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## **Professional Practice & Jurisprudence**

*for*

***Registered Homeopaths***

**Notes:**



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## College of Homeopaths of Ontario Jurisprudence Program – Course Outline Fall 2013

Topic Description	Jurisprudence Manual Page #	Other References	Competency
<p><b>Welcome to this Program</b>            Overview of Jurisprudence Program</p> <ul style="list-style-type: none"> <li>• Concept of self-regulation and professionalism</li> <li>• Proper communication with clients/patients and colleagues fundamental to a professional practice</li> <li>• Application of various laws</li> </ul> <p>Use of navigation tool bars and basic functions in each module of the program including quizzes and how to leave or pause the program.</p>	Page 6	<ul style="list-style-type: none"> <li>• <i>Regulated Health Professions Act, 1991 (RHPA)</i></li> <li>• <i>Homeopathy Act, 2007</i></li> </ul>	
<p><b>Self-Regulation – Quiz 1</b>            The goal of this lesson is to familiarize you with the purpose of the College of Homeopaths and to introduce the concept of self-regulation.</p> <p>At the end of this lesson, you will be able to:</p> <ul style="list-style-type: none"> <li>• Recognize the duties of homeopaths</li> <li>• Describe the concept of self-regulation</li> <li>• Identify the safeguards</li> </ul>	Page 6	<ul style="list-style-type: none"> <li>• <i>RHPA</i></li> <li>• <i>Homeopathy Act</i></li> <li>• College of Homeopaths Bylaws</li> <li>• Regulations:               <ul style="list-style-type: none"> <li>○ Registration</li> <li>○ Quality Assurance</li> <li>○ Professional Misconduct</li> </ul> </li> </ul>	Reviews 1.2, 3.5
<p><b>Professionalism – Quiz 2</b>            At the end of this lesson, you will be able to:</p> <ul style="list-style-type: none"> <li>• Identify the purpose of the Code of Ethics</li> <li>• Recognize common ethical principles</li> <li>• Identify the role of professional standards</li> <li>• Determine what constitutes professional misconduct</li> <li>• Define “incompetency” and “incapacity”</li> </ul>	Page 11	<ul style="list-style-type: none"> <li>• Standard on Principles of Professional Ethics (Code of Ethics)</li> <li>• Standards and Guidelines of Professional Practice (all)</li> <li>• Professional Misconduct Regulation</li> </ul>	
<p><b>Informed Consent – Quiz 3</b>            The goal of this lesson is to review the guidelines related to informed consent.</p> <p>At the end of this lesson, you will be able to:</p> <ul style="list-style-type: none"> <li>• Explain effective communication as it relates to informed consent</li> <li>• Identify the requirements for valid and informed consent</li> <li>• Identify ways to obtain consent</li> <li>• Determine when patients are incapable</li> <li>• Identify requirements for substitute decision makers</li> <li>• Determine what to do in an emergency</li> </ul>	Page 26	<ul style="list-style-type: none"> <li>• Standard Professional Practice on:               <ul style="list-style-type: none"> <li>○ Informed Consent</li> <li>○ Medical Emergency Preparedness</li> <li>○ Guideline on Patient Communication and Physical Examination</li> </ul> </li> <li>• <i>Health Care Consent Act</i></li> </ul>	Reviews 1.5 Tests 3.4

Topic Description	Jurisprudence Manual Page #	Other References	Competency
<p><b>Professional Boundaries – Quiz 4</b> Homeopaths must maintain professional boundaries in order to successfully provide professional services.</p> <p>The goal of this lesson is to review professional boundaries as well as the possible result of violating these boundaries.</p> <p>At the end of this lesson, you will be able to:</p> <ul style="list-style-type: none"> <li>• Identify types of boundary violations, including: <ul style="list-style-type: none"> <li>○ Self-Disclosure</li> <li>○ Giving and receiving gifts</li> <li>○ Dual Relationships</li> <li>○ Ignoring established customs</li> <li>○ Personal option/reactions</li> <li>○ Touching/disrobing</li> </ul> </li> <li>• Recognize forms of sexual abuse</li> <li>• Identify the consequences of sexual abuse</li> </ul>	Page 36	<ul style="list-style-type: none"> <li>• <i>RHPA</i></li> <li>• Professional Practice Standard on Therapeutic Relationships and Professional Boundaries</li> <li>• Guideline on Patient Communication and Physical Examination</li> <li>• College's Plan on Sexual Abuse (Patient Relations Program to be launched 2014)</li> </ul>	
<p><b>Billing and Collaboration – Quiz 5</b> Effective communication is important when collaborating with other health care providers and when establishing fees for services.</p> <p>The goal of this lesson is to review protocol for interprofessional collaboration and for billing.</p> <p>At the end of this lesson, you will be able to:</p> <ul style="list-style-type: none"> <li>• Identify the benefits of interprofessional collaboration</li> <li>• Determine the role of the College, homeopaths and patients</li> <li>• Recognize issues that may arise when collaborating</li> <li>• Identify regulations regarding billing</li> </ul>	Page 44	Standards of Professional Practice on: <ul style="list-style-type: none"> <li>• Fees and Billing</li> <li>• Record Keeping and Privacy of Information</li> <li>• Concurrent Treatment</li> <li>• Guideline on Interprofessional Collaboration</li> <li>• Guideline on Patient Communication and Physical Examination</li> </ul>	Tests 3.6
<p><b>Regulated Health Professions Act, Part 1 – Quiz 6</b> As a regulated health professional it is important for Homeopaths to understand the types of laws which effect the practice of the profession.</p> <p>The goal of this lesson is to introduce the Regulated Health Professions Act, 1991 (RHPA), as well as provisions related to controlled acts, scope of practice and use of titles.</p> <p>At the end of this lesson, you will be able to:</p> <ul style="list-style-type: none"> <li>• Identify the purpose of the RHPA</li> <li>• Recognize controlled acts</li> <li>• Determine exceptions to the controlled acts rule</li> <li>• Identify policy related to scope of practice</li> <li>• Determine guidelines pertaining to the use of professional titles and designations</li> </ul>	Page 48	<ul style="list-style-type: none"> <li>• <i>RHPA</i></li> <li>• Standard on Professional Practice on: <ul style="list-style-type: none"> <li>○ Scope of Practice</li> <li>○ Accepting Delegation of a Controlled Act</li> <li>○ Guideline on Title and Credentials</li> <li>○ Communicating a Homeopathic Assessment</li> <li>○ Prescribing</li> <li>○ Compounding</li> </ul> </li> <li>• <i>Natural Health Products Act</i></li> </ul>	Reviews 1.11



Topic Description	Jurisprudence Manual Page #	Other References	Competency
<p><b>Homeopathy Act and Regulations, Part 3 – Quiz 11</b> The goal of this lesson is to review provisions related to conflicts of interest and advertising.</p> <p>At the end of this lesson, you will be able to:</p> <ul style="list-style-type: none"> <li>• Recognize what may constitute a conflict of interest</li> <li>• Determine how to avoid conflicts of interest</li> <li>• Differentiate between appropriate and inappropriate forms of advertising</li> </ul>	Page 71	<ul style="list-style-type: none"> <li>• Standard on Professional Practice on Advertising</li> <li>• Interpretative Guide on Professional Conflict of Interest</li> </ul>	
<p><b>The College, Part 1 – Quiz 12</b> The goal of this lesson is to review processes related to registration, as well as complaints and discipline.</p> <p>At the end of this lesson, you will be able to:</p> <ul style="list-style-type: none"> <li>• Identify steps in the registration process</li> <li>• Recognize the process for investigating complaints</li> <li>• Identify provisions regarding discipline proceedings</li> </ul>	Page 75	<ul style="list-style-type: none"> <li>• <i>RHPA</i></li> <li>• <i>Regulated Health Professions Procedure Code</i></li> <li>• Health Professions Appeal and Review Board</li> <li>• Regulations <ul style="list-style-type: none"> <li>○ Registration</li> <li>○ Professional Misconduct</li> </ul> </li> </ul>	
<p><b>The College, Part 2 – Quiz 13</b> The goal of this lesson is to review the incapacity process and the quality assurance program.</p> <p>At the end of this lesson, you will be able to:</p> <ul style="list-style-type: none"> <li>• Identify the process for addressing incapacity concerns</li> <li>• Determine the purpose of the quality assurance program</li> <li>• Recognize components of the quality assurance program</li> </ul>	Page 80	<ul style="list-style-type: none"> <li>• <i>RHPA</i></li> <li>• Regulations <ul style="list-style-type: none"> <li>○ Quality Assurance</li> </ul> </li> </ul>	
<p><b>Privacy Laws – Quiz 14</b> The goal of this lesson is to review provisions under the Personal Health Information Protection Act (PHIPA) and the Personal Information Protection and Electronic Documents Act (PIPEDA), both which the use and disclosure of a patients personal information.</p> <p>At the end of this lesson, you will be able to:</p> <ul style="list-style-type: none"> <li>• Determine what constitutes personal health information</li> <li>• Identify protection measures</li> <li>• Recognize provisions related to collection, use, disclosure and access</li> <li>• Identify provisions related to personal information and commercial activity</li> </ul>	PHIPA Page 85  PIPEDA Page 91	<ul style="list-style-type: none"> <li>• Personal Health Information Protection Act (PHIPA)</li> <li>• Personal Information Protection and Electronic Documents Act (PIPEDA)</li> <li>• Office of the Information and Privacy Commissioner</li> </ul>	
<p><b>Consent and Mandatory Reporting – Quiz 15</b> There are specific acts that may permit collection, use and disclosure of personal health information despite privacy laws. Three of these acts include the Health Care Consent Act, Child and Family Services Act and the Long-Term Care Homes Acts.</p> <p>At the end of this lesson, you will be able to:</p> <ul style="list-style-type: none"> <li>• Recognize the role of the Consent and Capacity Board (CCB)</li> </ul>	Health Care Consent Act Page 92  Child and Family Services Act Page 93	<ul style="list-style-type: none"> <li>• Health Care Consent Act</li> <li>• Child and Family Services Act</li> </ul>	

Topic Description	Jurisprudence Manual Page #	Other References	Competency
<ul style="list-style-type: none"> <li>Identify situations in which homeopaths have a duty to report</li> </ul>	Long-Term Care Homes Acts Page 95	<ul style="list-style-type: none"> <li>Long-Term Care Homes Acts</li> <li>Standard on Professional Practice Mandatory Reporting on Patient Care</li> </ul>	
<p><b>Human Rights and Accessibility – Quiz 16</b></p> <p>Homeopaths need to be aware of the human rights and accessibility legislation in place which impact inaction with patients. This legislation includes the Human Rights Code and Accessibility for Ontarians with Disabilities Act (AODA).</p> <p>The goal of this lesson is to review provisions under the Human Rights Code and the AODA.</p> <p>At the end of this lesson, you will be able to:</p> <ul style="list-style-type: none"> <li>Recognize forms of discrimination</li> <li>Identify the duty to accommodate</li> <li>Identify consequences for human rights violations</li> <li>Determine the purpose of the AODA</li> <li>Recognize standards under the AODA</li> </ul>	Page 97	<ul style="list-style-type: none"> <li><i>Ontario Human Rights Code</i></li> <li><i>Accessibility for Ontarians with Disabilities Act</i></li> <li>Human Rights Tribunal of Ontario</li> <li>CHO Code of Ethics</li> <li>Standard of Professional Practice on: <ul style="list-style-type: none"> <li>Accepting New Patients</li> <li>Discontinuing Professional Services and Refusing Treatment</li> </ul> </li> </ul>	Reviews 1.3
<p><b>Jurisprudence Based Competencies – Quiz 17</b></p> <p>The goal of this lesson is to identify the Entry-to-Practice competencies for homeopaths practising in Ontario tested through the jurisprudence program.</p> <p>At the end of this lesson, you will be able to:</p> <ul style="list-style-type: none"> <li>Identify how some of these competencies directly relate to the jurisprudence program</li> <li>Demonstrate the required knowledge, skills and judgment to provide safe and competent care to patients</li> </ul>		<p><i>Competency Profile for Entry-to-Practice Homeopaths Practising in Ontario</i></p> <p><i>Individual Assessment Process</i></p>	Tests 1.2, 1.3, 1.4, 1.5, 1.10, 1.11, 2.17, 3.2, 3.5

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# Overview

The purpose of this handbook is to provide information on the ethical and legal framework within which Registered Homeopaths (HOMs) practise in Ontario.

There are three main sections to this handbook.

- Section 1 discusses professionalism and self-regulation and how these concepts apply to homeopaths. It explains the regulatory framework that governs self-regulation in Ontario, including setting out the role of the Regulatory College.
- Section 2 looks at patient-practitioner relationships; how open communication with patients and colleagues is fundamental to professional practice; and how this fits within the self-regulatory framework.
- Section 3 reviews the various laws that homeopaths are most likely to deal with in their practice.

## Glossary of Terms and Abbreviations

In this handbook there are a number of Acts that are referred to by their abbreviations including the following:

- *AODA - Accessibility for Ontarians with Disabilities Act, 2005*
- *CFSA - Child and Family Services Act, 1990*
- *HCCA - Health Care Consent Act, 1996*
- *MHA – Mental Health Act, 1990*
- *PHIPA – Personal Health Information Protection Act, 2004*
- *PIPEDA – Personal Information Protection and Electronic Documents Act, 2000*
- *RHPA – Regulated Health Professions Act, 1991*

Other abbreviations include the following:

- CAS – Children’s Aid Society
- CCB – Consent and Capacity Board
- CTO – Community Treatment Orders
- HPARB – Health Professions Appeal and Review Board
- HPRAC – Health Professions Regulatory Advisory Council
- ICRC – Inquiries, Complaints and Reports Committee
- QA Program - Quality Assurance Program
- HOM –Homeopath, Registered with a Full Class Certificate of Registration with the College of Homeopaths of Ontario
- HOM (T) – Homeopath, Registered with a Grandparented Class Certificate of Registration with the College of Homeopaths of Ontario
- HOM (I) – Homeopath, Registered with an Inactive Class Certificate of Registration with the College of Homeopaths of Ontario
- SDM – Substitute Decision-Maker.

# Section 1: Professionalism and Self-Regulation

## A. The Concept of Self-Regulation

Registered Homeopaths (HOMs) are Members of a self-regulated profession and as such have special duties and responsibilities to the patients they serve, to their colleagues and to their regulatory College, which is the College of *Homeopaths of Ontario* (the College). Homeopaths are also subject to a number of laws and regulations. As part of the self-regulatory framework, the College sets out by-laws which apply to its Registrants and a code of ethics to provide guidance. Registrants also work within a scope of practice and must follow specific standards of practice.

In Ontario, many health professions are self-regulated. In other jurisdictions, similar professions may be regulated directly by government or through general consumer protection laws. Ontario's regulatory model serves as the basis for professional regulation in several other jurisdictions, and is seen by many as a model of choice.

### I. Types of law

Legislation is passed by provincial legislatures and the federal parliament. When draft legislation is first introduced in the legislature (or parliament), it is known as a *Bill* (e.g. Bill C141). After it is passed into law, it becomes an Act, also referred to as a statute. Many Acts include clauses that provide for the subsequent creation of regulations under the Act. Regulations provide more details on how the Act will be implemented. It is important to note that the *Canadian Charter of Rights and Freedoms*, and certain other overriding statutes, may take priority over other statutes.

The Acts that apply most directly to Homeopaths are *the Regulated Health Professions Act (RHPA), 1991*, and the *Homeopathy Act, 2007*. In certain circumstances, a number of other acts apply as well. These laws are discussed in Section 3E, Other Laws.

Regulations are made by government when a statute permits that to be done. Under the *RHPA*, regulations can be proposed by the College (e.g. registration, professional misconduct, quality assurance) or by the Minister of Health and Long-Term Care (e.g. controlled acts, professional corporations).

By-laws are made by the College and deal primarily with the internal operations of the College and some matters relating to registration, such as fees and professional liability insurance.

In addition to developing regulations and by-laws, the College publishes official documents such as professional practice standards, and may also publish guidelines, policy statements and position statements. Practice standards set out the minimum standard of professional practice and conduct required of Registrants of the College in the practice of the profession. While standards are not actually law, the Professional Misconduct Regulation of this College states that it is professional misconduct to contravene a standard established by the College. The College may also issue guidelines, which provide additional information and direction for Registrants to help them understand how to meet practice standards. Policy statements and position statements generally provide guidance to Registrants on specific issues, and also share the College's position on issues with the public.

Court decisions, referred to as *case law*, are used as a guide by lawyers and judges when similar issues arise at a later date. Court decisions are particularly important in guiding the procedure of College

committees (e.g. investigations by the Inquiries, Complaints and Reports Committee (ICRC) and decisions of the Discipline Committee).

## **II. The Self-Regulatory Framework**

Self-regulation under statute is a relatively new concept for homeopaths in Ontario. Homeopaths will be regulated under *RHPA* and the *Homeopathy Act, 2007*, when the latter comes fully into force. The *Homeopathy Act* is the profession-specific statute for the College and is integrated with the *RHPA*. Together, the two Acts provide the regulatory framework for the practice of homeopathy in Ontario, and may be treated as one Act.

The *RHPA* provides a framework for self-regulation for all regulated health professions in Ontario. This statute helps to protect the public from harm that could arise in interactions between patients and regulated health professionals, by ensuring that health professionals meet certain standards of practice and competence.

The *RHPA* defines how regulated health professionals enter their profession and also establishes a framework to support continuing professional development and competence. It sets limits on the activities regulated health professionals can engage in, and on who may hold themselves out as such. For example, the *RHPA* protects the use of the titles, *Homeopath (HOM)*; *Homeopath, Transitional (HOM(T))*; and *Homeopath, Inactive(HOM(I))*. Individuals who are not registered with this College may not hold themselves out as an *HOM*, *HOM(T)*, or *HOM(I)*.

## **III. The Role of the College**

The *RHPA* authorizes the creation of a number of regulatory colleges to regulate various health professions. These colleges are regulatory bodies, not educational institutions. A college's mandate is to protect the public interest and not the interests of the profession (e.g. a college cannot set fees charged to patients. Nor can it advocate to government on behalf of the interests of the profession). Professional self-interest activities are the role of professional associations, not the regulatory college.

A college also has a number of roles (or objects) which it carries out to further its mandate. These include developing standards of qualification for entry-to-practice, standards of knowledge, requirements for ongoing professional development and standards for professional ethics.

A college also has a role in the discipline of its registrants. It may take disciplinary action against a registrant for reasons of professional misconduct or incompetence. It may also investigate and intervene where a registrant demonstrates incapacity; i.e. a mental or physical condition or disorder that may impair the registrant's to practise safely and effectively.

Under the *RHPA*, there are a number of statutory committees that each college must establish to carry out these roles. They are:

- Executive Committee
- Registration Committee
- Inquiries, Complaints and Reports Committee(ICRC)
- Discipline Committee
- Fitness to Practise Committee
- Quality Assurance Committee

- Patient Relations Committee (or Patient Relations Committee)

There are a number of safeguards, set out in the *RHPA*, which ensure that a college serves the public interest, including the following:

- Each college has a Council, similar to a board of directors of a corporation, which governs the activities of the college and its registrants. Public Council members are appointed to Council by the government and may also serve on college committees. Generally, public Council members are not practitioners of the profession. For example, in this College, a homeopath could not become a public Council member, but could run for election to a position on Council (if eligible). The election process of professional members is outlined in the By-laws of the College.
- Council meetings and discipline hearings are open to the public. Anyone may attend and watch the proceedings.
- The college must consult with registrants of the profession and the public before establishing a regulation or by-law.
- Decisions of college committees may be reviewed by other statutory bodies. For example, decisions of the Registration Committee or the ICRC may be appealed to the Health Professions Appeal and Review Board (HPRAB). Decisions of the Discipline Committee or the Fitness to Practise Committee may be appealed to Divisional Court.
- The government has appointed two bodies to ensure that regulatory colleges act in the public interest. The Office of the Fairness Commissioner makes sure that registration practices are transparent, objective, impartial and fair. In addition, the Minister of Health and Long-Term Care may refer concerns about a college's regulations or programs to the Health Professions Regulatory Advisory Council (HPRAC) for review.
- Colleges are accountable to the Minister of Health and Long-Term Care. They must report annually to the Minister, and provide additional reports to the Minister if requested. The Minister may make recommendations or even issue directions to the Council of the college. If there are serious concerns, the Minister may audit the operations of the college, and has the power to appoint a supervisor to take over its administration.

These safeguards help ensure that all health regulatory colleges serve the public interest in a fair and open manner.

The *RHPA* also sets out a number of controlled acts that registrants of approved professions may carry out.

Interprofessional Collaboration is a key value set out in the *RHPA*. This College promotes interprofessional collaboration among its own Registrants and with other health regulatory colleges, and encourages collaboration among the members of the various regulated health professions. It also promotes and enhances relations among key stakeholders and the public.

It is important that homeopaths are familiar with the College, its committees and any standards or guidelines developed by the College.

#### **IV. The Role of the College Council**

Each college has a Council, similar to a board of directors of a corporation, which governs the activities of the college and its registrants. Council members have a duty of loyalty and good faith to the mandate of the organization, which is to protect the public interest. The majority of Council members are elected by the profession, while a sizeable minority consists of public Council members appointed by the government. Professional and public Council members work together to ensure that the views of patients and the public are represented in the regulatory process.

For each college, the Council establishes the policies and processes of the college. For example, it develops the Professional Misconduct Regulation, oversees administration of regulatory activities of the College and establishes the budget of the Quality Assurance Program (QA Program), among other responsibilities.

Given the public interest mandate of the college, a Council member's only constituency is the public as a whole. When making decisions, Council members must keep in mind that they do not represent the registrants who voted for them, nor any particular regional or professional interest; their duty is to serve and protect the broader public interest.

**Sample Question**

Which sentence best describes the role of the College versus the role of a professional association?

1. The College serves the public interest and professional associations serve the interests of the profession.
2. The College and professional associations both serve the public interest.
3. The College and professional associations both serve the interests of the profession.
4. The professional associations direct the operations of the College.

*The best answer is 1. The College's mandate is to regulate the profession in order to serve and protect the public.*

*Answer 2. is not the best answer because professional associations are designed to serve the interests of their members. While professional associations care about the public interest and often take actions that assist the public interest, they are under no statutory duty to do so and are accountable only to their members.*

*Answer 3. is not the best answer because the College is not permitted to serve the interests of its Registrants under its statute. While the College tries to ensure that it regulates its practitioners sensitively and fairly, and consults with its Registrants, the College's mandate is to protect the public interest.*

*Answer 4. is not correct. While the College may consult with professional associations and consider their views, it is not under the control of any professional association.*

## ***B. Ethics, Professional Standards, Professional Misconduct, Incompetence & Incapacity***

An important part of the College's role is developing professional practice standards, and supporting its Registrants in adhering to those standards, mainly through education, continuing professional development and Registrants' participation in the Quality Assurance Program (QA Program).

The College may also take action when concerns arise about a Registrant's professional conduct, incompetence or incapacity – particularly, when a Registrant fails to address the concern through other means. Professional conduct, incompetence and incapacity are important concepts, described in greater detail below.

