

## Professional Incompetence and Misconduct Reporting Guidelines

### **Introduction**

Professional incompetence and professional misconduct are defined in the *Act* which then allows the individual to interpret whether these have occurred and whether the conduct should be reported. SCoP is taking the position that all matters of potential incompetence should be reported to SCoP but not all matters of potential misconduct would warrant reporting to SCoP as it is a matter of exercising some good judgment and discretion in regards to what warrants reporting. However, SCoP members should remain aware that opting not to report professional incompetence or professional misconduct could result in a report of professional misconduct against them and they should therefore guide themselves accordingly.

### **Guidelines**

A decision to report requires exercising your discretion and judgment by answering two key questions:

1. Is there reasonable cause to believe that the member's conduct makes him or her guilty of professional incompetence or professional misconduct?
2. If the answer to question one is yes, is the conduct likely to be of material significance to SCoP?

There is further exploration and guidance as to how to answer these questions below.

### ***Is there reasonable cause to believe that the member's conduct makes him or her guilty of professional incompetence or professional misconduct?***

Guidance for whether a member's conduct makes him or her guilty of professional incompetence or professional misconduct can be found in the definitions of those two discipline issues in the legislation. In section 24 of the *Act*, professional incompetence includes the following:

- Display by a member of a lack of knowledge, skill or judgment to an extent that demonstrates that the member is unfit to continue in the practice of the profession or provide one or more services ordinarily provided as a part of the practice of the profession; and
- Disregard for the welfare of a member of the public to an extent that demonstrates that the member is unfit to continue in the practice of the profession or provide one or more services ordinarily provided as a part of the practice of the profession.

Professional incompetence leans towards fairly serious matters as one of the questions is whether the member's conduct demonstrated that he or she is unfit to continue in some or all of the practice of the profession. As such, it is highly recommended that if a member's conduct is believed to be professional incompetence, that this conduct is immediately reported to SCoP so a proper investigation can occur.

Professional misconduct, on the other hand, often includes conduct of members that might not demonstrate that he or she is unfit to continue in some or all of the practice of the profession and could therefore include a larger realm of conduct. In section 25 of the *Act*, professional misconduct includes any matter, conduct or thing that:

- Is harmful to the best interests of the public or the members;
- Tends to harm the standing of the profession;
- Is a breach of the *Act* or bylaws; or
- Is a failure to comply with an order of the professional conduct committee, the discipline committee or the council.

There is a lot of room for individual interpretation in regards to what would be professional misconduct and it will not always be possible to agree. However, section 25 of the *Act* does state that any matter, conduct or thing

is professional misconduct if it is a breach of the *Act*. As section 23 of the *Act* requires our members to act within approved protocols, it could be interpreted that acting outside of approved protocols is essentially a breach of the *Act* and therefore is professional misconduct.

It should also be noted that it does not matter whether or not the member's behavior was disgraceful or dishonourable. That is to say that a member may have had the best of intentions but that does not mean that that member is not guilty of professional incompetence or professional misconduct.

***If the answer to question one is yes, is the conduct likely to be of material significance to SCoP?***

If you have reviewed a member's conduct and determined that he or she may be guilty of professional incompetence or professional misconduct, the next question is whether it is of material significance that it should be reported to SCoP. As indicated above, all conduct that suggests that a member is guilty of professional incompetence should automatically be reported to SCoP as soon as possible.

As for reporting professional misconduct, using their best judgment and discretion, an individual should consider the following factors in conducting their assessment of whether the conduct was of material significance to be reported to SCoP:

1. How serious was the matter, conduct or thing?
2. What was the likelihood that the matter, conduct or thing has or may lead to public or member harm?
3. What was the likelihood that the matter, conduct or thing could cause harm to the standing of the profession?
4. Was there any ability for the medical advisor or others to mitigate the risk of harm?
5. Was this a onetime matter, conduct or thing or is there a pattern of occurrence?

Essentially, if the matter was a onetime occurrence that was minor in nature and did not risk harm to the public, the members or the profession, and it could be mitigated by the employer, medical advisor etc., then it likely does not to be reported to SCoP. If a member's conduct is a result of a mistake that falls into the realm of minor and no risk, that behavior can often be corrected with internal training, education, supervision etc. and that is often consequences that would be recommended by the Professional Conduct Committee through a Consensual Complaint Resolution Agreement. Therefore, it is a good example of something that a person could use their judgment to not report to SCoP if able to stop the behavior from occurring again internally. However, if the matter is not minor, it did risk harm to the public, the members or the profession or is a repeat conduct or a pattern of behavior, then it becomes a bigger issue that should be reported to SCoP.

***Conclusion***

SCoP fully recognizes that we are in an environment that is dealing with new legislation, limiting protocols and a changing profession and that it is not always clear as to what will constitute professional misconduct that should be reported to SCoP. If in doubt, we strongly encourage you to take the time to call our office and discuss the matter as it is a new process for everyone involved and sometimes a discussion to determine how to proceed would be the best way to respond.