

[Français](#)

## Regulated Health Professions Act, 1991

S.O. 1991, CHAPTER 18

**Consolidation Period:** From December 15, 2009 to the [e-Laws currency date](#).

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## Interpretation

### 1. (1) In this Act,

“Advisory Council” means the Health Professions Regulatory Advisory Council; (“Conseil consultatif”)

“Board” means the Health Professions Appeal and Review Board under the *Ministry of Health and Long-Term Care Appeal and Review Boards Act, 1998*; (“Commission”)

“certificate of authorization” means a certificate of authorization issued under this Act or the Code; (“certificat d’autorisation”)

“Code” means the Health Professions Procedural Code in Schedule 2; (“Code”)

“College” means the College of a health profession or group of health professions established or continued under a health profession Act; (“ordre”)

“Council” means the Council of a College; (“conseil”)

“health profession” means a health profession set out in Schedule 1; (“profession de la santé”)

“health profession Act” means an Act named in Schedule 1; (“loi sur une profession de la santé”)

“health profession corporation” means a corporation incorporated under the *Business Corporations Act* that holds a valid certificate of authorization issued under this Act or the Code; (“société professionnelle de la santé”)

“member” means a member of a College; (“membre”)

“Minister” means the Minister of Health and Long-Term Care; (“ministre”)

“personal information” means personal information within the meaning of the *Freedom of Information and Protection of Privacy Act*. (“renseignements personnels”) 1991, c. 18, s. 1 (1); 1998, c. 18, Sched. G, s. 1; 2000, c. 42, Sched., s. 29; 2006, c. 19, Sched. L, s. 11 (2); 2007, c. 10, Sched. M, s. 1; 2009, c. 33, Sched. 18, s. 17 (2).

## Hearing not required unless referred to

(2) Nothing in this Act shall be construed to require a hearing to be held within the meaning of the *Statutory Powers Procedure Act* unless the holding of a hearing is specifically referred to. 1991, c. 18, s. 1 (2).

## Administration of Act

2. The Minister is responsible for the administration of this Act. 1991, c. 18, s. 2.

## **Duty of Minister**

**3.** It is the duty of the Minister to ensure that the health professions are regulated and coordinated in the public interest, that appropriate standards of practice are developed and maintained and that individuals have access to services provided by the health professions of their choice and that they are treated with sensitivity and respect in their dealings with health professionals, the Colleges and the Board. 1991, c. 18, s. 3.

## **Code**

**4.** The Code shall be deemed to be part of each health profession Act. 1991, c. 18, s. 4.

## **Powers of Minister**

**5. (1)** The Minister may,

- (a) inquire into or require a Council to inquire into the state of practice of a health profession in a locality or institution;
- (b) review a Council's activities and require the Council to provide reports and information;
- (c) require a Council to make, amend or revoke a regulation under a health profession Act, the *Drug and Pharmacies Regulation Act* or the *Drug Interchangeability and Dispensing Fee Act*;
- (d) require a Council to do anything that, in the opinion of the Minister, is necessary or advisable to carry out the intent of this Act, the health profession Acts, the *Drug and Pharmacies Regulation Act* or the *Drug Interchangeability and Dispensing Fee Act*. 1991, c. 18, s. 5 (1); 2009, c. 26, s. 24 (1).

## **Council to comply with Minister's request**

**(2)** If the Minister requires a Council to do anything under subsection (1), the Council shall, within the time and in the manner specified by the Minister, comply with the requirement and submit a report. 1991, c. 18, s. 5 (2).

## **Regulations**

**(3)** If the Minister requires a Council to make, amend or revoke a regulation under clause (1) (c) and the Council does not do so within sixty days, the Lieutenant Governor in Council may make, amend or revoke the regulation. 1991, c. 18, s. 5 (3).

## **Idem**

**(4)** Subsection (3) does not give the Lieutenant Governor in Council authority to do anything that the Council does not have authority to do. 1991, c. 18, s. 5 (4).

## **Expenses of Colleges**

**(5)** The Minister may pay a College for expenses incurred in complying with a requirement under subsection (1). 1991, c. 18, s. 5 (5).

## **College supervisor**

**5.0.1 (1)** The Lieutenant Governor in Council may appoint a person as a College supervisor, on the recommendation of the Minister, where the Minister considers it appropriate or necessary and where, in the Minister's opinion, a Council has not complied with a requirement under subsection 5 (1). 2009, c. 26, s. 24 (2).

## **Factors to be considered**

**(2)** In deciding whether to make a recommendation under subsection (1), the Minister may

consider any matter he or she considers relevant, including, without limiting the generality of the foregoing,

- (a) the quality of the administration and management, including financial management, of the College;
- (b) the administration of this Act or the health profession Act as they relate to the health profession; and
- (c) the performance of other duties and powers imposed on the College, the Council, the committees of the College, or persons employed, retained or appointed to administer this Act, the health profession Act, the *Drug and Pharmacies Regulation Act* or the *Drug Interchangeability and Dispensing Fee Act*. 2009, c. 26, s. 24 (2).

### **Notice**

(3) At least 30 days before recommending to the Lieutenant Governor in Council that a College supervisor be appointed, the Minister shall give the College a notice of his or her intention to make the recommendation and in the notice advise the College that it may make written submissions to the Minister. 2009, c. 26, s. 24 (2).

### **Review of submissions**

(4) The Minister shall review any submissions made by the College and if the Minister makes a recommendation to the Lieutenant Governor in Council to appoint a College supervisor, the Minister shall provide the College's submissions, if any, to the Lieutenant Governor in Council. 2009, c. 26, s. 24 (2).

### **Term of office**

(5) The appointment of a College supervisor is valid until terminated by order of the Lieutenant Governor in Council. 2009, c. 26, s. 24 (2).

### **Powers of College supervisor**

(6) Unless the appointment provides otherwise, a College supervisor has the exclusive right to exercise all the powers of a Council and every person employed, retained or appointed for the purposes of the administration of this Act, a health profession Act, the *Drug and Pharmacies Regulation Act* or the *Drug Interchangeability and Dispensing Fee Act*. 2009, c. 26, s. 24 (2).

### **Same**

(7) The Lieutenant Governor in Council may specify the powers and duties of a College supervisor appointed under this section and the terms and conditions governing those powers and duties. 2009, c. 26, s. 24 (2).

### **Additional powers of College supervisor**

(8) If, under the order of the Lieutenant Governor in Council, the Council continues to have the right to act respecting any matters, any such act of Council is valid only if approved in writing by the College supervisor. 2009, c. 26, s. 24 (2).

### **Right of access**

(9) A College supervisor has the same rights as a Council and the Registrar in respect of the documents, records and information of the College. 2009, c. 26, s. 24 (2).

### **Report to Minister**

(10) A College supervisor shall report to the Minister as required by the Minister. 2009, c. 26, s. 24 (2).

### **Minister's directions**

[\(11\)](#) The Minister may issue one or more directions to a College supervisor regarding any matter within the jurisdiction of the supervisor, or amend a direction. 2009, c. 26, s. 24 (2).

### **Directions to be followed**

[\(12\)](#) A College supervisor shall carry out every direction of the Minister. 2009, c. 26, s. 24 (2).

### ***Fair Access to Regulated Professions Act, 2006 not applicable***

[5.1](#) The *Fair Access to Regulated Professions Act, 2006* does not apply to any College. 2006, c. 31, s. 35 (1).

### ***Ontario Labour Mobility Act, 2009 not applicable***

[5.2](#) The *Ontario Labour Mobility Act, 2009*, except sections 21 to 24, does not apply to any College. 2009, c. 24, s. 33 (1).

### **Reports**

#### **Annual report**

[6. \(1\)](#) Each College and the Advisory Council shall report annually to the Minister on its activities and financial affairs. 1998, c. 18, Sched. G, s. 2 (1).

[\(2\)](#) Repealed: 2007, c. 10, Sched. M, s. 2 (1).

#### **Audited financial statement**

[\(3\)](#) Each College's annual report shall include an audited financial statement. 1998, c. 18, Sched. G, s. 2 (2).

#### **Content and form**

[\(4\)](#) The Minister may specify the content and form of the annual reports submitted by the College and the Advisory Council and, where the Minister has done so, the annual reports shall contain that content and be in that form. 2007, c. 10, Sched. M, s. 2 (2).

#### **Minister may publish information**

[\(5\)](#) The Minister may, in every year, publish information from the annual reports of the Colleges. 2007, c. 10, Sched. M, s. 2 (2).

#### **No personal information**

[\(6\)](#) Information from the annual reports published by the Minister shall not include any personal information. 2007, c. 10, Sched. M, s. 2 (2).

#### **Additional audits**

[\(7\)](#) The College and the Advisory Council shall be subject, at any time, to any other audits relating to any aspect of its affairs as the Minister may determine to be appropriate, conducted by an auditor appointed by or acceptable to the Minister. 2009, c. 26, s. 24 (3).

#### **Auditor to submit results**

[\(8\)](#) The auditor shall submit the results of any audit performed under subsection (7) to the Minister and the College. 2009, c. 26, s. 24 (3).

### **ADVISORY COUNCIL**

#### **Advisory Council**

[7. \(1\)](#) The Advisory Council is established under the name Health Professions Regulatory Advisory Council in English and Conseil consultatif de réglementation des professions de la santé in French.

## Composition

(2) The Advisory Council shall be composed of at least five and no more than seven persons who shall be appointed by the Lieutenant Governor in Council on the Minister's recommendation.

## Chair and vice-chair

(3) The Lieutenant Governor in Council shall designate one member of the Advisory Council to be the chair and one to be the vice-chair. 1991, c. 18, s. 7.

## Qualification of members

8. A person may not be appointed as a member of the Advisory Council if the person,
- (a) is employed under Part III of the *Public Service of Ontario Act, 2006* or by a Crown agency as defined in the *Crown Agency Act*; or
  - (b) is or has been a member of a Council or College. 1991, c. 18, s. 8; 2006, c. 35, Sched. C, s. 116 (1).

## Terms of members

9. (1) Members of the Advisory Council shall be appointed for terms of two years. 1991, c. 18, s. 9 (1).

## Replacement members

(2) A person appointed to replace a member of the Advisory Council before the member's term expires shall hold office for the remainder of the term. 1991, c. 18, s. 9 (2).

## Reappointments

- (3) Members of the Advisory Council are eligible for reappointment. 1991, c. 18, s. 9 (3).
- (4) Repealed: 2007, c. 10, Sched. M, s. 3.

## Remuneration and expenses

10. The members of the Advisory Council shall be paid the remuneration and expenses the Lieutenant Governor in Council determines. 1991, c. 18, s. 10.

## Duties of the Advisory Council

11. (1) The Advisory Council's duties are to advise the Minister and no other person on any issue from the matters described in clauses (2) (a) to (f), but only if the Minister decides to refer the issue to the Advisory Council in writing, seeking its advice, and in no other circumstances. 2009, c. 26, s. 24 (4).

## Matters that may be referred

- (2) The matters that the Minister may refer to the Advisory Council are,
- (a) whether unregulated professions should be regulated;
  - (b) whether regulated professions should no longer be regulated;
  - (c) suggested amendments to this Act, a health profession Act or a regulation under any of those Acts and suggested regulations under any of those Acts;
  - (d) matters concerning the quality assurance programs undertaken by Colleges;
  - (e) each College's patient relations program and its effectiveness; and
  - (f) any matter the Minister considers desirable to refer to the Advisory Council relating to the regulation of the health professions. 2009, c. 26, s. 24 (4).

### **Referrals to the Advisory Council**

**12. (1)** The Minister may refer any issue within the matters described in clauses 11 (2) (a) to (e) to the Advisory Council that a Council or person asks the Minister to refer, and the Minister may refer any other issue to the Advisory Council that the Minister determines is appropriate. 2009, c. 26, s. 24 (5).

### **Advice for Minister only**

**(2)** Unless the Minister or this Act provides otherwise, the Advisory Council shall provide its advice to the Minister and no other person, and shall not provide advice on any issue other than the issue referred to it by the Minister. 2009, c. 26, s. 24 (5).

### **Form and manner**

**(3)** If the Minister refers an issue to the Advisory Council for advice, the Advisory Council shall provide its advice to the Minister only in the form and manner specified by the Minister. 2009, c. 26, s. 24 (5).

### **Notice of amendments to Councils**

**13. (1)** If the Minister refers a suggested amendment to this Act, a health profession Act or a regulation under any of those Acts or a suggested regulation under any of those Acts to the Advisory Council, the Minister shall give notice of the suggestion to the Council of every College within ten days after referring it.

### **Submissions to Advisory Council**

**(2)** A Council may make written submissions to the Advisory Council with respect to a suggestion within forty-five days after receiving the Minister's notice of the suggestion or within any longer period the Advisory Council may specify. 1991, c. 18, s. 13.

### **Function is advisory only**

**14.** The function of the Advisory Council is advisory only and no failure to refer a matter or to comply with any other requirement relating to a referral renders anything invalid. 1991, c. 18, s. 14.

### **Procedure**

**15. (1)** The Advisory Council shall sit in Ontario where and when the chair designates.

### **Idem**

**(2)** The Advisory Council shall conduct its proceedings in the manner it considers appropriate. 1991, c. 18, s. 15.

### **Employees**

**16. (1)** Such employees as are considered necessary for the proper conduct of the affairs of the Advisory Council may be appointed under Part III of the *Public Service of Ontario Act, 2006*. 2006, c. 35, Sched. C, s. 116 (2).

### **Experts**

**(2)** The Advisory Council may engage experts or professional advisors to assist it. 1991, c. 18, s. 16 (2).

### **Secretary**

**17. (1)** The Advisory Council shall appoint one of its employees as the Secretary.

### **Duties**

**(2)** The Secretary's duties are,

- (a) to keep a record of matters that the Minister has referred to the Advisory Council;
  - (b) to have the custody and care of the records and documents of the Advisory Council;
  - (c) to give written notice of suggested amendments to this Act, a health profession Act or a regulation under any of those Acts and suggested regulations under any of those Acts that have been referred to the Advisory Council to persons who have filed, with the Secretary, a request to be notified; and
  - (d) to carry out the functions and duties assigned by the Minister or the Advisory Council.
- 1991, c. 18, s. 17.

## HEALTH PROFESSIONS BOARD

**18.-23.** Repealed: 1998, c. 18, Sched. G, s. 3.

### **Investigations and expert advice**

**24. (1)** Repealed: 1998, c. 18, Sched. G, s. 4.

### **Investigators**

**(2)** The Board may engage persons who are not public servants employed under Part III of the *Public Service of Ontario Act, 2006* to carry out investigations under paragraph 3 of subsection 28 (5) of the Code. 2006, c. 35, Sched. C, s. 116 (3); 2007, c. 10, Sched. M, s. 4 (1).

### **Experts**

**(3)** The Board may engage persons who are not public servants employed under Part III of the *Public Service of Ontario Act, 2006* to provide expert or professional advice in connection with a registration hearing, complaint review or registration review. 2006, c. 35, Sched. C, s. 116 (3).

### **Independence of experts**

**(4)** A person engaged under subsection (3) shall be independent of the parties, and, in the case of a complaint review, of the Inquiries, Complaints and Reports Committee. 2007, c. 10, Sched. M, s. 4 (2).

### **Advice disclosed**

**(5)** The nature of any advice, including legal advice, given by a person engaged under subsection (3) shall be made known to the parties and they may make submissions with respect to the advice. 1991, c. 18, s. 24 (5).

**25.** Repealed: 1998, c. 18, Sched. G, s. 5.

**26.** Repealed: 2007, c. 10, Sched. M, s. 5.

## PROHIBITIONS

### **Controlled acts restricted**

**27. (1)** No person shall perform a controlled act set out in subsection (2) in the course of providing health care services to an individual unless,

- (a) the person is a member authorized by a health profession Act to perform the controlled act; or
- (b) the performance of the controlled act has been delegated to the person by a member described in clause (a). 1991, c. 18, s. 27 (1); 1998, c. 18, Sched. G, s. 6.

### **Controlled acts**



- (2) A “controlled act” is any one of the following done with respect to an individual:
1. Communicating to the individual or his or her personal representative a diagnosis 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 or 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,
    - i. beyond the external ear canal,
    - ii. beyond the point in the nasal passages where they normally narrow,
    - iii. beyond the larynx,
    - iv. beyond the opening of the urethra,
    - v. beyond the labia majora,
    - vi. beyond the anal verge, or
    - vii. 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. 1991, c. 18, s. 27 (2); 2007, c. 10, Sched. L, s. 32.

**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 following paragraph:**

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 judgement, insight, behaviour, communication or social functioning.

**See: 2007, c. 10, Sched. R, ss. 19 (1), 20 (2).**

### **Exemptions**

**(3)** An act by a person is not a contravention of subsection (1) if the person is exempted by the regulations under this Act or if the act is done in the course of an activity exempted by the regulations under this Act. 1991, c. 18, s. 27 (3).

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 27 is amended by the Statutes of Ontario, 2007, chapter 10, Schedule R, subsection 19 (2) by adding the following subsection:**

### **Same**

**(4)** Despite subsection (1), a member of the Ontario College of Social Workers and Social Service Workers is authorized to perform the controlled act set out in paragraph 14 of subsection (2), in compliance with the *Social Work and Social Service Work Act, 1998*, its regulations and by-laws. 2007, c. 10, Sched. R, s. 19 (2).

**See: 2007, c. 10, Sched. R, ss. 19 (2), 20 (2).**

### **Delegation of controlled act**

**28. (1)** The delegation of a controlled act by a member must be in accordance with any applicable regulations under the health profession Act governing the member's profession.

### **Idem**

**(2)** The delegation of a controlled act to a member must be in accordance with any applicable regulations under the health profession Act governing the member's profession. 1991, c. 18, s. 28.

### **Exceptions**

**29. (1)** An act by a person is not a contravention of subsection 27 (1) if it is done in the course of,

- (a) rendering first aid or temporary assistance in an emergency;
- (b) fulfilling the requirements to become a member of a health profession and the act is within the scope of practice of the profession and is done under the supervision or direction of a member of the profession;
- (c) treating a person by prayer or spiritual means in accordance with the tenets of the religion of the person giving the treatment;
- (d) treating a member of the person's household and the act is a controlled act set out in paragraph 1, 5 or 6 of subsection 27 (2); or
- (e) assisting a person with his or her routine activities of living and the act is a controlled act set out in paragraph 5 or 6 of subsection 27 (2).

### **Counselling**

**(2)** Subsection 27 (1) does not apply with respect to a communication made in the course of counselling about emotional, social, educational or spiritual matters as long as it is not a communication that a health profession Act authorizes members to make. 1991, c. 18, s. 29.

### **Treatment, etc., where risk of harm**

**30. (1)** No person, other than a member treating or advising within the scope of practice of his or her profession, shall treat or advise 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. 1991, c. 18, s. 30 (1); 2007, c. 10, Sched. M, s. 6.

### **Exception**

**(2)** Subsection (1) does not apply with respect to treatment by a person who is acting under the direction of or in collaboration with a member if the treatment is within the scope of practice of the member's profession. 1991, c. 18, s. 30 (2).

### **Delegation**

**(3)** Subsection (1) does not apply with respect to an act by a person if the act is a controlled act that was delegated under section 28 to the person by a member authorized by a health profession Act to do the controlled act. 1991, c. 18, s. 30 (3).

### **Counselling**

**(4)** Subsection (1) does not apply with respect to counselling about emotional, social, educational or spiritual matters. 1991, c. 18, s. 30 (4).

### **Exceptions**

**(5)** Subsection (1) does not apply with respect to anything done by a person in the course of,

- (a) rendering first aid or temporary assistance in an emergency;
- (b) fulfilling the requirements to become a member of a health profession if the person is acting within the scope of practice of the profession under the supervision or direction of a member of the profession;
- (c) treating a person by prayer or spiritual means in accordance with the tenets of the religion of the person giving the treatment;
- (d) treating a member of the person's household; or
- (e) assisting a person with his or her routine activities of living. 1991, c. 18, s. 30 (5).

### **Exemption**

**(6)** Subsection (1) does not apply with respect to an activity or person that is exempted by the regulations. 1991, c. 18, s. 30 (6).

### **Dispensing hearing aids**

**31.** No person shall dispense a hearing aid for a hearing impaired person except under a prescription by a member authorized by a health profession Act to prescribe a hearing aid for a hearing impaired person. 1991, c. 18, s. 31.

### **Dental devices, etc.**

**32. (1)** No person shall design, construct, repair or alter a dental prosthetic, restorative or orthodontic device unless,

- (a) the technical aspects of the design, construction, repair or alteration are supervised by a member of the College of Dental Technologists of Ontario or the Royal College of Dental Surgeons of Ontario; or
- (b) the person is a member of a College mentioned in clause (a).

## **Employers**

(2) A person who employs a person to design, construct, repair or alter a dental prosthetic, restorative or orthodontic device shall ensure that subsection (1) is complied with.

## **Supervisors**

(3) No person shall supervise the technical aspects of the design, construction, repair or alteration of a dental prosthetic, restorative or orthodontic device unless he or she is a member of the College of Dental Technologists of Ontario or the Royal College of Dental Surgeons of Ontario.

## **Denturists**

(4) This section does not apply with respect to the design, construction, repair or alteration of removable dentures for the patients of a member of the College of Denturists of Ontario if the member does the designing, construction, repair or alteration or supervises their technical aspects.

## **Exceptions**

(5) This section does not apply with respect to anything done in a hospital as defined in the *Public Hospitals Act* or in a clinic associated with a university's faculty of dentistry or the denturism program of a college of applied arts and technology. 1991, c. 18, s. 32.

## **Restriction of title "doctor"**

33. (1) Except as allowed in the regulations under this Act, no person shall use the title "doctor", a variation or abbreviation or an equivalent in another language in the course of providing or offering to provide, in Ontario, health care to individuals. 1991, c. 18, s. 33 (1).

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 33 is amended by the Statutes of Ontario, 2007, chapter 10, Schedule P, subsection 20 (1) by adding the following subsections:**

### **Same**

(1.1) Subsection (1) does not apply to a person who is a member of the College of Naturopaths of Ontario. 2007, c. 10, Sched. P, s. 20 (1).

### **Naturopathic doctor**

(1.2) A member referred to in subsection (1.1) shall not use the title "doctor" in written format without using the phrase, "naturopathic doctor", immediately following his or her name. 2007, c. 10, Sched. P, s. 20 (1).

**See: 2007, c. 10, Sched. P, ss. 20 (1), 21 (2).**

### **Idem**

(2) Subsection (1) does not apply to a person who is a member of,

- (a) the College of Chiropractors of Ontario;
- (b) the College of Optometrists of Ontario;
- (c) the College of Physicians and Surgeons of Ontario;
- (d) the College of Psychologists of Ontario; or
- (e) the Royal College of Dental Surgeons of Ontario. 1991, c. 18, s. 33 (2).

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 33 is**

**amended by the Statutes of Ontario, 2006, chapter 27, subsection 18 (1) by adding the following subsection:**

**Same**

[\(2.1\)](#) Subsection (1) does not apply to a person who is a member of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario and who holds a certificate of registration that entitles the member to use the title “doctor”. 2006, c. 27, s. 18 (1).

**See: 2006, c. 27, ss. 18 (1), 20 (2).**

**Definition**

[\(3\)](#) In this section,

“abbreviation” includes an abbreviation of a variation. 1991, c. 18, s. 33 (3).

**Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section:**

**Psychotherapist title**

[33.1 \(1\)](#) Despite section 8 of the *Psychotherapy Act, 2007*, a person who holds a certificate of registration authorizing him or her to perform the controlled act of psychotherapy and is a member of one of the following Colleges may use the title “psychotherapist” if he or she complies with the conditions in subsections (2), (3) and (4):

1. The College of Nurses of Ontario.
2. The College of Occupational Therapists of Ontario.
3. The College of Physicians and Surgeons of Ontario.
4. The College of Psychologists of Ontario. 2009, c. 26, s. 24 (6).