### ***I. Code of Ethics – Standard on Principles of Professional Ethics***

In addition to developing regulations and professional practice standards, the College is authorized under its statute to develop a code of ethics for its Registrants. The College's Code of Ethics is in the form of the Standard on Principles of Professional Ethics. This standard takes precedence over any other code of ethics, such as one developed by a professional association.

The College's Standard on Principles of Professional Ethics sets out certain principles of professional practice – ideals that Registrants should aspire to in their professional practice and community roles. These principles differ from practice standards included in the Professional Misconduct Regulation and those developed by the College based on generally accepted standards of the profession. Practice standards can be thought of as the minimum standard of professional practice expected of all Registrants, whereas the principles included in the Standard on Principles of Professional Ethics are ideals that Registrants should strive to uphold.

**NAME: STANDARD ON PRINCIPLES OF PROFESSIONAL ETHICS**

*Note to Readers: In the event of any inconsistency between this document and the legislation that affects homeopathic practice, the legislation governs.*

**POLICY**

The College of Homeopaths of Ontario requires each Registrant to manage their practice and professional activities in an ethical, honest and transparent manner.

**INTENT**

This document is intended to outline, in broad fashion, the obligations to which Registrants of the College of Homeopaths of Ontario (hereafter referred to as the College) are expected to adhere in their relationships with the public, patients, fellow practitioners and other health care professionals.

**PREAMBLE**

The College recognizes that:

- One of the underlying principles of the *Regulated Health Professions Act, 1991* (RHPA) is to permit the public to exercise freedom of choice of health care provider within a range of safe options.
- Registrants are required to practise within the Homeopathic scope of practice set out in the *Homeopathic Act, 2007*, in providing ethical and competent patient centred care.

Through individual practitioners and the collective work of the College, professional associations, and homeopathic schools, there is an increasing awareness by the public, employers and other healthcare professionals of the practice of homeopathy as a primary health-care option in Ontario's integrated healthcare system. The public is entitled to safe, effective and ethical care performed by knowledgeable, skilled, and accountable practitioners in accordance with the professional standards of the College. Each Registrant will provide individualized and competent care, recognizing the patient's particular needs, and respecting their cultural background.

Each homeopath acts, at all times, in a manner as to justify public trust and confidence, to uphold and enhance the good standing and reputation of the profession, to serve the interest of society, and above all to safeguard the best interests of individual patients.

In all professional undertakings, including but not limited to the therapeutic relationship, Registrants respect the practice of homeopathy and adhere to the characteristics of an ethical homeopath. Within the context of these values and principles, registrants fulfill their professional obligations.

The Principles of Professional Ethics is a set of values intended to provide all registrants with information about the College's expectations of ethical conduct. It is a framework that describes the boundaries of acceptable professional practice. The Principles of Professional Ethics is a critical and enforceable element of the College's programs and as such, it is crucial that all registrants are knowledgeable about the contents of this document. Additionally, this document is intended to assist patients and other members of the public to better

understand the components of ethical care that they should expect from a homeopath.

#### **DESCRIPTION OF STANDARD**

##### **A. VALUES**

The body of work of Aristotle holds that the virtues (such as justice, charity, and generosity) are dispositions to act in ways that benefit both the person possessing them and that person's society. Accordingly, the following represent a set of qualities desirable for an ethical homeopath to have in order to protect the public.

<b>Altruistic:</b>	Unbiased, impartial and unselfish concern for the well-being of others.
<b>Competent:</b>	Having the necessary ability, knowledge, or skill to do something successfully.
<b>Courteous:</b>	Polite, considerate in manner and respectful, showing deference, respect and due regard for the feelings, wishes, rights, or traditions of others.
<b>Responsible:</b>	Having an obligation to do something, or caring for someone, as part of one's job or role.
<b>Trustworthy:</b>	Able to be relied on as honest or truthful.
<b>Unprejudiced:</b>	Not having or showing a dislike or distrust based on fixed or preconceived ideas.

##### **B. ETHICAL OBLIGATION**

While the practice of homeopathy includes a number of qualities to be considered ethical, those qualities need be demonstrated. This demonstration transpires in fulfilling one's duties and obligations to society in general, individual patients, professional colleagues, the public and regulatory bodies. The following outlines the specific expectations for an ethical homeopath.

###### **Section 1: General**

The ethical homeopath:

1. Provides patient-centred care within the scope of homeopathic practice as per the *Homeopathy Act, 2007*.
2. Maintains standards of professional competence and ethics including the principles of altruism, courteousness, responsibility, trustworthiness, and being non-judgmental.
3. Acts in accordance within the scope and standards of practice of the College including regulations, guidelines, policies and programs.
4. Clearly informs all interested parties of scope and limitations of practice;
5. Commits to the highest level of effective homeopathic treatment through the maintenance and application of relevant knowledge and skill;
6. Acts within the individual's level of competence and recognizes limitations;
7. Does not exploit any relationship, established as a homeopath, to further his/her own physical, psychological, emotional, financial, political, or business interests that could be considered as a conflict of interest and at the expense of the best interest of the patient and the public;
8. Openly acknowledges any conscientious objection or conflict of interest, which may affect professional practice;

9. Keeps confidential and private all information received except when reporting is required by law (i.e. RHPA, etc);
10. Implements safety measures to protect patients, self and colleagues from injury and hazards.
11. Acts without discrimination or prejudice in a manner consistent with the Canadian Human Rights Act and the Ontario Human Rights Code;
12. Conducts him/herself with dignity so as to bring honour to the profession.

### **Section 2: Obligations to the Patient**

The ethical homeopath:

1. Has as the first consideration the well-being of patients and acts in the best interest of their welfare;
2. Demonstrates respect for the physical, emotional, and spiritual well-being of patients;
3. Demonstrates sensitivity to and respects each patient's rights, autonomy, dignity and uniqueness;
4. In the case of emergency, provide care or refer the patient to the most appropriate health care provider;
5. Clearly informs and educates patients as to the role, function, standards and philosophy of homeopathic practice;
6. Respects patients' right to informed choice, to request opinions from other homeopaths regarding a treatment plan; acknowledges patients' right to consult with other health professionals or integrate other therapeutic modalities in combination with homeopathic treatment;
7. Ensures that his/her conduct in the practice of the homeopathic profession is above reproach;
8. Does not practice under conditions which may adversely affect the quality of services including when impaired or ill with any illness that could put patients at risk;
9. Is responsible in setting a reasonable value for their services;
10. Posts a schedule of service fees in a prominent and visible location in the office.

### **Section 3: Obligations to Professional Colleagues**

The ethical homeopath:

1. Speaks professionally of fellow practitioners or other health care professionals, their qualifications or the procedures they use;
2. Works collaboratively with other practitioners/team members/professionals and others, as appropriate, with a goal to enhancing patient care (e.g., information sharing, treatment, consultation and education) focused on the best interests of the patient;
3. Demonstrates respect for the physical, emotional, and spiritual well-being of colleagues, associates, or employees.

#### **Section 4: Obligations to the Public**

The ethical homeopath:

1. Claims only qualifications possessed;
2. Accurately represents the nature of homeopathic treatment;
3. Maintains a respectful relationship with members of the public in order to facilitate awareness and understanding of the profession of homeopathy;
4. Upholds the principle of informed consent, including the patient's right to choose from a range of options;
5. Reports to the respective College, where they have reason to believe sexual abuse of a patient by another registrant of any of the regulated health professions;
6. Reports to the College of Homeopaths of Ontario, where there is reason to believe incompetence, misconduct, incapacity, sub-standard and/or unethical behavior, or sexual abuse of a patient by another registrant.

#### **Section 5: Obligations to the College**

The ethical homeopath:

1. Maintains professional competency through ongoing self-assessment, intra-professional collaboration and professional development.
2. Maintains the Standards of Practice and conduct himself/herself in a professional, competent and ethical manner;
3. Complies with the Regulated Health Professions Act 1991 (RHPA), the Homeopathy Act 2007 and the Regulations, By-laws, standards, guidelines, policies, procedures, and programs of the College;
4. Abides by the laws of the jurisdiction of the practice location and complies with all governing legislation relevant to the Registrant's practice;
5. Informs the College when serious incapacity affects or may affect, over time, the Registrant's continuing ability to practice safely and competently;
6. Recognizes that self-regulation is a privilege and that each registrant has a continuing responsibility to merit the retention of the privilege.

#### **RELEVANT COMPETENCIES AND PERFORMANCE INDICATORS**

*Competencies are the specific knowledge, skills, attributes and abilities required of an entry-to-practice homeopath in order to practise safely and ethically. These competencies, from the Competency Profile for Entry-to-Practice Homeopaths Practising in Ontario, where adopted by the transitional Council of the College of Homeopaths of Ontario in 2012. For complete information please refer to College documents *Competency Profile for Entry-to-Practice Homeopaths Practising in Ontario* (February 27, 2012) and *Performance Indicators* (March 2012).*

- 1.6 Identify the potential effect of personal values, beliefs and experiences and utilize this self-awareness to provide unbiased care. (S)

##### **PERFORMANCE INDICATORS**

1. Recognize factors that influence the ability to provide unbiased care.
2. Formulate a plan to address actions that influence the ability to provide unbiased care.

- 1.11 Demonstrate an understanding of the legal and ethical obligations as it relates to the practice of homeopathy, including those imposed by the *Homeopathy Act, 2007* and the *Regulated Health Professions Act, 1991* and Standard of Practice on Principles of Professional Ethics. (K)

##### **PERFORMANCE INDICATORS**

1. Demonstrate knowledge of the ethical obligations of the noted legislation, standards and related guidelines.
2. Demonstrate knowledge of the legal obligations of the noted legislation, standards and related guidelines (i.e., jurisprudence).

## **DEFINITIONS**

### **Ethics**

Ethics is the branch of knowledge that deals with moral principles; especially those principles relating to or affirming a specified group, field, or form of conduct.

### **Informed Consent**

Informed consent ensures that the patient understands and appreciates the nature, anticipated benefits, material risks and side-effects and alternatives, including the likely consequences of not proceeding, of the proposed intervention and agrees to proceed. (*Healthcare Consent Act, 1996*)

### **Homeopath**

“Homeopath” means a registrant of the College of Homeopaths of Ontario.

### **Obligation**

An obligation is an act or course of action to which a person is legally bound; a duty or commitment.

### **Patient**

A patient may be an individual, or patients may be a group or organization receiving professional homeopathic services, products or information.

### **Patient-Centred Approach**

A patient-centred approach to care is one in which patients are viewed holistically. In addition to delivering services, a patient-centred approach involves advocacy, empowerment and respecting the patient’s self-determination.

### **Practice / Service**

Practice or service are two terms used interchangeably and refer to the overall organizational and specific goal-directed tasks related to the provision of care including direct patient care, provings, education or office administration.

### **Registrant**

A Registrant means a member of the College of Homeopaths of Ontario.

### **Scope of Practice**

Scope of practice encompasses the services that its practitioners are educated, competent and authorized to provide. (National Physiotherapy Advisory Group, 2009). In the *Homeopathy Act, 2007* a registrant’s scope of practice is defined as “The practice of homeopathy is the assessment of body system disorders and treatment using homeopathic techniques to promote, maintain or restore health.”

**Sexual Abuse**

Sexual Abuse of a patient by a Registrant is defined in the *Regulated Health Professions Act, 1991*, as:

- sexual intercourse or other forms of physical sexual relations between the Registrant and the patient;
- touching, of a sexual nature, of the patient by the Registrant; or
- behaviour or remarks of a sexual nature by the Registrant towards the patient.

Sexual nature does not include touching, behaviour or remarks of a clinical nature appropriate to the services provided.

**Therapeutic Relationship**

A therapeutic relationship is an important relationship that develops trust in the patient and creates a safe space for the disclosure of information and a sense of being listened to and understood.

**Uniqueness**

Uniqueness includes race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability. (Ontario Human Rights Code, 1990)

**LEGISLATIVE CONTEXT**

*Regulated Health Professions Act, 1991*

*Ontario Human Rights Code*

*Canadian Charter of Rights and Freedoms*

*Homeopathy Act, 2007, Ontario Regulation 315/12 Professional Misconduct* (Note: This regulation is not yet in force. It comes into force on the day named by proclamation of the Lieutenant Governor.):

16. Acting or being in a conflict of interest in one's professional capacity.
29. Influencing a patient or the patient's authorized representative to change the patient's will or other testamentary instrument.
42. Directly or indirectly benefiting from the practice of the profession while the member's certificate of registration is suspended unless full disclosure is made by the member of the College of the nature of the benefit to be obtained and prior approval is obtained from the Executive Committee.
48. 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.
49. Engaging in conduct that would reasonably be regarded by members as conduct unbecoming a member of the profession.

**Ethics Scenario**

*Ethan, who is a Homeopath, is finding that his personal life is becoming overwhelming. He lives on a large suburban lot, with a large garden which is expensive and time consuming to maintain. Ethan is in debt and therefore works long hours to try to catch up.*

*A patient of Ethan's is an underemployed gardener. The patient is unable to pay Ethan. Ethan decides to barter his homeopathic care (one hour a week) for six hours a week of gardening services by the patient.*

*Ethan consults with a colleague who raises concerns about Ethan's plan for a number of reasons.*

- *It creates a dual relationship with the patient;*
- *It discloses details about Ethan's personal life; and*
- *It demeans the patient's services (six hours are required to match one hour of Ethan's services).*

*Ethan decides to hire someone else.*

## ***II. Professional Practice Standards***

Professional practice standards relate to the ways in which registrants of a profession are expected to practise the profession. These standards are learned through formal education, professional reading, independent study, clinical practice experience, regulatory publications, and collaboration with colleagues, among other means.

Professional practice standards may be written or unwritten. Standards set out in legislation, in regulations and in documents developed by a college are examples of written standards. Unwritten standards are based on generally understood and accepted standards of the profession.

To date, the written standards of this College deal with matters such as informed consent, confidentiality, record-keeping, conflict-of-interest, business practices, advertising, among others. These standards are based on various statutes and the College's Professional Misconduct Regulation and are set out in greater detail in the *Professional Practice Standards and Guidelines* developed by the College.

Clinical practice standards, on the other hand, consist of the accumulated knowledge and understanding of clinical practice, acquired through formal study, clinical supervision and experiential learning, continuing education, discussion with colleagues, research and other professional activities. In addition, regulatory colleges may develop limited written practice standards or guidelines on specific clinical topics, usually in response to an identified need on the part of registrants.

The purpose of written standards and guidelines developed by the College is to assist Registrants in the safe, ethical, and effective practice of the profession. They are developed by Registrants of the profession, and generally will be posted on the College website. Written standards are created and adjusted over time, as the profession matures and as the College gains experience in matters of professional misconduct or incompetence. Often such standards are developed to assist Registrants in evolving practice areas.

Ultimately, the test of whether a Registrant has failed to uphold a practice standard (written or unwritten) is based on what a knowledgeable and prudent practitioner would have done in similar circumstances, as judged by a panel of his/her peers. In a discipline hearing, this decision is made by a panel of Members from the College's Discipline Committee, often after hearing expert evidence on the issue.

### ***Discontinuing Professional Services Scenario***

*Donna, a Homeopath, wants to stop treating a patient because the patient has stopped paying her. She reads an article in the College's newsletter suggesting that a Homeopath should give a patient reasonable notice before terminating the therapeutic relationship, to allow the patient to find a new homeopath. Donna does not take this advice, and stops seeing the patient.*

*The patient experiences significant distress once the care stops and misses 10 days of work before he is able to find another homeopath. The patient complains to the College. After investigating the complaint, the College requires Donna to appear before a panel of the College to receive a verbal caution.*

*Donna is cautioned that he should have made it clear at the beginning of the relationship that non-payment of services would result in the discontinuation of service. She is reminded that in future, in similar circumstances, in addition to giving adequate notice, Donna should offer assistance in finding alternative services, such as referring the patient and reminding the patient that in an emergency the patient may go to the emergency department. The fact that a homeopath has not been paid by a patient does not remove her/his duty to a patient who was in significant need of care.*

### **III. Professional Misconduct**

Professional misconduct is conduct that falls below minimum expectations of the profession. Provisions governing professional misconduct are contained either in statutes or regulations and apply to all Registrants of the College. More detail is provided in Section 3: Law, starting on p. 48. As noted above, College publications will assist Registrants in recognizing how to avoid engaging in professional misconduct.

Professional misconduct may lead to disciplinary proceedings that could result in a fine, suspension or even revocation of a Registrant's certificate of registration.

#### ***Permitting Illegal Conduct Scenario***

*Mike, a homeopath, is registered with the College and was a partner with his father in a joint practice. Mike's father is no longer registered with the College. He is no longer a partner in the practice, but he sometimes drops into Mike's office to treat his former long-term patients. Mike's father books these appointments with Mike's knowledge. A patient complains to the College when her insurance company refuses to pay for Mike's father's services because he was unregistered. Is Mike at risk for his father's conduct?*

*The answer is yes. It is professional misconduct to permit a person to hold him/herself out as qualified to practise the profession when s/he is not registered. Mike condoned the conduct that occurred at his office, and, as a registered practitioner, gave credibility and status to the illegal conduct of his father. Mike could face a discipline hearing.*

#### **IV. Incompetence**

A homeopath may be deemed incompetent where s/he shows a serious lack of knowledge, skill or judgment when assessing or treating a patient. A concern that a Registrant is incompetent may be investigated by the College and, in serious cases, may result in a discipline hearing. If the Discipline Committee finds that a homeopath is incompetent, it could impose restrictions on the Registrant's registration, such as not allowing the Registrant to work with teenagers. Alternatively, it could suspend or revoke the Practitioner's registration.

In any investigation of incompetence, the College will usually look at the Registrant's records and speak with him/her directly. It will also interview the patient (or patients) involved, and ask other homeopath whether they think the conduct shows incompetence. The investigating committee and/or deliberating committee (i.e. the Inquiries, Complaints and Reports Committee (ICRC) or the Discipline Committee) will include Homeopaths to assist in determining the difference between good and bad practice.

#### ***Incompetence Scenario***

*Rachel, a homeopath, does not assess her patients. She just asks her patients what's wrong and then gives all of them the same kind of remedy. A patient, Paula, came in with a serious condition that almost certainly would have been revealed through a proper assessment. Rachel did not recognize it. Paula's condition got worse. Rachel still did not recognize it. After three months Paula went to the emergency department of a hospital and was quickly diagnosed and treated appropriately. Paula complained to the College about Rachel's incompetence.*

*The ICRC looked at Rachel's records and heard Rachel's explanation. It sent the case to discipline. The Discipline Committee agreed that Rachel showed a lack of knowledge, skill and judgment. It ordered Rachel to undertake further education and training.*

## **V. Incapacity**

A homeopath is incapable when a health condition prevents him/her from practising safely. Usually the health condition is one that interferes with the homeopath's ability to think clearly. Often incapacity is related to substance abuse, addiction or illness (mental and physical) that impairs the Registrant's professional judgment; for example, a homeopath, addicted to alcohol or drugs, who provides care to patients while under the influence.

Under the law, incapable Homeopaths are not treated as if they have engaged in professional misconduct or incompetence. The investigation looks at the Registrant's health condition and the treatment s/he is receiving or may need. The College may require the homeopath to undergo a specialist examination. If the concern is justified, the Registrant will be referred to the Fitness to Practise Committee for a hearing. The Committee may order the Registrant to undergo treatment or receive medical monitoring, or it may restrict the homeopath's practice. In an extreme case (e.g. where the Registrant continues to see patients while impaired), the Fitness to Practise Committee may suspend or revoke the Practitioner's registration, in order to protect the public.

### ***Incapacity Scenario***

*Roger, a homeopath, has been drinking a lot more alcohol the last few months. One day Roger comes back from lunch drunk. Paul, a patient, notices that Roger smells of alcohol and is stumbling around the office. Paul also notices that Roger has forgotten what Paul told him during recent visits and that he has been inappropriate and rambling in some of his comments. Paul reports this to the College.*

*At first Roger denies there is a problem. However, during the investigation, the College learns that some of Roger's colleagues have noticed a significant change in his behaviour in recent months. The College also learns that he has been charged with impaired driving. The College sends Roger to a medical specialist who diagnoses him as having a serious substance abuse disorder.*

*The matter is referred to the Fitness to Practise Committee. Roger and the College agree to an order requiring that he stop drinking, attend Alcoholics Anonymous group meetings, and see an addiction counselor regularly. The College also assigns a colleague to monitor Roger n at work and send regular reports to the College.*

**Sample Question**

The sentence “Homeopaths are sensitive to the cultural background and dignity of their patients” is most likely to be found in which of the following?

1. The definition of incapacity.
2. The definition of incompetence.
3. The definition of professional misconduct.
4. Professional standards published by the College.
5. The Code of Ethics or Standard of Principles of Professional Ethics.

*The best answer is 5. Sensitivity is an ideal that registrants should always strive to achieve.*

*Answer 1 is not the best answer because incapacity deals with the Registrant’s health condition. Seriously insensitive behaviour may accompany some illnesses (e.g. addictions), but it is the illness that must be treated first.*

*Answer 2 is not the best answer because incompetence deals with the level of knowledge, skill or judgment of the Registrant.*

*Answer 3 is not the best answer because professional misconduct deals with the minimum conduct that is necessary to avoid discipline.*

*Answer 4 is not the best answer because professional standards deal with ways to practise safely, effectively and professionally.*

## ***Section 2: Patient-Practitioner Relationships***

### ***A. Introduction***

Good communication is important in establishing and maintaining good relationships with patients. It is also important to maintain good communication with the College and other practitioners. Many complaints against Registrants could be avoided by good communication with patients, staff and colleagues.

Good communication first involves listening to others. Understanding a person's wishes, expectations and values before initiating care is important. Asking questions to clarify and expand on what the patient or colleague is saying is important as well. Active listening helps to ensure that both parties understand one another. Active listening aids the homeopath in recording the patient's words and non-verbal cues. As contrasted with passive listening, the homeopath confirms what he/she has heard by restating or paraphrasing in order to optimize case-taking. This form of communication requires the listener to be compassionate, engaged and objective.

Good communication also involves making sure the other person knows what you are going to do, why you are going to do it and what is likely to happen. This is the concept of informed consent, discussed below.

## **B. Informed Consent**

Patients have the right to control their health care. Registrants do not have the right to assess or provide care to a patient unless the patient agrees. This is known as consent. A Registrant who provides an intervention without the patient's consent could face criminal charges (e.g. for assault), a civil suit (e.g. for damages) or professional consequences (e.g. a disciplinary action by the College).

The rules on obtaining informed consent come from the *Health Care Consent Act (HCCA)*. All Registrants should familiarize themselves with this statute; however the key principles are covered here. Homeopaths may learn about informed consent, including the requirements of the *HCCA*, from a number of sources, including books, articles, websites and Section 3: Law of this handbook. The College may develop additional materials on the subject for Registrants, which would be posted to the website.

### **I. Consent**

To be valid, a patient's consent must:

**Relate to the assessment or care**

An homeopath cannot receive consent for one purpose (e.g. taking a history of the patient's health for personal care) and then use the opportunity to do something different (e.g. a physical examination on the patient). The patient's consent must be for the purpose stated. In order to include the physical examination, the homeopath would have to obtain consent and ask the patient for permission to do a physical examination in addition to taking the case. The homeopath must be trained to do this work and ensure that it is being done within the homeopathic scope of practice. Homeopaths do not have controlled acts (see Standard of Professional Practice #15 on Scope of Practice).

