

Guidelines for Handling Incapacitated Pharmacists and Pharmacy Co-Workers

INTRODUCTION

If, in the course of the practice of pharmacy, you know, or suspect that a co-worker is incapacitated you are required to take suitable action.

As well, if you are the Designated Manager or owner/operator of the pharmacy, and terminate a member of the Ontario College of Pharmacists (the "College") for reasons of incapacity, you must report the termination, and the reasons, to the College. On the other hand, you are not required to report a member who is incapacitated to the College if you do not terminate them and they remain in your employ.

Nonetheless, as a licensed pharmacist, you have a responsibility to intervene and manage all such situations appropriately.

Members are increasingly asking the College what their responsibilities are whenever they encounter co-workers who they suspect to be incapacitated.

The following guidelines outline the professional, ethical and legal responsibilities for pharmacists who either suspect or know a co-worker is incapacitated.

BACKGROUND

1. What does "incapacitated" mean?

A pharmacist is "incapacitated" when he/she is suffering from a physical or mental illness or condition that may make it necessary for actions to be taken to restrict his or her ability to practice pharmacy for the best interests of public safety.

The most common cases of incapacity involve mood disorders or substance-use problems, but certain physical, cognitive, or sensory disabilities could also fall within the definition of incapacity. (See s.1(1) of the Health Professions Procedural Code (the "Code"), being Schedule 2 to the Regulated Health Professions Act.

2. **What is significant about an incapacitated colleague who continues to practice untreated?**

A member who is incapacitated but practises pharmacy without any restrictions is placing his/her patients and the public at risk. Moreover, the member's condition may not improve if they do not receive appropriate care and/or treatment that supports their recovery as a priority over practising.

Your primary objective is to ensure that your incapacitated colleague obtains suitable treatment so that they can recover to lead a healthy lifestyle and your practice environment remains safe.

To understand the scope of the pharmacist's responsibility for dealing with an incapacitated co-worker, it is necessary to first understand: the principles that underlie the need for suitable interventions; the signs to look for to identify the problem; and the available options to manage the situation.

UNDERLYING PRINCIPLES

The *Proposed Guidelines* are based on the following basic principles:

- The College's mandate is to protect the public interest.
- The practice of pharmacy is patient-focused. Every pharmacist must take all steps to ensure that all patients and the public receive the best and safest pharmaceutical care.
- The practice of pharmacy anticipates a team effort where all members are healthy, competent and safe. Pharmacists are placed in a vulnerable position whenever they practice with an incapacitated co-worker whose incapacity has gone unaddressed.
- Patient safety takes priority over other competing values and principles, including pharmacist collegiality and protection.
- Some people who are suffering from incapacity may be either unaware or unwilling to admit that they are incapacitated, and pharmacists are no exception to this. Many people are often unwilling to volunteer information about their physical illness or condition, and this is even more often the case for mental illness or other conditions, as there is significant social stigma attached to such conditions. A person may also be prevented by the nature of the illness itself as some conditions include some cognitive impairment or lack of insight that prevents the individual from recognizing it in himself or herself. Similarly, the very nature of

substance dependency and illegal or improper conduct that may be associated with it, often results in an individual being secretive or deceitful.

- Pharmacists, as members of a health care team, are expected to notice unusual behaviours in, or aberrant professional judgment calls made by, themselves and/or others.
- Failing to intervene with a co-worker that is known or suspected to be incapacitated is of no help to that co-worker and delays his/her treatment and/or recovery.
- Pharmacists are not experts in the area of incapacity detection, intervention, or suitable recovery, and therefore require expert assistance and guidance to handle such a situation.
- There is no requirement to report an incapacitated co-worker if he/she is not a College-member (e.g., pharmacy technician, assistant). This includes termination. However, such co-workers participate in the medication dispensing process, and so their incapacity or impairment might result in harm to the public. Therefore the guidelines outlined below would also apply to non-pharmacist co-workers.
- The practice of pharmacy and work in a dispensary can be very stressful, thereby making it an unhealthy work environment for an incapacitated individual. This is compounded by the fact that work in a pharmacy provides ready access to controlled substances which can pose additional risks to an incapacitated member whose condition involves substance dependency or abuse.
- Pharmacists are not immune to the illnesses of drug abuse or drug dependency despite having expertise in drugs, their effects and uses. In fact, statistics from a recent study suggest that 12-18 per cent of pharmacists will experience an abuse or dependency problem during the course of their career versus 10 per cent of the general population

*Bissell L et al Pharmacists recovering form alcohol and other drugs addiction: an interview study. Am Pharm. 1989; NS29(6):391-402.