**Oral identification**

[\(2\)](#) A person mentioned in subsection (1) shall not describe himself or herself orally as a “psychotherapist” to any person unless the member also mentions the full name of the College where he or she is a member and identifies himself or herself as a member of that College or identifies himself or herself using the title restricted to those who are members of the health profession to which the member belongs. 2009, c. 26, s. 24 (6).

**Written identification**

[\(3\)](#) A person mentioned in subsection (1) shall not use the title “psychotherapist” in writing in a way that identifies the member as a psychotherapist on a name tag, business card or any document, unless the member sets out his or her full name in writing, immediately followed by at least one of the following, followed in turn by “psychotherapist”:

1. The full name of the College where he or she is a member.
2. The name of the health profession that the member practises.
3. The restricted title that the member may use under the health profession Act governing the member’s profession. 2009, c. 26, s. 24 (6).

**In accordance with regulations**

[\(4\)](#) A person mentioned in subsection (1) shall use the title “psychotherapist” in accordance with

the regulations made under subsection (5). 2009, c. 26, s. 24 (6).

### **Regulations**

(5) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council of a College mentioned in paragraphs 1 to 4 of subsection (1) may make regulations governing the use of title “psychotherapist” by members of the College. 2009, c. 26, s. 24 (6).

**See: 2009, c. 26, ss. 24 (6), 27 (2).**

### **Holding out as a College**

34. (1) No corporation shall falsely hold itself out as a body that regulates, under statutory authority, individuals who provide health care.

### **Idem**

(2) No individual shall hold himself or herself out as a member, employee or agent of a body that the individual falsely represents as or knows is falsely represented as regulating, under statutory authority, individuals who provide health care. 1991, c. 18, s. 34.

### **Holding out as a health profession corporation**

34.1 (1) No corporation shall hold itself out as a health profession corporation unless it holds a valid certificate of authorization. 2000, c. 42, Sched., s. 30.

### **Same**

(2) No person shall hold himself or herself out as a shareholder, officer, director, agent or employee of a health profession corporation unless the corporation holds a valid certificate of authorization. 2000, c. 42, Sched., s. 30.

## MISCELLANEOUS

### **Exemption, aboriginal healers and midwives**

35. (1) This Act does not apply to,

- (a) aboriginal healers providing traditional healing services to aboriginal persons or members of an aboriginal community; or
- (b) aboriginal midwives providing traditional midwifery services to aboriginal persons or members of an aboriginal community.

### **Jurisdictions of Colleges**

(2) Despite subsection (1), an aboriginal healer or aboriginal midwife who is a member of a College is subject to the jurisdiction of the College.

### **Definitions**

(3) In this section,

“aboriginal healer” means an aboriginal person who provides traditional healing services;  
 (“guérisseur autochtone”)

“aboriginal midwife” means an aboriginal person who provides traditional midwifery services.  
 (“sage-femme autochtone”) 1991, c. 18, s. 35.

### **Confidentiality**

36. (1) Every person employed, retained or appointed for the purposes of the administration of this Act, a health profession Act or the *Drug and Pharmacies Regulation Act*

and every member of a Council or committee of a College shall keep confidential all information that comes to his or her knowledge in the course of his or her duties and shall not communicate any information to any other person except,

- (a) to the extent that the information is available to the public under this Act, a health profession Act or the *Drug and Pharmacies Regulation Act*;
- (b) in connection with the administration of this Act, a health profession Act or the *Drug and Pharmacies Regulation Act*, including, without limiting the generality of this, in connection with anything relating to the registration of members, complaints about members, allegations of members' incapacity, incompetence or acts of professional misconduct or the governing of the profession;
- (c) to a body that governs a profession inside or outside of Ontario;
- (d) as may be required for the administration of the *Drug Interchangeability and Dispensing Fee Act*, the *Healing Arts Radiation Protection Act*, the *Health Insurance Act*, the *Independent Health Facilities Act*, the *Laboratory and Specimen Collection Centre Licensing Act*, the *Ontario Drug Benefit Act*, the *Coroners Act*, the *Controlled Drugs and Substances Act* (Canada) and the *Food and Drugs Act* (Canada);
- (e) to a police officer to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (f) to the counsel of the person who is required to keep the information confidential under this section;
- (g) to confirm whether the College is investigating a member, if there is a compelling public interest in the disclosure of that information;
- (h) where disclosure of the information is required by an Act of the Legislature or an Act of Parliament;
- (i) if there are reasonable grounds to believe that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons; or
- (j) with the written consent of the person to whom the information relates. 2007, c. 10, Sched. M, s. 7 (1).

### **Reports required under Code**

[\(1.1\)](#) Clauses (1) (c) and (d) do not apply with respect to reports required under section 85.1 or 85.2 of the Code. 1993, c. 37, s. 1. 1998, c. 18, Sched. G, s. 7 (2).

### **Definition**

[\(1.2\)](#) In clause (1) (e),

“law enforcement proceeding” means a proceeding in a court or tribunal that could result in a penalty or sanction being imposed. 1998, c. 18, Sched. G, s. 7 (2); 2007, c. 10, Sched. M, s. 7 (2).

### **Limitation**

[\(1.3\)](#) No person or member described in subsection (1) shall disclose, under clause (1) (e), any information with respect to a person other than a member. 1998, c. 18, Sched. G, s. 7 (2); 2007, c. 10, Sched. M, s. 7 (3).

**No requirement**

[\(1.4\)](#) Nothing in clause (1) (e) shall require a person described in subsection (1) to disclose information to a police officer unless the information is required to be produced under a warrant. 1998, c. 18, Sched. G, s. 7 (2); 2007, c. 10, Sched. M, s. 7 (4).

**Confirmation of investigation**

[\(1.5\)](#) Information disclosed under clause (1) (g) shall be limited to the fact that an investigation is or is not underway and shall not include any other information. 2007, c. 10, Sched. M, s. 7 (5).

**Not compellable**

[\(2\)](#) No person or member described in subsection (1) shall be compelled to give testimony in a civil proceeding with regard to matters that come to his or her knowledge in the course of his or her duties. 1991, c. 18, s. 36 (2).

**Evidence in civil proceedings**

[\(3\)](#) No record of a proceeding under this Act, a health profession Act or the *Drug and Pharmacies Regulation Act*, no report, document or thing prepared for or statement given at such a proceeding and no order or decision made in such a proceeding is admissible in a civil proceeding other than a proceeding under this Act, a health profession Act or the *Drug and Pharmacies Regulation Act* or a proceeding relating to an order under section 11.1 or 11.2 of the *Ontario Drug Benefit Act*. 1991, c. 18, s. 36 (3); 1996, c. 1, Sched. G, s. 27 (2).

**Collection of personal information by College**

[36.1 \(1\)](#) At the request of the Minister, a College shall collect information directly from members of the College as is reasonably necessary for the purpose of Ministry health human resources planning. 2007, c. 10, Sched. M, s. 8.

**Unique identifiers**

[\(2\)](#) A unique identifier shall be assigned by the Minister or a person designated by the Minister for each member of a College from whom information is collected under subsection (1). 2009, c. 26, s. 24 (7).

**Form and manner**

[\(2.1\)](#) The unique identifier shall be in the form and manner specified by the Minister. 2009, c. 26, s. 24 (7).

**Members to provide information**

[\(3\)](#) A member of a College who receives a request for information for the purpose of subsection (1) shall provide the information to the College within the time period and in the form and manner specified by the College. 2007, c. 10, Sched. M, s. 8.

**Disclosure to Minister**

[\(4\)](#) A College shall disclose the information collected under subsection (1) to the Minister within the time period and in the form and manner specified by the Minister. 2007, c. 10, Sched. M, s. 8.

**Use by Minister**

[\(5\)](#) The Minister may use and disclose the information only for the purpose set out under subsection (1), and shall not use or collect personal information if other information will serve the purpose, and shall not use or collect more personal information than is necessary for the purpose. 2007, c. 10, Sched. M, s. 8.



## Reports

(6) The Minister may publish reports and other documents using information provided to him or her by a College under this section for the purpose set out in subsection (1), and for that purpose only, but the Minister shall not include any personal information about a member of a College in such reports or documents. 2007, c. 10, Sched. M, s. 8.

## Notice required by s. 39 (2) of FIPPA

(7) If the Minister requires a College to collect personal information from its members under subsection (1), the notice required by subsection 39 (2) of the *Freedom of Information and Protection of Privacy Act* is given by,

- (a) a public notice posted on the Ministry's website; or
- (b) any other public method that may be prescribed. 2007, c. 10, Sched. M, s. 8.

## Same

(8) If the Minister publishes a notice referred to under subsection (7), the Minister shall advise the College of the notice and the College shall also publish a notice about the collection on the College's website within 20 days of receiving the advice from the Minister. 2007, c. 10, Sched. M, s. 8.

## Definitions

(9) In this section,

“health human resources planning” means ensuring the sufficiency and appropriate distribution of health providers; (“planification des ressources humaines en santé”)

“information” includes personal information; (“renseignements”)

“Ministry” means the Ministry of Health and Long-Term Care. (“ministère”) 2007, c. 10, Sched. M, s. 8.

## Onus of proof to show registration

**37. (1)** A person who is charged with an offence to which registration under a health profession Act would be a defence shall be deemed, in the absence of evidence to the contrary, to have not been registered. 1991, c. 18, s. 37.

## Onus of proof to show certificate of authorization

(2) A person who is charged with an offence to which holding a certificate of authorization would be a defence shall be deemed, in the absence of evidence to the contrary, to have not been issued a certificate of authorization. 2000, c. 42, Sched., s. 31; 2007, c. 10, Sched. M, s. 9 (1).

## Injunctions

(3) Subsections (1) and (2) apply, with necessary modifications, to a person who is the subject of an application under section 87 of the Code. 2007, c. 10, Sched. M, s. 9 (2).

## Immunity

**38.** No action or other proceeding for damages shall be instituted against the Crown, the Minister, a College supervisor appointed under section 5.0.1 or his or her staff, an employee of the Crown, the Advisory Council, a College, a Council, or a member, officer, employee, agent or appointee of the Advisory Council, a College, a Council, a committee of a Council or a panel of a committee of a Council for an act done in good faith in the performance or intended performance of a duty or in the exercise or the intended exercise of a power under this Act, a health profession Act, the *Drug and Pharmacies Regulation Act* or a regulation or a by-law under those Acts or for

any neglect or default in the performance or exercise in good faith of the duty or power. 1991, c. 18, s. 38; 1998, c. 18, Sched. G, s. 8; 2007, c. 10, Sched. M, s. 10; 2009, c. 26, s. 24 (8).

### **Service**

**39. (1)** A notice or decision to be given to a person under this Act, the *Drug and Pharmacies Regulation Act* or a health profession Act may be given by mail or by fax. 2007, c. 10, Sched. M, s. 11.

### **When notice or decision given by mail received**

**(2)** If a notice or decision is sent by mail addressed to a person at the person's last known address, there is a rebuttable presumption that it was received by the person on the fifth day after mailing. 2007, c. 10, Sched. M, s. 11.

### **When notice or decision given by fax received**

**(3)** If a notice or decision is sent by fax to a person at the person's last known fax number, there is a rebuttable presumption that it was received by the person,

- (a) on the day it was faxed, if faxed after midnight and before 4 p.m.; or
- (b) on the following day, if faxed at any other time. 2007, c. 10, Sched. M, s. 11.

### **Offences**

**40. (1)** Every person who contravenes subsection 27 (1) or 30 (1) is guilty of an offence and on conviction is liable,

- (a) for a first offence, to a fine of not more than \$25,000, or to imprisonment for a term of not more than one year, or both; and
- (b) for a second or subsequent offence, to a fine of not more than \$50,000, or to imprisonment for a term of not more than one year, or both. 2007, c. 10, Sched. M, s. 12.

### **Same**

**(2)** Every individual who contravenes section 31, 32 or 33 or subsection 34 (2), 34.1 (2) or 36 (1) is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence. 2007, c. 10, Sched. M, s. 12.

### **Same**

**(3)** Every corporation that contravenes section 31, 32 or 33 or subsection 34 (1), 34.1 (1) or 36 (1) is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence. 2007, c. 10, Sched. M, s. 12.

### **Responsibility of employment agencies**

**41.** Every person who procures employment for an individual and who knows that the individual cannot perform the duties of the position without contravening subsection 27 (1) is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 for a first offence, and not more than \$50,000 for a second or subsequent offence. 1991, c. 18, s. 41; 2007, c. 10, Sched. M, s. 13.

### **Responsibility of employers**

**42. (1)** The employer of a person who contravenes subsection 27 (1) while acting within the scope of his or her employment is guilty of an offence and on conviction is liable to a fine of

not more than \$25,000 for a first offence, and not more than \$50,000 for a second or subsequent offence. 1991, c. 18, s. 42 (1); 2007, c. 10, Sched. M, s. 14 (1).

### **Responsibility of directors of corporate employers**

(2) In addition, if the employer described in subsection (1) is a corporation, every director of the corporation who approved of, permitted or acquiesced in the contravention is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 for a first offence, and not more than \$50,000 for a second or subsequent offence. 1991, c. 18, s. 42 (2); 2007, c. 10, Sched. M, s. 14 (2).

### **Exception**

(3) Subsection (2) does not apply with respect to a corporation that operates a public hospital within the meaning of the *Public Hospitals Act* or to a corporation to which Part III of the *Corporations Act* applies. 1991, c. 18, s. 42 (3).

### **No limitation**

42.1 Section 76 of the *Provincial Offences Act* does not apply to a prosecution under this Act, the *Drug and Pharmacies Regulation Act* or a health profession Act. 2007, c. 10, Sched. M, s. 15.

### **Regulations**

43. (1) Subject to the approval of the Lieutenant Governor in Council, the Minister may make regulations,

- (a) prescribing forms of energy for the purposes of paragraph 7 of subsection 27 (2);
- (b) exempting a person or activity from subsection 27 (1) or 30 (1);
- (c) attaching conditions to an exemption in a regulation made under clause (b);
- (d) allowing the use of the title “doctor”, a variation or abbreviation or an equivalent in another language;
- (e) respecting health profession corporations;
- (f) governing the issue, renewal, suspension, revocation and expiration of certificates of authorization;
- (g) governing the names of health profession corporations;
- (h) specifying in greater detail the things that shall be provided by or performed by a College under sections 15 to 22.11 of the Code;
- (h.1) for the purposes of clause 36.1 (7) (b), prescribing alternative methods of giving the notice required by subsection 39 (2) of the *Freedom of Information and Protection of Privacy Act*;

**Note: Clause (h.1) was enacted as clause (h) in the source law, the Statutes of Ontario, 2007, chapter 10, Schedule M, subsection 16 (1). The clause is renumbered in this consolidation to distinguish it from existing clause (h), enacted by the Statutes of Ontario, 2006, chapter 31, subsection 35 (2).**

- (h.2) prescribing information as information that is to be posted on a College website for the purposes of section 3.1 of the Code;

**Note: Clause (h.2) was enacted as clause (i) in the source law, the Statutes of Ontario, 2007, chapter 10, Schedule M, subsection 16 (2). The clause is renumbered in this consolidation to**

**distinguish it from existing clause (i), enacted by the Statutes of Ontario, 2006, chapter 31, subsection 35 (2).**

- (i) governing reports and certificates to be provided to the Fairness Commissioner, appointed under the *Fair Access to Regulated Professions Act, 2006*, including their form, their manner of preparation, making them available to the public and requiring a College to provide such reports and certificates;
- (j) governing other information to be provided to the Fairness Commissioner and requiring persons to provide that information;
- (k) governing audits, including specifying audit standards and the scope of audits;
- (l) prescribing a longer period in respect of a College for the purpose of section 22.23 of the Code;
- (m) defining, for the purposes of sections 22.3 and 22.15 to 22.23 of the Code, any word or expression that is used in those sections but not defined in this Act. 1991, c. 18, s. 43 (1); 2000, c. 42, Sched., s. 33; 2006, c. 31, s. 35 (2); 2007, c. 10, Sched. M, s. 16; 2009, c. 24, s. 33 (2).

### **Scope of regulations**

[\(2\)](#) A regulation may be general or particular in its application. 1991, c. 18, s. 43 (2).

### **Definition**

[\(3\)](#) In clause (1) (d),

“abbreviation” includes an abbreviation of a variation. 1991, c. 18, s. 43 (3).

### **Regulations**

[43.1](#) Subject to the approval of the Lieutenant Governor in Council, the Minister may make regulations governing funding under programs required under section 85.7 of the Code, including regulations,

- (a) prescribing the maximum amount or a means of establishing the maximum amount of funding that may be provided for a person in respect of a case of sexual abuse;
- (b) prescribing the period of time during which funding may be provided for a person in respect of a case of sexual abuse. 1993, c. 37, s. 3.

### **Expert committees**

[43.2](#) The Lieutenant Governor in Council may make regulations,

- (a) establishing one or more expert committees for the purposes of this Act, the Code and health profession Acts;
- (b) specifying the functions, duties, powers and membership of an expert committee;
- (c) requiring an expert committee to provide reports and information to the Minister and providing for the content of such reports and information;
- (d) requiring information to be provided by a College or Council to an expert committee, and governing the content of the information and the form and manner and time within which the information is to be provided to the committee. 2009, c. 26, s. 24 (9).

### **References to health professionals**

[44.](#) A reference in an Act or regulation to a person described in Column 1 of the Table

shall be deemed to be a reference to a person described opposite in Column 2. 1991, c. 18, s. 44.

**45.** Omitted (amends or repeals other Acts). 1991, c. 18, s. 45.

**46.** Omitted (revokes regulations). 1991, c. 18, s. 46.

**47., 48.** Omitted (amends or repeals other Acts). 1991, c. 18, ss. 47, 48.

**49.** Omitted (provides for coming into force of provisions of this Act). 1991, c. 18, s. 49.

**50.** Omitted (enacts short title of this Act). 1991, c. 18, s. 50.

### TABLE

	Column 1	Column 2
1.	person registered as a chiropodist under the <i>Chiropody Act</i>	member of the College of Chiropodists of Ontario
2.	person registered as a dental technician under the <i>Dental Technicians Act</i>	member of the College of Dental Technologists of Ontario
3.	person licensed as a denture therapist under the <i>Denture Therapists Act</i>	member of the College of Denturists of Ontario
4.	person registered as a chiropractor under the <i>Drugless Practitioners Act</i>	member of the College of Chiropractors of Ontario
5.	person registered as a masseur under the <i>Drugless Practitioners Act</i>	member of the College of Massage Therapists of Ontario
6.	person registered as an osteopath under the <i>Drugless Practitioners Act</i>	member of the College of Physicians and Surgeons of Ontario classed as an osteopath
<b>Note: Item 6 comes into force on a day to be named by proclamation of the Lieutenant Governor. See: 1991, c. 18, s. 49.</b>		
7.	person registered as a physiotherapist under the <i>Drugless Practitioners Act</i>	member of the College of Physiotherapists of Ontario
<b>Note: On a day to be named by proclamation of the Lieutenant Governor, the Table is amended by the Statutes of Ontario, 2007, chapter 10, Schedule P, subsection 20 (2) by adding the following item:</b>		
7.1	person registered under the <i>Drugless Practitioners Act</i>	member of the College of Naturopaths of Ontario
<b>See: 2007, c. 10, Sched. P, ss. 20 (2), 21 (2).</b>		
8.	person registered as a dental hygienist under Part II of the <i>Health Disciplines Act</i>	member of the College of Dental Hygienists of Ontario
9.	person licensed under Part II of the <i>Health Disciplines Act</i>	member of the Royal College of Dental Surgeons of Ontario
10.	person licensed under Part III of the <i>Health Disciplines Act</i>	member of the College of Physicians and Surgeons of Ontario
11.	person who is the holder of a certificate issued under Part IV of the <i>Health Disciplines Act</i>	member of the College of Nurses of Ontario
12.	person licensed under Part	member of the College of Optometrists of Ontario

	V of the <i>Health Disciplines Act</i>	
13.	person licensed under Part VI of the <i>Health Disciplines Act</i>	member of the Ontario College of Pharmacists
14.	Person registered under the <i>Ophthalmic Dispensers Act</i>	member of the College of Opticians of Ontario
15.	person registered under the <i>Psychologists Registration Act</i>	member of the College of Psychologists of Ontario
16.	person registered under the <i>Radiological Technicians Act</i>	member of the College of Medical Radiation Technologists of Ontario

1991, c. 18, Table.

**SCHEDULE 1**  
**SELF GOVERNING HEALTH PROFESSIONS**

<i>Health Profession Acts</i>	<i>Health Profession</i>
Audiology and Speech-Language Pathology Act, 1991	Audiology and Speech-Language Pathology
Chiropractic Act, 1991	Chiropractic
Chiropractic Act, 1991	Chiropractic
Dental Hygiene Act, 1991	Dental Hygiene
Dental Technology Act, 1991	Dental Technology
Dentistry Act, 1991	Dentistry
Denturism Act, 1991	Denturism
Dietetics Act, 1991	Dietetics
<b>Note: On a day to be named by proclamation of the Lieutenant Governor, Schedule 1 is amended by the Statutes of Ontario, 2007, chapter 10, Schedule Q, section 14 by adding the following:</b>	
Homeopathy Act, 2007	Homeopathy
<b>See: 2007, c. 10, Sched. Q, ss. 14, 15 (2).</b>	
<b>Note: On a day to be named by proclamation of the Lieutenant Governor, Schedule 1 is amended by the Statutes of Ontario, 2007, chapter 10, Schedule O, section 14 by adding the following:</b>	
Kinesiology Act, 2007	Kinesiology
<b>See: 2007, c. 10, Sched. O, ss. 14, 15 (2).</b>	
Massage Therapy Act, 1991	Massage Therapy
Medical Laboratory Technology Act, 1991	Medical Laboratory Technology
Medical Radiation Technology Act, 1991	Medical Radiation Technology
Medicine Act, 1991	Medicine
Midwifery Act, 1991	Midwifery
<b>Note: On a day to be named by proclamation of the Lieutenant Governor, Schedule 1 is amended by the Statutes of Ontario, 2007, chapter 10, Schedule P, subsection 20 (3) by adding the following:</b>	
Naturopathy Act, 2007	Naturopathy
<b>See: 2007, c. 10, Sched. P, ss. 20 (3), 21 (2).</b>	
Nursing Act, 1991	Nursing
Occupational Therapy Act, 1991	Occupational Therapy
Opticianry Act, 1991	Opticianry

Optometry Act, 1991	Optometry
Pharmacy Act, 1991	Pharmacy
Physiotherapy Act, 1991	Physiotherapy
Psychology Act, 1991	Psychology
<b>Note: On a day to be named by proclamation of the Lieutenant Governor, Schedule 1 is amended by the Statutes of Ontario, 2007, chapter 10, Schedule R, subsection 19 (3) by adding the following:</b>	
Psychotherapy Act, 2007	Psychotherapy
<b>See: 2007, c. 10, Sched. R, ss. 19 (3), 20 (2).</b>	
Respiratory Therapy Act, 1991	Respiratory Therapy
<b>Note: On a day to be named by proclamation of the Lieutenant Governor, Schedule 1 is amended by the Statutes of Ontario, 2006, chapter 27, subsection 18 (2) by adding the following:</b>	
Traditional Chinese Medicine Act, 2006	Traditional Chinese Medicine
<b>See: 2006, c. 27, ss. 18 (2), 20 (2).</b>	

1991, c. 18, Sched. 1; 1998, c. 18, Sched. G, s. 9.

## SCHEDULE 2

### HEALTH PROFESSIONS PROCEDURAL CODE

Note: This Code is deemed by section 4 of the *Regulated Health Professions Act, 1991* to be part of each health profession Act.