**Be specific**

A homeopath cannot ask for a general or a vague consent. One must explain the assessment or care that is being proposed. This means that the Registrant may need to obtain the patient's consent many times as changes in care become advisable. This also means that a Registrant cannot seek blanket consent to cover every intervention when the patient first comes in. The homeopath will need to obtain the patient's consent every time s/he gives a remedy.

**Be informed**

It is necessary that the patient understand what s/he is agreeing to. The Registrant must provide information to the patient before asking the patient to give consent, and respond appropriately to patient requests for additional information. (See Section 2 II The Concept of Informed Consent below for additional detail.)

The homeopath cannot force a patient to consent to an

**Be voluntary**

intervention. This is particularly important when dealing with younger or older patients who may be overly influenced by family members or friends. This is also important where the assessment or care will have financial consequences for the patient (e.g. the patient will lose his/her job or will lose financial benefits if the patient refuses to consent). The Registrant should inform the patient that consent is his/her choice.

**No misrepresentation or fraud**

A homeopath must not make claims about the assessment or care that are not true, for example telling the patient that a particular care will *cure* when in fact the results are uncertain. Consent obtained through misrepresentation or fraud, as demonstrated in this example, would not be considered true consent. Patients must be given accurate, factual information and opinions based in truth and fact.

## II. The Concept of Informed Consent

In order for consent to be considered *informed*, the patient must understand what s/he is agreeing to. Generally speaking, the following information should be provided to a patient when seeking his/her consent:

<b>Nature of the assessment or care</b>	The patient must have a reasonable understanding of what the homeopath is proposing to do. For example, before beginning care, a homeopath should explain why s/he is asking personal questions and why the patient should be candid.
<b>Who will be doing the assessment or care?</b>	Will the homeopath be doing the intervention personally or will an assistant or colleague do it? If it is an assistant or colleague, is s/he registered with the College, another College, or unregistered?
<b>Reasons for the assessment or remedy</b>	The homeopath must explain why s/he is proposing the remedy. (e.g. I am giving you this remedy to help you with your health concerns, such as your sore throat, ear ache, etc.) What are the expected benefits? (e.g. your symptoms or your health may improve). How does the intervention fit in with the overall treatment goals? (e.g. improvement of health at an acute or chronic level.) How likely is it that the hoped for benefits will occur? (e.g. we will know in a few days, weeks or months, whether the remedy is helping you. We will know this because symptoms may get better or disappear completely.)
<b>Remedy name, dosage and mode of delivery</b>	The homeopath must disclose to the patient the remedy name, potency, dosage, frequency and mode of delivery (e.g. I am giving you Belladonna 30C potency in liquid form, here is how to take it and any precautions you should be aware of.) with clear instructions on how to take the remedy.
<b>Material risks and side-effects</b>	The homeopath must explain any <i>material</i> risks or side-effects. A risk or side-effect is material if a reasonable person would want to know about it. For example, if there is a high likelihood of a side-effect (e.g. physical, mental or emotional discomfort or aggravation of symptoms, return of old symptoms, proving symptoms, etc.), the patient should be told.
<b>Alternatives</b>	If there are reasonable alternatives to the intervention, the patient must be told. Even if the homeopath does not recommend the option (e.g. it is more aggressive or carries more risk), the homeopath should describe the option and

tell the patient why s/he is not recommending it. Also, even if the homeopath does not offer the alternative intervention (e.g. it is provided by a registrant of a different profession, such as a physician), s/he must inform the patient, if it is a reasonable option. (e.g. this infection could be treated by a medical doctor with antibiotics; here are the advantages and disadvantages. Homeopathic remedies have been used to treat this kind of infection without the risk of medical/drug side effects.)

**Consequences of not having the remedy**

One option for a patient is do nothing. The homeopath should explain to the patient what could happen if the patient chooses to do nothing. If it is not clear what will happen, the homeopath should say so, providing outcome scenarios if possible.

**Particular patient concerns**

If some aspect of the intervention would be of special interest or concern to the patient, the patient should be informed. (e.g. the nature, side effect or composition of the remedy may violate the patient's personal beliefs.) This requires that the homeopath is reasonably aware of and sensitive to particular patient concerns or interests, such as strongly held values or beliefs, or even certain personal considerations. For example, a patient ascribing to a particular religion would need to know if an aspect of the intervention would violate his/her beliefs.

### **III. Ways of Receiving Consent**

There are three different ways in which a homeopath is able to receive consent. Each has its advantages and disadvantages.

#### **Written Consent**

A patient may give consent by signing a written document agreeing to the intervention. Written consent provides some evidence that the patient gave consent. A disadvantage of written consent is that some Registrants may confuse a signature with consent. For example, a patient who signs a form without actually understanding the nature, risks and possible alternatives to the intervention has not provided consent that could be considered informed. The use of written consent documents may inhibit open dialogue between the patient and homeopath, affecting the homeopath's ability to gauge whether the patient understands the information and is providing informed consent.

#### **Verbal Consent**

A patient may give consent by a verbal statement. Verbal consent is the best way for the homeopath and patient to discuss the information and ensure that the patient really understands it. Making a brief note of the discussion in the patient record may provide useful evidence later on, if there is a complaint.

#### **Implied Consent**

A patient may give consent by his/her actions. For example, in Consent Scenario No. 1 (below) the patient, Emma, simply nods her head to indicate consent. In this example, the action is considered implied consent and Ava, the homeopath, is able to proceed. The main disadvantage of implied consent is that the homeopath has no opportunity to check with the patient to make sure that s/he truly understands what is being agreed to.

#### **Consent Scenario No. 1**

*Ava, a homeopath, meets a new patient, Emma. Emma complains about feeling stressed and tired. Ava says: "I would like to better understand your personal and family background and your health history. There could be a lot of things making you feel tired and stressed and this information will help me understand what you're going through. If you are uncomfortable with any of my questions, please let me know. OK?" Emma nods her head.*

*Ava can assume that she has obtained implied consent to proceed, but must remain sensitive to any changes in Emma's body language. It would be prudent of Ava to reaffirm consent at appropriate intervals during the session, especially if there is a change in Emma's body language.*

#### **IV. Consent Where the Patient is Incapable**

A patient is not capable of giving consent when s/he does not understand the information provided, or when s/he does not appreciate the reasonably foreseeable consequences of the decision.

A homeopath may assume a patient is capable and does not need to conduct an incapacity assessment unless there is evidence that the patient may be incapable. The homeopath can assess the capacity of the patient by discussing the proposed intervention with him/her and determining whether the patient understands the information and appreciates its consequences.

#### **V. Substitute Decision-Maker**

In cases where the patient is found to be incapable, a substitute decision-maker must be identified. Unless it is an emergency, the homeopath must obtain consent from the substitute decision-maker before intervening. According to the *Health Care Consent Act (HCCA)*, the substitute must meet the following requirements. S/he must:

- be at least 16 years of age. However, there is an exception where the substitute is the parent of the patient, for example a 15-year-old mother can be the substitute decision-maker for the care of her child;
- be capable. In other words, the substitute, him/herself must understand the information and appreciate the consequences of the decision;
- be able to act (i.e. available) and willing to assume the responsibility of giving or refusing consent;
- not be prohibited by court order or separation agreement from acting as the patient's substitute decision-maker; and
- there must be no higher ranked substitute who wishes to make the decision. (See *Rankings for the Substitute Decision-Maker*, next page.)

If a homeopath concludes that the patient is not capable of providing consent for an intervention, the homeopath should tell the patient. The homeopath should also discuss the selection of the substitute decision-maker with the patient and should include the patient in discussions about the care (e.g. plans or goals, options and progress) as much as possible. Of course, there are circumstances where involving an incapable patient in discussions will not be possible (e.g. if such discussions would be upsetting to the patient, or if the patient is unconscious).

The *HCCA* also lays out the principles on which a substitute decision-maker must base his/her decisions. They are:

- The substitute must act in accordance with the last known capable wishes of the patient. For example, if a terminally ill patient, while still thinking clearly, said: "Don't send me to the hospital, I want to die at home," the substitute needs to obey those wishes, in so far as it is possible to do so.
- If the substitute is not aware of the last known capable wishes of the patient, or if the last known wishes are unattainable, the substitute must act in the patient's best interests. For example, if a proposed care is simple and painless, would make the patient more comfortable through a difficult illness and has little risk of harm, the substitute decision-maker should, in general, consent to it.

Where it becomes clear that a substitute decision-maker is not following the principles above, the homeopath should speak with him/her about it. If the substitute decision-maker is still not following the principles and is making decisions that, in the opinion of the homeopath, will harm the patient, the homeopath should call the office of the Public Guardian and Trustee. The contact information for the Public Guardian and Trustee of Ontario is available on the internet.

#### **Rankings for the Substitute Decision-Maker**

The ranking of the substitute decision-maker is as follows (from highest ranked to lowest ranked):

1. A court appointed guardian of the person.
2. A person who has been appointed attorney for personal care. The patient would have signed a document appointing the substitute to act on the patient's behalf in health care matters if the patient ever became incapable.
3. A person appointed by the Consent and Capacity Board to make a health decision in a specific matter.
4. The spouse or partner of the patient. A partner can include a same-sex partner. It may also include a non-sexual partner (e.g. two elderly sisters who live together).
5. A child of the patient or a parent of the patient or the Children's Aid Society who has been given wardship of the patient.
6. A parent of the patient who does not have custody of the patient.
7. A brother or sister of the patient.
8. Any other relative.
9. The Public Guardian or Trustee if there is no one else.

If there are two equally ranked substitute decision-makers (e.g. two sisters of the patient), and they cannot agree, the Public Guardian and Trustee may then make the decision.

**Consent Scenario No. 2**

*Olivia, a homeopath, proposes an intervention for her patient Emma. Emma does not understand the proposed intervention at all and is clearly incapable. Olivia knows that Emma appointed her friend Pat to be her power-of-attorney for personal care. However, Pat is travelling outside of the country. She cannot be reached and is not able to make the decision.*

*Olivia contacts Emma's elderly mother, who is frail herself and does not feel confident (or willing) to act as a substitute decision-maker. Emma's sister is willing and able to make the decision and appears to understand the information and its consequences for Emma. Emma's sister is able to give the consent even though she is not the highest ranked substitute.*

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**Consent Scenario No. 3**

*David, a homeopath, proposes supportive care for his patient Sara. Sara does not understand the proposed intervention at all and is clearly incapable. David knows that Sara appointed her friend Reena to be her power-of-attorney for personal care. Reena is going to inherit a significant amount of Sara's money when Sara dies. Sara is likely to die within a few months. The proposed intervention is simple, painless and poses little risk of harm. It would make Sara more comfortable through a difficult illness.*

*David is convinced that Reena is refusing to consent to the proposed intervention in order to inherit her money sooner. Sara's family is very upset because they want her to receive the care. David suggests that the family contact the office of the Public Guardian and Trustee.*

## **VI. Emergencies**

In an emergency, an exception to the requirement for informed consent can be made. There are two kinds of emergencies:

- The patient is incapable and a delay in treatment would cause suffering or serious bodily harm to the patient.
- There is a communication barrier (e.g. language, disability) despite efforts to overcome this barrier, and a delay in treatment would cause suffering or serious bodily harm to the patient.

In either case, the homeopath must attempt to obtain consent as soon as possible, even if it is after the fact, either by finding a substitute decision-maker (as in the first case – Consent Scenario No. 2) or by finding a means of communication with the patient (as in the second case – Consent Scenario No. 3).

### **Consent Scenario No. 4**

*Sara, a homeopath, is seeing her patient Paula at the office. Paula suddenly collapses in an apparent heart attack. There is a defibrillator in the room across the hall from Sara's office. Without trying to get consent from a substitute decision-maker, Sara uses the defibrillator. It was appropriate for Sara to act without consent in these circumstances.*

*Across the city, Sherif, a homeopath, is seeing his patient Emily at the office. Emily has terminal cancer and has filled out a wallet card saying that she does not want any measures taken to resuscitate her should she have a cardiovascular episode. Emily has mentioned this to Sherif. Emily suddenly collapses in an apparent heart attack. Sherif also has access to a defibrillator. Sherif is not able to act without consent in these circumstances because he already has a refusal from Emily that applies to these circumstances.*

**Sample Question**

Obtaining a broad consent, often called a *blanket consent* in writing from the patient on his/her arrival at the office is usually a bad idea because:

1. The patient does not know if s/he will need a ride home afterwards.
2. The patient does not have confidence in the homeopath yet.
3. The patient does not know what s/he is agreeing to.
4. The patient does not know how long the visit will be.

*The best answer is 3 informed consent requires the patient to understand the nature, risks and side-effects of the specific intervention proposed by the homeopath. It is impossible for the patient to know these things upon arrival at the office.*

*Answer 1 is not the best answer because it focuses on a side-issue and does not address the main issue.*

*Answer 2 is not the best answer because having confidence in the homeopath does not constitute informed consent. A patient may trust the homeopath and this may motivate the giving of consent, but the patient still needs to know what s/he is agreeing to.*

*Answer 4 is not the best answer because it focuses on a side-issue and does not address the main issue.*

**Sample Question**

Which of the following is the highest ranked substitute decision-maker (assuming that everyone was willing and able to give consent):

1. Someone appointed as attorney for personal care for the patient.
2. The patient's live-in boyfriend.
3. The patient's mother.
4. The patient's son.

*The best answer is 1 Only a court-appointed guardian is higher ranked than a power-of-attorney for personal care.*

*Answer 2 is not the best answer because the patient's spouse or partner is a lower ranked substitute decision-maker. In addition, it is not clear that the live-in boyfriend is a spouse. Under the Health Care Consent Act, the couple must have been living together for at least one year, have had a child together or have a written cohabitation agreement to be spouses.*

*Answers 3 and 4 are not the best answers because they are lower ranked than both an attorney for personal care or a patient's spouse. In addition, the patient's mother and son are equally ranked so either they would have to give the same consent or would have to sort out which one would give consent.*

## **C. Professional Boundaries**

Registrants must be careful to act as health care providers and not as friends to patients. Maintaining healthy professional boundaries is the responsibility of the homeopath and not the patient.

Becoming too personal or familiar with a patient may make him/her feel uncomfortable and may cause confusion by blurring the distinction between a professional and a personal relationship. It is easier for a homeopath to provide professional services when professional boundaries are maintained. For example, the homeopath may find it easier to be honest about a patient's issue or problem, or be better able to ask challenging questions of a patient when professional distance is maintained.

This section highlights some situations in which Registrants should exercise prudence and strive to maintain appropriate professional boundaries.

### **I. Self-Disclosure**

Homeopaths need to be cautious when disclosing personal information to patients. Revealing personal details must be of therapeutic benefit, and be shared in a professional manner. When a Registrant shares personal details about his/her private life in a non-therapeutic manner, it may confuse or upset the patient.

Non-therapeutic self-disclosure suggests that the professional relationship is serving a personal need for the homeopath rather than serving the patient's best interests. Non-therapeutic self-disclosure may be damaging to the therapeutic relationship, or worse, the patient. For example, this kind of self-disclosure could result in the homeopath becoming dependent on the patient to serve his/her own emotional needs, or the patient may feel that the homeopath wishes to have more than a professional relationship.

### **II. Giving or Receiving of Gifts**

Giving and receiving gifts is potentially dangerous to the professional relationship. A small token of appreciation by the patient purchased while on a holiday, around New Year's, or given at the end of care may be acceptable. However, anything beyond small gifts may indicate that the relationship is becoming personal.

In addition, the homeopath must be sensitive to the patient's culture. In some cultures, refusing a gift is considered a serious insult. However, if a gift is large, the patient may be developing a personal relationship with the homeopath. The patient may even expect something in return. The homeopath must use discretion in accepting gifts.

As well, gift-giving by a homeopath, even if the gift is small, may confuse a patient. While many patients would find a holiday season card from a homeopath to be a nice gesture, some patients might feel obliged to send one in return, and others with different cultural backgrounds may not be familiar with the custom, or may not know how to respond to the gesture.

### **Gift Giving Scenario**

*Joan, a homeopath, has a patient from a Mediterranean culture who brings food for every visit. Joan thanks her, but tries not to treat it as an expectation. On one visit Joan happens to mention her home-made pizza recipe. The patient insists that Joan visit her home over Thanksgiving to bring some home-made pizza. Joan politely declines the invitation, giving the patient a written recipe instead. In the weeks following this exchange, the patient stops bringing in food, is less friendly and starts missing appointments.*

*Joan did not do anything wrong in this scenario, but it shows the confusion that may occur when the boundaries between patient and homeopath start to blur.*

### **III. Dual Relationships**

A dual relationship exists when the patient has an additional connection to the homeopath outside the therapeutic relationship (e.g. the patient is also the coach of the homeopath's son's hockey team). In any dual relationship, it is possible that the other relationship could interfere with the professional one.

It is best to avoid dual relationships. Where the other relationship predates the professional one (e.g. a relative, a pre-existing friend), it would be prudent to refer the patient to another homeopath. Where a referral is not possible (e.g. in a small town, where availability of homeopaths may be limited), special safeguards are essential, such as discussing the dual relationship with the patient, agreeing with the patient to be formal during visits and never talking about the care outside the office setting.

### **Dual Relationships Scenario**

*David's son plays hockey in a local league for small children. At the start of the season, David, who is a homeopath, notices that one of the other parents is a relatively new patient of his. He thinks nothing of it, but as the season progresses, the patient becomes coach of the hockey team. David notices that his son seems to be getting less ice time than usual. He attempts to speak with the coach but feels uncomfortable with the response. The next appointment seems strained and rapport seems to have been lost.*

*With the patient's agreement, David refers him to another homeopath. Although the coach is no longer his patient, during hockey games David still feels that his son is treated differently than the other players.*

*The example is intended to highlight the difficulty that exists when drawn into a dual relationship and how problematic it may be to extricate one-self from the dual relationship and re-establish normal relationships.*

### **IV. Ignoring Established Customs**

Ignoring a custom or normal business practice may confuse the nature of the professional relationship. For example, appointments are usually held during regular business hours at a clinic. If a homeopath were to ignore this custom by holding a session at a restaurant, for example, confusion could result. The patient might think that the meeting is a social visit, or could feel that s/he has to pay for the meal. Treating a patient as special, or different from other patients, may be easily misinterpreted.

## **V. Personal Opinions**

Everyone has personal opinions and homeopaths are no exception. However, homeopaths should not use their position to promote personal opinions or causes with patients (e.g. religion, politics, or even a lifestyle choice). Similarly, personal reactions should not be shared, unless doing so serves a therapeutic purpose.

### ***Personal Opinions Scenario***

*Helen pushes for her homeopath's views on immigration. At first Don, the homeopath, resists, but eventually says he has some concerns about the abuses of the immigration system.*

*Don says he has heard, often directly from patients, about how they have lied to immigration authorities. Helen criticizes the immigration authorities for allowing too many immigrants into the country.*

*This loud talk could be heard by patients in the waiting room, some of whom are new Canadians. One of the patients tells other staff at the clinic that he feels uncomfortable with either Don or Helen around.*

## **VI. Becoming Friends**

Becoming a personal friend with a patient is a form of dual relationship. Registrants should be aware that it is difficult for all but the most assertive of patients to tell their homeopath they do not want to be friends. Moreover, a patient should never feel as though s/he must become a friend of the homeopath in order to receive ongoing care. It is the Registrant's responsibility to maintain professional boundaries and to prevent personal friendships from developing.

## **VII. Touching and Disrobing**

Touching may be easily misinterpreted, particularly where removal of clothing is involved. For example, a patient may view an act of encouragement by a homeopath, such as a hug, as a crossing of patient-practitioner boundaries or even a sexual gesture. When it comes to touch between a homeopath and patient, Registrants are encouraged to act prudently and with extreme caution. The nature and purpose of any clinical touching must always be explained first and the patient should always give consent before the touching begins. Cultural sensitivities should be observed. The presence of a third party should be permitted and even offered where appropriate. The touching must always have a clinical relevance that is obvious to the patient.

Managing boundaries is important for both homeopaths and patients.

## **D. Sexual Abuse**

Sexual abuse is considered an extreme boundary violation. Because of its potential to cause harm to patients, it is addressed specifically in the *Regulated Health Professions Act, 1991*.

Patients have a right to receive care from a Registrant in a manner that respects the boundary between the patient and the health professional, and in a manner which ensures the patient is free from harm. Given the inherent power imbalance between a Registrant and his/her patient, there is the potential for any sexual contact to cause serious harm to the patient.

The *RHPA* considers any form of sexual contact between a regulated health professional and his/her patients a serious form of professional misconduct. The term *sexual abuse* is defined broadly and includes the following conduct by homeopaths:

- sexual intercourse or other forms of physical sexual relations between a Registrant and a patient;
- touching, of a sexual nature, of the patient by the Registrant; or
- behaviour or remarks of a sexual nature by the Registrant towards a patient.

Even if a patient consents to sexual contact, it is prohibited for the Registrant to engage in any form of sexual activity with the patient.

### **I. Examples of Sexual Abuse**

A wide range of actions constitute sexual abuse. For example, telling a patient a sexual joke or hanging a sexually explicit calendar on a wall where it would be seen by patients are examples of sexual abuse. Non-clinical comments about a patient's physical appearance, such as, "You look sexy today," also constitute sexual abuse. Dating a patient is also sexual abuse.

Touching as part of a clinical examination or remarks of a *clinical nature* are not sexual abuse. For example, if information about the patient's sexual/romantic history is required for a therapeutic purpose, the homeopath may ask about the history. However, asking about a patient's sexual/romantic life to satisfy the personal interests of the homeopath is considered sexual abuse. Similarly, for those homeopaths whom perform physical examinations, touching of the chest or pelvic area of a patient must be clinically necessary, and, as discussed above, be done only after receiving informed consent.

It is always the responsibility of the Registrant to prevent sexual abuse. Registrants should consider ways of preventing sexual abuse, or even the perception of sexual abuse, from arising. For example, if a patient begins to tell a sexual joke, or makes comments about the appearance or romantic life of the homeopath, the homeopath must act to stop it. If the patient asks for a date or initiates sexual touching, the homeopath must say no, explain why such behaviour between a patient and homeopath is inappropriate and discourage future incidents.

The following are suggestions for preventing even the perception of sexual abuse:

- do not engage in any form of sexual behaviour;
- if a patient initiates sexual behaviour, put a stop to it – be sensitive, but firm when doing so;

- do not date patients;
- avoid non-therapeutic self-disclosure;
- avoid comments that might be misinterpreted, such as, “You’re looking good today;”
- be cautious in touching a patient;
- do not make gratuitous or inappropriate comments about a patient’s body or romantic life; and
- document well any discussion of relevant sexual matters or any incidents of a sexual nature.

In the context of the patient-practitioner relationship, experience indicates that most sexual abuse is not predatory in nature, but rather results from the homeopath and patient developing romantic or sexual feelings for each other.

When a homeopath and patient develop feelings for each other, the homeopath should take action to stop an inappropriate relationship from proceeding.