- Drug abuse and drug dependency are among the most common incapacities that pharmacists might observe in their colleagues. For this reason, many of the examples below refer to random urine samples, which are used to monitor possible drug abuse. (Please note that random urine samples are also used in cases of psychiatric disorders to monitor compliance with prescribed medications.)

WARNING SIGNS

Most professionals who suffer from an untreated incapacity may experience various levels of deterioration in different facets of their personal lives. They are often still able to function professionally when all other parts of their lives are not functioning as work is often the last place to deteriorate — especially if the incapacity involves drug use. As a result, a person's incapacity may have already escalated to a significant degree before it is observed in the workplace. Following are some typical, well-documented, warning signs for behaviours of a colleague that may indicate incapacity:

Physical changes

- Change in appearance/poor hygiene
- Tired appearance/insomnia
- Frequent shaking and/or sweating
- Loss of appetite/weight loss
- Slurred speech

Behavioral Changes

- Mood swings
- Memory loss or blackouts
- Withdrawal from friends and social activity
- Extreme anger, mistrust, anxiousness, depression, irritability
- Frequent work breaks
- Denial of having "problems" or need to be helped

Performance Changes

- Increased disorganization
- Increased number of prescription errors
- Increased number of customer complaints
- Frequent absences
- Lack of concentration or focus

Narcotic Shortages (For Substance Dependency or Abuse Cases)

- Shortages associated with the member's work schedule
- The member asks to have special narcotic responsibilities
- The member volunteers/asks to work shifts when the fewest staff are available

GUIDELINES

I. Responsibilities of Members at Large

If, in the course of the practice of pharmacy, you know, or suspect, that a co-worker is incapacitated, you are required to take appropriate measures to ensure that the incapacity does not compromise the safety of any pharmaceutical care the co-worker provides.

1. This obligation applies regardless of whether the co-worker is a pharmacist, an unregulated staff member, a subordinate, a superior or the Designated Manager.
2. Consider approaching and confronting your co-worker to discuss your concerns with them and suggest that he/she gets the necessary help. Your advice may also help your co-worker deal with a variety of psychosocial pressures, whether they have an illness or not. Suggest that he/she consult with his/her family physician or advise them to contact the consulting service at the Ontario Pharmacists' Association, or access the employee assistance programs in your workplace.

If his/her problem is work-related, let them know that they may be able to access insurance coverage from the WSIB, or some other kind of disability insurance, which would enable him/her to take time off to seek the necessary help.

3. It is also appropriate for you to share your concerns with the Designated Manager of your pharmacy, as he/she is responsible for the overall operation of the pharmacy, including the management of all regulated and unregulated employees. The Designated Manager is also required to follow up appropriately in accordance with the guidelines below.
4. Pharmacists who work on a relief basis, or who only overlap with a previous shift for a brief period, and who suspect that a team member on another shift may be incapacitated should report these concerns to the Designated Manager.
5. While reporting the suspicions of incapacity to the Designated Manager may be the appropriate action, the pharmacist is still obliged to ensure that appropriate safeguards are in place. If, for example, the suspected incapacitated member appears to remain unrestricted in his or her practice, bring your concerns to the Designated Manager's attention. If the Designated Manager does not share your concerns, you have a professional obligation to act further in this matter. You may consider contacting the Ontario Pharmacists' Association's

consulting service for advice on how to manage the situation. You may also contact the College's Investigations & Resolutions Department for confidential advice. Remember, your intervention may be the action that ensures your colleague gets the help that he or she needs.

II. RESPONSIBILITIES OF THE DESIGNATED MANAGER

A. Managing the Incapacity

As Designated Manager, you will be expected to take whatever measures are necessary to restrict the practice of an incapacitated team member to ensure that the public is protected from harm. This may include a total or partial restriction from working. You should document the information that you obtain about the incapacity, and any attempts you make to modify the job or otherwise accommodate and appropriately manage the incapacity.