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## Interpretation

1. (1) In this Code,

“alternative dispute resolution process” means mediation, conciliation, negotiation, or any other means of facilitating the resolution of issues in dispute; (“processus de règlement extrajudiciaire des différends”)

“Board” means the Health Professions Appeal and Review Board under the *Ministry of Health and Long-Term Care Appeal and Review Boards Act, 1998*; (“Commission”)

“by-laws” means by-laws made by the Council; (“règlements administratifs”)

“certificate of authorization” means a certificate of authorization issued under the *Regulated Health Professions Act, 1991* or this Code; (“certificat d’autorisation”)

“certificate of registration” means a certificate of registration issued by the Registrar; (“certificat d’inscription”)

“Council” means the Council of the College; (“conseil”)

“drug” means drug as defined in subsection 117(1) of the *Drug and Pharmacies Regulation Act*; (“médicament”)

“health profession corporation” means a corporation incorporated under the *Business Corporations Act* that holds a valid certificate of authorization issued under the *Regulated Health Professions Act, 1991* or this Code; (“société professionnelle de la santé”)

“incapacitated” means, in relation to a member, that the member is suffering from a physical or mental condition or disorder that makes it desirable in the interest of the public that the member’s certificate of registration be subject to terms, conditions or limitations, or that the member no longer be permitted to practise; (“frappé d’incapacité”)

“member” means a member of the College; (“membre”)

“Minister” means the Minister of Health and Long-Term Care; (“ministre”)

“patient relations program” means a program to enhance relations between members and patients; (“programme de relations avec les patients”)

“prescribed” means prescribed in the regulations; (“prescrit”)

“quality assurance program” means a program to assure the quality of the practice of the profession and to promote continuing evaluation, competence and improvement among the members; (“programme d’assurance de la qualité”)

“Registrar” means the Registrar of the College; (“registrateur”)

“registration” means the issuance of a certificate of registration. (“inscription”) 1991, c. 18, Sched. 2, s. 1 (1); 1998, c. 18, Sched. G, s. 10; 2000, c. 42, Sched., s. 34; 2006, c. 19, Sched. L, s. 11 (2); 2007, c. 10, Sched. M, s. 17; 2009, c. 26, s. 24 (10).

### **Hearing not required unless referred to**

(2) Nothing in the health profession Act or this Code shall be construed to require a hearing to be held within the meaning of the *Statutory Powers Procedure Act* unless the holding of a hearing is specifically referred to. 1991, c. 18, Sched. 2, s. 1 (2).

### **Sexual abuse of a patient**

(3) In this Code,

“sexual abuse” of a patient by a member means,

- (a) sexual intercourse or other forms of physical sexual relations between the member and the patient,
- (b) touching, of a sexual nature, of the patient by the member, or
- (c) behaviour or remarks of a sexual nature by the member towards the patient. 1993, c. 37, s. 4.

### **Exception**

(4) For the purposes of subsection (3),

“sexual nature” does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided. 1993, c. 37, s. 4.

### **Statement of purpose, sexual abuse provisions**

**1.1** The purpose of the provisions of this Code with respect to sexual abuse of patients by members is to encourage the reporting of such abuse, to provide funding for therapy and

counselling for patients who have been sexually abused by members and, ultimately, to eradicate the sexual abuse of patients by members. 1993, c. 37, s. 5.

College

### **College is body corporate**

2. (1) The College is a body corporate without share capital with all the powers of a natural person.

### ***Corporations Act***

(2) The *Corporations Act* does not apply in respect to the College. 1991, c. 18, Sched. 2, s. 2.

### **Duty of College**

2.1 It is the duty of the College to work in consultation with the Minister to ensure, as a matter of public interest, that the people of Ontario have access to adequate numbers of qualified, skilled and competent regulated health professionals. 2008, c. 18, s. 1.

### **Objects of College**

3. (1) The College has the following objects:

1. To regulate the practice of the profession and to govern the members in accordance with the health profession Act, this Code and the *Regulated Health Professions Act, 1991* and the regulations and by-laws.
2. To develop, establish and maintain standards of qualification for persons to be issued certificates of registration.
3. To develop, establish and maintain programs and standards of practice to assure the quality of the practice of the profession.
4. To develop, establish and maintain standards of knowledge and skill and programs to promote continuing evaluation, competence and improvement among the members.
- 4.1 To develop, in collaboration and consultation with other Colleges, standards of knowledge, skill and judgment relating to the performance of controlled acts common among health professions to enhance interprofessional collaboration, while respecting the unique character of individual health professions and their members.
5. To develop, establish and maintain standards of professional ethics for the members.
6. To develop, establish and maintain programs to assist individuals to exercise their rights under this Code and the *Regulated Health Professions Act, 1991*.
7. To administer the health profession Act, this Code and the *Regulated Health Professions Act, 1991* as it relates to the profession and to perform the other duties and exercise the other powers that are imposed or conferred on the College.
8. To promote and enhance relations between the College and its members, other health profession colleges, key stakeholders, and the public.
9. To promote inter-professional collaboration with other health profession colleges.
10. To develop, establish, and maintain standards and programs to promote the ability of members to respond to changes in practice environments, advances in technology and other emerging issues.

11. Any other objects relating to human health care that the Council considers desirable. 1991, c. 18, Sched. 2, s. 3 (1); 2007, c. 10, Sched. M, s. 18; 2009, c. 26, s. 24 (11).

### **Duty**

(2) In carrying out its objects, the College has a duty to serve and protect the public interest. 1991, c. 18, Sched. 2, s. 3 (2).

### **College website**

**3.1** (1) The College shall have a website, and shall include on its website information as may be prescribed in regulations made under clause 43 (1) (h.2) of the *Regulated Health Professions Act, 1991*. 2007, c. 10, Sched. M, s. 19.

### **Paper or electronic form**

(2) Upon request and, if required by the College, the payment of a reasonable fee, the College shall provide the information required to be posted under subsection (1) in paper or electronic form. 2007, c. 10, Sched. M, s. 19.

### **Council**

**4.** The College shall have a Council that shall be its board of directors and that shall manage and administer its affairs. 1991, c. 18, Sched. 2, s. 4.

### **Terms**

**5.** (1) No term of a Council member who is elected shall exceed three years.

### **Multiple terms**

(2) A person may be a Council member for more than one term but no person who is elected may be a Council member for more than nine consecutive years. 1991, c. 18, Sched. 2, s. 5.

### **Quorum**

**6.** A majority of the members of the Council constitute a quorum. 1991, c. 18, Sched. 2, s. 6.

### **Meetings**

**7.** (1) The meetings of the Council shall be open to the public and reasonable notice shall be given to the members of the College, to the Minister, and to the public. 2007, c. 10, Sched. M, s. 20 (1).

### **Exclusion of public**

(2) Despite subsection (1), the Council may exclude the public from any meeting or part of a meeting if it is satisfied that,

- (a) matters involving public security may be disclosed;
- (b) financial or personal or other matters may be disclosed of such a nature that the harm created by the disclosure would outweigh the desirability of adhering to the principle that meetings be open to the public;
- (c) a person involved in a criminal proceeding or civil suit or proceeding may be prejudiced;
- (d) personnel matters or property acquisitions will be discussed;
- (e) instructions will be given to or opinions received from the solicitors for the College; or
- (f) the Council will deliberate whether to exclude the public from a meeting or whether to

make an order under subsection (3). 1991, c. 18, Sched. 2, s. 7 (2); 2007, c. 10, Sched. M, s. 20 (2).

### **Orders preventing public disclosure**

(3) In situations in which the Council may exclude the public from meetings, it may make orders it considers necessary to prevent the public disclosure of matters disclosed in the meeting, including banning publication or broadcasting of those matters. 1991, c. 18, Sched. 2, s. 7 (3).

### **Grounds noted in minutes**

(4) If the Council excludes the public from a meeting or makes an order under subsection (3), it shall have its grounds for doing so noted in the minutes of the meeting. 2007, c. 10, Sched. M, s. 20 (3).

### **Remuneration and expenses**

**8.** Council members appointed by the Lieutenant Governor in Council shall be paid, by the Minister, the expenses and remuneration the Lieutenant Governor in Council determines. 1991, c. 18, Sched. 2, s. 8; 2006, c. 19, Sched. L, s. 10 (1).

### **Employees**

**9.** (1) The Council may employ persons it considers advisable.

### **Registrar**

(2) The Council shall appoint one of its employees as the Registrar. 1991, c. 18, Sched. 2, s. 9.

### **Committees**

**10.** (1) The College shall have the following committees:

1. Executive Committee.
2. Registration Committee.
3. Inquiries, Complaints and Reports Committee.
4. Discipline Committee.
5. Fitness to Practise Committee.
6. Quality Assurance Committee.
7. Patient Relations Committee. 1991, c. 18, Sched. 2, s. 10 (1); 2007, c. 10, Sched. M, s. 21 (1).

### **Transitional**

(1.1) For greater certainty, where, at the time subsection 21 (1) of Schedule M to the *Health System Improvements Act, 2007* comes into force, any matter that is before the Board based on anything done by the Committee formerly known as the Complaints Committee shall proceed as if the Board had the authority to do anything it could have done before the coming into force of sections 30 to 32 of that Schedule. 2007, c. 10, Sched. M, s. 21 (2).

### **Same**

(1.2) Where a regulation made under the *Regulated Health Professions Act, 1991* or a health profession Act that was made before the coming into force of subsection 21 (1) of Schedule M to the *Health System Improvements Act, 2007* refers to the Complaints Committee, the reference shall be deemed to be to the Inquiries, Complaints and Reports Committee. 2009, c. 26, s. 24 (12).

**Appointment**

(2) The Council shall appoint the members of the committees. 1991, c. 18, Sched. 2, s. 10 (2).

**Composition**

(3) The composition of the committees shall be in accordance with the by-laws. 1991, c. 18, Sched. 2, s. 10 (3); 1998, c. 18, Sched. G, s. 11.

**Annual reports**

11. (1) Each committee named in subsection 10 (1) shall monitor and evaluate their processes and outcomes and shall annually submit a report of its activities to the Council in a form acceptable to the Council. 2007, c. 10, Sched. M, s. 22.

**Exclusions from reports**

(2) The Inquiries, Complaints and Reports Committee shall not submit a report that contains information, other than information of a general statistical nature, relating to,

- (a) a referral by the Inquiries, Complaints and Reports Committee to the Discipline or Fitness to Practise Committee until a panel of the Discipline or Fitness to Practise Committee disposes of the matter;
- (b) an approval for the Registrar to appoint an investigator until the investigation is completed and reported by the Registrar and the Inquiries, Complaints and Reports Committee decides not to make a referral with respect to the matter to the Discipline Committee or, if the Inquiries, Complaints and Reports Committee makes a referral with respect to the matter to the Discipline Committee, until a panel of the Discipline Committee disposes of the matter; or
- (c) an interim order made by the Inquiries, Complaints and Reports Committee in respect of a member until a panel of the Discipline Committee disposes of the matter. 2007, c. 10, Sched. M, s. 22.

**Executive Committee's exercise of Council's powers**

12. (1) Between the meetings of the Council, the Executive Committee has all the powers of the Council with respect to any matter that, in the Committee's opinion, requires immediate attention, other than the power to make, amend or revoke a regulation or by-law.

**Report to Council**

(2) If the Executive Committee exercises a power of the Council under subsection (1), it shall report on its actions to the Council at the Council's next meeting. 1991, c. 18, Sched. 2, s. 12.

**Members**

13. (1) A person registered by the College is a member.

**Suspended members**

(2) A person whose certificate of registration is suspended is not a member. 1991, c. 18, Sched. 2, s. 13.

**Note: On a day to be named by proclamation of the Lieutenant Governor, Schedule 2 is amended by adding the following section:**

**Professional liability insurance**

13.1 (1) No member of a College in Ontario shall engage in the practice of the health profession

unless he or she is personally insured against professional liability under a professional liability insurance policy or belongs to a specified association that provides the member with personal protection against professional liability. 2009, c. 26, s. 24 (13).

### **Insurance requirements**

(2) A member mentioned in subsection (1) shall comply with the requirements respecting professional liability insurance or protection against professional liability specified by the College and prescribed in the regulations made under the health profession Act governing the member's health profession or set out in the by-laws. 2009, c. 26, s. 24 (13).

### **Professional misconduct**

(3) In addition to the grounds set out in subsection 51 (1), a panel of the Discipline Committee shall find that a member has committed an act of professional misconduct if the member fails to comply with subsection (1) or (2). 2009, c. 26, s. 24 (13).

**See: 2009, c. 26, ss. 24 (13), 27 (2).**

### **Continuing jurisdiction**

**14.** (1) A person whose certificate of registration is revoked or expires or who resigns as a member continues to be subject to the jurisdiction of the College for professional misconduct or incompetence referable to the time when the person was a member and may be investigated under section 75. 2007, c. 10, Sched. M, s. 23 (1).

### **Idem**

(2) A person whose certificate of registration is suspended continues to be subject to the jurisdiction of the College for incapacity and for professional misconduct or incompetence referable to the time when the person was a member or to the period of the suspension and may be investigated under section 75. 1991, c. 18, Sched. 2, s. 14 (2); 2007, c. 10, Sched. M, s. 23 (2).

Registration

### **Registration**

**15.** (1) If a person applies to the Registrar for registration, the Registrar shall,

- (a) register the applicant; or
- (b) refer the application to the Registration Committee. 1991, c. 18, Sched. 2, s. 15 (1).

### **Referrals to Registration Committee**

(2) The Registrar shall refer an application for registration to the Registration Committee if the Registrar,

- (a) has doubts, on reasonable grounds, about whether the applicant fulfils the registration requirements;
- (a.1) is of the opinion that terms, conditions or limitations should be imposed on a certificate of registration of the applicant and the applicant is an individual described in subsection 22.18 (1);
- (b) is of the opinion that terms, conditions or limitations should be imposed on a certificate of registration of the applicant and the applicant does not consent to the imposition; or
- (c) proposes to refuse the application. 1991, c. 18, Sched. 2, s. 15 (2); 1993, c. 37, s. 6; 2009, c. 24, s. 33 (3).



**Notice to applicant**

(3) If the Registrar refers an application to the Registration Committee, he or she shall give the applicant notice of the statutory grounds for the referral and of the applicant's right to make written submissions under subsection 18 (1). 1991, c. 18, Sched. 2, s. 15 (3).

**Terms, etc., attached on consent**

(4) If the Registrar is of the opinion that a certificate of registration should be issued to an applicant with terms, conditions or limitations imposed and the applicant consents to the imposition, the Registrar may do so with the approval of a panel of the Registration Committee selected by the chair for the purpose. 1991, c. 18, Sched. 2, s. 15 (4).

**Panels for consent**

(5) Subsections 17 (2) and (3) apply with respect to the panel mentioned in subsection (4). 1991, c. 18, Sched. 2, s. 15 (5).

**Disclosure of application file**

**16.** (1) The Registrar shall give an applicant for registration, at his or her request, all the information and a copy of each document the College has that is relevant to the application.

**Exception**

(2) The Registrar may refuse to give an applicant anything that may, in the Registrar's opinion, jeopardize the safety of any person. 1991, c. 18, Sched. 2, s. 16.

**Panels**

**17.** (1) An application for registration referred to the Registration Committee or an application referred back to the Registration Committee by the Board shall be considered by a panel selected by the chair from among the members of the Committee. 1991, c. 18, Sched. 2, s. 17 (1); 2007, c. 10, Sched. M, s. 24 (1).

**Composition of panels**

(2) A panel shall be composed of at least three persons, at least one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council. 2007, c. 10, Sched. M, s. 24 (2).

**Quorum**

(3) Three members of a panel constitute a quorum. 1991, c. 18, Sched. 2, s. 17 (3).

**Consideration by panel**

**18.** (1) An applicant may make written submissions to the panel within thirty days after receiving notice under subsection 15 (3) or within any longer period the Registrar may specify in the notice.

**Orders by panel**

(2) After considering the application and the submissions, the panel may make an order doing any one or more of the following:

1. Directing the Registrar to issue a certificate of registration.
2. Directing the Registrar to issue a certificate of registration if the applicant successfully completes examinations set or approved by the panel.
3. Directing the Registrar to issue a certificate of registration if the applicant successfully completes additional training specified by the panel.
4. Directing the Registrar to impose specified terms, conditions and limitations on a

certificate of registration of the applicant and specifying a limitation on the applicant's right to apply under subsection 19 (1).

5. Directing the Registrar to refuse to issue a certificate of registration.

### **Idem**

(3) A panel, in making an order under subsection (2), may direct the Registrar to issue a certificate of registration to an applicant who does not meet a registration requirement unless the requirement is prescribed as a non-exemptible requirement.

### **Order on consent**

(4) The panel may, with the consent of the applicant, direct the Registrar to issue a certificate of registration with the terms, conditions and limitations specified by the panel imposed. 1991, c. 18, Sched. 2, s. 18.

### **Application for variation**

**19.** (1) A member may apply to the Registration Committee for an order directing the Registrar to remove or modify any term, condition or limitation imposed on the member's certificate of registration as a result of a registration proceeding. 1991, c. 18, Sched. 2, s. 19 (1).

### **Limitations**

(2) The right to apply under subsection (1) is subject to any limitation in the order imposing the term, condition or limitation or to which the member consented and to any limitation made under subsection (7) in the disposition of a previous application under this section. 1991, c. 18, Sched. 2, s. 19 (2).

### **Panels**

(3) An application to the Registration Committee under subsection (1) or an application referred back to the Registration Committee by the Board shall be considered by a panel selected by the chair from among the members of the Committee. 1991, c. 18, Sched. 2, s. 19 (3); 2007, c. 10, Sched. M, s. 25 (1).

### **Idem**

(4) Subsections 17 (2) and (3) apply with respect to the panel mentioned in subsection (3). 1991, c. 18, Sched. 2, s. 19 (4).

### **Submissions**

(5) An applicant may make written submissions to the panel. 1991, c. 18, Sched. 2, s. 19 (5).

### **Orders**

(6) After considering the application and the submissions, the panel may make an order doing any one or more of the following:

1. Refusing the application.
2. Directing the Registrar to remove any term, condition or limitation imposed on the certificate of registration.
3. Directing the Registrar to modify terms, conditions or limitations on the certificate of registration. 1991, c. 18, Sched. 2, s. 19 (6); 2007, c. 10, Sched. M, s. 25 (2).

### **Limitations on applications**

(7) When an application has been disposed of under this section, the applicant may not make a new application under subsection (1) within six months of the disposition without leave

of the Registrar. 2007, c. 10, Sched. M, s. 25 (3).

### **Registrar's leave**

(8) The Registrar may only give leave for a new application to be made under subsection (7) if the Registrar is satisfied that there has been a material change in circumstances that justifies the giving of the leave. 2007, c. 10, Sched. M, s. 25 (3).

### **Notice of orders**

**20.** (1) A panel shall give the applicant notice of an order it makes under subsection 18 (2) or 19 (6) and written reasons for it if the order,

- (a) directs the Registrar to refuse to issue a certificate of registration;
- (b) directs the Registrar to issue a certificate of registration if the applicant successfully completes examinations or additional training;
- (c) directs the Registrar to impose terms, conditions and limitations on a certificate of registration of the applicant; or
- (d) refuses an application for an order removing or modifying any term, condition or limitation imposed on a certificate of registration. 1991, c. 18, Sched. 2, s. 20 (1).

### **Contents of notice**

(2) A notice under subsection (1) shall inform the applicant of the order and of the provisions of section 19 and of subsections 21 (1) and (2). 1991, c. 18, Sched. 2, s. 20 (2); 2007, c. 10, Sched. M, s. 26.

### **Appeal to Board**

**21.** (1) An applicant who has been given a notice under subsection 20 (1) of an order may require the Board to hold a review of the application and the documentary evidence in support of it, or a hearing of the application, by giving the Board and the Registration Committee notice in accordance with subsection (2).

### **Requirements of notice**

(2) A notice under subsection (1) shall be a written notice, given within thirty days after the notice under subsection 20 (1) was given, specifying whether a review or a hearing is required.

### **Order, etc., to Board**

(3) If the Registration Committee receives a notice that an applicant requires a hearing or review, it shall, within fifteen days after receiving the notice, give the Board a copy of the order made with respect to the application, the reasons for it and the documents and things upon which the decision to make the order was based.

### **When order may be carried out**

(4) An order of a panel, notice of which is required under subsection 20 (1), may be carried out only when,

- (a) the applicant has given the Registrar notice that the applicant will not be requiring a review or hearing;
- (b) thirty-five days have passed since the notice of the order was given under subsection 20 (1) without the applicant requiring a review or hearing; or
- (c) the Board has confirmed the order. 1991, c. 18, Sched. 2, s. 21.

### **Registration hearings or reviews**

**22.** (1) This section applies to a hearing or review by the Board required by an applicant under subsection 21 (1). 1991, c. 18, Sched. 2, s. 22 (1).

### **Procedural provisions**

(2) The following provisions apply with necessary modifications to a hearing or review:

1. Subsection 38 (4) (exclusion from panel).
2. Section 42 (disclosure of evidence).
3. Section 43 (no communication by panel members).
4. Section 50 (members of panel who participate).
5. Section 55 (release of evidence). 1991, c. 18, Sched. 2, s. 22 (2).

### **Idem**

(3) The following provisions also apply with necessary modifications to a hearing:

1. Section 45 (hearings open).
2. Section 47 (sexual misconduct witnesses).
3. Section 48 (transcript of hearings). 1991, c. 18, Sched. 2, s. 22 (3).

### **Same**

(3.1) The following provisions of the *Statutory Powers Procedure Act* also apply with necessary modifications to a review by the Board:

1. Section 21.1 (correction of errors).
2. Section 25.1 (rules). 1998, c. 18, Sched. G, s. 12.

### **Findings of fact**

(4) The findings of fact in a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15, 15.1, 15.2 and 16 of the *Statutory Powers Procedure Act*. 1991, c. 18, Sched. 2, s. 22 (4); 2007, c. 10, Sched. M, s. 27 (1).

### **Idem**

(5) The findings of fact in a review shall be based exclusively on the application and documentary evidence admissible or matters that may be noticed under sections 15, 15.1, 15.2 and 16 of the *Statutory Powers Procedure Act*. 1991, c. 18, Sched. 2, s. 22 (5); 2007, c. 10, Sched. M, s. 27 (2).

### **Disposal by Board**

(6) The Board shall, after the hearing or review, make an order doing any one or more of the following:

1. Confirming the order made by the panel.
2. Requiring the Registration Committee to make an order directing the Registrar to issue a certificate of registration to the applicant if the applicant successfully completes any examinations or training the Registration Committee may specify.
3. Requiring the Registration Committee to make an order directing the Registrar to issue a certificate of registration to the applicant and to impose any terms, conditions and limitations the Board considers appropriate.

4. Referring the matter back to the Registration Committee for further consideration by a panel, together with any reasons and recommendations the Board considers appropriate. 1991, c. 18, Sched. 2, s. 22 (6); 2007, c. 10, Sched. M, s. 27 (3).

### **Idem**

(7) The Board may make an order under paragraph 3 of subsection (6) only if the Board finds that the applicant substantially qualifies for registration and that the panel has exercised its powers improperly. 1991, c. 18, Sched. 2, s. 22 (7).

### **Limitation on order**

(8) The Board, in making an order under subsection (6), shall not require the Registration Committee to direct the Registrar to issue a certificate of registration to an applicant who does not meet a registration requirement that is prescribed as a non-exemptible requirement. 1991, c. 18, Sched. 2, s. 22 (8).

### **Parties**

(9) The College and the applicant are parties to a hearing or review. 1991, c. 18, Sched. 2, s. 22 (9).

### **Definitions**

**22.1** In this section and sections 22.2 to 22.14,

“audit” means an audit required under section 22.8; (“vérification”)

“auditor” means an auditor appointed under section 22.8; (“vérificateur”)

“Fairness Commissioner” means the Fairness Commissioner appointed under the *Fair Access to Regulated Professions Act, 2006*; (“commissaire à l’équité”)

“fair registration practices report” means a report required under section 22.7; (“rapport sur les pratiques d’inscription équitables”)

“internationally trained individual” means an individual who has been trained in a country other than Canada to practise a health profession and who has applied for, or who intends to apply for, registration by a College; (“particulier formé à l’étranger”)

“personal information” has the same meaning as in the *Freedom of Information and Protection of Privacy Act*; (“renseignements personnels”)

“record” means a record as defined in the *Freedom of Information and Protection of Privacy Act*; (“document”)

“regulations” means the regulations made under clauses 43 (1) (h) to (k) of the *Regulated Health Professions Act, 1991*. (“règlements”) 2006, c. 31, s. 35 (3).