### ***Sexual Abuse Scenario No. 1***

*Pam, a homeopath, tells a colleague about her romantic weekend with her husband for their anniversary. Pam makes a joke about how wine has the opposite effect on the libido of men and women. Unbeknownst to Pam, her patient, Kiah, is sitting in the reception area and overhears. When in session with Pam, Kiah mentions that she overheard the remark and is curious as to what Pam meant by this, as in her experience, wine helps the libido of both partners. Has Pam engaged in sexual abuse?*

*Pam clearly has crossed boundaries by making the comment in a place where a patient could overhear it. However, the initial comment was not directed towards Kiah and was not meant to be heard by her. It would certainly be sexual abuse for Pam to discuss her own personal experiences in response to Kiah’s question. Pam should apologize for making the comment in a place where Kiah could hear it and state that Pam needs to focus on Kiah’s care, which may include responding to the question in a professional manner.*

## **II. Treating a Spouse or Partner**

Treating a spouse or partner is also considered sexual abuse. A number of court decisions have established that a regulated health professional cannot treat his/her spouse, except in very limited circumstances, like an emergency. Homeopaths must not provide assessments or care to a spouse or partner. They need to transfer care to another practitioner.

Under the law, it does not matter that the spousal relationship came first. For example, the Court of Appeal in Ontario held that a chiropractor who became sexually involved with a person, and some months later began to treat her, had committed sexual abuse. The Court said that even though the personal relationship had come first, it was still inappropriate for the chiropractor to treat his partner, even occasionally. In this case, the treatment was not simply providing household advice or temporary physical comfort to a family member in physical pain it was a formal assessment and treatment plan of the patient.

## **III. Dating Former Patients and Handling Sexual / Romantic Feelings for Patients**

Where a Registrant has developed sexual/romantic feelings for a patient, s/he should either:

1. seek supervision or personal care, to resolve the feelings; or
2. transfer the care of the patient to another homeopath immediately.

Dating former patients is a sensitive issue. Technically, it is not sexual abuse because the person is no longer the homeopath's patient. However, it may be unprofessional for a homeopath to date a former patient because of the inherent power differential that continues to exist between them. There should be an appropriate *cooling off* period.

### **Sexual Abuse Scenario No. 2**

*Jim, a homeopath, is attracted to his patient Carl. Jim notices that he is looking forward to working on the days when Carl will be there. Jim extends the sessions a few minutes in order to chat informally with Carl and thinks that Carl might be interested in him as well by the way that he makes eye contact. Jim notices that he is touching Carl on the back and the arm more often.*

*Jim decides to ask Carl to join him for a coffee after his next visit to discuss whether Carl is interested in him. If Carl is interested, he will transfer Carl's care to a colleague. If Carl is not interested then he will make the relationship purely professional. Jim decides to ask a colleague, Donna, for advice.*

*Donna cautions Jim that he and Carl are both at significant risk. Donna also says that it is important for Jim to transfer the care of Carl right away and recommends that he wait some time before asking Carl to join him for a coffee. Donna is correct in her assessment of the situation and her recommendations are sound.*

#### ***IV. Handling of Allegations of Sexual Abuse by the College***

The College takes all complaints regarding sexual abuse very seriously. There are a number of special provisions that address the handling of sexual abuse matters throughout the complaints and discipline process.

If a complaint involves sexual touching and if there is evidence to support the complaint, a referral to the Discipline Committee for a discipline hearing is likely.

At the discipline hearing the identity of the patient is protected. The patient may have a role at the hearing. For example, if a finding is made, the patient might be invited to make a statement on the impact of the sexual abuse. Where the sexual abuse involves sexual intercourse or similar sexual acts, and a finding is made, there is a mandatory minimum penalty; the homeopath's registration will be revoked for a period of at least five years.

In all cases where a finding of sexual abuse has been made, the Registrant will be reprimanded and may be ordered to pay for the costs of any care needed by the patient.

Where a finding of sexual abuse is made, the College is also responsible for paying at least some of the costs of any care needed by the patient.

If a Registrant has reasonable grounds to believe that a regulated health professional (whether a registrant of this College or another college) has engaged in sexual abuse, the Registrant is required by law to make a report. In this case, the report is made to the Registrar of the college where the health professional is a registrant. For example, if a patient tells a homeopath that she was fondled by her physiotherapist, the homeopath must make a written report to the Registrar of the College of Physiotherapists of Ontario. This reporting obligation is discussed in detail in the section *Mandatory Reports*.

Because sexual abuse is such an important issue, colleges take it very seriously. Each college must take steps to prevent sexual abuse by its registrants. For example, to educate homeopaths regarding sexual abuse and its prevention, the Patient Relations Committee of the College is required to develop a sexual abuse prevention plan that will educate homeopaths in this regard.

**Sample Question**

Which of the following is clearly sexual abuse:

1. Taking a sexual history when it is clinically necessary to do.
2. Using glamour shots of scantily dressed Hollywood stars as your interior design theme in order to attract younger patients.
3. Telling an employee a sexual joke when there are no patients around.
4. Dating a former patient.

*The best answer is 2 These pictures sexualize the atmosphere at the clinic which is inappropriate in a health care setting.*

*Answer 1 is not the best answer because taking a sexual history is appropriate when it is needed to assess the patient and it is done professionally.*

*Answer 3 is not the best answer because the sexual abuse rules only apply to patients. Sexual behaviour with employees may, however, constitute sexual harassment under the Human Rights Code and could otherwise be unprofessional.*

*Answer 4 invites consideration but is not the best answer because the person is not a patient at the time of dating. However, it might still be unprofessional to date a former patient without a suitable cooling-off period, particularly if the homeopath had an intense or intimate role in the assessment or care of the patient.*

## **E. Interprofessional Collaboration**

In 2007, the *RHPA* was amended to require all colleges to promote interprofessional collaboration, both among the colleges as well as among practitioners.

On a practical level, collaboration helps to ensure that care is coordinated and as effective as possible. Collaboration reduces the risk of administering conflicting or inconsistent treatment and also reduces the chance that a patient receives inconsistent information or advice. These measures contribute to enhanced safety and improvement in patient experience – patients benefit from the shared knowledge of health professionals who can work together to meet his/her needs.

The public is looking to healthcare professionals to provide the safest, most efficient care possible, and there is an expectation that health care professionals will interact with each other in a professional manner to achieve these goals.

Ontario has been looking to interprofessional collaboration to help address health human resource shortages. The province's health care system faces a number of human resource pressures: the population is aging and life expectancies continue to rise, thereby increasing the demand for care. As the general population ages, the average age of health care workers is also rising. In addition, the incidence of people living with complex chronic conditions is increasing, while attracting and retaining health care professionals remains a challenge. Demands on the health care system and its professionals will intensify as a result of these factors.

The College supports collaboration in a number of ways. These include working with other colleges (e.g. sharing information on investigations, collaborating on standards development to promote consistency), and encouraging homeopaths to collaborate with registrants of other health care professions regarding the care of patients, when it is appropriate to do so and not counter-therapeutic.

Open and ongoing communication with other health care providers is a key component of successful collaboration. Registrants must make reasonable attempts to communicate with relevant health care providers with respect to a patient's care, except in instances where the patient refuses to consent to this communication or if the communication is counter-therapeutic or unnecessary. Failing to do so could be considered professional misconduct.

### **I. The Role of the Patient**

The patient controls the extent of interprofessional collaboration in a specific circumstance. If a patient is uncomfortable with any aspect of collaboration, s/he may direct the homeopath not to share his/her personal health information with others. The Registrant must comply with such a direction unless one of the exceptions in the *Personal Health Information Protection Act (PHIPA)* applies. (Refer to Section 3: Law, E, I for details.)

Registrants should discuss any planned interprofessional collaboration with the patient. However, there are circumstances where prior patient consent is not possible, such as when a patient is in an emergency situation and health care provider requests information about any interventions the patient has received. In such cases, homeopaths may disclose the information needed for the treatment of the patient without consent, so long as the patient has not prohibited the homeopath from doing so.

## **II. Issues for Homeopaths to Consider**

Where interprofessional collaboration involves working in a multi-disciplinary setting (i.e. a place where practitioners of different professions work together and where patients may be seen by multiple health care providers), other issues may arise, including the following:

- Will the setting have shared records or will the homeopath have separate records?
- If the records are shared, will the homeopath keep any private notes outside of the shared record? If so, how will s/he make sure that the other health care providers have access to any needed information? (See Section 3: Law, C, III, on Record Keeping for more information.)
- How does the setting deal with the wording used in the records? Will everyone use the same abbreviations?
- What happens to the records if the homeopath leaves to practice elsewhere? Will the patient be told where the homeopath has gone? Will another homeopath from the setting take over the patient's care? Will the patient be given a choice? (The patient should be given a choice, although some settings will only do so if the patient asks.)
- Who is the health information custodian that owns the records?
- Will there be one person who has overall responsibility for the care of the patient? If so, who? If not, how will the patient's care be coordinated?
- How will disagreements in the approach to the care of the patient be dealt with? If it is the homeopath who is in disagreement, when and how does s/he tell the patient?
- Is the patient aware of any of the above?

Collaboration in a multi-disciplinary setting is one of the many areas in which a Registrant should consider consulting his/her own lawyer.

### ***Interprofessional Collaboration Scenario***

*Asa, a homeopath, prefers to practice on her own. She provides alternative approaches to care compared to most other homeopaths, and certainly when compared to members of traditional Western medicine. Asa's patient, Liam, also has a family doctor. Liam's family doctor calls unexpectedly to say that Liam is not responding to his medication as the MD had expected. The doctor wonders if anything Asa is doing might interfere with Liam's medication. Asa has hinted to Liam that she is not supportive of the medication that he is on. Asa wonders if Liam has stopped taking the medication without telling the doctor. What should Asa say?*

*In many respects, there has already been a failure of interprofessional collaboration in this case. Rather than hint at her concerns about the medication that Liam is on, Asa should have discussed the concerns openly with Liam and requested permission to speak with his doctor. At this point, however, Asa should probably speak to Liam first before talking to the doctor. It is not clear that Liam would want such a discussion to take place, and this is not an emergency. Asa should obtain Liam's permission to speak to the doctor.*

## **F. Billing**

Establishing professional fees charged by Registrants is not within the mandate of the College, and the College does not set the price of Registrants' services. In fact, the College does not regulate the amount a Registrant may charge a patient, unless the fee is excessive. A fee is considered excessive if it takes advantage of a vulnerable patient or is so high that the profession would conclude that the homeopath is exploiting a patient.

### **I. Informing a Patient About Fees**

While the College does not set the fees for services provided by Registrants, it does regulate the way in which Registrants may bill patients. Generally speaking, billing must be open and honest. Patients must be informed about the Registrant's fees for services and/or products before they are provided. Any penalties for late payment must also be disclosed in advance.

The best way to inform patients about fees is to provide a written list or description of the fees. Such a list must include a summary of the services and any products provided by the Registrant and their associated cost. In addition, if there are penalties for late payment, these should be included. Patients may also be told verbally, or Registrants may post a sign clearly displaying the fees in a highly visible area of the practice, such as a reception area. The problem with relying on verbal or posted methods is that the patient might forget important information.

#### **Itemizing Bills for Patients**

Registrants must provide an itemized bill for any patient who requests one. The bill must describe the services and products that were provided. Any document relating to fees (e.g. an invoice, bill or receipt) must be accurate. **The following are EXAMPLES OF INACCURATE BILLING**, which could be a breach of billing practices considered acceptable by the College:

- Indicating that the Registrant provided the service when someone else did.
- Indicating the wrong date for the service. For example, putting in a date when the patient had insurance coverage, when the service actually occurred on a date that the patient did not have insurance coverage.
- Indicating that one service was performed when, in fact, another service was provided. For example, indicating that the fee was for a follow-up visit when in fact there was only a telephone conversation.
- Billing for services at more than the Registrant's usual rate because the service is being paid for by an insurance company.
- Indicating that a service was performed when, in fact, no service was performed. For example, indicating that a patient visit occurred when, in fact, the patient missed the appointment. (See next page for billing and cancellations.)
- Billing for a product at a rate that is more than its actual cost. The actual cost may include a reasonable amount for staff time, storage and handling.

## **II. Billing When No Service Is Provided**

No fee may be billed when no service was provided. The only exception is that a fee may be billed when a patient misses an appointment or cancels an appointment on very short notice. However, most insurance companies will not pay for a missed appointment and the fee must be charged directly to the patient.

Registrants cannot offer a reduction in the amount of a bill if it is paid immediately, as such a practice would give wealthy patients an advantage over other patients. However, a homeopath may charge interest on overdue accounts because there is an actual cost to the Registrant in collecting them.

## **III. Billing Reductions and Free Consultations**

Some homeopaths may choose to offer *free* initial consultations, as this can be an effective tool to promote a practice. If a Registrant wishes to do this, s/he must ensure that any such offer is completely honest, and that the service is provided as advertised. Any free initial consultation must be complete and not just a partial service. There must be no requirement to attend a second time and no hidden charges are permitted. The offer must be open to everyone.

### ***Billing Scenario***

*Ken, a homeopath, has a posted rate of \$120 per visit in the reception area of his office. In fact, if the patient is paying for the service personally and does not have extended health insurance coverage, Ken provides a credit reducing the rate to \$99 per visit. If a patient has special financial needs, Ken will consider reducing his rate even further; in fact he has three regular patients who pay only \$5 per visit.*

*The above scenario is contrary to the Professional Misconduct Regulation. In effect, Ken's posted fees are not honest and accurate. Ken is, in effect, billing patients with insurance more than his actual regular fee.*

*It is acceptable, however, for Ken to lower his actual fee in individual cases of financial hardship. Ken has to do this on a case by case basis and not through a general policy intended to hide his true fee.*

## Section 3: Law

### A. Types of law

Legislation is passed by provincial legislatures and the federal parliament. When draft legislation is first introduced in the legislature (or parliament), it is known as a *Bill* (e.g. Bill C141). After it is passed into law, it becomes an Act, also referred to as a statute. Many Acts include clauses that provide for the subsequent creation of regulations under the Act. Regulations provide more details on how the Act will be implemented. It is important to note that the *Canadian Charter of Rights and Freedoms*, and certain other overriding statutes, may take priority over other statutes.

The Acts that apply most directly to Homeopaths are *the Regulated Health Professions Act (RHPA), 1991*, and the *Homeopathy Act, 2007*. In certain circumstances, a number of other acts apply as well. These laws are discussed in Section E, Other Laws.

Regulations are made by government when a statute permits that to be done. Under the *RHPA*, regulations can be proposed by the College (e.g. registration, professional misconduct, quality assurance) or by the Minister of Health and Long-Term Care (e.g. controlled acts, professional corporations).

By-laws are made by the College and deal primarily with the internal operations of the College and some matters relating to registration, such as fees and professional liability insurance.

In addition to developing regulations and by-laws, the College publishes official documents such as professional practice standards, and may also publish guidelines, policy statements and position statements. Practice standards set out the minimum standard of professional practice and conduct required of Registrants of the College in the practice of the profession. While standards are not actually law, the Professional Misconduct Regulation of this College states that it is professional misconduct to contravene a standard established by the College. The College may also issue guidelines, which provide additional information and direction for Registrants to help them understand how to meet practice standards. Policy statements and position statements generally provide guidance to Registrants on specific issues, and also share the College's position on issues with the public.

Court decisions, referred to as *case law*, are used as a guide by lawyers and judges when similar issues arise at a later date. Court decisions are particularly important in guiding the procedure of College committees (e.g. investigations by the Inquires, Complaints and Reports Committee (ICRC) and decisions of the Discipline Committee).

## **B. RHPA**

The *Regulated Health Professions Act (RHPA)* sets out the regulatory framework for the health colleges in Ontario, with the goal of protecting the public from harm. The *RHPA* includes a Risk of Harm provision that prohibits a person from treating or advising a person “with respect to his or her health in circumstances in which it is reasonably foreseeable that serious bodily harm may result from the treatment or advice or from an omission from them”.

To carry out this mandate, the *RHPA* establishes a number of controlled acts, restricts the use of certain titles and sets the scope of practice for a profession. These concepts are important for homeopaths to be familiar with, and are discussed in more detail below.

### **I. Controlled Acts and Delegation**

There are certain health care procedures, called controlled acts that are potentially dangerous and should only be performed by a properly qualified professional. No one can perform a controlled act without legal authority. Fourteen controlled acts are listed in the *RHPA*. (See box on next page for complete list of controlled acts.)

Homeopaths have no controlled acts.

Registrants should be aware of the complete list of controlled acts so they are able to recognize when they may inadvertently engage in a controlled act. Examples of controlled acts include communicating a diagnosis, performing a procedure below the dermis, prescribing drugs and administering forms of energy.

While Registrants are not permitted to use any of the forms of energy listed below, therapeutic ultrasound is not a controlled act and may be used by anyone, including homeopaths. Forms of energy that may not be used by homeopaths include: use of electricity for aversive conditioning, cardiac pacemaker therapy, cardioversion, defibrillation, electrocoagulation, electroconvulsive shock therapy, electromyography, fulguration, nerve conduction studies, transcutaneous cardiac pacing, electromagnetism for magnetic resonance imaging, and soundwaves for diagnostic ultrasound, and lithotripsy. (Some exceptions may apply, see subsection on Exceptions, p. 51.)

Homeopaths may need to do some research or obtain advice when dealing with a specific substance to determine whether it is a drug. As a general rule, if a substance has a DIN (Drug Identification Number) it is usually considered to be a drug. Some non-drug substances have different kinds of drug numberings, such as a Natural Product Number (NPN) or Homeopathic Medicine Number (DIN-HM). These products are generally not considered to be drugs.

## The Fourteen Controlled Acts

The controlled acts listed in the *RHPA* are as follows:

1. Communicating a diagnosis to the individual or his/her personal representative identifying a disease or disorder as the cause of symptoms of the individual in circumstances in which it is reasonably foreseeable that the individual or his/her personal representative will rely on the diagnosis.
2. Performing a procedure on tissue below the dermis, below the surface of a mucous membrane, in or below the surface of the cornea, or in or below the surfaces of the teeth, including the scaling of teeth.
3. Setting or casting a fracture of a bone or a dislocation of a joint.
4. Moving the joints of the spine beyond the individual's usual physiological range of motion using a fast, low amplitude thrust.
5. Administering a substance by injection or inhalation.
6. Putting an instrument, hand or finger, beyond the external ear canal, beyond the point in the nasal passages where they normally narrow, beyond the larynx, beyond the opening of the urethra, beyond the labia majora, beyond the anal verge, or into an artificial opening into the body.
7. Applying or ordering the application of a form of energy prescribed by the regulations under this Act.
8. Prescribing, dispensing, selling or compounding a drug as defined in the *Drug and Pharmacies Regulation Act*, or supervising the part of a pharmacy where such drugs are kept.
9. Prescribing or dispensing, for vision or eye problems, subnormal vision devices, contact lenses or eye glasses other than simple magnifiers.
10. Prescribing a hearing aid for a hearing impaired person.
11. Fitting or dispensing a dental prosthesis, orthodontic or periodontal appliance or a device used inside the mouth to protect teeth from abnormal functioning.
12. Managing labour or conducting the delivery of a baby.
13. Allergy challenge testing of a kind in which a positive result of the test is a significant allergic response.
14. *Treating, by means of psychotherapy technique, delivered through a therapeutic relationship, an individual's serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual's judgment, insight, behaviour, communication or social functioning.* (Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by the Statutes of Ontario, 2007, chapter 10, Schedule R, subsection 19 (1) by adding the 14<sup>th</sup> controlled act.)

### **Controlled Acts Scenario No. 1**

*David, a homeopath, sees his patient Kyle. Kyle mentions an earache he has had for two days. David takes a look and sees that a bug has gotten into his ear and has been jammed deep into the inner ear canal, perhaps with a cotton stick. David takes some tweezers and gently works his way into the inner ear canal and removes the bug. Kyle is grateful. David mentions the incident to a colleague who advised David that he has just performed a controlled act that is not authorized to homeopaths. David checks the RHPA and realizes that his colleague is correct.*

There are four ways in which a health care provider can receive the legal authority to perform a controlled act (details provided below):

1. if authorized to do so;
2. as an exception, in limited situations;
3. as a result of an exemption; and
4. in certain circumstances, if a controlled act is delegated.

#### **Authorizing a Controlled Act**

Registrants of a regulated health profession may be authorized by their governing statute to perform a controlled act. Homeopaths are not authorized to perform controlled acts.

#### **Exceptions**

The *RHPA* identifies a number of exceptions permitting those not authorized to perform controlled acts to do so in certain circumstances including:

- if helping someone in an emergency;
- under supervision while in formal training to become a registrant of a college authorized to perform the controlled act;
- if treatment is by prayer or spiritual means pursuant to one's religion;
- when done for a member of one's household. However, this applies only to the following controlled acts: communicating a diagnosis (e.g. a medical doctor telling his or her child that she has a cold), administering a substance by injection or inhalation, or entering a body opening);
- when helping a person with his/her routine activities of daily living such as administering a substance by injection or inhalation or entering a bodily orifice (e.g. on a home visit helping a patient with an insulin injection);
- if providing aboriginal healing within the aboriginal community; and

- if counselling, as long as this does not amount to communicating a diagnosis or providing psychotherapy.

### **Exemptions**

In addition to the exceptions listed in the *RHPA*, the Minister of Health and Long-Term Care has provided a number of exemptions in a Minister's regulation, most of which are limited in scope (e.g. dentists are permitted to apply electricity for electrocoagulation). A few of the exemptions have broader applications and include tasks that anyone can perform, such as cosmetic body piercings and tattooing, electrolysis, and male circumcision.

The Minister of Health and Long-Term Care also permits registrants of seven colleges to perform acupuncture under exemption, including chiropractors, chiropractors, massage therapists, nurses, occupational therapists, physiotherapists and dentists. Naturopaths will soon be added to the list. Registrants of other regulated professions, such as practitioners of traditional Chinese medicine and physicians, can perform acupuncture under the authorization of their profession-specific Acts. Homeopaths are not permitted to perform acupuncture under the *Homeopathy Act* or by exemption.

### **Delegating a Controlled Act**

A health care provider who is authorized to perform a controlled act can delegate the controlled act to another health care provider or to an unregulated person. However, the following rules govern the delegation of a controlled act:

- The person giving the delegation is limited by any regulations or professional standards of his/her college.
- The person receiving delegation is also limited by any regulations or professional standards of his/her college.
- The person delegating the procedure is responsible for the actions of the person receiving the delegation.