1. If the member admits that he or she is incapacitated, you should encourage them to seek suitable treatment with a reputable health care professional. If the incapacity is due to substance use, you should ask the member to consult with a health care provider who is a certified addictions specialist. As Designated Manager you should also consult with appropriate resources such as help lines or your company's human resource experts. You should also consider, in situations where the member refuses help, whether it is appropriate for that member to work in the pharmacy before receiving care.
2. As Designated Manager you must be satisfied that the co-worker has successfully completed appropriate treatment and that returning to work is endorsed by his/her physician(s) and/or specialist(s) prior to their returning to work.

To be satisfied that these criteria have been met, you should ask the member to provide you with consent to communicate with his or her treating health caregivers to confirm that allowing the member to return to work is appropriate. In some cases, the caregiver may recommend restrictions to the member's work conditions, such as limited work hours, total or partial on-site supervision, or restricted access to narcotics. You will therefore need to consider whether you can accommodate these restrictions before reintegrating the member into the pharmacy's practice.

Remember: These restrictions have been designed to support the member's treatment and recovery while, at the same time, to provide suitable safeguards for public protection.

3. As Designated Manager, you should be informed, upon the member's return to work, of relevant, continuing components of the member's treatment or after care program, such as attendance at AA sessions, appointments with their addictions specialist, or random urine samples. You should also initiate some form of return-to-work contract with the member that outlines, as a term of his or her employment, their prescribed aftercare regimen and requirements to inform you of their compliance with the regimen. The College is available to discuss the suitable components of such a contract.
4. **As Designated Manager, you are not legally required to report the member's incapacity to the College if: the member remains employed at the pharmacy and you are managing the incapacity appropriately (in that you are aware of and are participating in the member's treatment or recovery) and you have not terminated his or her employment.** In such cases, you should certainly take the responsibility of intervention, monitoring and supervision and support in the member's recovery. Indeed, you will be seen as acting responsibly and protecting the public from unsafe practice if the member is undergoing suitable treatment with an appropriate and monitored aftercare program, of which your supervision and cooperation form a part. This would also include suitable restrictions and modifications being made to the member's practice.

You may also, if you are aware that the member also works at another pharmacy, ask him/her to confirm that the Designated Manager of the other pharmacy is aware of the incapacity and treatment. You should also get the member's permission to discuss their situation with the Designated Manager of their second workplace. If your staff person does not provide such cooperation, you may question whether you can be sure that their incapacity is being properly managed in each pharmacy location that they work.

5. Some pharmacists serve as Designated Manager in more than one location. Therefore you must ensure that there is an appropriately delegated individual as "workplace monitor", responsible for monitoring and supervising an incapacitated member in any pharmacy for which you are the Designated Manager but where you are not always present. In this instance, you should ensure that the "workplace monitor" fully understands the scope of their responsibilities and is comfortable and capable of taking this on your behalf.

(A sufficiently skilled and experienced pharmacy technician may also be appropriate to act as a monitor, whenever another pharmacist is not

present to act as a monitor for the member. As Designated Manager, you may also consider relocating the incapacitated pharmacist to a location where you or a pharmacist "workplace monitor" will be more regularly present.)

Please contact the Investigations & Resolutions Department for assistance or advice on suitable return-to-work arrangements at the 416- 847-8272. Your inquiries will be held in confidence and can be made without providing your or your co-worker's name.

B. Termination and Mandatory Reporting of an Incapacitated Member

1. If the member you know or suspect to be incapacitated refuses to:

- Go into appropriate treatment,
- Provide you with information about his or her aftercare program, and/o
- Be monitored or to have his or her practice restricted;

You need to consider whether you can adequately ensure the safety of your patients so long as the member remains practising in your pharmacy.

If you decide to terminate the employment of a member of the College, or dissolve a partnership or association with the member, because of their incapacity, you are required to report the fact of his or her termination (and reasons) to the College.

Similarly, if a member is terminated or a partnership is dissolved for reasons of professional misconduct or incompetence, this action (and reasons) must also be reported to the College.

2. It should also be emphasized that as Designated Manager, you are also required to report a member's resignation (to the College) if an incapacitated member resigns before you are able to terminate his or her employment.