### **Fair registration practices: general duty**

**22.2** The College has a duty to provide registration practices that are transparent, objective, impartial and fair. 2006, c. 31, s. 35 (3).

### **Information**

**22.3** The College shall provide information on its website with respect to the requirements for registration, the procedures for applying for registration and the amount of time that the registration process usually takes. 2009, c. 24, s. 33 (4).

### **Qualifications**

**22.4** (1) The College shall make information publicly available on what documentation of

qualifications must accompany an application and what alternatives may be acceptable to the College if an applicant cannot obtain the required documentation for reasons beyond his or her control. 2006, c. 31, s. 35 (3).

### **Same**

(2) If the College makes its own assessment of qualifications, it shall do so in a way that is transparent, objective, impartial and fair and, if it relies on a third party to assess qualifications, it shall take reasonable measures to ensure that the third party makes the assessment in a way that is transparent, objective, impartial and fair. 2006, c. 31, s. 35 (3).

### **Same**

(3) The College shall ensure that individuals assessing qualifications and making registration decisions or reviewing decisions have received training that includes, where appropriate,

- (a) training on how to assess such qualifications and make such decisions;
- (b) training in any special considerations that may apply in the assessment of applications and the process for applying those considerations. 2006, c. 31, s. 35 (3).

### **Functions**

**22.5** (1) It is the function of the Fairness Commissioner to,

- (a) assess the registration practices of a College based on its obligations under this Code and the regulations;
- (b) specify audit standards, the scope of audits, times when fair registration practices reports and auditors' reports shall be filed, the form of all required reports and certificates and the information that they must contain;
- (c) establish eligibility requirements that a person must meet to be qualified to conduct audits;
- (d) establish a roster of persons who in the opinion of the Fairness Commissioner have satisfied the eligibility requirements established under clause (c);
- (e) consult with Colleges on the cost, scope and timing of audits;
- (f) monitor third parties relied on by a College to assess the qualifications of individuals applying for registration by the College to help ensure that assessments are based on the obligations of the College under this Code and the regulations;
- (g) advise a College or third parties relied on by a College to assess qualifications with respect to matters related to registration practices under this Code and the regulations;
- (h) provide advice and recommendations to the Minister, including advice and recommendations that a College do or refrain from doing any action respecting a contravention by a College if the Fairness Commissioner determines that the College has failed to comply with any requirement imposed on it by sections 22.2 to 22.11; and
- (i) perform such other functions as may be assigned by the Lieutenant Governor in Council. 2006, c. 31, s. 35 (3).

### **Scope**

(2) A matter specified under clause (1) (b) or established under clause (1) (c) or (d) may be general or specific in its application and may be limited as to time and place. 2006, c. 31,

s. 35 (3).

**Same**

(3) The Fairness Commissioner shall give notice to the College of all matters specified under clause (1) (b) and established under clauses (1) (c) and (d) and the notice may be given in the manner he or she considers appropriate. 2006, c. 31, s. 35 (3).

**Review of practices**

**22.6** (1) The College shall undertake reviews of its registration practices at such times as the Fairness Commissioner may specify to ensure that the registration practices are transparent, objective, impartial and fair. 2006, c. 31, s. 35 (3).

**Same**

- (2) The review shall include an analysis of,
- (a) the extent to which the requirements for registration are necessary for or relevant to the practice of the profession;
  - (b) the efficiency and timeliness of decision-making; and
  - (c) the reasonableness of the fees charged by the College in respect of applications. 2006, c. 31, s. 35 (3).

**Reports**

(3) The College shall file a copy of the results of the review with the Fairness Commissioner within 30 days after the completion of the review. 2006, c. 31, s. 35 (3).

**Fair registration practices reports**

**22.7** (1) The College shall prepare a fair registration practices report annually or at such other times as the Fairness Commissioner may specify. 2006, c. 31, s. 35 (3).

**Same**

(2) The College may combine its fair registration practices report with such other report of the College as the Fairness Commissioner may permit and in such case an audit shall be confined to those parts of the report that relate to registration practices. 2006, c. 31, s. 35 (3).

**Other reports**

(3) The Fairness Commissioner may require that the College provide the Fairness Commissioner with reports or information relating to the College's compliance with sections 15 to 22.11 and the regulations and the College shall prepare and file the reports with, or provide the information to, the Fairness Commissioner. 2006, c. 31, s. 35 (3).

**Same**

(4) Reports and information required under subsection (3) are in addition to the reports required under subsection (1) and section 22.8. 2006, c. 31, s. 35 (3).

**Audits**

**22.8** (1) Every three years or at such other times as the Fairness Commissioner may specify, the Fairness Commissioner shall give notice to the College that an audit must be conducted in respect of its registration practices and of its compliance with this Code and the regulations. 2006, c. 31, s. 35 (3).

**Notice of audit**

(2) The Fairness Commissioner shall give the notice required by subsection (1) at least 90 days before the audit is to begin and the notice shall state,

- (a) that the College must choose and appoint an auditor from the roster established by the Fairness Commissioner by the date specified in the notice;
  - (b) that if the College fails to choose and appoint an auditor by the date specified in the notice that the Fairness Commissioner will choose the auditor;
  - (c) the scope of the audit and the standards that will apply;
  - (d) the date by which the audit must be completed; and
  - (e) that the College is responsible for the payment of the auditor's fees and expenses.
- 2006, c. 31, s. 35 (3).

### **Choice of auditor**

(3) The College shall, by the date specified in the notice, choose and appoint an auditor from the roster established by the Fairness Commissioner and notify the Fairness Commissioner of its choice. 2006, c. 31, s. 35 (3).

### **Failure to choose**

(4) If the College fails to notify the Fairness Commissioner of the name of the auditor it has chosen and appointed by the date specified in the notice, the Fairness Commissioner shall choose the auditor and notify the College of his or her choice and the auditor shall be deemed to have been appointed by the College. 2006, c. 31, s. 35 (3).

### **Auditor's duties**

(5) The auditor chosen and appointed under subsection (3) or (4) shall begin the audit promptly, shall conduct it in accordance with the scope of the audit and the audit standards set out in the notice under subsection (2) and shall complete it by the date set out in the notice. 2006, c. 31, s. 35 (3).

### **Collection of personal information**

(6) An auditor may collect personal information, directly or indirectly, only for the purpose of an audit required under this section, but an auditor shall not retain any personal information after completing the audit and shall not include any personal information in any draft report or final report submitted in accordance with this section. 2006, c. 31, s. 35 (3).

### **Duty to furnish information**

- (7) A College shall co-operate with the auditor and shall,
- (a) produce such records for, and provide such other information to, the auditor regarding its registration practices and any other matters related to compliance by the College with its obligations under sections 15 to 22.11 and the regulations as are reasonably necessary for the auditor to perform his or her duties under this Code, including any reports required from the College under section 22.6, 22.7 or 22.9 or the regulations; and
  - (b) provide the auditor with any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce a record in readable form. 2006, c. 31, s. 35 (3).

### **Limitation**

- (8) Despite subsection (7), a College may refuse access to a record if,
- (a) the record or any information in the record is subject to a legal privilege that restricts disclosure of the record or the information; or



(b) an Act of Ontario or of Canada or a court order prohibits disclosure of the record or any information in the record in the circumstances. 2006, c. 31, s. 35 (3).

### **Draft report**

(9) The auditor shall prepare a draft report on the audit and provide a copy of it to the College, together with a notice that the College may, within 30 days, make submissions to the auditor on the draft report. 2006, c. 31, s. 35 (3).

### **Same**

(10) The auditor shall consider the submissions, if any, made by the College and may make any changes the auditor considers appropriate before finalizing the report. 2006, c. 31, s. 35 (3).

### **Auditor's reports**

(11) The auditor shall make a final report on the audit and shall file it with the Fairness Commissioner and provide a copy to the College to which the audit relates. 2006, c. 31, s. 35 (3).

### **Auditor's certificate**

(12) The auditor shall file a certificate with the Fairness Commissioner certifying that the auditor made the audit in accordance with this Act and the regulations and that he or she has provided a copy of the auditor's report to the College. 2006, c. 31, s. 35 (3).

### **When audit is complete**

(13) An audit is complete when the auditor has provided a copy of the final report to the College to which the audit relates and has filed with the Fairness Commissioner the final report and the certificate referred to in subsection (12) and, if the College made submissions to the auditor on the draft report, a copy of the submissions made by the College. 2006, c. 31, s. 35 (3).

### **Filing with Minister**

(14) The Fairness Commissioner shall provide the Minister of Health and Long-Term Care with a copy of all auditors' reports within a reasonable time after receiving them. 2006, c. 31, s. 35 (3).

### **Auditor's fees and expenses**

(15) The College shall pay the auditor's fees and expenses. 2006, c. 31, s. 35 (3).

### **Filing of reports by College**

**22.9** (1) The College shall file its fair registration practices reports with the Fairness Commissioner by the dates specified by the Fairness Commissioner. 2006, c. 31, s. 35 (3).

### **Report available to public**

(2) The College shall make reports filed under subsection (1) available to the public. 2006, c. 31, s. 35 (3).

### **Form of reports**

**22.10** (1) Reports and certificates required by sections 22.7 and 22.8 and under the regulations shall be in the form and contain the information specified by the Fairness Commissioner or as may be specified in the regulations. 2006, c. 31, s. 35 (3).

### **Restriction on personal information**

(2) Despite subsection (1), no report prepared by the College, the Fairness Commissioner or an auditor under sections 22.6 to 22.8 shall contain personal information. 2006, c. 31, s. 35 (3).

### **Certification of report**

**22.11** (1) A fair practices registration report shall include a statement certifying that all the

information required to be provided in the report has been provided and that the information is accurate. 2006, c. 31, s. 35 (3).

### **Signature**

(2) A person with authority to sign on behalf of the College shall sign the statement required by subsection (1). 2006, c. 31, s. 35 (3).

### **Offences**

**22.12** (1) A person is guilty of an offence who,

- (a) furnishes false or misleading information in a fair registration practices report or other report or record filed with the Fairness Commissioner under this Code or otherwise provides false or misleading information to the Fairness Commissioner or to a person employed by the Fairness Commissioner or providing services under an agreement referred to in subsection 16 (3) of the *Fair Access to Regulated Professions Act, 2006*;
- (b) obstructs the Fairness Commissioner or a person employed by the Fairness Commissioner or providing services under an agreement referred to in subsection 16 (3) of the *Fair Access to Regulated Professions Act, 2006* in exercising powers or performing duties under this Code;
- (c) furnishes false or misleading information to an auditor;
- (d) obstructs, fails to co-operate with or assist an auditor; or
- (e) contravenes subsection (2). 2006, c. 31, s. 35 (3).

### **Same, intimidation**

(2) No person shall intimidate, coerce, penalize or discriminate against another person because that person,

- (a) has co-operated or may co-operate with the Fairness Commissioner, an auditor or a person employed by the Fairness Commissioner or providing services under an agreement referred to in subsection 16 (3) of the *Fair Access to Regulated Professions Act, 2006* in exercising powers or performing duties under this Code; or
- (b) has provided, or may provide, records or other information in the course of an audit or other activity or proceeding under this Code in respect of fair registration practices. 2006, c. 31, s. 35 (3).

### **Penalties**

- (3) Every person who is guilty of an offence under subsection (1) is liable on conviction,
  - (a) to a fine of not more than \$50,000; or
  - (b) if the person is a corporation, to a fine of not more than \$100,000. 2006, c. 31, s. 35 (3); 2009, c. 33, Sched. 18, s. 29 (1).

### **Consent to prosecution**

(4) No prosecution for an offence under subsection (1) shall be instituted except with the consent in writing of the Attorney General. 2006, c. 31, s. 35 (3); 2009, c. 33, Sched. 18, s. 29 (2).

### **Immunity**

**22.13** (1) No proceeding shall be commenced against the Fairness Commissioner or anyone employed by the Fairness Commissioner or providing services under an agreement

referred to in subsection 16 (3) of the *Fair Access to Regulated Professions Act, 2006* for any act done or omitted in good faith in the execution or intended execution of his or her duties under this Code. 2006, c. 31, s. 35 (3).

### **Testimony**

(2) Neither the Fairness Commissioner nor anyone employed by the Fairness Commissioner or providing services under an agreement referred to in subsection 16 (3) of the *Fair Access to Regulated Professions Act, 2006* is a competent or compellable witness in a civil proceeding outside this Code in connection with anything done under this Code. 2006, c. 31, s. 35 (3).

### **Limitation on powers**

**22.14** Neither the Fairness Commissioner nor anyone employed by the Fairness Commissioner or providing services under an agreement referred to in subsection 16 (3) of the *Fair Access to Regulated Professions Act, 2006*,

- (a) has power to influence a registration decision by the College or Registration Committee, to provide representation or advice to an applicant or potential applicant for registration in respect of a registration decision or to otherwise involve himself or herself in a registration decision or any review decision on behalf of an applicant or potential applicant for registration;
- (b) has status at any proceeding of a College, the Registration Committee, the Board, a court or other tribunal in relation to any matter arising from an application for registration; or
- (c) has the power to act as legal counsel or agent for any person in a proceeding described in clause (b) or in preparing for the proceeding. 2006, c. 31, s. 35 (3).

### **Definitions**

**22.15** (1) In this section and in sections 22.16 to 22.23,

“Agreement on Internal Trade” means the Agreement on Internal Trade signed in 1994 by the governments of Canada, the provinces of Canada, the Northwest Territories and the Yukon Territory, as amended from time to time; (“Accord sur le commerce intérieur”)

“occupational standards”, in relation to a certificate of registration, means the knowledge, skills and judgment that an individual must possess in order to be issued the certificate of registration, as established by the College, and against which the College measures the qualifications of an applicant for registration when assessing whether the applicant is qualified to practise the profession to the extent permitted by the certificate of registration; (“normes professionnelles”)

“out-of-province certificate” means a certificate, licence, registration, or other form of official recognition that,

- (a) attests to an individual being qualified to practise the profession and authorizes the individual to practise the profession, use a title or designation relating to the profession, or both, and
- (b) is granted to the individual by a body or individual that is authorized under an Act of Canada or of a province or territory of Canada that is a party to the Agreement on Internal Trade, other than Ontario, to grant such certificate, licence, registration, or other form of official recognition. (“certificat extraprovincial”) 2009, c. 24, s. 33 (5).

## **Federal Act**

(2) For greater certainty, the reference in clause (b) of the definition of “out-of-province certificate” in subsection (1), to an Act of Canada that authorizes a body or individual to grant a certificate, licence, registration, or other form of official recognition, does not include the *Trade-marks Act* (Canada). 2009, c. 24, s. 33 (5).

## **Purposes**

**22.16** The purposes of sections 22.15 to 22.23 are,

- (a) to eliminate or reduce measures established or implemented by the College that restrict or impair the ability of an individual to obtain a certificate of registration when the individual holds an equivalent out-of-province certificate; and
- (b) to support the Government of Ontario in fulfilling its obligations under Chapter Seven of the Agreement on Internal Trade. 2009, c. 24, s. 33 (5).

## **Ontario residency cannot be required**

**22.17** The College shall not make it a registration requirement that an applicant reside in Ontario, if the applicant resides in another province or territory of Canada that is a party to the Agreement on Internal Trade. 2009, c. 24, s. 33 (5).

## **When applicant holds out-of-province certificate**

**22.18** (1) This section applies if an individual applying to the College for registration already holds an out-of-province certificate that is equivalent to the certificate of registration being applied for. 2009, c. 24, s. 33 (5).

## **Material additional training, etc., cannot be required**

(2) The College shall not impose any registration requirement that would require the applicant to have, undertake, obtain or undergo any material additional training, experience, examinations or assessments. 2009, c. 24, s. 33 (5).

## **Exception, registration requirements listed on website**

(3) Despite subsection (2), the College is not prohibited from imposing on the applicant any registration requirement that,

- (a) is listed on the publicly accessible website referred to in clause 9 (3) (a) of the *Ontario Labour Mobility Act, 2009*; and
- (b) is stated on the website to be a permissible registration requirement for the certificate of registration being applied for, adopted by the Government of Ontario under Article 708 of the Agreement on Internal Trade. 2009, c. 24, s. 33 (5).

## **Other exceptions**

(4) Despite subsection (2), if the conditions set out in subsection (6) are met, the College is not prohibited from imposing one or both of the following registration requirements on the applicant:

1. Requiring the applicant to demonstrate proficiency in English or in French if equivalent proficiency in the language was not a requirement for the granting of the out-of-province certificate.
2. Requiring the applicant to undertake, obtain or undergo material additional training, experience, examinations or assessments if the applicant has not, within a period of time fixed by the College, before submitting the application for registration, practised

the profession to the extent that would be permitted by the certificate of registration for which the applicant is applying. 2009, c. 24, s. 33 (5).

### **Other permitted registration requirements**

(5) Subsection (2) does not prohibit the College from imposing registration requirements that would require the applicant to do one or more of the following:

1. If the conditions set out in subsection (6) are met:
  - i. Pay a fee upon application for registration and upon registration.
  - ii. Obtain professional liability insurance or any other insurance or similar protection.
  - iii. Post a bond.
  - iv. Undergo a criminal background check.
  - v. Provide evidence of good character.
2. If the condition set out in paragraph 2 of subsection (6) is met, provide a certificate, letter or other evidence from every body or individual from whom the applicant currently holds an out-of-province certificate, confirming that the out-of-province certificate is in good standing.
3. If the conditions set out in subsection (6) are met, demonstrate knowledge of matters applicable to the practice of the profession in Ontario, as long as this does not involve material additional training, experience, examinations or assessments.
4. If the conditions set out in subsection (6) are met, meet any other requirement specified by the College that does not involve material additional training, experience, examinations or assessments. 2009, c. 24, s. 33 (5).

### **Conditions for subss. (4) and (5)**

(6) The conditions referred to in subsections (4) and (5) are:

1. Subject to subsection (9), the requirement imposed by the College on applicants who hold an out-of-province certificate must be the same as, or substantially similar to but no more onerous than, the requirement imposed by the College on applicants who do not hold an out-of-province certificate.
2. The requirement imposed by the College must not be a disguised restriction on labour mobility. 2009, c. 24, s. 33 (5).

### **Permitted measures**

(7) This section does not prohibit the College from carrying out the following measures in respect of the applicant if the conditions set out in subsection (8) are met:

1. Refusing to issue a certificate of registration to the applicant or imposing terms, conditions or limitations on the applicant's certificate of registration if, in the opinion of the Registration Committee, such action is necessary to protect the public interest as a result of complaints, or criminal, disciplinary or other proceedings, against the applicant in any jurisdiction whether in or outside Canada, relating to the applicant's competency, conduct or character.
2. If the out-of-province certificate held by the applicant is subject to a term, condition or limitation,

- i. imposing an equivalent term, condition or limitation on the certificate of registration to be issued to the applicant, or
- ii. refusing to register the applicant, if the College does not impose an equivalent term, condition or limitation on the certificate of registration being applied for. 2009, c. 24, s. 33 (5).

### **Conditions for subs. (7)**

(8) The conditions referred to in subsection (7) are:

- 1. Subject to subsection (9), the measure carried out by the College with respect to applicants who hold an out-of-province certificate must be the same as, or substantially similar to but no more onerous than, the measure carried out by the College with respect to applicants who do not hold an out-of-province certificate.
- 2. The measure carried out by the College must not be a disguised restriction on labour mobility. 2009, c. 24, s. 33 (5).

### **Costs**

(9) The College shall ensure that any registration requirements it imposes on the applicant and any measures it carries out with respect to the applicant in connection with the registration of the applicant do not result in the imposition on the applicant of fees or other costs that are more onerous than those the College would impose if the applicant did not hold an out-of-province certificate, unless the difference in such fees or other costs reflects the actual cost differential to the College. 2009, c. 24, s. 33 (5).

### **Expeditious registration**

(10) The College shall ensure that its imposition of registration requirements on the applicant under subsections (3), (4) and (5) and its imposition of terms, conditions or limitations on the applicant's certificate of registration under subsection (7) do not prevent the expeditious registration of the applicant. 2009, c. 24, s. 33 (5).

### **Transition**

**22.19** Sections 22.17 and 22.18 apply to,

- (a) an application for registration made to the College on or after the day this section comes into force; and
- (b) an application for registration made to the College before the day this section comes into force, if the application has not been finally decided before that day. 2009, c. 24, s. 33 (5).

### **Occupational standards**

**22.20** (1) The College shall, to the extent possible and where practical,

- (a) ensure that the process it follows in establishing or amending occupational standards for certificates of registration is conducive to labour mobility within Canada;
- (b) take steps to reconcile differences between the occupational standards it has established for certificates of registration and occupational standards in effect with respect to the profession in the other provinces and territories of Canada that are parties to the Agreement on Internal Trade; and
- (c) ensure that the occupational standards it establishes for certificates of registration are consistent with such common interprovincial or international occupational standards as

may have been developed for the profession. 2009, c. 24, s. 33 (5).

### **No limitation**

(2) Subsection (1) does not limit the objects of the College under section 3 or the powers of the Council under section 95 to establish such occupational standards for the profession as it considers appropriate to protect the public. 2009, c. 24, s. 33 (5).

### **Notice of proposed occupational standards**

**22.21** If the College wishes to establish or amend occupational standards for a certificate of registration, it shall,

- (a) give notice of the proposed new or amended standards to,
  - (i) the Minister,
  - (ii) the co-ordinating Minister under the *Ontario Labour Mobility Act, 2009*, and
  - (iii) the granting bodies and individuals referred to in clause (b) of the definition of “out-of-province certificate” in subsection 22.15 (1); and
- (b) afford those granting bodies and individuals an opportunity to comment on the development of the new or amended standards. 2009, c. 24, s. 33 (5).

### **Conflict**

**22.22** (1) If any of sections 22.16 to 22.21 conflicts with the health profession Act or a regulation or by-law made under the health profession Act or under this Code, sections 22.16 to 22.21 prevail to the extent of the conflict. 2009, c. 24, s. 33 (5).

### **Same**

(2) This conflict provision prevails over any other conflict provision in the health profession Act, even if the other conflict provision is enacted after this one, unless the other conflict provision refers expressly to sections 22.16 to 22.21 of this Code. 2009, c. 24, s. 33 (5).

### **Regulations and by-laws to conform**

**22.23** Within 12 months after the day this section comes into force or within such longer period as may be prescribed, the Council shall take such steps as are within its power to make, amend or revoke regulations and by-laws under this Code and under the health profession Act so that they conform with sections 22.16 to 22.21 of this Code. 2009, c. 24, s. 33 (5).

### **Register**

**23.** (1) The Registrar shall maintain a register. 2007, c. 10, Sched. M, s. 28.

### **Contents of register**

- (2) The register shall contain the following:
  1. Each member’s name, business address and business telephone number, and, if applicable, the name of every health profession corporation of which the member is a shareholder.
  2. The name, business address and business telephone number of every health profession corporation.
  3. The names of the shareholders of each health profession corporation who are members of the College.
  4. Each member’s class of registration and specialist status.

5. The terms, conditions and limitations that are in effect on each certificate of registration.
6. A notation of every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 and has not been finally resolved, until the matter has been resolved.
7. The result, including a synopsis of the decision, of every disciplinary and incapacity proceeding, unless a panel of the relevant committee makes no finding with regard to the proceeding.
8. A notation of every finding of professional negligence or malpractice, which may or may not relate to the member's suitability to practise, made against the member, unless the finding is reversed on appeal.
9. A notation of every revocation or suspension of a certificate of registration.
10. A notation of every revocation or suspension of a certificate of authorization.
11. Information that a panel of the Registration, Discipline or Fitness to Practise Committee specifies shall be included.
12. Where findings of the Discipline Committee are appealed, a notation that they are under appeal, until the appeal is finally disposed of.
13. Where, during or as a result of a proceeding under section 25, a member has resigned and agreed never to practise again in Ontario, a notation of the resignation and agreement.
14. Information that is required to be kept in the register in accordance with the by-laws. 2007, c. 10, Sched. M, s. 28.

