the prior informed consent of the client.	33. Charging a fee <del>in excess</del> <b>outside</b> of the posted fees, without the prior informed consent of the client.	
34.	34. Charging a fee less than the posted fees without noting the reduction and the reasons for it in the client's financial record.	34. <b>[Repeal]</b>	Likely unnecessary. The record keeping paragraphs already require registrants to keep financial records of the amount charged. In addition, the rewording of paragraph 33 addresses this.
35.	35. Charging or accepting a fee or amount under any agreement, if the fee or amount is excessive or unreasonable having regard to the services to be performed or that may be performed under the agreement.	35. <b>[Repeal]</b>	Appears repetitive of paragraph 31 above.
36.	36. Failing to advise, in advance of services being rendered, of the fees proposed to be charged for the services to be rendered.	36. Failing to advise, in advance of services being rendered, of the fees proposed to be charged for the services to be rendered.	
37.	37. Failing to abide by a written undertaking given by the member to the College or to carry out an agreement entered into with the College.	37. <b>[Repeal]</b>	Recommend moving this paragraph below to "Miscellaneous" where the other paragraphs related to the College are listed (proposed paragraph 55).
38.	38. Offering or giving a reduction for prompt payment of an account.	38. <b>[Repeal]</b>	This paragraph may no longer be required. Although some other health Colleges have this paragraph, it is not regularly prosecuted. Businesses that provide discounts to clients for purchasing multiple massages in advance could be perceived as breaching this paragraph. In addition, the Patients First Act articulated that regulators should focus on care provided by registrants vs. general business practices.
39.	39. Failing to itemize an account for professional services, if requested to do so by the client or the person or agency who is to pay, in whole or in part, for the services.	39. Failing to itemize an account for professional services, if requested to do so by the client or the person or agency who is to pay, in whole or in part, for the services.	
40.	40. Selling or assigning any debt owed to the member for professional services. This does not include the use of credit cards to pay for professional services.	40. Selling or assigning any debt owed to the member for professional services. This does not include the use of credit cards to pay for professional services.	
	<b>MISCELLANEOUS MATTERS</b>	<b>MISCELLANEOUS MATTERS</b>	
41.	41. Contravening the Act, the <i>Regulated Health Professions Act, 1991</i> or the regulations under either of those Acts.	41. Contravening the Act, the <i>Regulated Health Professions Act, 1991</i> or the regulations under either of those Acts.	
42.	42. Failing to comply with section 27 respecting the use of a practice name.	42. <b>[Repeal]</b>	Proposing to repeal s. 27. Therefore, this paragraph becomes unnecessary. See comments on s.27 below.
43.	43. Contravening a federal, provincial or territorial law, a municipal by-law or a by-law or rule of a hospital, within the meaning of the <i>Public Hospitals Act</i> if,  i. the purpose of the law, by-law or rule is to protect the public health, or	43. Contravening a federal, provincial or territorial law, a municipal by-law or a by-law or rule of a hospital, within the meaning of the <i>Public Hospitals Act</i> if,	

	ii. the contravention is relevant to the member's suitability to practise.	i. the purpose of the law, by-law or rule is to protect the public health, or  ii. the contravention is relevant to the member's suitability to practise.	
44.	44. Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.	44. Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.	
45.	45. Treating or attempting to treat a condition beyond the member's competence.	45. [Repeal]	Recommend moving this paragraph above to the "The Practice of the Profession and the Care of, and Relationship with, Clients" section and reworded (proposed paragraph 20.1).
46.	46. Failing to refer a client to a qualified medical practitioner where the member recognizes or ought to have recognized a condition which requires medical examination.	46. [Repeal]	Recommend moving this paragraph above to the "The Practice of the Profession and the Care of, and Relationship with, Clients" section (proposed paragraph 20.2).
47.	47. With respect to the information return required under Ontario Regulation 864/93 (Registration) made under the Act on the renewal of a certificate of registration, making a false or misleading statement or declaration or failing to fully provide the information required.	47. [Repeal]	This language is complicated and potentially difficult to understand. There is already a paragraph for failing to take steps to ensure information provided to the College is accurate (current paragraph 22, proposed paragraph 51).  This is also captured by "contravening a term, condition or limitation" (paragraph 5) since the Registration Regulation makes it a condition to comply with the by-laws.
48.	48. Verbally or physically abusing an employee, agent, officer or other representative of the College.	48. Verbally or physically abusing an employee, agent, officer or other representative of the College.	
49.	49. Engaging in conduct that would reasonably be regarded by members as conduct unbecoming a massage therapist. O. Reg. 748/94, s. 2; O. Reg. 208/07, s. 1.	49. Engaging in conduct that would reasonably be regarded by members as conduct unbecoming a massage therapist. O. Reg. 748/94, s. 2; O. Reg. 208/07, s. 1.	
50.		50. Failing to pay any money owing to the College.	Currently paragraph 21
51.		51. Providing false or misleading information to the College or failing to take reasonable steps to ensure that any information provided by or on behalf of the member to the College is accurate.	Currently paragraph 22. Added "Providing false or misleading information to the College".
52.		52. Failing to reply appropriately or within a reasonable time to a written inquiry made by the College that requests a response.	Currently paragraph 23

53.		53. Failing to comply with an order or direction of a Committee or a panel of a Committee of the College.	Revision of paragraph 24 with updated and broader language. The current version refers to failing to attend an oral caution of the Complaints Committee or an oral reprimand of the Discipline Committee.
54.		54. Failing to permit entry at a reasonable time or to co-operate with an authorized representative of the College conducting an investigation, assessment, inspection or examination of the member's office, records, equipment or practice.	Revision of current paragraph 25. Added "investigation" and "assessment".
55.		55. Failing to carry out or abide by an undertaking given to the College or breaching an agreement with the College.	Revision of current paragraph 37 with updated and clearer language. More consistent with other health Colleges.
56.		56. Failing to take reasonable steps to prevent sexual abuse of clients by any person working under the member's direction or supervision.	This paragraph is based on a recommendation from the Federation of Health Regulatory Colleges of Ontario (FHRCO) based on the Sexual Abuse Task Force Report recommendations. This paragraph proposes that registrants would be held responsible for preventing and addressing sexual abuse by their unregistered employees and agents.
57.	<p>27. (1) If a member practises under a practice name, the member shall notify the College in writing of the number and names of the persons working in the practice who are providing care to clients and, if they are members of the College, of their certificate number.</p> <p>(2) The member shall notify the College of any change in the information referred to in subsection (1) within 30 days of the change.</p> <p>(3) If a member practises under a practice name, the member shall use a practice name that is reasonably referable to and describes the location of the practice or that has been approved by the Executive Committee. O. Reg. 748/94, s. 2.</p>	<p>27. (1) [Repeal]</p> <p>27. (2) [Repeal]</p> <p>27. (3) [Repeal]</p>	<p>These provisions have not been regularly enforced by the College.</p> <p>Paragraph 27(1) and (2) are more appropriately addressed within CMTO's by-laws (information to be provided by registrants and the timing of providing this information). Currently, CMTO's by-law 8 paragraph 5(A) requires registrants to provide the following: "The practice name, business address, telephone number, website address and email address, if any, of each location where the registrant practices"</p> <p>Locating related information in one place allows for greater consistency and clarity.</p>