### **Controlled Acts Scenario No. 2**

*Frank, a homeopath, has a plate of cookies in his waiting room. Connor, a patient, eats one and goes into anaphylactic shock. Frank recalls that Connor has a peanut allergy and realizes that the cookies may have peanuts in them. Frank looks inside Connor's briefcase and finds an EpiPen containing a measured dose of epinephrine. Frank injects the epinephrine into Connor's muscle and calls 911. Connor recovers. While Frank did perform a controlled act not authorized to him (injecting a drug), he did so under an emergency which is a recognized exception to the controlled acts rule.*

### **Controlled Acts Scenario No. 3**

*Cam, a homeopath, only works part time. His other job is to perform artistic body piercings. Even though such piercings go beyond the dermis, this procedure is exempted under the Minister's regulation on controlled acts. Cam is permitted in his other job to perform artistic body piercing.*

### **Controlled Acts Scenario No. 4**

*Daniela, a homeopath, works with a physician. Because of Daniela's knowledge of pharmacology, the physician trusts Daniela to dispense samples of some medications while the physician is not present. The physician delegates this intervention to Daniela through a written medical directive. Daniela is permitted by the delegation to provide these medications. However, both Daniela and the physician will be responsible if something goes wrong.*

### **Sample Question**

Which of the following is a controlled act:

1. Removing broken glass that has been deeply embedded in a child's leg.
2. Cleaning a scrape on a child's elbow with soap and water.
3. Applying alcohol to that scrape on a child's elbow.
4. Wrapping the child's wounds.

*The best answer is 1 Deeply embedded glass has almost certainly gone beyond the dermis and is sitting in deeper tissue. There may be an issue as to whether this is an emergency (likely not as in most cases it would be possible to take the child to a hospital or physician's clinic for treatment), but that does not change the fact that removing the glass is a controlled act. Similarly, the household exemption does not apply to these sorts of procedures.*

*Answer 2 is not the best answer because a scrape on the skin implies that it has not gone beneath the dermis.*

*Answer 3 is not the best answer because applying a substance to the skin is not administering a substance by inhalation or injection.*

*Answer 4 is not the best answer because the procedure is above the skin and does not fall within any of the other controlled acts.*

## **II. Scope of Practice**

A regulated health profession's scope of practice is a general description of what that profession does. Under the *Homeopathy Act*, the scope of practice statement reads as follows:

*The practice of Homeopathy is the assessment of body system disorders and treatment using homeopathic techniques to promote, maintain and restore health.*

If a procedure is not a Controlled Act, then it is considered to be in the public domain. The registrant must adhere to the accepted standards while performing activities that fall within the public domain. Homeopathy is within the public domain. Registrants are expected to meet the minimum entry-to-practice competencies established by the College of Homeopaths of Ontario and ensure ongoing competencies are met. Only Registrants of the College that practice homeopathy are assessed on their knowledge, skill and judgments to practice safely.

For the purposes of this standard "Public domain" means any diagnostic or therapeutic procedure, other than the Controlled Acts listed in section 27(2) of the RHPA, that any regulated health professional may utilize in the course of providing patient care.

The regulated health profession's scope of practice is intended to protect the public from harm by ensuring that regulated health professionals do not engage in activities which pose risk for their patients if they are not trained in these activities. For example, if a Registrant treated a patient's cancer by using procedures outside of his/her scope, such as surgery, the homeopath could face discipline or even prosecution.

Registrants are permitted to provide information that lies outside of their scope of practice, as long as it is not inherently dangerous, and provided the patient understands that the information comes from the homeopath's personal experience only.

### **Scope of Practice and Risk of Harm Scenario**

*Mike, a homeopath, had a patient named James, who was diagnosed with Stage IV cancer. James was scheduled for surgery the next week to be followed by chemotherapy. James' physician said that the treatment had a 50% chance of success (i.e., meaning he will be alive and cancer free in five years' time, and that without treatment, James had a less than 50% chance of surviving for five years.)*

*After a careful assessment, Mike advised the patient to cancel both the surgery and the chemotherapy. He recommends a series of remedies and some diet and lifestyle changes. James died within two months and the family has gone to the police asking that Mike be prosecuted under the risk of harm clause.*

*In this case, Mike provided treatment that is outside of the scope of practice of a Registrant of the College. The treatment also appears to have no evidence to support it. There was an inherent risk of harm in advising the patient to reject the proposed medical treatment that had evidence of a reasonable chance of recovery in favour of a treatment that had not been fully researched.*

### III. Use of Titles

There are a number of rules about the use of professional titles and designations by homeopaths.

The *RHPA* restricts the use of titles, including the use of *Doctor*, and those titles conferred by health profession regulatory colleges.

#### ➤ The Doctor Title

The *RHPA* restricts use of the title *Doctor* to registrants of certain regulated professions ((i.e. chiropractors, dentists, optometrists, physicians, psychologists and traditional Chinese medicine practitioners, and, in the future, naturopaths). If a person is not from one of the approved health professions, s/he cannot use the title *Doctor* in a clinical setting, even if the person has an earned doctoral degree (i.e. the person holds a Ph.D or another doctoral designation or degree but is not a registrant of the five regulatory colleges which permit the use of the doctor title. Under these situations, the title *Doctor* can be used in other settings, such as socially or in a purely teaching or research setting, where there are no patients.)

Registered Homeopaths are not permitted to use the title *Doctor* in a clinical setting. In addition, allowing a staff member to call a homeopath “*Doctor*” in a clinical setting would constitute an offence.

#### ➤ HOM / Registered Homeopath Titles

The *RHPA* states that only *Registrants* of this College can use the titles Homeopath (HOM) or any variation of those titles including Homeopath, Transitional (HOM (T)), or Homeopath, Inactive (HOM(I)). Moreover, *Registrants* may only use the title associated with their class of registration.

Class of Registration	Title / Designation	Abbreviation
Full	Homeopath	Hom
Grandparented	Homeopath (Transitional)	Hom (T)
Inactive	Homeopath (Inactive)	Hom (I)

Anyone not registered with the College is restricted from using these titles or any variations. In addition, a person who is not registered with the College is prohibited from holding him/ herself out as someone qualified to practise homeopathy in Ontario. These restrictions prevent individuals from pretending that s/he is a homeopath when they are not.

Homeopaths are not permitted to use any title or designation indicating that they are specialists. For example, a homeopath cannot say that he or she is a paediatrician (although he or she could say that the practice is restricted to children).

Finally, there are general Professional Misconduct Regulations prohibiting *Registrants* from using misleading titles or designations, or engaging in false or misleading advertising. For example, it would be professional misconduct for a homeopath to refer to an educational degree that has not been earned.

### **Use of Titles Scenario No. 1**

*Darren, a homeopath with a MD in Homeopathy from India, teaches at a school that trains students in the practice of homeopathy. The school operates a clinic where patients are seen. Darren supervises the students at the clinic and the students refer to him as “Doctor Darren” at the clinic. The Dean of the school pulls Darren aside and tells him to ask his students to stop calling him Doctor in the clinic where there are patients. It is OK in the classroom, but not the clinic. Darren reviews the RHPA and realizes that the Dean is correct. Darren is assisting with the care of patients in the clinic and thus is not permitted to call himself (or allow others to call him) Doctor. Darren also recognizes that he was being a poor role model for the students.*

### **Use of Titles Scenario No. 2**

*Marla, a homeopath, has decided to start a private practice and has just designed her new business cards, brochures and an internet advertisement. Marla shows her designs to a colleague who notes that on all her advertising she accurately gives prominence to her homeopath regulated title, except in the internet ad.*

*Marla explains that she was limited to the number of words she could use in the ad and wanted to most accurately describe what she does in her practice.*

*The colleague rightly points out to Marla that she must always use and give prominence to her regulated title and may not use a specialty title in favour of her regulated title. Marla consults College guidelines on the use of titles and confirms that her colleague gave her the right advice.*

## **IV. Mandatory Reports**

There are a number of specific reports that *Registrants* are required by law to file. For example, Homeopaths are compelled to report if another regulated health professional is sexually abusing a patient.

*Registrants* are protected in a number of ways when filing these reports; both the *RHPA* and case law provide immunity to *registrants* of a regulated health profession who make a mandatory report in good faith. The mandatory reporting requirements also create an exception to the Registrant’s duty of confidentiality. In circumstances where a report must be filed with a college, the *PHIPA* allows exceptions to the expectation of privacy.

### **➡ Sexual Abuse Mandatory Report**

Registrants must report sexual abuse by another regulated health professional if there are reasonable grounds to believe that the health professional has sexually abused a patient.

*Reasonable grounds* means the information would cause a reasonable person, who is not familiar with the individual involved to conclude that it is more likely than not that the information is correct. Reasonable

grounds could arise even if the Registrant did not personally observe the sexual abuse. It would likely constitute reasonable grounds, for example, if a patient tells his/her homeopath details of the abuse.

The report must follow these requirements:

- The report must be made, in writing, within 30 days of receiving the information;
- if it appears that patients are continuing to be harmed and there is an urgent need for intervention, the report must be made right away;
- it should be directed to the Registrar of the college to which the alleged sexual abuser belongs;
- the reporting homeopath's name and the alleged grounds of the report must be included; and
- to protect the privacy of potentially vulnerable patients, the report cannot include the patient's name unless the patient consents in writing.

It is also mandatory for the operator of a facility to file a report if s/he has reasonable grounds to believe that a Registrant of this College (or any other college) has sexually abused a patient. An operator of a facility may or may not be a regulated health professional, but has this duty nonetheless. Such a report must be filed with the Registrar of the college to which the alleged sexual abuser belongs, in accordance with the requirements noted above.

#### ***Sexual Abuse Mandatory Report Scenario***

*Kim, a homeopath, is told by her patient, Carla, that Carla had an affair with her family doctor who was treating her while the affair was going on.*

*Kim tells Carla that she is required by law to report this information to the Registrar of the College of Physicians and Surgeons of Ontario (CPSO). Kim explains that the CPSO will want to investigate the report. The CPSO will likely want to interview Carla about the affair. The investigation could lead to a discipline hearing.*

*However, the law is clear that Kim cannot include Carla's name and contact information in her report unless Carla is prepared to sign a written consent permitting Kim to do so. Kim says that they can call the CPSO right now, on an anonymous basis, to see what the process would be like. Carla agrees to the telephone call. After the call Carla says that she will not give her consent to include her name and contact information. Kim then provides the report in writing without identifying Carla.*

## ➤ **Incompetence, Incapacity and Professional Misconduct Mandatory Report**

A Registrant must file a report if s/he ends a business relationship with another regulated health professional (e.g. a partnership, employee/employer relationship, a corporation, or space sharing arrangement) on the basis that the other professional is incompetent, incapacitated or engaged in professional misconduct. The report must be made even if the person in question quit or resigned before the business arrangement ended.

The report must:

- be made in writing within 30 days of receiving the information;
- be made right away if patients are continuing to be harmed and there is an urgent need for intervention;
- should be directed to the Registrar of the college to which the subject of the report belongs; and
- must include the homeopath's name and the alleged grounds for the report.

Under this mandatory reporting obligation, the name of affected patients can be included without their consent.

As previously mentioned, an operator of a facility may or may not be a regulated health professional; however, s/he has reporting obligations nonetheless. It is mandatory that the operator of a facility file a report if s/he has reasonable grounds to believe that a Registrant of this College (or any other college) who practises in the facility is incompetent or incapacitated. Such a report must be made even if the business relationship with the regulated health professional who is the subject of the report continues. For example, if a homeopath operating a facility knows that a regulated health professional working at the facility is in a treatment program for drug addiction, a report would still have to be made. The report should be filed according to the requirements noted above.

### **Incompetence, Incapacity and Professional Misconduct Mandatory Report Scenario**

*Sheila, a homeopath, learns that her employer, also a homeopath, is an alcoholic. Sheila tries to help her employer get treatment, but the employer keeps relapsing. Yesterday the employer came back after lunch obviously impaired. Sheila called her employer's wife to pick him up and take him home.*

*What concerned Sheila most was that her employer treated three patients after lunch before Sheila became aware about his condition. Sheila is preparing her letter of resignation and consults a lawyer about what to do. The lawyer advises her that she must make a written report to the Registrar of the College, and explains that the report should include Sheila's own name, the grounds for the report, and the names of the three patients seen after lunch on the day of the incident. Sheila files the report.*

## ➔ Offences – Mandatory Self-Report

Registrant must inform the College when they have been found guilty of an offence (a finding by the court). All offences including criminal offences, offences under federal drug or other legislation and provincial offences (e.g. highway traffic offences) must be reported to the College.

Only courts can make offence findings. Thus any findings by a body that is not a court, such as a tribunal, are not reportable under this provision. All findings are reportable regardless of whether or not they resulted in a conviction, for example, an absolute discharge order for assault, a conditional discharge order for theft or a conviction for public mischief.

Reports must be made to the Registrar of the College as soon as possible after the finding, and should contain the following information:

- name of the homeopath filing the report;
- nature of, and a description of the offence;
- date the homeopath was found guilty of the offence;
- name and location of the court that found the homeopath guilty of the offence; and
- the status of any appeal initiated respecting the finding of guilt.

Once a report is filed, it will be reviewed by the College and may result in an investigation. However, the report is not automatically placed on the public register. If there is an appeal that alters the information reported, an updated report must be made.

### ***Offence Mandatory Report Scenario***

*Kate, a homeopath, is found guilty of careless driving under the Highway Traffic Act. On the College's annual renewal form she sees a question asking if she has been found guilty of any offence. She cannot believe that this question is meant to include her careless driving charge. She calls the College for clarification.*

*Kate is told that the RHPA requires all offences to be reported. The intent of requiring such reports is to prevent Registrants from determining whether the findings are relevant or not. That decision is made by the College. In fact, Kate should have reported the finding when it occurred and not waited six months for the annual renewal form. Kate makes the report and a few weeks later she receives a letter from the College thanking her for her report, stating that the College does not believe that this finding is worth investigating further, and reminding her that in future such findings need to be reported right away.*

## ➤ Professional Negligence – Mandatory Self-Report

Homeopaths found by the courts to have engaged in professional negligence or malpractice must report themselves to the Registrar of the College.

Findings by a tribunal do not need to be reported. Moreover, settlements of claims for professional negligence need not be included if they did not result in a court finding.

Reports are to be made to the Registrar of the College at registration and as soon as possible after the finding and should contain the following information:

- name of the homeopath filing the report;
- nature of, and a description of the finding;
- date of the finding;
- name and location of the court that made the finding; and
- the status of any appeal initiated respecting the finding.

The report will be reviewed by the College and may result in an investigation. The report is automatically placed on the public register (see the discussion of the register below). If there is an appeal that alters the information reported, an updated report must be made.

### ***Professional Negligence Mandatory Report Scenario***

*Dennis, a homeopath, is sued in Small Claims Court by a patient, Donovan. Donovan claims that he told Dennis about pain in his lower abdomen but that Dennis minimized the significance of the pain. After an initial assessment and two weeks of supportive care for stress, despite increasing pain, Donovan went to the emergency department. He was rushed into surgery and stayed in the hospital for almost a week. He claims that Dennis should have referred him to another health care provider to rule out a physical condition.*

*The Small Claims Court judge agreed and ordered Dennis to pay Donovan \$10,000 for malpractice. Dennis reports the finding to the College. The College places a note about the finding on the public register.*

## ➤ Duty to Warn & Mandatory Reporting

A regulated health professional who has reasonable grounds to believe that someone is likely to cause severe bodily harm either to him/herself or another person must warn the appropriate authorities of the risk. It may also be necessary to warn the person who is the subject of the threat, unless it is impossible to do so. This duty applies whether the person threatening harm is a patient, colleague, a professional regulated by another college, or any other person.

If a Registrant has reasonable grounds to believe that another homeopath is likely to cause harm (or has caused harm), the Registrant is obligated to report this to the College Registrar. The College has included an aspect of this duty to warn in provision 36 of its Professional Misconduct Regulation:

*Failing to promptly report to the College an incident of unsafe practice by another member.*

This report must be made promptly to the College and may include the name of a patient without his/her consent.

If a Registrant has reasonable grounds to believe that a patient will harm him/herself or another person, the appropriate authorities must be alerted. This may include the police or emergency medical services, other relevant health care providers involved in the patient's care, and possibly the person who is the subject of the threat. Registrants are not required to report such incidents to the College.

### ***Duty to Warn Mandatory Report Scenario***

*Donna, a homeopath, learns from Paula, a patient, that another homeopath, David, strongly recommended that Paula undergo a month long cleanse. The cleanse involved no food and only lemon juice and water to drink. Paula is in her fifties and is, if anything, underweight. Paula says that at least two other patients of David had been given similar advice. Donna is concerned that such a cleanse is not safe for many people and certainly not someone like Paula. Donna is also concerned that homeopaths likely do not have the expertise to oversee such a long fast. Donna makes a report to the Registrar of the College.*

### **Sample Question**

Is a mandatory report required where a Registrant overhears another homeopath tell two male patients a sexually explicit joke that causes the patients to laugh loudly?

1. No. Dirty jokes are not sexual abuse.
2. Yes. This is sexual harassment. The report should be made to the Human Rights Tribunal.
3. No. The patients liked the joke and would not have been harmed by it.
4. Yes. This constitutes sexual abuse.

*The best answer is 4 Sexual abuse includes comments of a sexual nature to a patient. Reporting sexual abuse is mandatory. While it is unlikely that punitive action will be taken by the College (perhaps a sensitivity course), it is still important that homeopaths learn that such conduct can be harmful to some patients. One never knows what experiences patients have had in their past that might make even a dirty joke harmful.*

*Answer 1 is incorrect because dirty jokes are considered sexual abuse as that term is defined in the RHPA.*

*Answer 2 is not the best answer because there are no mandatory reporting requirements under the Human Rights Code. Also, the RHPA uses the term sexual abuse rather than sexual harassment and gives that term a unique meaning.*

*Answer 3 is not the best answer because whether the patient was a willing participant or not is irrelevant. The joke should not have been made. Also, one never knows what experiences patients have had in their past that might make even a dirty joke harmful. In addition, sexualizing the practice of the profession is inherently confusing to patients who assume that there is no sexual aspect to their relationship with homeopaths.*

### *Public Register*

The RHPA requires that the public be able to obtain certain information about Registrants of the College. This information helps the public (e.g. patients, employers) decide whether to choose a particular homeopath, and helps to ensure that homeopaths practise only as they are permitted to. For example, if a homeopath is suspended for three months, this information would be posted on the College's public register.

The Public Register must include contact information for the homeopath, the class of registration, and any terms, conditions and limitations on the registration. It must also include any referrals to the Discipline Committee for a discipline hearing, a summary of every finding of professional misconduct, incompetence or incapacity and any findings by a court of professional negligence. Every suspension and revocation of registration must be included in the Public Register as well as any agreement to resign and any agreement to never reapply for registration.

There are only a few circumstances where the College can choose not to place such information on the register, or remove information from the register, such as the following:

- The information (e.g. contact information) would jeopardize the safety of a Registrant (e.g. if a homeopath is being stalked).
- The information is obsolete or no longer relevant (e.g. if a finding of professional misconduct relates to conduct that is now acceptable, such as a change to advertising rules which now allows a Registrant to advertise by telephone under certain conditions).
- The information is unnecessary (e.g. with respect to incapacity matters, if the information relates to the personal health of a Registrant).
- After six years, where there was only a reprimand, a fine or a finding of incapacity and the Discipline Committee or Fitness to Practise Committee agrees that there is no public interest in keeping the information on the Public Register.

The information on the Public Register is available to the public in a number of ways: on the College's website; at the College's office; or on paper, if a paper copy of information is requested. The College is also permitted to provide information available on the Public Register over the telephone. Where there is an inquiry about a Registrant, the College must assist, and may provide any information that is available on the Public Register.

#### ***Public Register Scenario***

*Ann, a homeopath, has separated from her husband. He has physically assaulted Ann a number of times, and since the separation, he has been following her. The police cannot seem to stop Ann's husband. Ann moves to another city and asks the Registrar not to put her business address or telephone number on the Public Register so that her husband cannot find her. Ann provides documents from the police and the courts about her husband's behaviour. The Registrar removes Ann's contact information from the Public Register.*

## **V. Professional Corporations**

A Registrant can choose to practise personally (i.e. in his/her own name), through a partnership or through a professional corporation. Homeopaths who already have a regular business corporation will need to change that corporation to a professional corporation once they become registered with the College.

Professional corporations have a number of conditions and restrictions. These include the following:

- only Registrants of the same regulatory college can hold shares;
- the officers and directors of the professional corporation must be shareholders;
- the name of the professional corporation must include the words "Professional Corporation;"
- the professional corporation cannot be a numbered company (e.g. 1234567 Ontario Inc.); and
- the professional corporation can only offer homeopathic care, or provide related or ancillary services.

Registrants cannot avoid professional liability through the creation of a professional corporation. For example, injured patients can sue the homeopath personally even if they provide their services through a professional corporation. However, homeopaths working through a professional corporation have protection against trade creditors. For example, if suppliers or other creditors are not paid by the professional corporation, they cannot sue the homeopath personally.

A number of provisions exist to ensure that all Registrants meet their professional and ethical obligations, even if they practise through a professional corporation. The College has the same powers over the professional corporation as it has over the homeopath.

### ***Professional Corporation Scenario***

*Fraser, a homeopath, has had a business corporation for many years before the College was created. His wife and children are shareholders. It is not a professional corporation. What are his options?*

*Fraser has to do something. He cannot continue to operate a regular business corporation once he becomes registered because it does not follow the rules for professional corporations. Fraser must either convert his business corporation into a professional corporation, or give up the business corporation. Fraser's wife and children cannot be shareholders of the professional corporation unless they are also registered with the College. If Fraser gives up the business corporation, he cannot practise the profession through it. Fraser should speak to his accountant or lawyer to get advice as to what is best for him.*

## **C. Homeopathy Act, Regulations, By-Laws**

The *Homeopathy Act* is the profession-specific statute of the College of *Homeopaths of Ontario*. It establishes the College, sets out the scope of practice and controlled act for Registrants and authorizes the College to make a number of regulations. Several of these regulations are discussed below.

### **I. Registration Regulation**

The Registration Regulation sets out requirements for obtaining and maintaining registration, or entry to practice, with the College. It establishes the following classes of certificate of registration:

- *Full*, a class intended for individuals whose primary practice is homeopathy;
- *Grandparented*, a class intended for individuals who are practising homeopathy at the time of proclamation; and
- *Inactive*, a class intended for existing Registrants (Full or Grandparented) who are not practising the profession.

To become a registered with the College, practitioners must complete an application form that may include information about their training and past professional experience. Applicants must also pay the required fees and provide evidence of professional liability insurance coverage.

The applicant must be able to speak, read and write either English or French with reasonable fluency. Applicants must report issues of incapacity. Applicants must report all criminal offences that resulted in court findings, as well as other details relating to their professional history, such as prior professional discipline findings. In addition, the applicant must have completed a jurisprudence learning program, approved by the Registration Committee, on basic health regulation and law.

Each class of registration has specific registration requirements.

For established, experienced and competent homeopaths practising at the time of proclamation of the *Homeopathy Act*, there is a time-limited alternative route to a Full certificate of registration, through recognition of the Grandparented certificate of registration.

All applicants are required to complete an individual assessment process, in addition to fulfilling all of the requirements of registration.

An applicant for Inactive certificate of registration must first be registered as a homeopath (Full or Grandparented) and must promise not to practise while holding a certificate of registration for Inactive class.

Registrants of each class of registration are assigned one of the titles, which they must use so the public can identify their registration status.

Once a homeopath is registered with the College, s/he must continue to meet certain requirements of the College. For example, if a Registrant is found guilty of a criminal or other offence, or if a Registrant is disciplined by another professional regulator, the Registrant must inform the College. (See *Mandatory Reports*, for details.)