### **Publication ban**

(3) No action shall be taken under this section which violates a publication ban, and nothing in this section requires or authorizes the violation of a publication ban. 2007, c. 10, Sched. M, s. 28.

### **Panels specifying information in register**

(4) In disposing of a matter, a panel of the Registration, Discipline or Fitness to Practise Committee may, for the purposes of paragraph 11 of subsection (2), specify information that is to be included in the register in addition to the information specified in other paragraphs of subsection (2). 2007, c. 10, Sched. M, s. 28.

### **Access to information by the public**

(5) All of the information required by paragraphs 1 to 13 of subsection (2) and all information designated as public in the by-laws shall, subject to subsections (6), (7), (8), (9) and (11), be made available to an individual during normal business hours, and shall be posted on the College's website in a manner that is accessible to the public or in any other manner and form specified by the Minister. 2007, c. 10, Sched. M, s. 28.

### **When information may be withheld from the public**

(6) The Registrar may refuse to disclose to an individual or to post on the College's website an address or telephone number or other information designated as information to be withheld from the public in the by-laws if the Registrar has reasonable grounds to believe that disclosure may jeopardize the safety of an individual. 2007, c. 10, Sched. M, s. 28.



**Same**

(7) The Registrar may refuse to disclose to an individual or to post on the College's website information that is available to the public under subsection (5), if the Registrar has reasonable grounds to believe that the information is obsolete and no longer relevant to the member's suitability to practise. 2007, c. 10, Sched. M, s. 28.

**Same, personal health information**

(8) The Registrar shall not disclose to an individual or post on the College's website information that is available to the public under subsection (5) that is personal health information, unless the personal health information is that of a member and it is in the public interest that the information be disclosed. 2007, c. 10, Sched. M, s. 28.

**Restriction, personal health information**

(9) The Registrar shall not disclose to an individual or post on the College's website under subsection (8) more personal health information than is reasonably necessary. 2007, c. 10, Sched. M, s. 28.

**Personal health information**

(10) In subsections (8) and (9),

“personal health information” means information that identifies an individual and that is referred to in clauses (a) through (g) of the definition of “personal health information” in subsection 4 (1) of the *Personal Health Information Protection Act, 2004*. 2007, c. 10, Sched. M, s. 28.

**Other cases when information may be withheld**

(11) The Registrar shall refuse to disclose to an individual or to post on the College's website information required by paragraph 7 of subsection (2) if,

- (a) a finding of professional misconduct was made against the member and the order made was only a reprimand or only a fine, or a finding of incapacity was made against the member;
- (b) more than six years have passed since the information was prepared or last updated;
- (c) the member has made an application to the relevant committee for the removal of the information from public access because the information is no longer relevant to the member's suitability to practise, and if,
  - (i) the relevant committee believes that a refusal to disclose the information outweighs the desirability of public access to the information in the interest of any person affected or the public interest, and
  - (ii) the relevant committee has directed the Registrar to remove the information from public access; and
- (d) the information does not relate to disciplinary proceedings concerning sexual abuse as defined in clause (a) or (b) of the definition of “sexual abuse” in subsection 1 (3). 2007, c. 10, Sched. M, s. 28.

**Information from register**

(12) The Registrar shall provide to an individual a copy of any information in the register that the individual is entitled to obtain, upon the payment of a reasonable fee, if required. 2007, c. 10, Sched. M, s. 28.

### **Positive obligation**

(13) Subject to subsection (11), where an individual inquires about a member, the Registrar shall make reasonable efforts to ensure that the individual is provided with a list of the information that is available to the public under subsection (5). 2007, c. 10, Sched. M, s. 28.

### **Meaning of results of proceeding**

(14) For the purpose of this section and section 56,

“result”, when used in reference to a disciplinary or incapacity proceeding, means the panel’s finding, particulars of the grounds for the finding, and the order made, including any reprimand. 2007, c. 10, Sched. M, s. 28.

### **Suspension for non-payment of fees**

24. If a member fails to pay a fee that he or she is required to pay in accordance with the by-laws, the Registrar shall give the member notice of intention to suspend the member and may suspend the member’s certificate of registration for failure to pay the fee 30 days after notice is given. 1998, c. 18, Sched. G, s. 14; 2007, c. 10, Sched. M, s. 29.

### **Complaints And Reports**

#### **Panel for investigation or consideration**

25. (1) A panel shall be selected by the chair of the Inquiries, Complaints and Reports Committee from among the members of the Committee to investigate a complaint filed with the Registrar regarding the conduct or actions of a member or to consider a report that is made by the Registrar under clause 79 (a). 2007, c. 10, Sched. M, s. 30.

#### **Composition**

(2) A panel shall be composed of at least three persons, at least one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council. 2007, c. 10, Sched. M, s. 30.

#### **Quorum**

(3) Three members of a panel constitute a quorum. 2007, c. 10, Sched. M, s. 30.

#### **Complaint must be recorded**

(4) A panel shall not be selected to investigate a complaint unless the complaint is in writing or is recorded on a tape, film, disk or other medium. 2007, c. 10, Sched. M, s. 30.

#### **Complainant to be informed**

(5) The Registrar shall give a complainant notice of receipt of his or her complaint and a general explanation of the processes of the College, including the jurisdiction and role of the Inquiries, Complaints and Reports Committee, together with a copy of the provisions of sections 28 to 29. 2007, c. 10, Sched. M, s. 30.

#### **Notice to member**

(6) The Registrar shall give the member, within 14 days of receipt of the complaint or the report,

- (a) notice of the complaint, together with a copy of the provisions of sections 28 to 29, or notice of the receipt of the report;
- (b) a copy of the provisions of section 25.2; and
- (c) a copy of all available prior decisions involving the member unless the decision was to take no further action under subsection 26 (5). 2007, c. 10, Sched. M, s. 30.

### **Alternative dispute resolution with respect to a complaint**

**25.1** (1) The Registrar may, with the consent of both the complainant and the member, refer the complainant and the member to an alternative dispute resolution process,

- (a) if the matter has not yet been referred to the Discipline Committee under section 26; and
- (b) if the matter does not involve an allegation of sexual abuse. 2007, c. 10, Sched. M, s. 30.

### **Confidentiality**

(2) Despite this or any other Act, all communications at an alternative dispute resolution process and the facilitator's notes and records shall remain confidential and be deemed to have been made without prejudice to the parties in any proceeding. 2007, c. 10, Sched. M, s. 30.

### **Facilitator not to participate**

(3) The person who acts as the alternative dispute resolution facilitator shall not participate in any proceeding concerning the same matter. 2007, c. 10, Sched. M, s. 30.

### **Ratification of resolution**

(4) If the complainant and the member reach a resolution of the complaint through alternative dispute resolution, they shall advise the panel of the resolution, and the panel may,

- (a) cease its investigation of the complaint and adopt the proposed resolution; or
- (b) continue with its investigation of the complaint. 2007, c. 10, Sched. M, s. 30.

### **Submissions by member**

**25.2** (1) A member who is the subject of a complaint or a report may make written submissions to the Inquiries, Complaints and Reports Committee within 30 days of receiving notice under subsection 25 (6). 2007, c. 10, Sched. M, s. 30.

### **Exception**

(2) The Inquiries, Complaints and Reports Committee may specify a period of time of less than 30 days in which the member may make written submissions, and inform the member to that effect, if the Committee is of the opinion, on reasonable and probable grounds, that the conduct of the member exposes or is likely to expose his or her patients to harm or injury. 2007, c. 10, Sched. M, s. 30.

### **What a panel may do**

**26.** (1) A panel, after investigating a complaint or considering a report, considering the submissions of the member and making reasonable efforts to consider all records and documents it considers relevant to the complaint or the report, may do any one or more of the following:

1. Refer a specified allegation of the member's professional misconduct or incompetence to the Discipline Committee if the allegation is related to the complaint or the report.
2. Refer the member to a panel of the Inquiries, Complaints and Reports Committee under section 58 for incapacity proceedings.
3. Require the member to appear before a panel of the Inquiries, Complaints and Reports Committee to be cautioned.
4. Take action it considers appropriate that is not inconsistent with the health profession Act, this Code, the regulations or by-laws. 2007, c. 10, Sched. M, s. 30.

**Prior decisions**

(2) A panel of the Inquiries, Complaints and Reports Committee shall, when investigating a complaint or considering a report currently before it, consider all of its available prior decisions involving the member, including decisions made when that committee was known as the Complaints Committee, and all available prior decisions involving the member of the Discipline Committee, the Fitness to Practise Committee and the Executive Committee, unless the decision was to take no further action under subsection (5). 2007, c. 10, Sched. M, s. 30.

**Quality assurance**

(3) In exercising its powers under paragraph 4 of subsection (1), the panel may not refer the matter to the Quality Assurance Committee, but may require a member to complete a specified continuing education or remediation program. 2007, c. 10, Sched. M, s. 30.

**Complaint in bad faith, etc.**

(4) If the panel considers a complaint to be frivolous, vexatious, made in bad faith, moot or otherwise an abuse of process, it shall give the complainant and the member notice that it intends to take no action with respect to the complaint and that the complainant and the member have a right to make written submissions within 30 days after receiving the notice. 2007, c. 10, Sched. M, s. 30.

**Same**

(5) If the panel is satisfied, after considering the written submissions of the complainant and the member, that a complaint was frivolous, vexatious, made in bad faith, moot or otherwise an abuse of process, the panel shall not take action with respect to the complaint. 2007, c. 10, Sched. M, s. 30.

**Notice of decision**

**27.** (1) A panel shall give the complainant and the member who is the subject of the complaint,

- (a) a copy of its decision;
- (b) a copy of its reasons, if the panel acted under paragraph 3 or 4 of subsection 26 (1);  
and
- (c) a notice advising the member and the complainant of any right to request a review they may have under subsection 29 (2). 2007, c. 10, Sched. M, s. 30.

**Same, report**

(2) A panel shall give the member, in the case of a report,

- (a) a copy of its decision; and
- (b) a copy of its reasons, if the panel acted under paragraph 3 or 4 of subsection 26 (1).  
2007, c. 10, Sched. M, s. 30.

**Timely disposal**

**28.** (1) A panel shall dispose of a complaint within 150 days after the filing of the complaint. 2007, c. 10, Sched. M, s. 30.

**Not affected by ADR**

(2) A referral to an alternative dispute resolution process under section 25.1 does not affect the time requirements under this section. 2007, c. 10, Sched. M, s. 30.

**If complaint not disposed of**

(3) If a panel has not disposed of a complaint within 150 days after the complaint was filed, the Registrar shall provide the complainant with written notice of that fact and an expected date of disposition which shall be no more than 60 days from the date of the written notice. 2007, c. 10, Sched. M, s. 30.

**If further delay**

(4) If a panel has not disposed of the complaint by the expected date of disposition described in subsection (3), the Registrar shall,

- (a) provide the member and complainant with written notice and reasons for the delay and the new expected date of disposition which shall be no more than 30 days from the date of the revised notice or from the expected date of disposition described in subsection (3), whichever is sooner; and
- (b) provide the Board with written notice of and reasons for the delay as were provided to the member and complainant. 2007, c. 10, Sched. M, s. 30.

**Powers of the Board**

(5) The Board, on application of the member or the complainant, shall consider the written reasons for the delay and shall do any one of the following:

- 1. Direct the Inquiries, Complaints and Reports Committee to continue the investigation.
- 2. Make recommendations the Board considers appropriate to the Inquiries, Complaints and Reports Committee.
- 3. Investigate the complaint and make an order under subsection (9) within 120 days of the decision to investigate the complaint. 2007, c. 10, Sched. M, s. 30.

**Board's investigatory powers**

(6) In investigating a complaint under paragraph 3 of subsection (5), the Board has all the powers of a panel of the Inquiries, Complaints and Reports Committee and of the Registrar with respect to the investigation of the matter and may appoint an investigator under clause 75 (1) (c). 2007, c. 10, Sched. M, s. 30.

**Continuing power of Inquiries, Complaints and Reports Committee**

(7) The Inquiries, Complaints and Reports Committee may take action under section 26 at any time before the Board completes its investigation. 2007, c. 10, Sched. M, s. 30.

**Same**

(8) For greater certainty, if the Inquiries, Complaints and Reports Committee takes action as provided for in subsection (7), the Board no longer has jurisdiction to take action under section 26. 2007, c. 10, Sched. M, s. 30.

**Powers of Board re an investigation**

(9) After an investigation, the Board may do any one or more of the following:

- 1. Refer the matter to the Inquiries, Complaints and Reports Committee.
- 2. Make recommendations the Board considers appropriate to the Inquiries, Complaints and Reports Committee.
- 3. Require the Inquiries, Complaints and Reports Committee or a panel to do anything the Committee or a panel may do under the health profession Act and this Code except to request the Registrar to conduct an investigation. 2007, c. 10, Sched. M, s. 30.

### **Powers of Board re time limits**

**28.1** If the Board is satisfied that no person will be unduly prejudiced, it may, on reasonable grounds, extend any time limit with respect to,

- (a) a requirement, under subsection 21 (1), for a review or hearing by the Board;
- (b) a request, under subsection 29 (2), for a review by the Board; or
- (c) the Registrar's obligation to give to the Board, under subsection 32 (1), a record of an investigation of a complaint against a member and all relevant documents and things. 2007, c. 10, Sched. M, s. 30.

### **Review by Board**

**29.** (1) Subject to section 30, the Board shall review a decision of a panel of the Inquiries, Complaints and Reports Committee if the Board receives a request under subsection (2). 2007, c. 10, Sched. M, s. 30.

### **Request for review**

(2) The complainant or the member who is the subject of the complaint may request the Board to review a decision of a panel of the Inquiries, Complaints and Reports Committee unless the decision was,

- (a) to refer an allegation of professional misconduct or incompetence to the Discipline Committee; or
- (b) to refer the member to a panel of the Inquiries, Complaints and Reports Committee under section 58 for incapacity proceedings. 2007, c. 10, Sched. M, s. 30.

### **Time limit**

(3) A request for a review may be made only within 30 days after the receipt of the notice of the right to request a review given under clause 27 (1) (c). 2007, c. 10, Sched. M, s. 30.

### **Limitation**

(4) The Board shall not, under section 28.1, extend the time limit set out in subsection (3) for more than 60 days. 2007, c. 10, Sched. M, s. 30.

### **Parties**

(5) The complainant and the member who is the subject of the complaint are parties to a review. 2007, c. 10, Sched. M, s. 30.

### **When no review**

**30.** (1) The Board shall not review a decision if the party who requested the review withdraws the request and the other party consents. 1991, c. 18, Sched. 2, s. 30 (1).

### **Request in bad faith, etc.**

(2) If the Board considers a request to review a decision to have been frivolous, vexatious, made in bad faith, moot or otherwise an abuse of process, it shall give the parties notice that it intends not to proceed with the review and that the parties have a right to make written submissions within thirty days after receiving the notice. 1991, c. 18, Sched. 2, s. 30 (2); 2007, c. 10, Sched. M, s. 31 (1).

### **Idem**

(3) If the Board is satisfied, after considering the written submissions of the parties, that a request was frivolous, vexatious, made in bad faith, moot or otherwise an abuse of process, the Board shall not review the decision. 1991, c. 18, Sched. 2, s. 30 (3); 2007, c. 10, Sched. M,

s. 31 (2).

### **Personal representative as complainant**

**31.** A complainant's personal representative may act as the complainant for the purposes of a review of the decision by the Board if the complainant dies or becomes incapacitated. 1991, c. 18, Sched. 2, s. 31.

### **Record of decision to be reviewed**

**32.** (1) If the Board is requested to review a decision, the Registrar shall give the Board, within fifteen days after the Board's request, a record of the investigation and the documents and things upon which the decision was based.

### **Disclosure**

(2) Before reviewing a decision, the Board shall disclose to the parties everything given to it by the Registrar under subsection (1).

### **Exceptions**

(3) The Board may refuse to disclose anything that may, in its opinion,

- (a) disclose matters involving public security;
- (b) undermine the integrity of the complaint investigation and review process;
- (c) disclose financial or personal or other matters of such a nature that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that disclosure be made;
- (d) prejudice a person involved in a criminal proceeding or in a civil suit or proceeding; or
- (e) jeopardize the safety of any person. 1991, c. 18, Sched. 2, s. 32.

### **Conduct of review**

**33.** (1) In a review, the Board shall consider either or both of,

- (a) the adequacy of the investigation conducted; or
- (b) the reasonableness of the decision.

### **Procedure**

(2) In conducting a review, the Board,

- (a) shall give the party requesting the review an opportunity to comment on the matters set out in clauses (1)(a) and (b) and the other party an opportunity to respond to those comments;
- (b) may require the College to send a representative;
- (c) may question the parties and the representative of the College;
- (d) may permit the parties to make representations with respect to issues raised by any questions asked under clause (c); and
- (e) shall not allow the parties or the representative of the College to question each other. 1991, c. 18, Sched. 2, s. 33.

### **Procedural provisions**

**34.** (1) The following provisions apply with necessary modifications to a review by the Board:

1. Section 43 (no communication by panel members).
2. Section 45 (hearings open).
3. Section 47 (sexual misconduct witnesses).
4. Section 50 (members of panel who participate).
5. Section 55 (release of evidence). 1991, c. 18, Sched. 2, s. 34.

### **Same**

(2) The following provisions of the *Statutory Powers Procedure Act* also apply with necessary modifications to a review by the Board:

1. Section 4 (waiver of procedural requirement).
2. Section 4.1 (disposition of proceeding without hearing).
3. Section 5.1 (written hearings).
4. Section 5.2 (electronic hearings).
5. Section 5.3 (pre-hearing conferences).
6. Section 21 (adjournments).
7. Section 21.1 (correction of errors).
8. Section 25.1 (rules). 1998, c. 18, Sched. G, s. 16.

### **Powers of Board**

**35.** (1) After conducting a review of a decision, the Board may do any one or more of the following:

1. Confirm all or part of the decision.
2. Make recommendations the Board considers appropriate to the Inquiries, Complaints and Reports Committee.
3. Require the Inquiries, Complaints and Reports Committee to do anything the Committee or a panel may do under the health profession Act and this Code except to request the Registrar to conduct an investigation. 1991, c. 18, Sched. 2, s. 35 (1); 2007, c. 10, Sched. M, s. 32 (1, 2).

### **Decision in writing**

(2) The Board shall give its decision and reasons in writing to the parties and the Inquiries, Complaints and Reports Committee. 1991, c. 18, Sched. 2, s. 35 (2); 2007, c. 10, Sched. M, s. 32 (3).

### **Discipline**

#### **Inquiries, Complaints and Reports Committee referral**

**36.** (1) The Inquiries, Complaints and Reports Committee may refer a specified allegation of a member's professional misconduct or incompetence to the Discipline Committee. 2007, c. 10, Sched. M, s. 33 (1).

#### **Allegations of sexual abuse**

(2) In deciding whether or not to refer an allegation of the sexual abuse of a patient to the Discipline Committee, the Inquiries, Complaints and Reports Committee shall take into account



any opinion, required under subsection 85.3 (5), as to whether or not the member who is the subject of the report is likely to sexually abuse patients in the future. 1993, c. 37, s. 9; 2007, c. 10, Sched. M, s. 33 (2).

### **Interim suspension**

**37.** (1) The Inquiries, Complaints and Reports Committee may, subject to subsection (5), make an interim order directing the Registrar to suspend or impose terms, conditions or limitations on a member's certificate of registration if,

- (a) an allegation is referred to the Discipline Committee; and
- (b) it is of the opinion that the conduct of the member exposes or is likely to expose his or her patients to harm or injury. 1991, c. 18, Sched. 2, s. 37 (1); 2007, c. 10, Sched. M, s. 34 (1).

### **Procedure following interim suspension**

(2) If an order is made under subsection (1) by the Inquiries, Complaints and Reports Committee in relation to a matter referred to the Discipline Committee,

- (a) the College shall prosecute the matter expeditiously; and
- (b) the Discipline Committee shall give precedence to the matter. 1991, c. 18, Sched. 2, s. 37 (2); 2007, c. 10, Sched. M, s. 34 (2).

### **Duration of order**

(3) An order under subsection (1) continues in force until the matter is disposed of by a panel of the Discipline Committee. 1991, c. 18, Sched. 2, s. 37 (3).

### **Panel's order**

(4) In a matter in which an order under subsection (1) was made, an order of a panel of the Discipline Committee directing the Registrar to revoke, suspend or impose conditions on a member's certificate takes effect immediately despite any appeal. 1991, c. 18, Sched. 2, s. 37 (4).

### **Restrictions on orders**

- (5) No order shall be made under subsection (1) unless the member has been given,
  - (a) notice of the Committee's intention to make the order; and
  - (b) at least 14 days to make written submissions to the Committee. 2007, c. 10, Sched. M, s. 34 (3).

### **Extraordinary action to protect public**

(6) Despite subsection (5), an order may be made under subsection (1) without notice to the member, subject to the right of the member to make submissions while the suspension or the terms, conditions or limitations are in place, if the Committee is of the opinion, on reasonable and probable grounds, that the conduct of the member exposes or is likely to expose his or her patients to harm or injury and urgent intervention is needed. 2007, c. 10, Sched. M, s. 34 (3).

### **Panel for discipline hearing**

**38.** (1) The chair of the Discipline Committee shall select a panel from among the members of the Committee to hold a hearing of allegations of a member's professional misconduct or incompetence referred to the Committee by the Inquiries, Complaints and Reports Committee. 1991, c. 18, Sched. 2, s. 38 (1); 2007, c. 10, Sched. M, s. 35.

### **Composition**

- (2) A panel shall be composed of at least three and no more than five persons, at least two

of whom shall be persons appointed to the Council by the Lieutenant Governor in Council. 1991, c. 18, Sched. 2, s. 38 (2).

### **Idem**

(3) At least one of the members of a panel shall be both a member of the College and a member of the Council. 1991, c. 18, Sched. 2, s. 38 (3).

### **Exclusion from panel**

(4) No person shall be selected for a panel who has taken part in the investigation of what is to be the subject-matter of the panel's hearing. 1991, c. 18, Sched. 2, s. 38 (4).

### **Quorum**

(5) Three members of a panel, at least one of whom must be a member who was appointed to the Council by the Lieutenant Governor in Council, constitute a quorum. 1991, c. 18, Sched. 2, s. 38 (5).

### **Panel members deemed to continue**

**39.** A member of a panel who ceases to be a member of the Discipline Committee after a hearing of a matter has commenced before the panel shall be deemed, for the purposes of dealing with that matter, to remain a member of the panel until the final disposition of the matter. 1991, c. 18, Sched. 2, s. 39.

### **Amendment of notice of hearing**

**40.** A panel may at any time permit a notice of hearing of allegations against a member to be amended to correct errors or omissions of a minor or clerical nature if it is of the opinion that it is just and equitable to do so and the panel may make any order it considers necessary to prevent prejudice to the member. 1991, c. 18, Sched. 2, s. 40.

### **Parties**

**41.** The College and the member against whom allegations have been made are parties to a hearing. 1991, c. 18, Sched. 2, s. 41.

### **Non-party participation in hearings**

**41.1** (1) A panel, on application by a person who is not a party, may allow the person to participate in a hearing if,

- (a) the good character, propriety of conduct or competence of the person is an issue at the hearing; or
- (b) the participation of the person, would, in the opinion of the panel, be of assistance to the panel. 1993, c. 37, s. 10; 2007, c. 10, Sched. M, s. 36.

### **Extent of participation**

(2) The panel shall determine the extent to which a person who is allowed to participate may do so and, without limiting the generality of this, the panel may allow the person to make oral or written submissions, to lead evidence and to cross examine witnesses. 1993, c. 37, s. 10.