You should also report to the College any member that you terminate for a reason other than incapacity (e.g. chronic lateness) if you suspect that the reason is related to an underlying incapacity. Not reporting such instances not only fails to help the member receive appropriate treatment, but also just "passes the problem along" to the member's next Designated Manager.

Please contact the Investigations & Department if you require any advice or assistance in reporting a terminated member due to incapacity at 416-847-8272.

C. When the Impaired Member is Your Employer

Clearly, when the impaired member is not an employee but an employer, it creates a challenge for the pharmacist or other co-worker who is under his or her direct supervision. Nonetheless, your professional and ethical obligations and duty to public safety still requires you to take some action to ensure that the public is protected from unsafe care. While this may place you in a vulnerable situation with perceivably fewer options for intervention than when the impaired member is an employee, action must still be taken. You can consider confronting your employer as a colleague to seek necessary treatment, but it is more likely that you will need some external assistance for this to be effective. If you do not know what to do, you should either contact the College for advice or consider reporting the member to the College.

INCAPACITY PROCEEDINGS AT THE COLLEGE

The incapacity process at the College is outlined below: (See also ss.57-74 of the Code)

Incapacity proceedings at the College are special non-disciplinary proceedings that are designed to make appropriate inquiries to determine whether a member is incapacitated as defined in legislation. The inquiries are focused on identifying whether a member needs treatment and recovery as well as ensuring that the member is compliant with their treatment plan.

This process is not designed in any way to penalize the member for their illness. Nonetheless, the College is required to be involved in these situations to ensure that the proper safeguards and restrictions are in place to protect the public from unsafe practice.

REGISTRAR'S HEALTH INQUIRIES

Information that is provided to the College must be of the nature and quality that provides the Registrar with reasonable grounds to believe that the member is incapacitated and to commence making inquiries. Such grounds are based on reliable information attesting to behaviours that are consistent with incapacity.

The Registrar's inquiries include: notifying the member of the nature of the College's inquiries; inviting the member to provide explanations for their alleged behaviours; and asking the member for releases for the College to

access the member's health information. The member may share this information, in which case the College will obtain copies of relevant health records and reports from the member's healthcare providers. The member is not required to participate in the inquiry.

It should be noted that:

- The member is not given the identity of the informant
- The incapacity proceedings are strictly confidential
- The member's legal authority to practice is not restricted during the inquiries.

BOARD OF INQUIRY

The results of the inquiries are reported to the College's Executive Committee, which may in turn appoint a Board of Inquiry. A Board of Inquiry is an investigative arm of the Executive Committee with expertise in health inquiries. The board consists of three pharmacists with relevant areas of expertise, and two public members of Council. The Board's task is to make further inquiries it deems appropriate with a view to determining whether or not the member is incapacitated. This may also include an order for the member to be assessed by an independent expert medical examiner of the board's choice. These inquiries are also designed to help determine whether the incapacitated member will be able to continue practice with suitable restrictions, and what those restrictions may be. The remainder of the process is designed to formalize those restrictions and to monitor them in the practice.

The member is kept informed about each step of the process and is provided with continual opportunities to cooperate and provide information to support his/her case. The member may also be represented by legal counsel throughout these proceedings.

FITNESS TO PRACTISE COMMITTEE PROCEEDINGS

After the Board of Inquiry reports its findings to the Executive Committee, the Committee may refer the member to the Fitness to Practise Committee. The Fitness to Practise proceedings differ from the discipline proceedings in a number of significant ways:

- The proceedings do not make determinations of professional misconduct
- The proceedings are not open to the public
- The proceedings' results are not published in Pharmacy Connection

However, time-defined restrictions on a member's practice, resulting from these proceedings, are noted on the public portion of the register. This measure is intended to protect the public and is not designed to penalize the

member.

SUMMARY

Certainly no member wishes to be required to participate in proceedings at the College. However it is very difficult for an incapacitated person to recover without assistance. Most members that have undergone an incapacity proceeding at the College later reported that they appreciated being helped to gain insight into their condition, to locate and receive the necessary treatment, to gain and maintain recovery and to restore all aspects of their lives.

Therefore you can only help an incapacitated colleague if you intervene.

In other words:

"Break the Conspiracy of Silence!"

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