### **Registration Regulation Scenario**

*Marla applies for registration. When she was in university she got involved in a fight at a pub and was convicted of assault. A few years later she obtained a pardon. When applying for registration, she is asked if she has ever been found guilty of a criminal offence. She is uncertain whether she needs to report the pardoned offence.*

*College staff tell her she must do so because it would be dishonest to say she had never been found guilty of an offence. The pardon does not absolve her of the need to disclose the offence. Marla reports the offence, and the Registrar asks her for more details. The Registration Committee determines that the offence does not create a concern which would make her unsuitable to be a Registrant of the College. The College registers her.*

## **II. Professional Misconduct Regulation**

The RHPA has identified a number of actions, including sexual abuse of a patient and failing to cooperate with the Quality Assurance Program, as professional misconduct for all regulated health professionals.

As well, this College's Professional Misconduct Regulation sets out additional examples of professional misconduct including:

- failing to meet standards of practice of the profession;
- inappropriate behaviour towards patients or the public, including physical or verbal abuse of patients, and rude or unbecoming behaviour towards patients, members of the public or other health professionals;
- failing to make and keep appropriate and adequate records;
- failing to obtain informed consent before assessing or treating a patient;
- failing to maintain confidentiality;
- engaging in conflict of interest;
- improper billing;
- misrepresentation, dishonesty in one's dealings with patients, colleagues, third party payors or the College;
- improper use of names, title or designations;
- improper advertising;
- impolite or uncooperative conduct towards colleagues; and
- disregarding restrictions on one's certificate of registration (e.g. a homeopath who is required by a committee to practise under supervision must do so, in accordance with the restriction on his/her certificate).

## ➤ Conduct towards the College

Professional misconduct may also involve inappropriate conduct towards the College, including:

- publicly challenging the integrity of the College's role or actions;
- breaching an undertaking given to the College;
- failing to participate in the Quality Assurance Program;
- failing to respond appropriately and promptly to correspondence from the College; and
- failing to report a homeopath to the College who has jeopardized the safety of a patient.

In addition, the *RHPA* deems failing to co-operate in an investigation by the College, or obstructing an investigation by the College as professional misconduct.

## ➤ Catch-all Provisions

The College has two general 'catch-all' provisions that cover types of conduct not specifically dealt with elsewhere in the regulations. One prohibits conduct that would be reasonably regarded as disgraceful, dishonourable, or unprofessional. This provision assumes that there is a general consensus in the profession of conduct or behaviour that would be considered unacceptable. For example, there is no specific provision that says that the homeopath cannot verbally abuse a patient's mother during a visit; however, no one doubts that this conduct would be unprofessional.

The second catch-all provision makes it professional misconduct to engage in conduct unbecoming a member of the profession. This provision refers to conduct in a homeopath's private life that brings discredit to the profession. For example, a homeopath who engages in fraud on the stock exchange could be disciplined for dishonesty.

### **Professional Misconduct Scenario**

*Jill, a homeopath, has recently been criticized by her colleague, Wendy, who works in the same clinic. She suggests that Jill is sometimes too loud with her patients. Wendy mentions that in speaking loudly she is disrupting others working in the office. Jill tells Wendy that she is sorry for disrupting her, and any of her patients, and that she will try to lower his voice out of respect for others. Wendy feels this is a serious problem and thinks that Jill should be reported to the College for professional misconduct. She wants the very best atmosphere created for her patients, and thinks loud talking is completely unprofessional. Is Wendy correct in saying this would be professional misconduct according to the regulations?*

*Probably not. Wendy holds a particular view about Jill's level of voice that may not be consistent with the rest of the profession. Unless the conduct persists and unless it is so loud that most neutral observers would agree that Jill is disrupting the rest of the office, it is not professional misconduct.*

*While it is courteous for Wendy to raise the issue with Jill so they can come to a reasonable resolution, professional misconduct is not meant to apply to uniquely personal views of unacceptable behaviour. Instead, it is intended to be based on conduct that is considered unacceptable by general consensus of the profession.*

### **Sample Question**

Which of the following is possible professional misconduct according to the Professional Misconduct Regulation?

1. Failing to maintain patient confidentiality.
2. Using verbal threats and insults in an email to a patient because s/he did not show up for an appointment.
3. Charging a higher rate because a third party is paying for the service.
4. All of the above.

*The best answer is 4. The regulation describes many types of professional misconduct. All of the situations described involve conduct that is specifically prohibited in the Professional Misconduct Regulation.*

*Answers 1, 2, and 3 are not the best answers because all of the situations listed in the question are clear examples of professional misconduct.*

### **III. Record Keeping**

Good record keeping is essential for good patient care. The patient record is intended to capture what was done and what was considered by the homeopath. Records permit the monitoring of changes in a patient's status and can assist other homeopaths who may also see the patient. Records enable a homeopath to explain what s/he did for patients if any questions arise, and may help defend the homeopath if a patient recalls things differently. Failure to make and keep adequate records can be a failure to maintain minimum professional standards and therefore may be considered professional misconduct.

#### **➤ How records are kept**

Records may be kept on paper or electronically, on a computer. Computerized records should be printable and viewable and should have an audit trail of changes made. All records must be legible, and while information can be recorded in other languages, it must also be recorded in English or French.

It should be clear who made each entry and when that entry was made. Importantly, any changes to the record should still permit the reader to read the original entry. This includes changes to the health record.

Homeopaths cannot falsify records, meaning that, if an error is made in a previous entry, it cannot be removed (e.g. "whited"-out or deleted). The record should be maintained with the correction to the error. Usually this is done by adding a simple line through the erroneous entry and writing in the correction, the date and initials of the person correcting the error.

#### **➤ How long to keep records**

Records need to be kept for 10 years from the last interaction with the patient, or the patient's 18<sup>th</sup> birthday, whichever is later. Financial records, appointment and attendance records also need to be kept for 10 years.

When the time period for keeping the record has expired, the records should be destroyed in a secure manner that prevents anyone from accessing, discovering, or otherwise obtaining the information. If a homeopath destroys any records, s/he should record the names of the destroyed files and the date they were destroyed.

### ➤ **Maintaining or transferring records upon leaving a practice or retiring**

In general, the entire original record should be kept by the Registrant (or the health information custodian) and only copies of the record should be supplied to others.

Even when a homeopath retires or leaves the practice, the original record should be kept for the 10 year retention period, unless it has been transferred to another homeopath who will maintain the record. The patient must be notified of the transfer.

The only exception to this arises when there is a legal requirement to provide the original record (e.g. in a police, Coroner's or College investigation, or with a summons). In such a circumstance, the Registrant should keep a legible copy of the record.

When transferring from paper to electronic records, the electronic version of the document becomes the original.

### ➤ **Confidentiality and privacy issues**

Homeopaths should take reasonable steps to keep records safe and secure. In general, no one other than authorized health professionals in the patient's circle of care should be able to access the records. Privacy protections must be in place to ensure that records cannot be seen, altered or removed by others. Paper records should be kept under lock and key and electronic records stored on a computer need to be password protected. Computers used to store records must have firewall and virus protections, and must be backed up on a regular basis.

### ➤ **Patient access to records**

Although the homeopath may own the health care record and be responsible for it, patients are authorized by *Personal Health Information Protection Act (PHIPA)* to access their record. An exception applies if access would significantly jeopardize the health or safety of the patient or another person. Patients also have the right to correct any errors in their health record. If a patient requests any relevant parts of the record, the homeopath should provide them with a copy and not the original.

#### ***Record Keeping Scenario No. 1***

*George, a homeopath, who has been practising for 45 years in the same practice, decides he is ready for retirement but wonders what he is supposed to do with his patient records.*

*Ordinarily he would have to retain patient records for 10 years from the last interaction with the patient, or the patient's 18<sup>th</sup> birthday, whichever is later. But, in this case, George may be transferring his practice to another homeopath to take over the business and patients. If this is the case, he does not have to retain the records himself but needs to notify the patients of the transfer of their patient records. This can be done through a combination of telling patients on their next visit and placing a notice in the local newspaper.*

### General requirements for the content of the health record

- The record should always contain identifying information such as the name and date of birth of the patient. Identifying information should be on each document in the record so that a particular document may be returned to the record if separated.
- The record should include the date of the visit and all relevant subjective and objective information gathered regarding the patient. This includes all relevant information provided by the patient (or his/her authorized representative, or other health care providers involved in the patient's care), regardless of the medium or format (e.g. communicated in person, on paper, email, fax, telephone, etc.). It also includes any records regarding observations (e.g. how the patient walked into the office).
- Any results of testing done by the Registrant should be recorded. If a patient discloses test results from another health professional, this should be noted in the record. However, a Registrant does not have to ask for copies of reports if they are not needed.
- The patient's condition prior to care should be recorded. Following this, the actual assessment and/or care provided should be noted. The record should also include any progress notes on how the patient progressed during care, any changes in the patient's condition, any reassessments or any modifications to the plan for care. The notes should be clear to any homeopath reading the record.
- If the patient was referred by another health care professional, the name of the person who made the referral and the reason for the referral should be recorded.
- Any consent that is obtained should be included in the record, such as copies of signed consent and any notations of consent, including verbal or implied.

### Sample Question

Which one of the following does not need to be recorded in the patient's record?

1. The patient's birth date.
2. The name of the patient's friend who recommended the homeopath.
3. The patient's health concerns.
4. The care plan for the patient.

*The best answer is 2 Only if the patient was referred by a health care provider must there be a record of who recommended the patient. If another patient referred the person or the person found out about the office through advertising, such information does not have to be recorded (although in some cases it would be helpful to record this information).*

*Answer 1 is not the best answer because homeopaths need to record the patient's birth date. It is relevant to many treatment decisions.*

*Answer 3 is not the best answer because homeopaths need to record the patient's health concerns*

*Answer 4 is not the best answer because homeopaths need to record the care for the patient. It is relevant to following through with the care on future visits and for justifying one's actions should questions be raised later.*

#### **IV. Conflict of Interest**

A conflict of interest arises where a Registrant does not take reasonable steps to separate his/her own personal interests from the interest of patients. For example, if an homeopath refers a patient to a health store owned by the homeopath's friend to buy products, a reasonable person would question whether the homeopath recommended that product because the patient needed it or in order to help his/her friend.

There is no need for proof of an actual conflict of interest. Instead, one looks to what a reasonable person might conclude from the circumstances regardless of what is actually going on in the mind of the homeopath. A conflict of interest can be actual, potential or perceived. The homeopath should always ask himself/herself – might another objective and reasonable person think that there is a conflict of interest, given this circumstance?

There are circumstances where taking certain safeguards could remove the concern regarding a potential conflict of interest. These include:

- disclosing the nature of the relationship in questions (e.g. “My friend owns the health food store I’m recommending”);
- providing alternative options (e.g. “Here are three other places you could get the product I’m recommending”); and
- reassuring the patient that choosing another store will not affect the patient’s care (e.g. “You’re free to choose any of the places to get the product; you will still be welcome here as my patient”).

Registrants must provide the College with any documents, explanations or information regarding a suspected conflict of interest if requested to do so. This is to enable the College to assess whether a conflict of interest exists.

##### **Common examples of conflict of interest**

- Splitting fees with a person who has referred a patient;
- receiving benefits from suppliers or persons receiving referrals from the homeopath;
- giving gifts or other inducements to patients who use the Registrant’s services where the service is paid for by a third party (e.g. insurance);
- working for an unregistered person who can interfere with professional decisions (e.g. how much time is scheduled for each appointment);
- using or referring a patient to a business in which one has a financial interest;
- selling a product to a patient for a profit;
- having a dual relationship with a patient in addition to the professional one, which would reasonably be seen as affecting the Registrant’s professional judgment or adversely affecting a patient’s confidence in the Registrant; and
- bartering services with a patient except for products or services of equal or lesser value, for a patient who cannot afford to pay, so long as it would not reasonably be seen as affecting the Registrant’s professional judgment or adversely affecting a patient’s confidence in the Registrant.

### **Conflict of Interest Scenario No. 1**

*Catherine, a homeopath, owns a practice down the street from a women's shelter. She has been practising there for less than a year. She is trying to build her practice and wants people to know she's new to the neighbourhood. Catherine offers to give the administrator of the women's shelter free dinner and theatre tickets in return for her referring patients fleeing spousal abuse to Catherine's practice.*

*While this may seem like a good business decision, Catherine is in a conflict of interest. Catherine cannot give a free ticket to the administrator of the women's shelter in order to obtain referrals, as this would constitute a form of benefit or inducement. Patients should be referred to Catherine based on an honest view of the appropriateness of the referral by the administrator, not because the referring person is getting free dinner and theatre tickets.*

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### **Conflict of Interest Scenario No. 2**

*Kate, a homeopath, recently began using a new rescue remedy. Patients have responded quite well to the remedy. Kate calls the company to explain how helpful the remedy has been to her patients.*

*The company asks her if she would like to participate in a new magazine advertising campaign. They plan to run a picture of her within the advertisement, identify her by name and qualifications and include her support for the product. They say they cannot pay her because they are still a small company, and don't have the budget for it. Kate agrees.*

*Unfortunately, this would likely be a conflict of interest and would be professional misconduct. Kate cannot use his professional status to promote a product commercially, even though she has not been paid for the endorsement. It can be assumed that she will benefit from the advertisement in some indirect manner (for example, he may have increased patient influx from those people who see the advertisement).*

*Also, Registrants should not make blanket clinical recommendations, such as an advertising testimonial. Kate can give advice on products and remedies, including recommending a remedy to patients, provided it is within a patient-practitioner relationship, and is based on professional judgment regarding a patient's individual needs through proper assessment.*

## **V. Advertising**

Homeopaths are allowed to advertise as long as it provides relevant information to the public in order for them to make informed choices with regards to their health care needs.

Advertising should be accurate, ethical, relevant, comprehensible to the intended audience, professionally appropriate within the Ontario health care system, in good taste, and in compliance with the standards of practice of the profession. It should not include any information that misleads, either by leaving out relevant information, or including non-relevant, or false. Homeopaths should also take reasonable steps to ensure that advertisements placed by others (e.g. employees, marketing consultants) meet these standards as well.

In particular, references to qualifications in the advertisement should be consistent with the College's Standards. For instance, the title the Registrant can use will depend on his/her class of registration. Fees or prices advertised should meet expectations for honesty and accuracy.

Advertisements are prohibited if they promote a demand for unnecessary services, pressure vulnerable patients, make a claim or promise a result that cannot always be delivered, or draw comparisons to others (e.g. better or best, claims of superiority). Testimonials from a patient, former patient, or other person in respect of the Registrant's practice are also not permitted.

Registrants may not directly or indirectly solicit communication with a member of the public to invite them to use his/her services in person, by telephone, in writing, through electronic communication or by similar means of communication without prior consent. This includes using a computerized, random-dialing message service that is not considered to be a public medium. This does not prevent the registrant from:

- a. advertising to the general public;
- b. calling/emailing a patient to remind him or her of an upcoming appointment/service;
- c. periodically contacting current or former patients or patients for goodwill purposes, or
- d. providing information to prospective referral sources.

### **Advertising Scenario**

*Aashi, a homeopath, wishes to attract new patients, and places a weekly advertisement in the community newspaper with a description of her service. She makes sure the advertisement only describes the care and does not offer any guaranteed outcome. She does not compare her care to other care or provide reasons why she might be a better choice.*

*However, with the consent of a few of her patients, she takes “before and after” photos and publishes them in the local newspaper. She feels that people can decide for themselves based on the photos if they want to try the care.*

*Unfortunately in doing so, Aashi has violated the advertising standards for the profession. Before and after pictures are inherently misleading as they cannot be verified for authenticity, and involve comparisons in order to promote a specific care. Also, “before and after” pictures may be construed as suggesting an outcome, or a guarantee, that cannot always be expected.*

### **Sample Question**

Advertising needs to be:

1. Accurate.
2. Verifiable.
3. Not contain personal opinions.
4. All of the above.

*Answer 4 is the best answer. All the qualities listed are required of advertising. Advertisements should also be factual, objective, comprehensible, and professionally appropriate.*

*Answers 1, 2, and 3 are not the best answers because all the answers listed are correct.*

## **D. The College**

The *RHPA* gives the duty to regulate the profession to a body called a College. The Act requires health regulatory colleges to create structures and safeguards designed to protect the public from harm.

### **I. Registration Process**

To register with this College, applicants complete an application form and pay applicable fees. The College verifies the applicant's qualifications and issues a certificate of registration if the applicant meets all the requirements to become a Registrant of the College. (This process is described in more detail in the discussion of the Registration Regulation and on the College website at [www.collegeofhomeopaths.on.ca](http://www.collegeofhomeopaths.on.ca).)

If the applicant does not appear to meet the registration requirements (or if this is unclear), the Registrar refers the application to the Registration Committee. The applicant will be informed of any concerns and given an opportunity to provide a written response.

Following this process, if the Registration Committee concludes that the applicant meets the registration requirements, a certificate of registration will be issued. If the Registration Committee concludes that the applicant does not meet the requirements it can make a number of decisions including:

- directing the applicant to complete further training;
- issuing a certificate of registration with terms, conditions or limitations applied; or
- refusing the application.

If a certificate is not granted by the Registration Committee, the applicant may appeal the decision to the Health Professions Appeal and Review Board (HPARB). HPARB is an independent body appointed by the government. HPARB can make any of several determinations. For example, it may determine that an applicant meets the registration requirements, or require the Registration Committee to obtain additional information and make a new decision. HPARB's decision may be appealed to the courts.

The Office of the Fairness Commissioner of Ontario audits and reviews all college's registration processes to ensure that they are transparent, objective, impartial and fair.

### **II. Complaints and Discipline Process**

The complaints and discipline process is set out in the *RHPA* and is common to all the health regulatory colleges. Colleges investigate concerns regarding registrants' professional conduct or competence. Where possible, colleges deal with professional misconduct and incompetence by requiring registrants to undertake additional education and training. Serious matters, however, may be referred for discipline.

In the case of incapacity (e.g. the registrant has a health condition that prevents him/her from practising safely), colleges consider the health condition and if there is reasonable and probable grounds to believe that the registrant is incapacitated a term, condition or limitation may be placed on the practitioner's certificate of registration imposing certain restrictions. This may allow the registrant to continue practising during treatment (if treatment is deemed necessary) and following treatment.

For all health colleges, the Inquiries, Complaints and Reports Committee (ICRC) is the statutory committee that handles registrant-specific concerns regarding professional misconduct, incompetence and incapacity. It does not handle claims about professional negligence (i.e. civil lawsuits).

### ➤ **Formal Complaints**

The ICRC handles only formal complaints and Registrar's reports (see below regarding Registrar's reports). To be considered a formal complaint the following requirements must be met:

- the complaint must be in writing or recorded on tape, film, disk or other medium (as set out in the *Health Professions Procedural Code*);
- the complainant must be identified;
- the Registrant must be identifiable;
- the complaint must identify some conduct or action that is of concern (i.e. not just a vague complaint that a Registrant is unprofessional, incompetent or incapable, but must include some level of detail about the circumstance); and
- the complainant must intend the matter to be a complaint.

The Registrar must give the Registrant in question notice of a formal complaint within 14 days of receiving it.

On rare occasions, when a complaint is frivolous or vexatious, is made in bad faith, or is otherwise an abuse of process, the ICRC may choose not to investigate it. For this to happen, it must be fairly obvious that there is little merit to the complaint and that processing the complaint would be unfair in the circumstances. For example, a complainant repeating a complaint regarding a homeopath without any new evidence would be frivolous and vexatious. Notice is given to the Registrant and complainant if the ICRC intends to take no action in such cases.

Investigations of a homeopath follow a number of steps. First, both the complainant and Registrant are usually asked to provide all documentation available to them. Next, additional information is gathered from a variety of sources including College files, the homeopath's files, public databases (e.g. court files), other regulators, witnesses, and other homeopaths, until it is determined that it is likely that all reasonable and available evidence has been obtained.

After reviewing all relevant information and evidence, the ICRC makes a decision about the complaint and determines what further action, if any, needs to be taken. A complaint is to be addressed within 150 days of being filed with the College. If it cannot be addressed within this timeframe, the parties must be notified regularly about the progress of the complaint. If the College takes too long, the complainant or the Registrant can ask HPARB to take action.

### ➤ **Investigations of Registrar's Reports**

An investigation of a homeopath may be launched if a concern arises that the Registrar believes warrants investigation. In this case, the concern is brought to the ICRC by the Registrar with a request that the ICRC appoint an investigator. The Quality Assurance (QA) Committee may also bring a concern to the ICRC. However, because the Quality Assurance Program of the College is fully separate from the ICRC process, the QA Committee may only share limited information with the ICRC. (See *Quality Assurance Program*, p. 82.) If the ICRC decides to appoint an investigator, the investigator makes a report to the Registrar, following which the Registrar makes a Registrar's Report to the ICRC.

There is no set deadline to complete an investigation of a Registrar’s Report and render a decision. However, such investigations should be completed within a reasonable timeframe. Once the investigation is completed, the ICRC makes a decision, called a disposition.

### ➤ Possible Outcomes of the ICRC Process

The ICRC may do any of the following:

<b>Request an undertaking</b>	The Registrant promises to do certain things (or refrain from doing certain things) to address the concern. No further action is necessary because the undertaking addresses the concern.
<b>Refer to Discipline Committee</b>	A decision to refer a matter to discipline is intended for serious concerns (e.g. dishonesty, breach of trust, willful disregard of professional values, inability to practise competently). The ICRC must ensure there is reasonable evidence to support the concern before deciding to refer the complaint to discipline. The Discipline Committee may hold hearings, make findings of credibility, find wrongdoing, or impose disciplinary sanctions (i.e. a fine or suspension) as appropriate.
<b>Refer to <u>Fitness to Practice Committee</u></b>	In cases where the conduct may be due to an illness or health condition, the concern is referred to the Fitness to Practice Committee.
<b>Caution the Registrant</b>	The Registrant may be required to appear before a panel of the ICRC for a caution about his/her conduct. This may include constructive feedback regarding the Registrant’s conduct, and is usually accompanied by a warning that, if the circumstances do not change, the Registrant will face more formal action in the future.
<b>Other actions</b>	The ICRC may be creative in its decisions and solutions. For example it may require the Registrant to undergo a Specified Continuing Education and Remediation Program (SCERP) (e.g. a record keeping course).
<b>Take no action</b>	If there is no basis for concern, the ICRC may close (or dismiss) the complaint. Reasons must be given for taking no action.

If the complainant wishes to withdraw his/her complaint, the ICRC may still decide to proceed with an investigation. The ICRC must decide whether to accept the withdrawal of a complaint.

Either the Registrant or the complainant may seek a HPARB review of an ICRC decision, unless the decision was referred to Discipline Committee or Fitness to Practice Committee. HPARB may confirm an ICRC decision or return the matter to the ICRC to make a new decision. HPARB may also make recommendations to the ICRC.

## ➤ Discipline Proceedings

If a concern is not resolved at the ICRC level and becomes a discipline matter, it is referred to the Discipline Committee by the ICRC. In very serious cases the ICRC may make an interim order (for example, suspension of the Registrant's certificate of registration) to protect the public while awaiting a discipline hearing. This is used only when absolutely necessary to protect patients from harm.