### **Disclosure of evidence**

**42.** (1) Evidence against a member is not admissible at a hearing of allegations against the member unless the member is given, at least ten days before the hearing,

- (a) in the case of written or documentary evidence, an opportunity to examine the evidence;
- (b) in the case of evidence of an expert, the identity of the expert and a copy of the

expert's written report or, if there is no written report, a written summary of the evidence;  
or

(c) in the case of evidence of a witness, the identity of the witness. 1991, c. 18, Sched. 2, s. 42 (1); 1993, c. 37, s. 11.

### **Exception**

(2) A panel may, in its discretion, allow the introduction of evidence that is inadmissible under subsection (1) and may make directions it considers necessary to ensure that the member is not prejudiced. 1991, c. 18, Sched. 2, s. 42 (2).

### **Disclosure of evidence**

**42.1** (1) Evidence of an expert led by a person other than the College is not admissible unless the person gives the College, at least ten days before the hearing, the identity of the expert and a copy of the expert's written report or, if there is no written report, a written summary of the evidence. 1993, c. 37, s. 12.

### **Exception**

(2) A panel may, in its discretion, allow the introduction of evidence that is inadmissible under this section and may make directions it considers necessary to ensure that the College is not prejudiced. 1998, c. 18, Sched. G, s. 17.

### **No communication by panel members**

**43.** No member of a panel holding a hearing shall communicate outside the hearing, in relation to the subject-matter of the hearing, with a party or the party's representative unless the other party has been given notice of the subject-matter of the communication and an opportunity to be present during the communication. 1991, c. 18, Sched. 2, s. 43.

### **Legal advice**

**44.** If a panel obtains legal advice with respect to a hearing, it shall make the nature of the advice known to the parties and they may make submissions with respect to the advice. 1991, c. 18, Sched. 2, s. 44.

### **Hearings public**

**45.** (1) A hearing shall, subject to subsection (2), be open to the public. 1991, c. 18, Sched. 2, s. 45 (1).

### **Exclusion of public**

(2) The panel may make an order that the public be excluded from a hearing or any part of it if the panel is satisfied that,

- (a) matters involving public security may be disclosed;
- (b) financial or personal or other matters may be disclosed at the hearing of such a nature that the harm created by disclosure would outweigh the desirability of adhering to the principle that hearings be open to the public;
- (c) a person involved in a criminal proceeding or in a civil suit or proceeding may be prejudiced; or
- (d) the safety of a person may be jeopardized. 1991, c. 18, Sched. 2, s. 45 (2); 2007, c. 10, Sched. M, s. 37.

### **Orders preventing public disclosure**

(3) In situations in which the panel may make an order that the public be excluded from a

hearing, it may make orders it considers necessary to prevent the public disclosure of matters disclosed at the hearing, including orders banning the publication or broadcasting of those matters. 1991, c. 18, Sched. 2, s. 45 (3).

#### **Public information may be disclosed**

(4) No order shall be made under subsection (3) that prevents the publication of anything that is contained in the register and available to the public. 1991, c. 18, Sched. 2, s. 45 (4).

#### **Exclusion of public**

(5) The panel may make an order that the public be excluded from the part of a hearing dealing with a motion for an order under subsection (2). 1991, c. 18, Sched. 2, s. 45 (5).

#### **Orders with respect to matters in submissions**

(6) The panel may make any order necessary to prevent the public disclosure of matters disclosed in the submissions relating to any motion described in subsection (5), including prohibiting the publication or broadcasting of those matters. 1991, c. 18, Sched. 2, s. 45 (6).

#### **Reasons for order, etc.**

(7) The panel shall ensure that any order it makes under this section and its reasons are available to the public in writing. 1991, c. 18, Sched. 2, s. 45 (7).

#### **Reconsidering of order**

(8) The panel may reconsider an order made under subsection (2) or (3) at the request of any person or on its own motion. 1991, c. 18, Sched. 2, s. 45 (8).

#### **Exception to closed hearings**

**46.** If a panel makes an order under subsection 45 (2) wholly or partly in relation to a person, the panel may allow the person and his or her personal representative to attend the hearing and may, in its discretion, allow another person to attend if, in the opinion of the panel, to do so does not undermine the reasons for making the order and does not cause undue prejudice to a party. 2007, c. 10, Sched. M, s. 38.

#### **Sexual misconduct witnesses**

**47.** (1) A panel shall, on the request of a witness whose testimony is in relation to allegations of a member's misconduct of a sexual nature involving the witness, make an order that no person shall publish the identity of the witness or any information that could disclose the identity of the witness. 1991, c. 18, Sched. 2, s. 47.

#### **Interpretation**

(2) In subsection (1),

“allegations of a member's misconduct of a sexual nature” include, but are not limited to, allegations that the member sexually abused the witness when the witness was a patient of the member. 1993, c. 37, s. 13.

#### **Transcript of hearings**

**48.** (1) The panel holding a hearing shall ensure that,

- (a) the oral evidence is recorded;
- (b) copies of the transcript of the hearing are available to a party on the party's request at the party's expense; and
- (c) copies of the transcript of any part of the hearing that is not the subject of an order prohibiting publication are available to any person at that person's expense.

### **Transcripts filed with court**

(2) If a transcript of a part of a hearing that is the subject of an order prohibiting publication is filed with a court in respect of proceedings, only the court and the parties to the proceedings may examine it unless the court orders otherwise. 1991, c. 18, Sched. 2, s. 48.

### **Admissibility of evidence**

**49.** Despite the *Statutory Powers Procedure Act*, nothing is admissible at a hearing that would be inadmissible in a court in a civil action and the findings of a panel shall be based exclusively on evidence admitted before it. 1991, c. 18, Sched. 2, s. 49.

### **Members of panel who participate**

**50.** Only the members of a panel who were present throughout a hearing shall participate in the panel's decision. 1991, c. 18, Sched. 2, s. 50.

### **Professional misconduct**

**51.** (1) A panel shall find that a member has committed an act of professional misconduct if,

- (a) the member has been found guilty of an offence that is relevant to the member's suitability to practise;
- (b) the governing body of a health profession in a jurisdiction other than Ontario has found that the member committed an act of professional misconduct that would, in the opinion of the panel, be an act of professional misconduct as defined in the regulations;
- (b.0.1) the member has failed to co-operate with the Quality Assurance Committee or any assessor appointed by that committee;
- (b.1) the member has sexually abused a patient; or
- (c) the member has committed an act of professional misconduct as defined in the regulations. 1991, c. 18, Sched. 2, s. 51 (1); 1993, c. 37, s. 14 (1); 2007, c. 10, Sched. M, s. 39 (1).

### **Orders**

(2) If a panel finds a member has committed an act of professional misconduct, it may make an order doing any one or more of the following:

1. Directing the Registrar to revoke the member's certificate of registration.
2. Directing the Registrar to suspend the member's certificate of registration for a specified period of time.
3. Directing the Registrar to impose specified terms, conditions and limitations on the member's certificate of registration for a specified or indefinite period of time.
4. Requiring the member to appear before the panel to be reprimanded.
5. Requiring the member to pay a fine of not more than \$35,000 to the Minister of Finance.
- 5.1 If the act of professional misconduct was the sexual abuse of a patient, requiring the member to reimburse the College for funding provided for that patient under the program required under section 85.7.
- 5.2 If the panel makes an order under paragraph 5.1, requiring the member to post security

acceptable to the College to guarantee the payment of any amounts the member may be required to reimburse under the order under paragraph 5.1. 1991, c. 18, Sched. 2, s. 51 (2); 1993, c. 37, s. 14 (2).

### **Idem**

(3) In making an order under paragraph 2 or 3 of subsection (2), a panel may specify criteria to be satisfied for the removal of a suspension or the removal of terms, conditions and limitations imposed on a member's certificate of registration. 1991, c. 18, Sched. 2, s. 51 (3).

### **Suspension of order**

(4) A panel may suspend the effect of all or part of an order made under subsection (2) for a specified period and on specified conditions. 1991, c. 18, Sched. 2, s. 51 (4); 2007, c. 10, Sched. M, s. 39 (2).

### **Orders relating to sexual abuse**

(5) If a panel finds a member has committed an act of professional misconduct by sexually abusing a patient, the panel shall do the following in addition to anything else the panel may do under subsection (2):

1. Reprimand the member.
2. Revoke the member's certificate of registration if the sexual abuse consisted of, or included, any of the following,
  - i. sexual intercourse,
  - ii. genital to genital, genital to anal, oral to genital, or oral to anal contact,
  - iii. masturbation of the member by, or in the presence of, the patient,
  - iv. masturbation of the patient by the member,
  - v. encouragement of the patient by the member to masturbate in the presence of the member. 1993, c. 37, s. 14 (3).

### **Statement re impact of sexual abuse**

(6) Before making an order under subsection (5), the panel shall consider any written statement that has been filed, and any oral statement that has been made to the panel, describing the impact of the sexual abuse on the patient. 1993, c. 37, s. 14 (3).

### **Same**

(7) The statement may be made by the patient or by his or her representative. 1993, c. 37, s. 14 (3).

### **Same**

(8) The panel shall not consider the statement unless a finding of professional misconduct has been made. 1993, c. 37, s. 14 (3).

### **Notice to member**

(9) When a written statement is filed, the panel shall, as soon as possible, have copies of it provided to the member, to his or her counsel and to the College. 1993, c. 37, s. 14 (3).

### **Incompetence**

**52.** (1) A panel shall find a member to be incompetent if the member's professional care of a patient displayed a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates that the member is unfit to continue to practise or that the member's practice should

be restricted. 1991, c. 18, Sched. 2, s. 52 (1); 2007, c. 10, Sched. M, s. 40 (1).

### **Order**

(2) If a panel finds a member is incompetent, it may make an order doing any one or more of the following:

1. Directing the Registrar to revoke the member's certificate of registration.
2. Directing the Registrar to suspend the member's certificate of registration.
3. Directing the Registrar to impose specified terms, conditions and limitations on the member's certificate of registration for a specified period of time or indefinite period of time. 1991, c. 18, Sched. 2, s. 52 (2); 2007, c. 10, Sched. M, s. 40 (2).

### **Idem**

(3) In making an order under paragraph 2 or 3 of subsection (2), a panel may specify criteria to be satisfied for the removal of a suspension or the removal of terms, conditions and limitations imposed on a member's certificate of registration. 1991, c. 18, Sched. 2, s. 52 (3); 2007, c. 10, Sched. M, s. 40 (3).

### **Costs if proceedings unwarranted**

**53.** If a panel is of the opinion that the commencement of proceedings was unwarranted, it may make an order requiring the College to pay all or part of the member's legal costs. 1991, c. 18, Sched. 2, s. 53.

### **College's costs**

**53.1** In an appropriate case, a panel may make an order requiring a member who the panel finds has committed an act of professional misconduct or finds to be incompetent to pay all or part of the following costs and expenses:

1. The College's legal costs and expenses.
2. The College's costs and expenses incurred in investigating the matter.
3. The College's costs and expenses incurred in conducting the hearing. 1993, c. 37, s. 15.

### **Decision to complainant**

**54.** A panel shall give its decision and reasons in writing to the parties and, if the matter had been referred to the Discipline Committee by the Inquiries, Complaints and Reports Committee, to the complainant in the matter. 1991, c. 18, Sched. 2, s. 54; 2007, c. 10, Sched. M, s. 41.

### **Release of evidence**

**55.** The Discipline Committee shall release documents and things put into evidence at a hearing to the person who produced them, on request, within a reasonable time after the matter in issue has been finally determined. 1991, c. 18, Sched. 2, s. 55.

### **Publication of decisions**

**56.** (1) The College shall publish a panel's decision and its reasons, or a summary of its reasons, in its annual report and may publish the decision and reasons or summary in any other publication of the College.

### **Publication of member's name**

(2) In publishing a decision and reasons or summary under subsection (1), the College shall publish the name of the member who was the subject of the proceeding if,

- (a) the results of the proceeding may be obtained by a person from the register; or
- (b) the member requests the publication of his or her name.

### **Withholding of member's name**

(3) The College shall not publish the member's name unless it is required to do so under subsection (2). 1991, c. 18, Sched. 2, s. 56.

Incapacity

### **Registrar's inquiry**

**57.** If the Registrar believes that a member may be incapacitated, the Registrar shall make inquiries he or she considers appropriate and shall report the results of the inquiries to the Inquiries, Complaints and Reports Committee. 1991, c. 18, Sched. 2, s. 57; 2007, c. 10, Sched. M, s. 42.

### **Panel shall inquire**

**58.** (1) A panel selected by the chair of the Inquiries, Complaints and Reports Committee from among the members of the Committee shall inquire into whether a member is incapacitated if,

- (a) the Inquiries, Complaints and Reports Committee receives a report from the Registrar under section 57; or
- (b) a referral is made from a panel of the Inquiries, Complaints and Reports Committee under paragraph 2 of subsection 26 (1). 2007, c. 10, Sched. M, s. 43.

### **Notice to member**

(2) The Inquiries, Complaints and Reports Committee shall give a member notice that it intends to inquire into whether the member is incapacitated. 2007, c. 10, Sched. M, s. 43.

### **Transitional**

(3) A board of inquiry that was constituted under this section, as it existed immediately before the coming into force of section 43 of Schedule M to the *Health System Improvements Act, 2007*, shall be deemed to continue to be validly constituted and to have the authority to do anything that it could have done before the coming into force of section 44 of that Schedule, and where the board of inquiry was to give a copy of a report to the Executive Committee, that Committee may continue to act with respect to that matter and shall have the authority to do anything it could have done before the coming into force of sections 44 to 47 of that Schedule. 2007, c. 10, Sched. M, s. 43.

### **Inquiries by panel**

**59.** (1) A panel shall make the inquiries it considers appropriate. 2007, c. 10, Sched. M, s. 44.

### **Physical or mental examinations**

(2) If, after making inquiries, a panel has reasonable and probable grounds to believe that the member who is the subject of the inquiry is incapacitated, the panel may require the member to submit to physical or mental examinations conducted or ordered by a health professional specified by the panel and may, subject to section 63, make an order directing the Registrar to suspend the member's certificate of registration until he or she submits to the examinations. 2007, c. 10, Sched. M, s. 44.

### **Panel's report**



**60.** The panel shall give a copy of its report and a copy of any report on an examination required under subsection 59 (2) to the member who was the subject of the inquiry. 2007, c. 10, Sched. M, s. 44.

#### **Referral to Fitness to Practise Committee**

**61.** After giving a copy of its report and copy of any report on an examination required under subsection 59 (2) to the member, the panel may refer the matter to the Fitness to Practise Committee. 2007, c. 10, Sched. M, s. 44.

#### **Interim suspension**

**62.** (1) The panel may, subject to section 63, make an interim order directing the Registrar to suspend or impose terms, conditions or limitations on a member's certificate of registration if,

- (a) it has referred a matter involving the member to the Fitness to Practise Committee; and
- (b) it is of the opinion that the physical or mental state of the member exposes or is likely to expose his or her patients to harm or injury. 1991, c. 18, Sched. 2, s. 62 (1); 2007, c. 10, Sched. M, s. 45 (1).

#### **Procedure following interim suspension**

(2) If an order is made under subsection (1) in relation to a matter referred to the Fitness to Practise Committee,

- (a) the College shall prosecute the matter expeditiously; and
- (b) the Fitness to Practise Committee shall give precedence to the matter. 1991, c. 18, Sched. 2, s. 62 (2); 2007, c. 10, Sched. M, s. 45 (2).

#### **Duration of order**

(3) An order under subsection (1) continues in force until the matter is disposed of by a panel of the Fitness to Practise Committee. 1991, c. 18, Sched. 2, s. 62 (3).

#### **Restrictions on orders**

**63.** (1) No order shall be made with respect to a member under subsection 59 (2) or 62 (1) unless the member has been given,

- (a) notice of the intention to make the order;
- (b) at least 14 days to make written submissions to the panel; and
- (c) in the case of an order under subsection 62 (1), a copy of the provisions of section 62. 2007, c. 10, Sched. M, s. 46.

#### **Extraordinary action to protect the public**

(2) Despite subsection (1), an order may be made without notice to the member, subject to the right of the member to make submissions while the suspension is in place to the panel that made the order, if the panel is of the opinion on reasonable and probable grounds that the physical or mental state of the member exposes or is likely to expose his or her patients to harm or injury and urgent intervention is needed. 2007, c. 10, Sched. M, s. 46.

#### **Panels for Fitness to Practise hearings**

**64.** (1) The chair of the Fitness to Practise Committee shall select a panel from among the members of the Committee to hold a hearing of any matter referred to the Committee by a panel of the Inquiries, Complaints and Reports Committee. 1991, c. 18, Sched. 2, s. 64 (1); 2007, c. 10, Sched. M, s. 47 (1).

### **Composition**

(2) A panel shall be composed of at least three persons, at least one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council. 1991, c. 18, Sched. 2, s. 64 (2); 2007, c. 10, Sched. M, s. 47 (2).

### **Quorum**

(3) Three members of a panel constitute a quorum. 1991, c. 18, Sched. 2, s. 64 (3).

### **Parties**

**65.** The College, the member who is alleged to be incapacitated and any other person specified by the panel are parties to a hearing. 1991, c. 18, Sched. 2, s. 65.

### **Reports of health professionals**

**66.** (1) A report prepared and signed by a health professional containing his or her findings and the facts upon which they are based is admissible as evidence at a hearing without proof of its making or of the health professional's signature if the party introducing the report gives the other parties a copy of the report at least ten days before the hearing.

### **Testimony of health professionals**

(2) A health professional may not give evidence in his or her professional capacity at a hearing unless a report, prepared and signed by the health professional containing his or her findings and the facts upon which they are based, is introduced as evidence.

### **Cross-examination**

(3) If a report described in subsection (1) is introduced by a party, the other parties may summon and cross-examine the person who prepared the report. 1991, c. 18, Sched. 2, s. 66.

### **Exception**

(4) A panel may, in its discretion, allow a party to introduce evidence that is inadmissible under this section and may make directions it considers necessary to ensure that the other parties are not prejudiced. 1998, c. 18, Sched. G, s. 18.

### **Procedural provisions**

**67.** The following provisions apply with necessary modifications to a hearing by a panel of the Fitness to Practise Committee:

1. Subsection 22 (4) (findings of fact).
2. Subsection 38 (4) (exclusion from panel).
3. Section 39 (panel members deemed to continue).
4. Section 42 (disclosure of evidence).
- 4.1 Section 42.1 (disclosure of evidence by member).
5. Section 43 (no communication by panel members).
6. Section 44 (legal advice).
7. Section 47 (sexual misconduct witnesses).
8. Section 50 (members of panel who participate).
9. Section 55 (release of evidence). 1991, c. 18, Sched. 2, s. 67; 1993, c. 37, s. 16; 2007, c. 10, Sched. M, s. 48.

### **Hearings closed**

**68.** (1) A hearing by a panel of the Fitness to Practise Committee shall, subject to subsection (2), be closed to the public. 1991, c. 18, Sched. 2, s. 68 (1); 2007, c. 10, Sched. M, s. 49 (1).

**Open on request of member in some cases**

(2) A hearing shall be open to the public if the person who is alleged to be incapacitated requests it in a written notice received by the Registrar before the day the hearing commences, unless the panel is satisfied that,

- (a) matters involving public security may be disclosed;
- (b) financial or personal matters or other matters may be disclosed at the hearing of such a nature that the harm created by disclosure would outweigh the desirability of adhering to the principle that hearings be open to the public;
- (c) a person involved in a criminal proceeding or civil suit may be prejudiced; or
- (d) the safety of any person may be jeopardized. 1991, c. 18, Sched. 2, s. 68 (2); 2007, c. 10, Sched. M, s. 49 (2).

**Orders**

**69.** (1) If a panel finds that a member is incapacitated, it shall make an order doing any one or more of the following:

- 1. Directing the Registrar to revoke the member's certificate of registration.
- 2. Directing the Registrar to suspend the member's certificate of registration.
- 3. Directing the Registrar to impose specified terms, conditions and limitations on the member's certificate of registration for a specified period of time or indefinite period of time. 1991, c. 18, Sched. 2, s. 69 (1); 2007, c. 10, Sched. M, s. 50 (1).

**Idem**

(2) In making an order under paragraph 2 or 3 of subsection (1), a panel may specify criteria to be satisfied for the removal of a suspension or the removal of terms, conditions and limitations imposed on a member's certificate of registration. 1991, c. 18, Sched. 2, s. 69 (2); 2007, c. 10, Sched. M, s. 50 (2).

**Varying**

(3) A member or the College may apply to the Fitness to Practise Committee for an order directing the Registrar to remove or modify any term, condition or limitation imposed on the member's certificate of registration as a result of paragraph 3 of subsection (1) and the chair may select a panel to deal with the application. 2007, c. 10, Sched. M, s. 50 (3).

**Limitations**

(4) The right to apply under subsection (3) is subject to any limitation in the order or to which the member consented and to any limitation made under subsection (5) in the disposition of a previous application to vary. 2007, c. 10, Sched. M, s. 50 (3).

**Limitations on applications**

(5) The panel, in disposing of an application by a member under subsection (3), may fix a period of time not longer than six months during which the member may not make a further application. 2007, c. 10, Sched. M, s. 50 (3).

Appeals to Court

## **Appeals from decisions**

**70.** (1) A party to proceedings before the Board concerning a registration hearing or review or to proceedings before a panel of the Discipline or Fitness to Practise Committee, other than a hearing of an application under subsection 72 (1), may appeal from the decision of the Board or panel to the Divisional Court.

### **Basis of appeal**

(2) An appeal under subsection (1) may be made on questions of law or fact or both.

### **Court's powers**

(3) In an appeal under subsection (1), the Court has all the powers of the panel that dealt with the matter and, in an appeal from the Board, the Court also has all the powers of the Board. 1991, c. 18, Sched. 2, s. 70.

### **No stay of certain orders pending appeal**

**71.** An order made by a panel of the Discipline Committee on the grounds of incompetence or by a panel of the Fitness to Practise Committee on the grounds of incapacity, directing the Registrar to revoke, suspend or impose terms, limitations or conditions on a member's certificate, takes effect immediately despite any appeal. 1991, c. 18, Sched. 2, s. 71.

### **No stay of certain orders pending appeal**

**71.1** Section 71 also applies to an order made by a panel of the Discipline Committee because of a finding that a member has committed sexual abuse of the kind described in subparagraph i, ii, iii or iv of paragraph 2 of subsection 51 (5). 1993, c. 37, s. 17.

### **Order where public at risk**

**71.2** If the conduct of the member exposes or is likely to expose his or her patients to harm or injury and urgent intervention is needed, the College may apply to a judge of the Superior Court of Justice for an order declaring that an order that was made by a panel of the Discipline Committee on the grounds of professional misconduct and that directs the Registrar to revoke, suspend or impose terms, conditions or limitations on a member's certificate shall take effect immediately despite any appeal and any other Act. 2007, c. 10, Sched. M, s. 51.

## **Reinstatement**

### **Applications for reinstatement**

**72.** (1) A person whose certificate of registration has been revoked or suspended as a result of disciplinary or incapacity proceedings may apply in writing to the Registrar to have a new certificate issued or the suspension removed. 1991, c. 18, Sched. 2, s. 72 (1).

### **Time of application**

(2) An application under subsection (1) shall not be made earlier than,

- (a) one year after the date on which the certificate of registration was revoked or suspended; or
- (b) six months after a decision has been made in a previous application under subsection (1). 2007, c. 10, Sched. M, s. 52.

### **Time of application, sexual abuse cases**

(3) An application under subsection (1), in relation to a revocation for sexual abuse of a patient, shall not be made earlier than,

- (a) five years after the date on which the certificate of registration was revoked; or

- (b) six months after a decision has been made in a previous application under subsection (1). 2007, c. 10, Sched. M, s. 52.

### **Notice where complainant**

(4) The Registrar shall give the complainant in the original proceeding notice of an application under subsection (1). 2007, c. 10, Sched. M, s. 52.

### **Reasons for reinstatement**

(5) The person making the application under subsection (1) shall provide reasons why the certificate should be issued or the suspension be removed. 2007, c. 10, Sched. M, s. 52.

### **Referral to Committee**

**73.** (1) The Registrar shall refer the application, if the revocation or suspension was on the grounds of,

- (a) professional misconduct or incompetence, to the Discipline Committee; or
- (b) incapacity, to the Fitness to Practise Committee.

### **Hearings**

(2) The chair of a committee to which an application is referred shall select a panel from among the members of the committee to hold a hearing of the application.

### **Procedural provisions**

(3) The following provisions apply with necessary modifications to a hearing of an application by a panel of the Discipline Committee:

1. Subsection 22 (4) (findings of fact).
2. Subsection 38 (2) (composition).
3. Subsection 38 (3) (composition).
4. Subsection 38 (5) (quorum).
5. Section 43 (no communication by panel members).
6. Section 44 (legal advice).
7. Section 45 (hearings open).
8. Section 47 (sexual misconduct witnesses).
9. Section 48 (transcript of hearings).
10. Section 50 (members of panel who participate).
11. Section 55 (release of evidence).

### **Idem**

(4) The following provisions apply with necessary modifications to a hearing of an application by a panel of the Fitness to Practise Committee:

1. Subsection 22 (4) (findings of fact).
2. Section 43 (no communication by panel members).
3. Section 44 (legal advice).
4. Section 47 (sexual misconduct witnesses).

5. Section 48 (transcript of hearings).
6. Section 50 (members of panel who participate).
7. Section 55 (release of evidence).
8. Subsection 64 (2) (composition).
9. Subsection 64 (3) (quorum).
10. Section 68 (hearings closed).

### **Order**

- (5) A panel may, after a hearing, make an order doing any one or more of the following:
1. Directing the Registrar to issue a certificate of registration to the applicant.
  2. Directing the Registrar to remove the suspension of the applicant's certificate of registration.
  3. Directing the Registrar to impose specified terms, conditions and limitations on the applicant's certificate of registration. 1991, c. 18, Sched. 2, s. 73 (1-5).

### **Limitation for sexual abuse cases**

(5.1) A panel may not make an order directing that the Registrar issue a new certificate of registration to an applicant whose certificate had been revoked for sexual abuse of a patient unless the prescribed conditions are met. 1993, c. 37, s. 19.

### **Decision**

(6) A panel that held a hearing of an application shall give its decision and reasons in writing to the applicant and the Registrar. 1991, c. 18, Sched. 2, s. 73 (6).

### **Orders without hearing**

**74.** (1) The Council or Executive Committee may, without a hearing, with respect to a person whose certificate of registration has been revoked or suspended as a result of disciplinary or incapacity proceedings, make an order doing any one or more of the following:

1. Directing the Registrar to issue a new certificate of registration to the applicant.
2. Directing the Registrar to remove the suspension of the applicant's certificate of registration.
3. Directing the Registrar to impose specified terms, conditions and limitations on the applicant's certificate of registration if an order is made under paragraph 1 or 2. 1991, c. 18, Sched. 2, s. 74.

### **Limitation**

(2) This section does not apply with respect to a revocation for sexual abuse of a patient. 1993, c. 37, s. 20.

### **Registrar's Powers of Investigation**

### **Investigators**

**75.** (1) The Registrar may appoint one or more investigators to determine whether a member has committed an act of professional misconduct or is incompetent if,

- (a) the Registrar believes on reasonable and probable grounds that the member has committed an act of professional misconduct or is incompetent and the Inquiries,

Complaints and Reports Committee approves of the appointment;

- (b) the Inquiries, Complaints and Reports Committee has received information about a member from the Quality Assurance Committee under paragraph 4 of subsection 80.2 (1) and has requested the Registrar to conduct an investigation; or
- (c) the Inquiries, Complaints and Reports Committee has received a written complaint about the member and has requested the Registrar to conduct an investigation. 2007, c. 10, Sched. M, s. 53.

### **Emergencies**

- (2) The Registrar may appoint an investigator if,
  - (a) the Registrar believes on reasonable and probable grounds that the conduct of the member exposes or is likely to expose his or her patients to harm or injury, and that the investigator should be appointed immediately; and
  - (b) there is not time to seek approval from the Inquiries, Complaints and Reports Committee. 2007, c. 10, Sched. M, s. 53.

### **Report**

(3) Where an investigator has been appointed under subsection (2), the Registrar shall report the appointment of the investigator to the Inquiries, Complaints and Reports Committee within five days. 2007, c. 10, Sched. M, s. 53.

### **Powers of investigators**

**76.** (1) An investigator may inquire into and examine the practice of the member to be investigated and has, for the purposes of the investigation, all the powers of a commission under Part II of the *Public Inquiries Act*. 1991, c. 18, Sched. 2, s. 76 (1).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed and the following substituted:**

### **Application of *Public Inquiries Act*, 2009**

(1) An investigator may inquire into and examine the practice of the member to be investigated and section 33 of the *Public Inquiries Act*, 2009 applies to that inquiry and examination. 2009, c. 33, Sched. 6, s. 84.

**See: 2009, c. 33, Sched. 6, ss. 84, 92.**

### **Reasonable inquiries**

(1.1) An investigator may make reasonable inquiries of any person, including the member who is the subject of the investigation, on matters relevant to the investigation. 2009, c. 6, s. 1.

### **Idem**

(2) An investigator may, on the production of his or her appointment, enter at any reasonable time the place of practice of the member and may examine anything found there that is relevant to the investigation. 1991, c. 18, Sched. 2, s. 76 (2); 2007, c. 10, Sched. M, s. 54.

### **Obstruction prohibited**

(3) No person shall obstruct an investigator or withhold or conceal from him or her or destroy anything that is relevant to the investigation. 1991, c. 18, Sched. 2, s. 76 (3).

### **Member to co-operate**

(3.1) A member shall co-operate fully with an investigator. 2009, c. 6, s. 1.

### **Conflicts**

(4) This section applies despite any provision in any Act relating to the confidentiality of health records. 1991, c. 18, Sched. 2, s. 76 (4).

### **Entries and searches**

77. (1) A justice of the peace may, on the application of the investigator made without notice, issue a warrant authorizing an investigator to enter and search a place and examine any document or thing specified in the warrant if the justice of the peace is satisfied that the investigator has been properly appointed and that there are reasonable and probable grounds established upon oath for believing that,

- (a) the member being investigated has committed an act of professional misconduct or is incompetent; and
- (b) there is something relevant to the investigation at the place. 2007, c. 10, Sched. M, s. 55.

### **Hours of execution**

(2) A warrant issued under subsection (1) may be executed only between 8 a.m. and 8 p.m. unless the warrant specifies otherwise. 2007, c. 10, Sched. M, s. 55.

### **Application for dwelling**

(2.1) An application for a warrant under subsection (1) to enter a dwelling shall specifically indicate that the application relates to a dwelling. 2007, c. 10, Sched. M, s. 55.

### **Assistance and entry by force**

(3) An investigator entering and searching a place under the authority of a warrant issued under subsection (1) may be assisted by other persons and may enter a place by force. 1991, c. 18, Sched. 2, s. 77 (3).

### **Investigator to show identification**

(4) An investigator entering and searching a place under the authority of a warrant issued under subsection (1) shall produce his or her identification, on request, to any person at the place. 1991, c. 18, Sched. 2, s. 77 (4).

### **Copying of documents and objects**

78. (1) An investigator may copy, at the College's expense, a document or object that an investigator may examine under subsection 76 (2) or under the authority of a warrant issued under subsection 77 (1).

### **Removal for documents and objects**

- (2) An investigator may remove a document or object described in subsection (1) if,
  - (a) it is not practicable to copy it in the place where it is examined; or
  - (b) a copy of it is not sufficient for the purposes of the investigation.

### **Return of documents and objects or copies**

(3) If it is practicable to copy a document or object removed under subsection (2), the investigator shall,

- (a) if it was removed under clause (2) (a), return the document or object within a reasonable time; or
- (b) if it was removed under clause (2) (b), provide the person who was in possession of the document or object with a copy of it within a reasonable time.



### **Copy as evidence**

(4) A copy of a document or object certified by an investigator to be a true copy shall be received in evidence in any proceeding to the same extent and shall have the same evidentiary value as the document or object itself.

### **Definition**

(5) In this section,

“document” means a record of information in any form and includes any part of it. 1991, c. 18, Sched. 2, s. 78.

### **Report of investigation**

79. The Registrar shall report the results of an investigation to,

- (a) the Inquiries, Complaints and Reports Committee if the investigator was appointed under clause 75 (1) (a) or (b) or subsection 75 (2);
- (b) the Inquiries, Complaints and Reports Committee if the investigator was appointed under clause 75 (1) (c), at the request of the Inquiries, Complaints and Reports Committee; or
- (c) the Board if the investigator was appointed under clause 75 (1) (c) by the Board exercising the Registrar’s powers under subsection 28 (6). 2007, c. 10, Sched. M, s. 56.

Quality Assurance Committee

79.1 Repealed: 2007, c. 10, Sched. M, s. 57.

### **Quality assurance program required**

80. The Council shall make regulations under clause 95 (1) (r) prescribing a quality assurance program. 1991, c. 18, Sched. 2, s. 80; 2000, c. 26, Sched. H, s. 3 (1).

### **Minimum requirements for quality assurance program**

80.1 A quality assurance program prescribed under section 80 shall include,

- (a) continuing education or professional development designed to,
  - (i) promote continuing competence and continuing quality improvement among the members,

**Note: On a day to be named by proclamation of the Lieutenant Governor, clause (a) is amended by adding the following subclause:**

(i.1) promote interprofessional collaboration,

**See: 2009, c. 26, ss. 24 (14), 27 (2).**

- (ii) address changes in practice environments, and
  - (iii) incorporate standards of practice, advances in technology, changes made to entry to practice competencies and other relevant issues in the discretion of the Council;
- (b) self, peer and practice assessments; and
- (c) a mechanism for the College to monitor members’ participation in, and compliance with, the quality assurance program. 2007, c. 10, Sched. M, s. 58.

## **Powers of the Committee**

**80.2** (1) The Quality Assurance Committee may do only one or more of the following:

1. Require individual members whose knowledge, skill and judgment have been assessed under section 82 and found to be unsatisfactory to participate in specified continuing education or remediation programs.
2. Direct the Registrar to impose terms, conditions or limitations for a specified period to be determined by the Committee on the certificate of registration of a member,
  - i. whose knowledge, skill and judgment have been assessed or reassessed under section 82 and have been found to be unsatisfactory, or
  - ii. who has been directed to participate in specified continuing education or remediation programs as required by the Committee under paragraph 1 and has not completed those programs successfully.
3. Direct the Registrar to remove terms, conditions or limitations before the end of the specified period, if the Committee is satisfied that the member's knowledge, skill and judgment are now satisfactory.
4. Disclose the name of the member and allegations against the member to the Inquiries, Complaints and Reports Committee if the Quality Assurance Committee is of the opinion that the member may have committed an act of professional misconduct, or may be incompetent or incapacitated. 2007, c. 10, Sched. M, s. 58.

## **Notice**

(2) No direction shall be given to the Registrar under paragraph 2 of subsection (1) unless the member has been given notice of the Quality Assurance Committee's intention to give direction, and at least 14 days to make written submissions to the Committee. 2007, c. 10, Sched. M, s. 58.

## **Assessors**

**81.** The Quality Assurance Committee may appoint assessors for the purposes of a quality assurance program. 1991, c. 18, Sched. 2, s. 81.

## **Co-operation with Committee and assessors**

**82.** (1) Every member shall co-operate with the Quality Assurance Committee and with any assessor it appoints and in particular every member shall,

- (a) permit the assessor to enter and inspect the premises where the member practises;
- (b) permit the assessor to inspect the member's records of the care of patients;
- (c) give the Committee or the assessor the information in respect of the care of patients or in respect of the member's records of the care of patients the Committee or assessor requests in the form the Committee or assessor specifies;
- (d) confer with the Committee or the assessor if requested to do so by either of them; and
- (e) participate in a program designed to evaluate the knowledge, skill and judgment of the member, if requested to do so by the Committee.

## **Inspection of premises**

(2) Every person who controls premises where a member practises, other than a private dwelling, shall allow an assessor to enter and inspect the premises.

### **Inspection of records**

(3) Every person who controls records relating to a member's care of patients shall allow an assessor to inspect the records.

### **Exception**

(4) Subsection (3) does not require a patient or his or her representative to allow an assessor to inspect records relating to the patient's care.

### **Conflict**

(5) This section applies despite any provision in any Act relating to the confidentiality of health records. 1991, c. 18, Sched. 2, s. 82.

### **Confidentiality of information**

**83.** (1) Except as provided in section 80.2 and in this section, the Quality Assurance Committee and any assessor appointed by it shall not disclose, to any other committee, information that,

- (a) was given by the member; or
- (b) relates to the member and was obtained under section 82. 1991, c. 18, Sched. 2, s. 83 (1); 2007, c. 10, Sched. M, s. 59 (1).

### **Exception if member gave false information**

(2) Where relevant to a proceeding before a committee, information described in subsection (1) may be disclosed to that committee for the purpose of showing that the member knowingly gave false information to the Quality Assurance Committee or an assessor. 2007, c. 10, Sched. M, s. 59 (2).

(3) Repealed: 2007, c. 10, Sched. M, s. 59 (3).

### **Use in other Committees**

(4) Information that was disclosed contrary to subsection (1) shall not be used against the member to whom it relates in a proceeding before the Discipline or Fitness to Practise Committees. 1991, c. 18, Sched. 2, s. 83 (4).

(5) Repealed: 2004, c. 3, Sched. B, s. 11 (1).

### **Quality assurance and other information**

**83.1** (1) In this section,

“disclose” means, with respect to quality assurance information, to provide or make the information available to a person who is not,

- (a) a member of the Quality Assurance Committee,
- (b) an assessor appointed by the Committee, a person engaged on its behalf such as a mentor or a person conducting an assessment program on its behalf, or
- (c) a person providing administrative support to the Committee or the Registrar or the Committee's legal counsel,

and “disclosure” has a corresponding meaning; (“divulguer”, “divulgarion”)

“proceeding” includes a proceeding that is within the jurisdiction of the Legislature and that is held in, before or under the rules of a court, a tribunal, a commission, a justice of the peace, a coroner, a committee of a College under the *Regulated Health Professions Act, 1991*, a committee of the Board under the *Drugless Practitioners Act*, a committee of the College

under the *Social Work and Social Service Work Act, 1998*, an arbitrator or a mediator, but does not include any activities carried on by the Quality Assurance Committee; (“instance”)

“quality assurance information” means information that,

- (a) is collected by or prepared for the Quality Assurance Committee for the sole or primary purpose of assisting the Committee in carrying out its functions,
- (b) relates solely or primarily to any activity that the Quality Assurance Committee carries on as part of its functions,
- (c) is prepared by a member or on behalf of a member solely or primarily for the purpose of complying with the requirements of the prescribed quality assurance program, or
- (d) is provided to the Quality Assurance Committee under subsection (3),

but does not include,

- (e) the name of a member and allegations that the member may have committed an act of professional misconduct, or may be incompetent or incapacitated,
- (f) information that was referred to the Quality Assurance Committee from another committee of the College or the Board, or
- (g) information that a regulation made under this Code specifies is not quality assurance information and that the Quality Assurance Committee receives after the day on which that regulation is made; (“renseignements sur l’assurance de la qualité”)

“witness” means a person, whether or not a party to a proceeding, who, in the course of the proceeding,

- (a) is examined or cross-examined for discovery, either orally or in writing,
- (b) makes an affidavit, or
- (c) is competent or compellable to be examined or cross-examined or to produce a document, whether under oath or not. (“témoin”) 2004, c. 3, Sched. B, s. 11 (2).

### **Conflict**

(2) In the event of a conflict between this section and a provision under any other Act, this section prevails unless it specifically provides otherwise. 2004, c. 3, Sched. B, s. 11 (2).

### **Disclosure to Quality Assurance Committee**

(3) Despite the *Personal Health Information Protection Act, 2004*, a person may disclose any information to the Quality Assurance Committee for the purposes of the committee. 2004, c. 3, Sched. B, s. 11 (2).

### **Quality assurance information**

(4) Despite the *Personal Health Information Protection Act, 2004*, no person shall disclose quality assurance information except as permitted by the *Regulated Health Professions Act, 1991*, including this Code or an Act named in Schedule 1 to that Act or regulations or by-laws made under the *Regulated Health Professions Act, 1991* or under an Act named in Schedule 1 to that Act. 2004, c. 3, Sched. B, s. 11 (2).

### **Non-disclosure in proceeding**

(5) No person shall ask a witness and no court or other body conducting a proceeding shall permit or require a witness in the proceeding to disclose quality assurance information except as

permitted or required by the provisions relating to the quality assurance program. 2004, c. 3, Sched. B, s. 11 (2).

### **Non-admissibility of evidence**

(6) Quality assurance information is not admissible in evidence in a proceeding. 2004, c. 3, Sched. B, s. 11 (2).

### **Non-retaliation**

(7) No one shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage a person by reason that the person has disclosed information to the Quality Assurance Committee under subsection (3), but a person may be disciplined for disclosing false information to the Committee. 2004, c. 3, Sched. B, s. 11 (2).

### **Immunity**

(8) No action or other proceeding may be instituted against a person who in good faith discloses information to a Quality Assurance Committee at the request of the Committee or for the purposes of assisting the Committee in carrying out its functions. 2004, c. 3, Sched. B, s. 11 (2).

Patient Relations Program

### **Patient relations program**

**84.** (1) The College shall have a patient relations program. 1991, c. 18, Sched. 2, s. 84 (1).

### **Measures for sexual abuse of patients**

(2) The patient relations program must include measures for preventing and dealing with sexual abuse of patients. 1993, c. 37, s. 22 (1); 2007, c. 10, Sched. M, s. 60 (1).

### **Same**

- (3) The measures for preventing and dealing with sexual abuse of patients must include,
- (a) educational requirements for members;
  - (b) guidelines for the conduct of members with their patients;
  - (c) training for the College's staff; and
  - (d) the provision of information to the public. 1991, c. 18, Sched. 2, s. 84 (3); 1993, c. 37, s. 22 (2); 2007, c. 10, Sched. M, s. 60 (2).

### **Report on program**

(4) The Council shall give the Health Professions Regulatory Advisory Council a written report describing the patient relation program and, when changes are made to the program, a written report describing the changes. 1991, c. 18, Sched. 2, s. 84 (4).

### **Advice to Council**

**85.** The Patient Relations Committee shall advise the Council with respect to the patient relations program. 1991, c. 18, Sched. 2, s. 85.

Reporting of Health Professionals

### **Reporting by members**

**85.1** (1) A member shall file a report in accordance with section 85.3 if the member has reasonable grounds, obtained in the course of practising the profession, to believe that another member of the same or a different College has sexually abused a patient.

**If name not known**

(2) A member is not required to file a report if the member does not know the name of the member who would be the subject of the report.

**If information from a patient**

(3) If a member is required to file a report because of reasonable grounds obtained from one of the member's patients, the member shall use his or her best efforts to advise the patient of the requirement to file the report before doing so. 1993, c. 37, s. 23.

**Reporting by facilities**

**85.2** (1) A person who operates a facility where one or more members practise shall file a report in accordance with section 85.3 if the person has reasonable grounds to believe that a member who practises at the facility is incompetent, incapacitated, or has sexually abused a patient. 1993, c. 37, s. 23; 2007, c. 10, Sched. M, s. 61.

**When non-individuals have reasonable grounds**

(2) For the purposes of subsection (1), a person who operates a facility but who is not an individual shall be deemed to have reasonable grounds if the individual who is responsible for the operation of the facility has reasonable grounds. 1993, c. 37, s. 23.

**If name not known**

(3) A person who operates a facility is not required to file a report if the person does not know the name of the member who would be the subject of the report. 1993, c. 37, s. 23.

**Requirements of required reports**

**85.3** (1) A report required under section 85.1 or 85.2 must be filed in writing with the Registrar of the College of the member who is the subject of the report. 1993, c. 37, s. 23.

**Timing of report**

(2) The report must be filed within 30 days after the obligation to report arises unless the person who is required to file the report has reasonable grounds to believe that the member will continue to sexually abuse the patient or will sexually abuse other patients, or that the incompetence or the incapacity of the member is likely to expose a patient to harm or injury and there is urgent need for intervention, in which case the report must be filed forthwith. 2007, c. 10, Sched. M, s. 62 (1).

**Contents of report**

- (3) The report must contain,
- (a) the name of the person filing the report;
  - (b) the name of the member who is the subject of the report;
  - (c) an explanation of the alleged sexual abuse, incompetence or incapacity;
  - (d) if the grounds of the person filing the report are related to a particular patient of the member who is the subject of the report, the name of that patient, subject to subsection (4). 1993, c. 37, s. 23; 2007, c. 10, Sched. M, s. 62 (2).

**Patients not named without consent**

(4) The name of a patient who may have been sexually abused must not be included in a report unless the patient, or if the patient is incapable, the patient's representative, consents in writing to the inclusion of the patient's name. 1993, c. 37, s. 23.

**If reporter providing psychotherapy**

(5) If a member who is required to file a report under section 85.1 is providing psychotherapy to the member who would be the subject of the report, the report must also contain the opinion of the member filing the report, if he or she is able to form one, as to whether or not the member who is the subject of the report is likely to sexually abuse patients in the future. 1993, c. 37, s. 23.

### **Additional reports, psychotherapy**

**85.4** (1) A member who files a report in respect of which subsection 85.3 (5) applies, shall file an additional report to the same College if the member ceases to provide psychotherapy to the member who was the subject of the first report.

### **Timing of additional report**

(2) The additional report must be filed forthwith. 1993, c. 37, s. 23.

### **Reporting by employers, etc.**

**85.5** (1) A person who terminates the employment or revokes, suspends or imposes restrictions on the privileges of a member or who dissolves a partnership, a health profession corporation or association with a member for reasons of professional misconduct, incompetence or incapacity shall file with the Registrar within thirty days after the termination, revocation, suspension, imposition or dissolution a written report setting out the reasons. 1993, c. 37, s. 23; 2000, c. 42, Sched., s. 36.

### **Same**

(2) If a person intended to terminate the employment of a member or to revoke the member's privileges for reasons of professional misconduct, incompetence or incapacity but the person did not do so because the member resigned or voluntarily relinquished his or her privileges, the person shall file with the Registrar within thirty days after the resignation or relinquishment a written report setting out the reasons upon which the person had intended to act. 1993, c. 37, s. 23.

### **Application**

(3) This section applies to every person, other than a patient, who employs or offers privileges to a member or associates in partnership or otherwise with a member for the purpose of offering health services. 1993, c. 37, s. 23.

### **Immunity for reports**

**85.6** No action or other proceeding shall be instituted against a person for filing a report in good faith under section 85.1, 85.2, 85.4 or 85.5. 1993, c. 37, s. 23.

### **Reporting by members re: offences**

**85.6.1** (1) A member shall file a report in writing with the Registrar if the member has been found guilty of an offence. 2007, c. 10, Sched. M, s. 63; 2009, c. 26, s. 24 (15).

### **Timing of report**

(2) The report must be filed as soon as reasonably practicable after the member receives notice of the finding of guilt. 2007, c. 10, Sched. M, s. 63.

### **Contents of report**

- (3) The report must contain,
- (a) the name of the member filing the report;
  - (b) the nature of, and a description of the offence;

- (c) the date the member was found guilty of the offence;
- (d) the name and location of the court that found the member guilty of the offence; and
- (e) the status of any appeal initiated respecting the finding of guilt. 2007, c. 10, Sched. M, s. 63.

### **Publication ban**

(4) The report shall not contain any information that violates a publication ban. 2007, c. 10, Sched. M, s. 63.