The Discipline Committee holds a hearing to consider any allegations referred to it. Before a discipline hearing starts, the Registrant in question is notified of the hearing and any information that will be needed during the process. S/he is given a summary of allegations and the conclusions that have been drawn from it. The Chair of the Discipline Committee selects a panel from the Members of the Committee, usually five people (two must be public Council Members and three are usually professional Council Members).

Pre-hearing conferences may be held before a discipline hearing; the purpose is to reach an agreement on as many issues as possible, and to plan the hearing. Discussions at pre-hearing conferences are off the record. If a resolution is agreed upon (e.g. an agreed statement of facts and/or joint submission on penalty), it is presented to the panel of the Discipline Committee for acceptance.

The procedure of a discipline hearing is formal and similar to a court case, in that the two sides present their arguments and evidence to the panel. The hearing is open to the public unless there is a compelling reason for privacy. Generally, rules of evidence that apply to civil court trials apply to discipline hearings. Decisions are based exclusively on the evidence admitted and cannot draw on any knowledge that was not presented as evidence. A record is kept compiling all the exhibits of evidence.

Once the Discipline Committee determines what a Registrant has done, it must then decide whether or not that behaviour constitutes professional misconduct. If a Registrant is found to have engaged in professional misconduct, the Discipline Committee may make one or more of the following orders:

<b>Revocation</b>	Removal of the Registrant from the profession for at least a year. Registrant's certificate of registration is revoked for five years. Following the revocation period, the Registrant must satisfy the Discipline Committee that s/he ought to be permitted back into the profession. In the case of finding of sexual abuse the Registrant's certificate of registration is revoked for five years.
<b>Suspension</b>	Temporary removal of the Registrant from the profession. The duration of the suspension can be fixed or flexible, or depend on an event occurring (e.g. successful completion of a course).
<b>Terms, conditions and/or limitations</b>	Attaching terms, conditions and/or limitations on a Registrant's certificate of registration, either for a specified period (e.g. until the Registrant successfully completes certain remedial training) or for an indefinite period (e.g. the Registrant cannot consume any alcohol). The terms, conditions and/or limitations must be related to the finding made by the Discipline Committee.
<b>Reprimand</b>	A conversation between the Discipline Committee and the Registrant where the Committee tells the Registrant its views of

his/her conduct and how to avoid similar problems in the future.

**Fines & Costs**

The Discipline Committee can impose a fine of up to \$35,000 and can require that a portion of the expenses associated with the hearing be covered by the Registrant.

Either party involved in a discipline hearing may appeal to the Divisional Court. The Court has the power to confirm, amend or reverse a decision of the Discipline Committee if it acted unreasonably or made an error of law. An order does not stay after notice of an appeal is provided.

A ruling of incompetence is different from professional misconduct as it generally does not involve unethical or dishonest conduct, but rather, the Registrant does not have the knowledge, skill or judgment to practise safely. A finding of incompetence is based on the care of one or more of the Registrant's patients.

A finding of incompetence may be either that the homeopath is unfit to continue to practise, or that the Registrant's practice should be restricted. In incompetence cases, the Discipline Committee may order revocation or suspension, or it may impose terms, conditions and/or limitations on the Registrant's certificate of registration, affecting how s/he practises.

Where there is a finding of sexual abuse, the Discipline Committee may require the Registrant to reimburse the College for any care required by the patient. For cases involving sexual acts, there is a mandatory minimum order of both a reprimand and revocation. No reinstatement may be made for five years after revocation on these grounds.

***Complaints and Discipline Scenario***

*A patient sends a letter of complaint to the College saying that Ruth, a homeopath, was rude to her. The patient says that Ruth became angry when the patient expressed concern that the care wasn't working. The patient says that Ruth "threw her out of the office."*

*The Registrar sends a letter notifying Ruth of the complaint and asking for a response. Ruth responds that the patient was extremely challenging and after doing all that she could for her, the patient became verbally abusive and Ruth had to terminate the professional relationship. Ruth's letter is sent to the patient who replies that she was never verbally abusive to Ruth and that Ruth is making this up to defend herself.*

*The ICRC obtains statements from the patient's husband, Ruth's receptionist and patients who were in the office at the time. It is difficult to reconcile the stories but it appears that there was a verbal confrontation in which both parties may have used intemperate language.*

*The ICRC decides that this is not a case for discipline, particularly since there have been no previous complaints about Ruth. However, the ICRC sends Ruth a letter of caution reminding her of the need to be professional in her dealing with patients even in challenging circumstances.*

### **III. Incapacity Process**

Under the *RHPA*, incapacity has a particular definition in relation to a regulated health professional. Incapacity refers to a physical or mental condition or disorder that makes it desirable in the interest of the public that the Registrant's certificate of registration be subject to some restrictions. This section focuses on what happens when incapacity becomes a concern.

The intent of the incapacity provision under the *RHPA* is never to punish an ill practitioner. The goal of the incapacity process is to determine if there are reasonable and probable grounds to believe that the registrant is incapacitated, and to ensure that the Registrant receive appropriate treatment and is supervised and monitored sufficiently closely that he or she can continue practising without compromising the protection of the public. Only in rare circumstances will the Registrant have his or her certificate of registration be suspended (except perhaps for a short period to facilitate intensive treatment) or revoked.

When incapacity becomes an issue, the concern is brought to the ICRC. Information about possible incapacity may come from a variety of sources, including a law enforcement agency, a mandatory report by an employer, or an expression of concern by a Registrant of the College, a registrant of another regulated health profession, or the public.

Once an ICRC panel is selected, notice is given to the Registrant that the panel intends to consider whether the Registrant is incapacitated. The panel is an investigative body that gathers information, reviews relevant information, takes statements and holds interviews, as needed. The ICRC may also order a specialist examination of the Registrant, and may access relevant medical records.

The ICRC must prepare a report of its inquiries and send a copy to the Registrant for comment. It then determines whether the matter should be referred to the Fitness to Practise Committee for a hearing.

The matter is only referred for a hearing if there are reasonable and probable grounds to believe that the Registrant is incapacitated. The decision to do so is not taken lightly; there must be sufficient evidence of, and a reasonable prospect of finding incapacity. This usually occurs when there is concern that the Registrant's condition will, now or in the future, affect his/her professional practice. Typically, it involves a lack of insight by the homeopath into the extent of his/her condition.

In serious situations, the ICRC may order the Registrar to suspend the Registrant's certificate of registration, or to impose terms, conditions, or limitations on the Registrant's registration temporarily, until the Fitness to Practise Committee addresses the matter.

#### **➤ Hearings Before the Fitness to Practise Committee**

Hearings before the Fitness to Practise Committee share many similarities with the hearings before the Discipline Committee. A panel is selected by the Chair of the Fitness to Practise Committee, consisting of at least three people, including at least one public Member of College Council and at least two other persons, usually Registrants of the College. All relevant information and evidence is collected. Incapacity hearings are closed unless the Registrant requests that the hearing be open to the public.

If the Fitness to Practise Committee finds the Registrant to be incapacitated, it must decide what restrictions to place on the Registrant's certificate of registration. It may revoke the Registrant's certificate entirely, suspend the certificate, or impose terms, conditions and/or limitations on the Registrant's certificate. Terms, conditions or limitations on the certificate may be ordered. For example, conditions may include an order for treatment followed by monitoring and supervision.

If circumstances change, the Committee may alter orders it made in the past. For instance, if a homeopath establishes that for a period of time his/her illness has been appropriate and responsibly managed (i.e. sobriety), there may be a loosening or removal of restrictions on his/her certificate of registration.

## 🔄 Appeals

Either party at the Fitness to Practise hearing may appeal to the Divisional Court. In this case, despite an appeal being made, any order by the Fitness to Practise Committee takes effect while the appeal is pending. Again, the Divisional Court may confirm, amend or reverse a decision of the Fitness to Practise Committee.

### ***Fitness to Practise Scenario***

*Roger is a homeopath working with Mike, another homeopath. Mike reports to the College that he is terminating his partnership with Roger because Roger's alcohol use is beginning to affect his work. Mike is tired of covering for Roger when he comes to the office two hours late and smelling of alcohol.*

*The Registrar makes some inquiries that tend to confirm Mike's report. Roger, however, denies he has a problem. The Registrar reports the matter to the ICRC which asks Roger for consent to obtain a copy of his medical records. Roger gives consent and the records indicate that Roger has been recently charged for impaired driving.*

*The ICRC directs that Roger undergo an assessment through a substance abuse program. The report from the program suggests that Roger's use of alcohol is clearly problematic. The ICRC refers Roger to the Fitness to Practise Committee for a hearing and suspends Roger's certificate of registration until the hearing may be completed. Roger enters and successfully completes a 30-day treatment program for substance abuse, and participates actively in the recommended after-care program.*

*At the Fitness to Practise hearing Roger's lawyer and the College's lawyer present a joint submission asking the Committee to find that Roger is incapacitated, as defined in the Act, and to order that Roger's certificate of registration be restored on the following conditions:*

- *that he continue in regular treatment,*
- *that he work with another homeopath who will monitor Roger's performance at work, and*
- *that regular reports of Roger's progress be made to the College.*

*The Committee accepts the joint submission. In its reasons, the Committee explains that incapacity, as defined in the Act, does not mean total incapacity. It has a special legal meaning for Fitness to Practise hearings, which refers to a condition or disorder that requires restrictions on a Registrant's registration. Roger is safe to practise so long as he remains in treatment and is appropriately monitored.*

#### **IV. Quality Assurance Program**

Every college must have a Quality Assurance Program (QA Program). The QA Program is intended to assist registrants to improve and enhance their practice on an ongoing basis by participating in professional development activities and receiving constructive feedback.

The QA Program is not a form of discipline. Information collected through the QA Program may not be used by a college to discipline a registrant or by any person in any legal proceeding. The only exception arises in cases where the registrant makes a false statement to the college or fails to cooperate with the Program. Considering the QA Program of this College, if the Quality Assurance (QA) Committee is of the opinion that the registrant may have committed an act of professional misconduct, or may be incompetent or incapacitated, the QA Committee may report the homeopath's name and the allegation to the ICRC, which may choose to investigate.

The QA Program is administered by the QA Committee of the College. The Program includes professional development and self and peer practice assessments. It also involves monitoring of Registrants' participation in, and compliance with, the Program.

##### **➤ Self-assessment and professional development**

As part of the QA Program, Registrants must participate in self-assessment and professional development activities. Professional development activities enable homeopaths to remain informed about changes and innovations in practice standards, and to develop skills and knowledge of inter-professional collaboration.

##### **➤ Peer and practice assessment and remediation**

Each year the QA Committee selects a number of Registrants to participate in peer and practice assessments. Registrants may be randomly selected for a peer and practice assessment. They may also be selected if the College requests to review the Registrant's self-assessment and professional development records and finds that the records are incomplete or inadequate. The College may develop other criteria for selecting homeopaths for peer and practice assessments. Selection criteria will be published on the College's website.

Peer and practice assessments are conducted by independent practice assessors appointed by the QA Committee. Generally assessors will be fellow homeopaths. A practice assessor may review a Registrant's education, professional development and self-assessment records. The assessor may also obtain information about a Registrants practice by various methods, including visiting the Registrant's office.

##### **Peer and practice assessments**

During a peer and practice assessment, Registrants must cooperate with the assessment by:

- \* permitting the assessor to enter and inspect the premises where the Registrant practises. However, assessors may not enter a Registrant's home unless s/he also practises there;
- \* permitting the assessor to inspect the Registrant's patient records, even though they are confidential;
- \* giving the assessor any information requested regarding the care of patients or the Registrant's confidential records, and
- \* meeting with the assessor upon request.

## ➤ Follow Up Actions

Following a peer or practice assessment, the assessor prepares a report for the QA Committee. After reviewing the report, the QA Committee determines what action, if any, is needed.

Since the QA Program is educational and supportive in nature, it will be rare for the Committee to direct anything other than upgrading (e.g. course work, working with a mentor, remedial action) even in cases where there are significant gaps in the Registrant's knowledge, skill or judgment.

If the Committee is of the opinion that the Registrant's knowledge, skills or judgment is not satisfactory, the Committee may direct the Registrar to require the Registrant to undergo a Specified Continuing Education and Remediation Program (SCERP) (e.g. a record keeping course). The Registrar may also impose terms, conditions and/or limitations on his/her certificate of registration for a specified period of time. The Committee must consider any written submissions by the Registrant before taking this action. If the Committee believes the Registrant may have committed an act of professional misconduct, or may be incompetent or incapacitated, the Committee may disclose only the name of the Registrant and the allegations against the Registrant to the ICRC.

### **Quality Assurance Scenario No. 1**

*Kevin, a homeopath, is asked by the College to provide his record of professional development and self-assessment activities. Kevin has not kept any record of these activities. A practice assessor is appointed and meets with Kevin to review his professional development and self-assessment activities. The assessor then prepares a report for the QA Committee that describes the professional development activities Kevin participated in. The Committee may decide that there is no reason to take action because Kevin has learned from this experience about the importance of keeping records of professional development activities.*

### **Quality Assurance Scenario No. 2**

*Kim, a homeopath, is randomly selected for a peer and practice assessment and a practice assessor is appointed. Kim cooperates with the assessor's review of her records and inspection of her office. The practice assessor provides a report to the QA Committee, which indicates that Kim has not been keeping adequate clinical records. The Committee gives Kim an opportunity to respond in writing. After reviewing Kim's response, the Committee decides that Kim must take a record-keeping course. The Committee also directs that Kim's practice be reassessed in one year's time to see if there has been any improvement.*

**Sample Question**

*If a Registrant is selected for a peer and practice assessment, the Registrant should:*

- 1. Cooperate with the practice assessor's review, including permitting the assessor to inspect his/her office, and upon request, provide any requested records.*
- 2. Permit the practice assessor to inspect his/her home.*
- 3. Give the assessor all records except those that are confidential.*
- 4. Complete all required professional development records and fill in gaps in patient records before sending them to the practice assessor.*

*The best answer is 1 Registrants have a duty to cooperate with peer and practice assessments.*

*Answer 2 is the not best answer because practice assessors are not permitted to enter private homes.*

*Answer 3 is not the best answer because the practice assessor's right to access premises and records overrides patient confidentiality.*

*Answer 4 is not the best answer because, while a practice assessment is a good opportunity to improve record keeping and other practices, a Registrant should always update patient records immediately so they are accurate. Registrant s should never wait until they are selected for an assessment to update their records. Additionally, if records are falsified, the Committee may report the Registrant's name and this allegation to the ICRC.*

## **E. Other laws**

### **I. Personal Health Information Protection Act (PHIPA)**

Registrants have a legal and professional duty to protect the privacy of patients' personal health information. The *Personal Health Information Protection Act (PHIPA)* governs homeopaths' use of personal health information, including its collection, use, disclosure, and access. *PHIPA* helps guide the general duty of confidentiality described above.

Personal Health Information refers to almost anything that would be in a homeopath's patient files. Information is covered by *PHIPA* if it:

- relates to the person's physical or mental health, including the person's family health history;
- relates to the providing of health care to the person, including the identification of a person as someone who provided health care to the person;
- is a plan of service within the meaning of the *Home Care and Community Services Act, 1994* for the person;
- relates to the person's payments or eligibility for health care, or eligibility for coverage for health care;
- relates to the donation by the individual of any body part or bodily substance of the person or is derived from the testing or examination of any such body part or bodily substance;
- is the person's provincial health insurance number; or
- identifies a person's substitute decision-maker.

Privacy policies are the responsibility of the Health Information Custodian ("Custodian"). The Custodian is a person or organization responsible for health records. If a homeopath is working outside a supervised practice setting, or working in independent or solo practice, s/he is the Custodian of any health information collected during the course of practice. If a homeopath works for a health organization such as a hospital or long-term care home, the organization is usually the Custodian of health records. The Custodian develops privacy policies for his/her organization, which must meet the requirements of *PHIPA* and should explain how health information will be protected. The privacy policy should clearly explain how and when personal health information will be collected, used and disclosed.

Two or more homeopaths who work together could decide to act as a single organization for the purposes of *PHIPA*, and could create a single privacy policy. This would allow for consistent record keeping practices, in which case the homeopaths would have shared responsibility for complying with *PHIPA*.

*PHIPA* requires every homeopath and health organization to appoint a contact person (often called a Privacy Officer) who ensures compliance with the privacy policy and requirements of *PHIPA*. The Officer's duties include reviewing the organization's privacy practices, providing training, and monitoring compliance. The Officer is also the contact person for requests for information from the public. A homeopath, or working in independent or solo practice, usually acts as the Officer. A health organization may appoint a person within the organization, or may hire a person outside the organization to be its Officer.

### **PHIPA Scenario**

*Three homeopaths work together in an office. They decide they will act as an organization for privacy purposes. Their organization is the Health Information Custodian. The homeopaths create a privacy policy together and decide to appoint the most senior homeopath, Jackie, as Privacy Officer. Jackie creates a procedure to protect personal information, develops a privacy complaints procedure, and ensures that the homeopaths comply with the privacy policy.*

#### **➤ Protecting Personal Health Information**

Custodians must establish practices to protect personal health information under their control. Practitioners and organizations must adhere to these practices and take appropriate measures to protect personal health information from unauthorized access, disclosure, use or tampering. Such safeguards must include physical measures (e.g. restricted access areas, locked filing cabinets), organizational measures (e.g. need-to-know and other employee policies, security clearances), and technological measures (e.g. passwords, encryption, virus protection, firewalls).

Custodians need to systematically review all the places where they may temporarily or permanently hold personal health information, assess the adequacy of the safeguards, and implement changes as necessary.

#### **➤ Collection, use and disclosure of personal health information**

A homeopath or organization may collect, use or disclose a person's personal information only if the person consents or if the collection, use or disclosure is otherwise permitted or required by law. A Registrant should collect, use or disclose no more information than is reasonably required in the circumstances.

Under *PHIPA*, collection, use and disclosure of personal health information is permitted without consent in the following limited circumstances:

##### **Circle of Care**

A Registrant may share information within a patient's circle of care, which includes other health professionals who provide care to the same patient, other health care providers within a multidisciplinary setting, and other health care providers where the patient is referred by the Registrant.

A homeopath may assume that s/he has a patient's implied consent to disclose personal health information to other health providers in the patient's circle of care, unless the patient instructs otherwise.

In some cases, the circle of care may also include other health care providers not mentioned here. For example, in circumstances where it is necessary to provide care to an individual, but not reasonably possible to obtain consent in a timely manner, the patient's health information may be shared with other providers. However, to avoid misunderstandings, many practitioners do not share information with others in the circle of care without the

patient's explicit consent, except in emergencies. Caution is particularly important where the information is sensitive.

**Family and Friends**

While Registrants may commonly understand the circle of care to include supportive family and friends of the patient, in this context, the circle of care has a specific meaning, referring only to health care professionals, as noted above.

Generally speaking, consent should be obtained before sharing personal health information with members of a patient's family. However, personal health information may be disclosed for the purpose of contacting family members, friends, or other persons who may be potential substitute decision-makers, if the individual is injured, incapacitated, or ill, and not able to provide consent.

**Disclosure related to risk**

A Registrant may disclose a patient's personal health information if the homeopath believes on reasonable grounds that disclosure is necessary to eliminate or reduce a significant risk of serious bodily harm to the person or anyone else.

**Other Laws**

*PHIPA* allows disclosure of personal health information that is permitted or required by many other Acts. For example, the *RHPA* permits disclosure of personal health information to the ICRC or QA Committee, if this information is required.

Despite the circumstances in which sharing of a patient's personal health information is permitted (explained above), when a patient or patient's substitute decision-maker says that s/he does not want information to be shared, the information must then be put in a "lock box" and cannot be shared unless another provision in *PHIPA* permits it.

Disclosure of personal health information is permitted or required by many other Acts, including the following:

- the *HCCA* or *Substitute Decisions Act* for the purposes of determining, assessing or confirming capacity;
- disclosure to a college in accordance with the *RHPA*; and
- disclosure to an investigator or inspector authorized by a warrant, or by any provincial or federal law, for the purpose of complying with the warrant or facilitating the investigation or inspection.

Additionally, as discussed in the Mandatory Reports section, there are some circumstances in which disclosure of personal health information is required.

### **Circle of Care Scenario**

*Sue, a homeopath, receives a telephone call from a registered nurse at a local hospital. The nurse advises Sue that her patient has just been admitted to the hospital. The nurse reports that she has been unable to contact the patient's substitute decision-maker (SDM). The nurse wants to know what treatment Sue has been providing to the patient. Sue tells the nurse in very general terms about the care she has been providing and discloses contact information she has for the SDM. In this case, the "circle of care" principle allows Sue to disclose her patient's personal health information without express consent, and it would be inappropriate to insist on a signed consent before making any disclosure.*

### **↻ Access to Personal Health Information**

Every patient has a right to access his/her own personal health information. One important exception is when granting access would likely result in a risk of serious harm to the patient's treatment or recovery, or a risk of serious bodily harm to the patient or another person. It should be noted that *bodily harm* is interpreted to include mental or emotional harm.

If a person makes a request to access his/her personal health information, the Custodian must either:

- permit the person to see the record and provide a copy at the person's request;
- determine, after a reasonable search, that the record is unavailable, and notify the person of this in writing, as well as his/her right to complain to the Information and Privacy Commissioner; or
- determine that the person does not have a right of access because of the risk of serious harm, and notify the person of this as well as his/her right to complain to the Information and Privacy Commissioner.

The Information and Privacy Commissioner may review the Custodian's refusal to provide a record, and may overrule the Custodian's decision. If law does not permit disclosure for any reason, the Registrant should black out (on a copy, not the original) those parts that should not be disclosed if it is reasonable to do so, so that the patient may access the rest of the record.

### **↻ Correction of Personal Health information**

Individuals generally have a right to request corrections to their own personal health information. A homeopath or other Custodian who receives a written request must respond by either granting or refusing the request within 30 days. It is also a good idea to respond to verbal requests as soon as possible. If the request cannot be fulfilled within 30 days, the person should be advised of this in writing.

Corrections to records must always be made in a way that allows the original record to be traced. The original record should never be destroyed, deleted, or blacked out. If the record cannot be corrected on its face, it should be possible for another person accessing the record to be informed of the correction and where to find the correct information. The person should also be notified of how the correction was made.

At the person's request, the homeopath should notify anyone to whom the homeopath has disclosed the incorrect information, of the correction. The exception to this is if the correction will not impact the person's health care or otherwise benefit the person.

The homeopath (or Custodian) may refuse the request if s/he believes the request to be frivolous or vexatious; if s/he did not create the record and does not have the knowledge, expertise and authority to correct it; or if the information consists of a professional opinion made in good faith. In other words, corrections are limited to factual information, not professional opinions.

A homeopath who refuses to make a correction must notify the person in writing, with reasons, and advise the person that s/he may:

- prepare a concise statement of disagreement that sets out the correction that the homeopath refused to make;
- require the Registrant to attach the statement of disagreement to his/her clinical records, and disclose the statement of disagreement whenever the homeopath discloses related information;
- require the homeopath to make all reasonable efforts to disclose the statement of disagreement to anyone to whom the Registrant has previously disclosed the record; or
- make a complaint about the refusal to the Information and Privacy Commissioner.

## 🔄 **Complaints**

Every Custodian must have a system in place to deal with complaints regarding personal health information. Patients should also be aware of their right to complain to the College and/or to the Information and Privacy Commissioner.

### **Sample Question**

*Which of the following best describes a patient's right to look at his/her personal health information contained in an homeopath's records?*

- 1. A patient has an unrestricted right to access his/her personal health information.*
- 2. A patient generally has a right to access his/her health information, and has a right to complain to the Information and Privacy Commissioner if access is refused for any reason.*
- 3. A patient has a right to access his/her health information unless the homeopath believes it is not in the patient's best interests to see the information.*
- 4. A patient may request a copy of a record containing his/her personal health information, but a homeopath does not have to provide it.*

*The best answer is answer 2. A patient's right to access his/her health information is broad but has some legal limits. However, even if access is refused for an appropriate reason, the patient is entitled to bring a complaint to the Information and Privacy Commissioner.*

*Answer 1 is not the best answer because the right to access personal health information may be restricted in some circumstances (e.g. where there is a serious risk of significant bodily harm).*

*Answer 3 is not the best answer because an homeopath's opinion about whether it is good for the patient to see the record is irrelevant. Only if the homeopath believes on reasonable grounds that viewing the information would seriously harm the patient's treatment, may access be refused.*

*Answer 4 is not the best answer because an homeopath does not have a general right to refuse a person access to personal health information.*

## **II. Personal Information Protection and Electronic Documents Act (PIPEDA)**

Another privacy law that Registrants should be aware of is the *Personal Information Protection and Electronic Documents Act (PIPEDA)*. *PIPEDA* is a federal law that governs the collection, use, and disclosure of personal information in relation to commercial activity, such as the sale of products at Registrant's offices and the offering of educational sessions. *PHIPA* and *PIPEDA* are based on the same principles. *PHIPA* simply provides more detail about how to achieve those principles in the health care context.

The following ten privacy principles apply to a Registrant's commercial activities:

<b>Accountability</b>	An organization must have a privacy officer who is accountable for the collection, use, and disclosure of personal information; develops privacy policies and procedures, and ensures that staff receive privacy training.
<b>Identifying purposes</b>	An organization must identify the purposes for which personal information will be used at the time the information is collected.
<b>Consent</b>	Informed consent is required to collect, use, and disclose personal information except in limited circumstances.
<b>Limiting collection</b>	An organization must collect only information needed for identified purposes.
<b>Limiting use, disclosure and retention</b>	An organization must only use, disclose and retain personal information that is necessary for the identified purposes, and is obtained with consent. It should be retained no longer than necessary.
<b>Safeguards</b>	An organization must protect personal information with appropriate safeguards in order to protect against loss, theft, unauthorized access, disclosure, copying, use, or modification.
<b>Openness</b>	An organization must make its privacy policies readily available.
<b>Individual access</b>	Upon request, an individual must be informed of the existence, use, and disclosure of his/her personal information, and be given access to it. An individual may request corrections to the information. Access may be prohibited in limited circumstances.
<b>Challenging compliance</b>	An organization must have a complaints procedure relating to personal information and must investigate all complaints.

### **III. Health Care Consent Act**

As discussed in Section 2, the *Health Care Consent Act (HCCA)* sets out rules about consent to treatment, which for homeopaths includes all assessments and care, especially where there is concern about the capacity of the patient to consent to treatment. In general, except in cases of emergency, informed consent for any assessment or care must be obtained from the patient. If the patient is incapable, informed consent must be obtained from the patient's substitute decision-maker.

Where there is a dispute about the care of an incapable patient, the homeopath, patient, or substitute decision-maker may apply to the Complaints and Capacity Board (CCB) to render a decision regarding the patient's consent or capacity. The CCB may agree with the homeopath's determination that a patient is incapacitated, or may find that the patient is capable with respect to the treatment. If the CCB overrules the homeopath, s/he may not administer the treatment unless the patient consents.

The CCB may provide direction to a substitute decision-maker with respect to an incapable person's wishes (e.g. whether the wish applies to the circumstances, or whether the patient's wish was expressed when the person was capable). The CCB may also consider a request from a substitute decision-maker to depart from a person's wish that was expressed while the person was capable.

The CCB may review decisions regarding a person's capacity to consent to treatment, admission to a care facility, or use of a personal assistive service. The CCB may appoint a substitute decision-maker to:

- make decisions for an incapable person with respect to treatment, admission to a care facility or use of a personal assistance service;
- amend or terminate the appointment of a representative;
- review a decision to admit an incapable person to a hospital, psychiatric facility, nursing home or home for the aged for the purpose of treatment; and
- review a substitute decision-maker's compliance with the rules for substitute decision-making.

A patient may challenge a decision of the CCB by appealing to the courts.

#### ***HCCA Scenario***

*Mike, a homeopath, works in a prison. Mike has proposed a plan of care to be carried out with a patient, but has been met with the patient's adamant and unexplained refusal. Mike thinks this care is warranted and that it will help the patient's rehabilitation. Mike does not think the patient will make the gains he needs without the care. He also does not believe the patient's refusal is rationally based, and proposes to go ahead with the care anyway, deciding that the patient lacks the capacity to consent to, or withhold consent for, treatment.*

*The patient does not agree with this decision, and decides to challenge it at the CCB. The CCB holds a hearing. It receives testimony from both Mike and the patient, and concludes that the patient is capable of withholding consent for the treatment. The patient reaffirms to Mike that he is refusing to consent to the care.*

*In this situation, Mike cannot initiate the care, even if he believes it is in the patient's best interest.*

#### **IV. Child and Family Services Act**

A Registrant who suspects that any child is in need of protection must report this to a Children's Aid Society (CAS). This duty overrides all privacy and confidentiality duties and laws, including *PHIPA*. No legal action may be taken against a Registrant for making a report, unless the report is made maliciously or without reasonable grounds. The College cannot discipline a Registrant for making such a report in good faith and with reasonable grounds.

As a result of a report, a CAS worker may investigate further, and where action is needed, in many cases, CAS will offer family services such as counselling and parental support.

A homeopath has a duty to report with respect to any child under the age of 16 (or who is 16 or 17 years old and under a child protection order). This includes all children, including the child of a patient, or a child who is a patient, or any other child. However, a Registrant has a special responsibility to report information about a child who is a patient or about a patient if the information was obtained while providing treatment or services to the child. A Registrant may be fined up to \$1000 for failing to make a report in such a circumstance. The duty to report is ongoing (for new information) even if a previous report has been made respecting a child. The report must be made personally.

A Registrant must make a report if s/he has reasonable grounds to suspect any of the following:

**A child has been or is at risk of harm**

A report is required if a child has been, or is likely, at risk of being physically harmed by a person in charge of the child (e.g. a parent or guardian), either directly or as a result of neglect or a pattern of neglect. A report is also required if a child has been, or is at risk of being sexually molested or sexually exploited, by a person in charge of the child. A report is also required if the person in charge of the child knows or should know of this risk and fails to protect the child.

**Failure to provide or consent to services or treatment**

There are numerous circumstances where the person in charge of a child does not (or cannot) provide services or treatment to a child, or where the person in charge does not (or cannot) consent to services or treatment for a child. A report is required where a child is not receiving services or treatment, *and*:

- a) the child requires medical treatment to cure, prevent or alleviate physical harm or suffering;
- b) the child has suffered or is likely at risk of suffering emotional harm, demonstrated by serious anxiety, depression, withdrawal, self-destructive or aggressive behaviour, or delayed development believed to be caused by action or inaction of the person in charge of the child;
- c) the child has a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development; or if

d) the child is under the age of 12, has killed or seriously injured another person or has caused serious damage to another person's property, and services or treatment are needed to prevent a recurrence.

**Abandonment**

A report is required if a child has been abandoned by a parent or guardian, or is otherwise left without a caregiver. This includes the death of the child's parents.

**Failure to supervise a child**

A report is required if a child has injured another person or damaged another person's property more than once because a person in charge of the child encouraged the child to do so. A report is also required if a child has injured another person or damaged another person's property more than once because a person in charge of a child has not or is not able to supervise a child adequately.

**Mandatory Reporting Scenario 1**

*Melanie, a homeopath, has a patient who discloses that she has physically harmed her son. Melanie has a duty to make a report, even if the patient reported this in confidence or in the course of assessment or care. If two months later the patient says something that makes Melanie suspect that the patient has physically harmed her son again, Melanie has a duty to make another report.*

**Mandatory Reporting Scenario 2**

*Phil, a homeopath, has an 11 year old patient who has been displaying signs of erratic and violent behaviour, and reports that he assaulted his friend last week to the point where the friend had to be taken to the emergency department. Phil believes that specialized health care services are necessary to prevent the patient from causing serious injury again, and recommends a referral to another health care provider. The patient's parents do not believe that their 11 year old son would really hurt anybody, suggesting that the seriousness of the incident was exaggerated by the victim's overreaction. The patient's parents refuse to consent to any further care. In this case, Phil has a duty to make a report to the Children's Aid Society. This duty to report exists even if the child does not want anyone to know about the incident and the parents refuse to believe the matter is serious and are angry at the homeopath.*

## **V. Long-Term Care Homes Act**

The *Long-Term Care Homes Act* regulates long-term care homes in Ontario, which are facilities that provide 24-hour nursing care and supervision for persons in need of this level of care.

The *Long-Term Care Homes Act* sets out a Residents Bill of Rights requiring long-term care homes to ensure residents are treated fairly and with dignity and respect. This includes the right to participate in decision-making about the resident's care, the right to privacy in treatment and care, and the right to receive care and assistance aimed at maximizing the resident's independence as much as possible.

A long-term care home must have a zero-tolerance policy with respect to abuse (physical, sexual, emotional, verbal or financial) and neglect of residents.

Registrants have a duty to report abuse and neglect of residents and certain other types of conduct to the Ministry of Health and Long-Term Care. A report is required if a homeopath (or any other person) suspects on reasonable grounds that any of the following has occurred:

- improper or incompetent treatment or care of a resident that resulted in harm or a risk of harm to the resident;
- abuse of a resident by anyone;
- neglect of a resident by staff, including management, that resulted in harm or a risk of harm to the resident;
- unlawful conduct that resulted in harm or a risk of harm to a resident;
- misuse or misappropriation of a resident's money; or
- misuse or misappropriation of funding provided to a long-term care home.

It is an offence for a Registrant to fail to make a report in any of the above circumstances if the homeopath provides care or services in a long-term care home. A Registrant may be fined up to \$25,000 for failing to make such a report.

Complaints and reports about the care of a resident or the operation of a long-term care home must be investigated by the Ministry of Health and Long-Term Care if they involve certain matters, including abuse of a resident by anyone, and neglect of a resident by staff. Every person including a homeopath is protected from retaliation for making a report or for cooperating with an investigation. This includes protection from being fired, disciplined or suspended Should they be employed by the home or facility.

**Sample Question**

A Registrant is not required to report the following:

1. A resident's son frequently yells and swears at the resident.
2. A staff member is borrowing money from a resident with memory difficulties.
3. A nurse has not been monitoring a resident over the past several shifts.
4. A resident's daughter has stopped visiting the resident.

*The best answer is 4 All of the above except iv must be both reported and investigated. While a resident's family member may neglect that person, this does not have to be investigated unless the neglect is to the point of emotional abuse.*

*Answer 1 is not the best answer because this may constitute emotional abuse, and emotional abuse by any person must be reported and investigated.*

*Answer 2 is not the best answer because this may be considered financial abuse, and any person who financially abuses a resident must be reported and investigated.*

*Answer 3 is not the best answer because a nurse who has not been monitoring a resident may be neglecting that patient. Neglect of a patient by a staff member must be reported.*

## **VI. Human Rights and Accessibility Legislation**

Laws and concepts relating to human rights and accessibility are described below.

### **➤ Human Rights Code**

Every person is entitled to access and receive health care services in a manner that respects his/her human rights. The *Ontario Human Rights Code* requires every Registrant to treat patients, potential patients, employees, and others equally, regardless of the person's race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability.

If a person feels that a homeopath or organization has violated the *Human Rights Code*, the person may complain to the Human Rights Tribunal of Ontario. If the Tribunal finds that a homeopath has violated the *Human Rights Code*, it may order the homeopath or organization to pay damages and require the homeopath or organization to take action, such as taking training or implementing a human rights policy.

Since the Human Rights Tribunal does not have the power to suspend or revoke a Registrant's certificate of registration, a person who believes his/her human rights have been violated may also bring a complaint to the College.

In order to meet the obligations of the College and to avoid a misunderstanding that could lead to a human rights complaint, Registrants should always clearly communicate their reasons for making clinical decisions, including assessments, remedies and referrals, among others. Registrants should always make decisions to refuse or end a therapeutic relationship in good faith. For example, a homeopath may refer a patient whose presenting concerns are outside his/her area of competence; however, false claims of lack of training or expertise to work with a particular patient, and refusal to provide services to the patient based on such false claims, could be considered a form of discrimination.

#### ***Duty not to discriminate***

A Registrant must not discriminate against any person on any prohibited ground. Examples of discrimination may include the following:

- refusing to accept or continue to treat a new patient for a prohibited reason, such as race, colour, sexual orientation;
- making a treatment decision for a prohibited reason;
- insulting a patient in relation to a prohibited reason;
- refusing to allow a patient with a disability to attend an appointment with a support person, assistive device or service animal; and
- making assumptions, not based on clinical observation or professional knowledge and experience, about a person's health or abilities because of his/her age or another prohibited reason.

It is not discrimination to make clinical decisions or to accept or refuse to continue seeing a patient for reasons other than prohibited grounds. For example, if a homeopath does not have the competency to treat or continue to treat a person, or if the assessment or care

required is not within the Registrant's scope of practice, a Registrant should not initiate or continue care with a patient.

Homeopaths are similarly entitled to rely on professional knowledge, judgment and experience to comment upon clinically relevant matters that relate to a person's age, gender, or cultural background.

### ➡ **Duty to Accommodate**

The *Human Rights Code* requires that persons with disabilities be accommodated, unless the accommodation would result in undue hardship (e.g. because of a real risk to health or safety or because of undue cost). The duty to accommodate also applies to other prohibited grounds of discrimination.

To accommodate persons with disabilities, accommodation must be individualized. Individual accommodations should be discussed with the person where possible, and must be provided in a manner that respects the person's dignity and autonomy. However, a Registrant is not required to provide the exact accommodation that a person requests if another form of accommodation is reasonable and acceptable.

Examples of accommodation may include the following:

- permitting a patient who uses a wheelchair to reschedule an appointment with less than 24-hours notice if the elevator in the homeopath's office is temporarily out of service;
- offering an extended appointment time to a patient with an intellectual, learning, or mental health disability who may need a longer time to explain his/her symptoms;
- permitting a person with a disability to enter your premises with a support person, service animal, or assistive device; and
- communicating in writing if a person with hearing impairment or other disability requests this.

### **Human Rights Code Scenario No. 1**

*Nancy, a homeopath, determines that she is not competent to continue to treat her patient because the patient's health condition has become increasingly more complex. The patient is unhappy about Nancy's decision, and believes that Nancy has always had a problem with him because of his race and religion. Nancy should carefully communicate her reasons for terminating the patient-practitioner relationship, so the patient is not left with a misunderstanding that the decision was made because of the patient's race or religion. Nancy must continue to provide support for the patient until an appropriate referral is made.*

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### **Human Rights Code Scenario 2**

*Frank, a homeopath, has a new patient named Jennifer who has an intellectual disability, and he finds it difficult to communicate with her. Frank should ask Jennifer what he can do to better communicate with her. If Jennifer has a support person who sometimes provides assistance, she may ask to bring that person to Frank's office.*

*Frank is required by law to permit a support person to accompany a patient. However, Frank should not assume the patient needs a support person and should discuss the matter with the patient if possible. Additionally, if the patient does not have the capacity to make decisions regarding care, the patient may need a substitute decision-maker. In any of these circumstances, Frank cannot refuse to accept the patient because of his/her disability, even if the visits will take longer.*

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### **Human Rights Code Scenario 3**

*Kim, a homeopath, has a patient who has been diagnosed with a mental illness. Kim has been having increasing difficulty interacting with her patient. The patient has also been rude towards Kim and staff. While no patient has a right to be abusive, Kim may consider whether the behaviour is caused or exacerbated by the person's illness. Kim cannot stop providing services because of the patient's mental illness, unless Kim concludes she is not competent to continue treating the patient, or unless there are health and safety concerns for Kim or her staff.*

*If Kim believes a referral to another health care provider with the appropriate competencies to manage the patient's health care needs is necessary, Kim should clearly explain the reasons for the decision. Kim also should consider whether any accommodations are possible. For example, a patient who is uncomfortable in a crowded waiting room because of a mental illness might be offered an alternative space to wait. There may be other practical measures the patient may be able to suggest that will help the patient manage his/her disability-related symptoms.*

## 🔄 Accessibility for Ontarians with Disabilities Act

The *Accessibility for Ontarians with Disabilities Act (AODA)* provides standards for accessible customer service, information and communications, transportation, employment, and built environment (i.e. physical facilities). The intention of the standards is to achieve accessibility for Ontarians with disabilities by 2025. A homeopath or organization the homeopath works for may be fined for not complying with the *AODA*.

The standards currently apply only to persons and organizations with at least one employee in Ontario. Different standards apply depending on the number of employees an organization has. Neither a sole proprietor nor a group of persons in a partnership are considered employees, therefore the *AODA* standards currently do not apply in these situations. However, if a homeopath has incorporated as a business, s/he may be considered an employee of the corporation along with any other employees the homeopath has.

Accessibility standards are found in regulations and have the status of law. A breach of an *AODA* standard is not necessarily a breach of the *Human Rights Code*. However, it is possible that the *AODA* standards will be used as a reference point in Human Rights Tribunal hearings.

Relevant Accessibility Standards are listed below:

### **Customer Service Standard**

Homeopaths with at least one employee in Ontario must comply with the accessible customer service standard as of January 2012. For organizations with fewer than 20 employees, the *AODA* requires homeopaths to:

- implement policies, practices and procedures regarding the provision of goods and services to persons with disabilities, that are consistent with the principles of dignity, independence, integration, and equal opportunity, and that deal with the use of assistive devices and the availability of any measures that make services accessible (e.g. TTY, elevator);
- permit service animals and support persons in public areas of premises;
- provide reasonable notice of any temporary disruptions to any accessibility features or services, including the reason for the disruption, the anticipated duration, and a description of any alternate services;
- provide training to all employees and anyone else who deals with members of the public or third parties, which must include the following:
  - a) review of purposes of *AODA* and requirements of Customer Service standard;
  - b) how to interact with persons with disabilities who use assistive devices, use a service animal, or are assisted by a support person;

- c) how to use available accessibility equipment and devices on premises or that are otherwise provided to the public; and
- d) what to do if someone with a particular type of disability is having difficulty accessing the providers' goods or services; and
- establish a process for receiving and responding to feedback about accessibility and make information about the process readily available to the public. This process must permit people to provide feedback in person, by telephone, in writing, or electronically, and the process must specify actions that will be taken if a complaint is received.

For organizations with 20 or more employees, there are additional requirements, including putting any policies, practices and procedures in writing and making them available upon request, filing publicly-available accessibility reports, and keeping records of the training that has been provided.

### **Integrated Standard**

The Integrated Standard includes standards on information and communications, transportation, and employment. For organizations with fewer than 50 employees, the general requirements under this standard include the creation and implementation of policies, practices and procedures regarding how the organization will meet the Integrated Standard. It includes requirements for training of all employees, volunteers, and others on the Integrated Standard and the *Human Rights Code*.

### **Information and Communication Standard**

The Information and Communication Standard requires organizations to ensure that information available to the public and the organization's communications with the public are accessible, or may be made accessible. This standard will be phased in and will apply to organizations with fewer than 50 employees in 2017.

This includes making any feedback system accessible upon request, ensuring that any emergency or public safety information available to the public is made accessible upon request, and providing accessible information formats and communication supports upon request.

For example, this standard may require homeopaths with at least one employee to provide intake forms, charts, and other health information in accessible format (e.g. large print, audio, or Braille). It may also require homeopaths to

provide sign language interpretation. The homeopath must consult with the person making the request regarding an accessible format or communication support, and then must provide an accessible format or communication support in a timely manner, without increasing the cost to the patient.

For organizations with 50 or more employees, additional steps will be required, including ensuring that websites are compliant with web accessibility standards, and filing accessibility reports.

### **Employment Standard**

The employment standard requires employers to provide an accessible workplace. This includes the following:

- providing public notice regarding accessibility practices in hiring employees;
- providing accessible workplace information; and
- providing, on request, any individualized emergency response information to employees who require this individualized information because of a disability.

For organizations with fewer than 50 employees, the employment standard will generally come into force on January 1, 2017. The deadline for providing individualized workplace emergency response information is January 1, 2012.

### **Built Environment Standard**

The standard on built environment has not yet been developed. However, it will apply to the construction of new buildings and to major renovations.

#### **AODA Scenario**

*Tom, a homeopath, has an office with one employee who provides administrative support. Under the Accessibility for Ontarians with Disabilities Act's customer service standard, Tom must create an accessibility plan for providing accessible customer service and accessible information and communications.*

*Tom is not required to put his policies, practices and procedures in writing, but must ensure that they are followed, including by his employee. Tom is also responsible for ensuring that training is provided to the employee regarding the accessibility standards (e.g. that support persons, animals or devices are allowed on the premises). Tom should also be aware of how the information and communications and employment standards will apply to his/her practice. He may wish to consider documenting any policies, practices and procedures in writing and make a record of any training provided to employees.*

## **VII. Municipal Licensing**

In some circumstances, Registrants may require a municipal license. A municipal license, such as a business license, is granted and regulated by the municipality, and not by the provincial government or the College. A municipal license does not give an individual the right to be registered with the College.

Municipal licensing applies to all business operators, not just homeopaths. Generally speaking, the purpose of municipal licensing is to set conditions for the premises in which a business operates, as well as to address public health matters such as sanitation. For example, a municipal inspector may inspect a homeopath's office to ensure that protocols are in place to avoid the spread of disease. A municipal licensing body is generally not focused on professional qualifications or professional conduct.

It is the Registrant's obligation to ensure s/he is meeting the licensing requirements and standards of their municipality. If the College requires a higher standard or different standard than the municipality does, the College's standard must always be followed, as the *RHPA* is a provincial statute which takes priority over a municipal by-law.

### ***Municipal Licensing Scenario***

*Laurie has a municipal business license allowing her to operate an office in her city, and pays a fee every year to renew her license. Laurie now wishes to register with the College. She inquires whether the College will accept her municipal license as meeting all of the registration requirements for the College. She assumes that this is what is meant by grandparenting.' The College advises Laurie that she is misinformed and must meet all registration requirements of the College, including conditions for grandparenting, in order to become a Registrant. Laurie's business license has no bearing on her eligibility for registration which the College.*

## *Conclusion*

When legal issues arise, Registrants are encouraged to discuss them with colleagues and to check with the College about its expectations. The College cannot provide legal advice, nor can one's colleagues or professional association, unless they have legal/ethical consultation services in-house, as some do. Thus, on many issues a Registrant may need to consult with his/her own lawyer to address specific concerns.

**Notes:**