### **Same**

(5) No action shall be taken under this section which violates a publication ban and nothing in this section requires or authorizes the violation of a publication ban. 2007, c. 10, Sched. M, s. 63.

### **Additional reports**

(6) A member who files a report under subsection (1) shall file an additional report if there is a change in status of the finding of guilt as the result of an appeal. 2007, c. 10, Sched. M, s. 63.

### **Reporting by members re: professional negligence and malpractice**

**85.6.2** (1) A member shall file a report in writing with the Registrar if there has been a finding of professional negligence or malpractice made against the member. 2007, c. 10, Sched. M, s. 63; 2009, c. 26, s. 24 (16).

### **Timing of report**

(2) The report must be filed as soon as reasonably practicable after the member receives notice of the finding made against the member. 2007, c. 10, Sched. M, s. 63.

### **Contents of report**

- (3) The report must contain,
  - (a) the name of the member filing the report;
  - (b) the nature of, and a description of the finding;
  - (c) the date that the finding was made against the member;
  - (d) the name and location of the court that made the finding against the member; and
  - (e) the status of any appeal initiated respecting the finding made against the member. 2007, c. 10, Sched. M, s. 63.

### **Publication ban**

(4) The report shall not contain any information that violates a publication ban. 2007, c. 10, Sched. M, s. 63.

### **Same**

(5) No action shall be taken under this section which violates a publication ban and nothing in this section requires or authorizes the violation of a publication ban. 2007, c. 10, Sched. M, s. 63.

### **Additional reports**

(6) A member who files a report under subsection (1) shall file an additional report if there is a change in status of the finding made against the member as the result of an appeal. 2007, c. 10, Sched. M, s. 63.



## Funding for Therapy and Counselling

### **Funding provided by College**

**85.7** (1) There shall be a program, established by the College, to provide funding for therapy and counselling for persons who, while patients, were sexually abused by members. 1993, c. 37, s. 23.

### **Funding governed by regulations**

(2) The funding shall be provided in accordance with the regulations made under the *Regulated Health Professions Act, 1991*. 1993, c. 37, s. 23.

### **Administration**

(3) The Patient Relations Committee shall administer the program. 1993, c. 37, s. 23.

### **Eligibility**

(4) A person is eligible for funding only if,

- (a) there is a finding by a panel of the Discipline Committee that the person, while a patient, was sexually abused by a member; or
- (b) the alternative requirements prescribed in the regulations made by the Council are satisfied. 1993, c. 37, s. 23.

### **Effect of appeal**

(5) A person's eligibility for funding under clause (4) (a) is not affected by an appeal from the panel's finding. 1993, c. 37, s. 23.

### **No assessment**

(6) A person is not required to undergo a psychological or other assessment before receiving funding. 1993, c. 37, s. 23.

### **Choice of therapist or counsellor**

(7) A person who is eligible for funding is entitled to choose any therapist or counsellor, subject to the following restrictions:

1. The therapist or counsellor must not be a person to whom the eligible person has any family relationship.
2. The therapist or counsellor must not be a person who, to the College's knowledge, has at any time or in any jurisdiction been found guilty of professional misconduct of a sexual nature or been found civilly or criminally liable for an act of a similar nature.
3. If the therapist or counsellor is not a member of a regulated health profession, the College may require the person to sign a document indicating that he or she understands that the therapist or counsellor is not subject to professional discipline. 1993, c. 37, s. 23.

### **Payment**

(8) Funding shall be paid only to the therapist or counsellor chosen by the person. 1993, c. 37, s. 23.

### **Use of funding**

(9) Funding shall be used only to pay for therapy or counselling and shall not be applied directly or indirectly for any other purpose. 1993, c. 37, s. 23.

### **Same**

(10) Funding may be used to pay for therapy or counselling that was provided at any time after the sexual abuse took place. 2007, c. 10, Sched. M, s. 64.

### **Other coverage**

(11) The funding that is provided to a person shall be reduced by the amount that the Ontario Health Insurance Plan or a private insurer is required to pay for therapy or counselling for the person during the period of time during which funding may be provided for him or her under the program. 1993, c. 37, s. 23.

### **Right of recovery**

(12) The College is entitled to recover from the member, in a proceeding brought in a court of competent jurisdiction, money paid in accordance with this section for therapy or counselling for an eligible person referred to in clause (4) (a). 1993, c. 37, s. 23.

### **Person not required to testify**

(13) The eligible person shall not be required to appear or testify in the proceeding. 1993, c. 37, s. 23.

Health Profession Corporations

### **Professional corporations**

**85.8** (1) Subject to the regulations made under subsection 43 (1) of the *Regulated Health Professions Act, 1991* and the by-laws, one or more members of the same health profession may establish a health profession corporation for the purposes of practising their health profession. 2005, c. 28, Sched. B, s. 2 (1).

### **Same**

(2) The provisions of the *Business Corporations Act*, including the regulations made under that Act, that apply with respect to professional corporations apply with respect to a health profession corporation established under subsection (1). 2005, c. 28, Sched. B, s. 2 (1).

### **Notice of change of shareholder**

**85.9** A health profession corporation shall notify the Registrar within the time and in the form and manner determined under the by-laws of a change in the shareholders of the corporation who are members of the College. 2000, c. 42, Sched., s. 37; 2007, c. 10, Sched. M, s. 69.

### **Application of Act, etc.**

**85.10** The following things apply to a member who practises a health profession through a health profession corporation:

1. The *Regulated Health Professions Act, 1991* and the regulations made under that Act.
2. The health profession Act governing the member's health profession and the regulations and by-laws made under that Act. 2001, c. 8, s. 220; 2007, c. 10, Sched. M, s. 65.

### **Professional, fiduciary and ethical obligations to patients**

**85.11** (1) The professional, fiduciary and ethical obligations of a member to a person on whose behalf the member is practising a health profession,

- (a) are not diminished by the fact that the member is practising through a health profession corporation; and
- (b) apply equally to the corporation and to its directors, officers, shareholders, agents and employees. 2000, c. 42, Sched., s. 37; 2001, c. 8, s. 221 (1).

## **Investigation**

(2) Subsections (3) and (4) apply if an action or the conduct of a member practising on behalf of a health profession corporation is the subject of one of the following:

1. A complaint.
2. A mandatory report.
3. A specified allegation of professional misconduct or incompetence.
4. An investigation, review or hearing by the Board.
5. An investigation, inspection or assessment by an investigator or assessor appointed under the Code.
6. An inquiry by a panel of the Inquiries, Complaints and Reports Committee.
7. A referral to the Discipline Committee or the Fitness to Practise Committee.
8. A hearing by a committee of the college. 2001, c. 8, s. 221 (2); 2007, c. 10, Sched. M, s. 66.

## **Same**

(3) In the circumstances described in subsection (2), any power that the College may exercise in respect of the member may be exercised in respect of the health profession corporation. 2001, c. 8, s. 221 (2).

## **Liability**

(4) In the circumstances described in subsection (2), the health profession corporation is jointly and severally liable with the member for all fines, costs and expenses that the member is ordered to pay. 2001, c. 8, s. 221 (2).

## **Conflict in duties**

**85.12** If there is a conflict between a member's duty to a patient, the college or the public and the member's duty to a health profession corporation as a director or officer of the corporation, the duty to the patient, the college or the public prevails. 2001, c. 8, s. 222.

## **Restrictions apply to corporation's certificate**

**85.13** A term, condition or limitation imposed on the certificate of registration of a member practising a health profession through a health profession corporation applies to the certificate of authorization of the corporation in relation to the practice of the health profession through the member. 2000, c. 42, Sched., s. 37.

## **Prohibition, professional misconduct**

**85.14** (1) In the course of practising a health profession, a health profession corporation shall not do, or fail to do, something that would constitute professional misconduct if a member of the health profession did, or failed to do, it. 2001, c. 8, s. 223.

## **Prohibition, contraventions**

- (2) A health profession corporation shall not contravene any provision of,
- (a) the *Regulated Health Professions Act, 1991* and the regulations made under that Act; or
  - (b) the health profession Act governing the member's health profession and the regulations and by-laws made under that Act. 2001, c. 8, s. 223; 2007, c. 10, Sched. M, s. 67.

### **Prohibition, corporate matters**

(3) A health profession corporation shall not practise a health profession when it does not satisfy the requirements for a professional corporation under subsection 3.2 (2) of the *Business Corporations Act* or a requirement established under subsection 3.2 (6) of that Act. 2005, c. 28, Sched. B, s. 2 (2).

Miscellaneous

### **Right to use French**

**86.** (1) A person has the right to use French in all dealings with the College. 1991, c. 18, Sched. 2, s. 86 (1).

### **Language preferences**

(1.1) The College shall identify and record the language preference of each College member and identify the language preference of each member of the public who has dealings with the College. 2007, c. 10, Sched. M, s. 68.

### **Council to ensure right**

(2) The Council shall take all reasonable measures and make all reasonable plans to ensure that persons may use French in all dealings with the College. 1991, c. 18, Sched. 2, s. 86 (2).

### **Definition**

(3) In this section,

“dealings” means any service or procedure available to the public or to members and includes giving or receiving communications, information or notices, making applications, taking examinations or tests and participating in programs or in hearings or reviews. 1991, c. 18, Sched. 2, s. 86 (3).

### **Limitation**

(4) A person’s right under subsection (1) is subject to the limits that are reasonable in the circumstances. 1991, c. 18, Sched. 2, s. 86 (4).

### **Court orders**

**87.** The College may apply to the Superior Court of Justice for an order directing a person to comply with a provision of the health profession Act, this Code, the *Regulated Health Professions Act, 1991*, the regulations under those Acts or the by-laws made under clause 94 (1) (1.2), (1.3) (s), (t), (t.1), (t.2), (v), (w) or (y). 1991, c. 18, Sched. 2, s. 87; 1998, c. 18, Sched. G, s. 20; 2000, c. 42, Sched., s. 38; 2001, c. 8, s. 224; 2006, c. 19, Sched. C, s. 1 (1).

### **Evidence of Registrar**

**88.** A statement purporting to be certified by the Registrar under the seal of the College as a statement of information from the records kept by the Registrar in the course of his or her duties is admissible in court as proof, in the absence of evidence to the contrary, of the information in it without proof of the Registrar’s appointment or signature or of the seal of the College. 1991, c. 18, Sched. 2, s. 88.

**89.** Repealed: 2002, c. 24, Sched. B, s. 25.

**90.** Repealed: 1993, c. 37, s. 24.

**91.** Repealed: 2007, c. 10, Sched. M, s. 70.

### **Making false representations to obtain certificates**

**92.** (1) Every person who makes a representation, knowing it to be false,

- (a) for the purpose of having a certificate of registration issued is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or
- (b) for the purpose of having a certificate of authorization issued is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence. 2007, c. 10, Sched. M, s. 71.

### **Assisting the making of false representation**

(2) Every person who knowingly assists a person in committing an offence under subsection (1) is guilty of an offence and on conviction is liable,

- (a) in the case of an individual, to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or
- (b) in the case of a corporation, to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence. 2007, c. 10, Sched. M, s. 71.

### **Protection for reporters from reprisals**

**92.1** No person shall do anything, or refrain from doing anything, relating to another person's employment or to a contract providing for the provision of services by that other person, in retaliation for that other person filing a report or making a complaint as long as the report was filed, or the complaint was made, in good faith. 1993, c. 37, s. 25.

### **Offences**

**93.** (1) Every person who contravenes an order made under subsection 7 (3) or section 45 or 47, or who contravenes subsection 76 (3), 82 (2) or (3), 85.2 (1), 85.5 (1) or (2) or 85.14 (2) or section 92.1 is guilty of an offence and on conviction is liable,

- (a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or
- (b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence. 2007, c. 10, Sched. M, s. 72; 2009, c. 26, s. 24 (17).

### **Same**

(2) Every person who contravenes subsection 85.1 (1) or 85.4 (1) is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence. 2007, c. 10, Sched. M, s. 72.

### **Forms**

**93.1** The College may require that forms approved by the College be used for any purpose under the Act. 1998, c. 18, Sched. G, s. 21.

### **By-laws**

**94.** (1) The Council may make by-laws relating to the administrative and internal affairs of the College and, without limiting the generality of the foregoing, the Council may make by-laws,

- (a) adopting a seal for the College;
- (b) providing for the execution of documents by the College;

- (c) respecting banking and finance;
- (d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;
  - (d.1) respecting the election of Council members, including the requirements for members to be able to vote, electoral districts and election recounts;
  - (d.2) respecting the qualification and terms of office of Council members who are elected;
  - (d.3) prescribing conditions disqualifying elected members from sitting on the Council and governing the removal of disqualified Council members;
- (e) providing procedures for the election of the President and Vice-President of the College, the selection of the chairs of the committees, the filling of a vacancy in those offices, and setting out the duties and powers of the President, Vice-President and the chairs;
- (f) respecting the calling, holding and conducting of the Council meetings and respecting the duties of the Council's members;
- (g) respecting the calling, holding and conducting of meetings of the members;
  - (g.1) providing that a meeting of the Council or of members or a meeting of a committee or of a panel that is held for any purpose other than for the conducting of a hearing may be held in any manner that allows all the persons participating to communicate with each other simultaneously and instantaneously;
  - (g.2) prescribing what constitutes a conflict of interest for members of the Council or a committee and regulating or prohibiting the carrying out of the duties of those members in cases in which there is a conflict of interest;
- (h) providing for the remuneration of the members of the Council and committees other than persons appointed by the Lieutenant Governor in Council and for the payment of the expenses of the Council and committees in the conduct of their business;
  - (h.1) respecting the filling of vacancies on the Council or on committees;
  - (h.2) providing for the composition of committees;
  - (h.3) respecting the qualification, selection, appointment and terms of office of members of committees required by subsection 10 (1) who are not members of the Council;
  - (h.4) prescribing conditions disqualifying committee members from sitting on committees required under subsection 10 (1) and governing the removal of disqualified committee members;
- (i) providing for the appointment, powers and duties of committees other than the committees required by subsection 10 (1);
- (j) delegating to the Executive Committee powers and duties of the Council, other than the power to make, amend or revoke regulations and by-laws;
- (k) providing for a code of ethics for the members;
- (l) providing for the appointment of inspectors for the purposes of regulations made under clause 95 (1) (h);
  - (l.1) respecting the maintenance of the register kept by the Registrar and providing for the

- issuing of certificates when information contained in the register is made available to the public under section 23;
- (1.2) prescribing information as information to be kept in the register for the purposes of paragraph 14 of subsection 23 (2), designating information kept in the register as public for the purposes of subsection 23 (5), and designating information kept in the register as public for the purposes of subsection 23 (5) that may be withheld from the public for the purposes of subsection 23 (6);
  - (1.3) requiring members to give the College their home addresses and such other information as may be specified in the by-law about themselves and the places they practise the profession, the services they provide there, their participation in continuing education programs and the names, business addresses, telephone numbers and facsimile numbers of their associates, partners, employers and employees and prescribing the form and manner in which the information shall be given;
  - (1.4) respecting the duties and office of the Registrar;
  - (m) providing procedures for the making, amending and revoking of by-laws;
  - (n) prescribing forms and providing for their use;
  - (o) respecting the management of the property of the College;
  - (p) authorizing the College to make arrangements for the indemnity of members against professional liability and providing levies to be paid by members;
  - (q) respecting membership of the College in a national organization of bodies with similar functions, the payment of annual assessments and representation at meetings;
  - (r) authorizing the making of grants to advance scientific knowledge or the education of persons wishing to practise the profession, to maintain or improve the standards of practice of the profession or to provide public information about, and encourage interest in, the past and present role of the profession in society;
  - (s) requiring members to pay annual fees, fees upon application for a certificate and upon registration and fees for examinations, appeals from examinations, election recounts and continuing education programs and for anything the Registrar or a committee of the College is required or authorized to do and requiring members to pay penalties for the late payment of any fee;
  - (t) specifying the amount of any fee or penalty required under clause (s);
  - (t.1) prescribing the form and manner in which a health profession corporation shall notify the Registrar of a change in the shareholders of the corporation and the time period for doing so;
  - (t.2) requiring the payment of fees upon application for a certificate of authorization and for the issue or renewal of a certificate of authorization and specifying the amount of such fees;
  - (u) requiring persons to pay fees, set by the Registrar or by by-law, for anything the Registrar is required or authorized to do;
  - (v) requiring members to pay specified amounts to pay for the program required under section 85.7, including amounts that are different for different members or classes of

members and including amounts,

- (i) that are specified in the by-law,
  - (ii) that are calculated according to a method set out in the by-law, or
  - (iii) that are determined by a person specified in the by-law;
- (w) requiring members to participate in an arrangement set up by the College in which members pay a person such amounts as may be determined by the person for the members or for classes of members and the person pays amounts to the College to pay for the program required under section 85.7;
- (x) authorizing the Patient Relations Committee to require therapists and counsellors who are providing therapy or counselling that is funded through the program required under section 85.7 and persons who are receiving such therapy or counselling, to provide a written statement, signed in each case by the therapist or counsellor and by the person, containing details of the therapist's or counsellor's training and experience, and confirming that therapy or counselling is being provided and that the funds received are being devoted only to that purpose;
- (y) requiring members to have professional liability insurance that satisfies the requirements specified in the by-laws or to belong to a specified association that provides protection against professional liability and requiring members to give proof of the insurance or membership to the Registrar in the manner set out in the by-laws;
- (z) respecting the designation of life or honorary members of the College and prescribing their rights and privileges;
- (z.1) exempting any member or class of member from a by-law made under this section;
- (z.2) specifying or setting out anything that is required to be specified or set out under this subsection. 1991, c. 18, Sched. 2, s. 94 (1); 1998, c. 18, Sched. G, s. 22 (1-4); 2000, c. 42, Sched., s. 40; 2007, c. 10, Sched. M, s. 73 (1, 2).

### **Circulation of certain by-laws**

(2) A by-law shall not be made under clause (1) (1.2), (1.3), (s), (t), (v), (w) or (y) unless the proposed by-law is circulated to every member at least 60 days before it is approved by the Council. 1998, c. 18, Sched. G, s. 22 (5).

### **Exception**

(2.1) Despite subsection (2), the Council may, with the approval of the Minister, exempt a by-law from the requirement that it be circulated or abridge the 60-day period referred to in subsection (2) to such lesser period as the Minister may determine. 1998, c. 18, Sched. G, s. 22 (5).

### **Copies of by-laws, etc.**

(3) A copy of the by-laws and standards of practice made by the Council, and any documents that are referred to in the by-laws and regulations made by the Council shall be given to the Minister and to each member and shall be made available to the public during normal business hours in the office of the College. 2007, c. 10, Sched. M, s. 73 (3).

### **Public copies**

(3.1) Any person is entitled to a copy of any by-law, standard of practice or other document mentioned in subsection (3) on the payment of a reasonable fee, if required, to the



Registrar. 2007, c. 10, Sched. M, s. 73 (3).

### **Unanimous by-laws, etc.**

(4) A by-law or resolution signed by all the members of the Council is as valid and effective as if passed at a meeting of the Council called, constituted and held for the purpose. 1991, c. 18, Sched. 2, s. 94 (4).

### **Application**

(5) Subsections (3) and (4) apply to by-laws made under this section or under a health profession Act. 1998, c. 18, Sched. G, s. 22 (6).

### **Regulations**

**95.** (1) Subject to the approval of the Lieutenant Governor in Council and with prior review of the Minister, the Council may make regulations,

- (a) prescribing classes of certificates of registration and imposing terms, conditions and limitations on the certificates of registration of a class;
- (b) respecting applications for certificates of registration or classes of them and the issuing, suspension, revocation and expiration of the certificates or classes of them;
- (c) prescribing standards and qualifications for the issue of certificates of registration;
- (d) prescribing certain registration requirements as non-exemptible requirements for the purposes of subsection 18 (3) and 22 (8);
- (e) defining specialties in the profession, providing for certificates relating to those specialties, the qualifications for and suspension and revocation of those certificates and governing the use of prescribed terms, titles or designations by members indicating a specialization in the profession;
- (f) requiring, for purposes associated with the registration of members, the successful completion of examinations as set and approved, from time to time, by the College, other persons or associations of persons and providing for an appeal of the results of the examinations;
- (g) governing or prohibiting the delegation by or to members of controlled acts set out in subsection 27 (2) of the *Regulated Health Professions Act, 1991*;
- (h) requiring and providing for the inspection and examination of premises used in connection with the practice of the profession and of equipment, books, accounts, reports and records of members relating to their practices;
- (h.1) providing for the direct observation of a member in his or her practice, including the direct observation by inspectors of procedures, during the course of an inspection or examination provided for under clause (h);
- (i) prescribing what constitutes a conflict of interest in the practice of the profession and regulating or prohibiting the practice of the profession in cases in which there is a conflict of interest;
- (j) defining professional misconduct for the purposes of clause 51 (1) (c);
- (k) designating acts of professional misconduct that must be reported;
- (l) respecting the promotion or advertising of the practice of the profession;

- (m) respecting the reporting and publication of decisions of panels;
- (n) prescribing the standards of practice of the profession and prohibiting members from acting beyond the scope of practice of the profession in the course of practising the profession;
- (o) requiring members to keep prescribed records in respect of their practice;
- (p) regulating or prohibiting the use of terms, titles and designations by members in respect of their practices;
- (q) prescribing alternative requirements for eligibility for funding under clause 85.7 (4) (b);
- (r) prescribing a quality assurance program;
- (r.1) specifying information for the purposes of clause (g) of the definition of “quality assurance information” in subsection 83.1 (1);
- (s) respecting the giving of notice of meetings and hearings that are to be open to the public;
- (t) providing for the exemption of any member from the regulations made by the Council;
- (u) prescribing anything that is referred to in the health profession Act or this Code as being prescribed. 1998, c. 18, Sched. G, s. 23 (1); 2004, c. 3, Sched. B, s. 11 (3); 2009, c. 6, s. 2; 2007, c. 10, Sched. M, s. 74 (1).

**Note: The following apply with respect to regulations made under paragraphs 1 to 7, 14, 22, 23, 27 to 31, 31.2 to 32, 34, 35 and 38 of subsection 95 (1) that are in force immediately before the Statutes of Ontario, 1998, chapter 18, Schedule G, subsection 23 (1) comes into force:**

**Despite the coming into force of the Statutes of Ontario, 1998, chapter 18, Schedule G, subsection 23 (1) (repealing the authority under which the regulations are made), the regulations shall be deemed to continue in force until they are revoked by the authority that made them.**

**A reference to by-laws in any Act listed in Schedule 1 shall be deemed to include a reference to regulations which are deemed to continue in force. See: 1998, c. 18, Sched. G, ss. 23 (2-4), 74.**

### **Standards of practice**

(1.1) A regulation under clause (1) (n) may adopt by reference, in whole or in part and with such changes as are considered necessary, any code, standard or guideline relating to standards of practice of the profession and require compliance with the code, standard or guideline as adopted. 1998, c. 18, Sched. G, s. 23 (1).

### **Rolling incorporation**

(1.2) If a regulation under subsection (1.1) so provides, a scientific, administrative or technical document adopted by reference shall be a reference to it, as amended from time to time, and whether the amendment was made before or after the regulation was made. 2007, c. 10, Sched. M, s. 74 (2).

### **Third party external document**

(1.2.1) A document adopted under subsection (1.2) must be a document created by a recognized body and must not be a document created by the College. 2007, c. 10, Sched. M, s. 74 (2).

### **Exception**

(1.2.2) Despite subsection (1.2.1), the incorporation by reference of a document created by the College that was made before the coming into force of that subsection remains valid until it is revoked. 2007, c. 10, Sched. M, s. 74 (2).

### **Copies available for inspection**

(1.3) A copy of every code, standard or guideline adopted by reference under subsection (1.1) shall be available for public inspection during normal business hours in the office of the College and shall be posted on the College's website or be available through a hyperlink at the College's website. 2007, c. 10, Sched. M, s. 74 (2).

### **Circulation**

(1.4) A regulation shall not be made under subsection (1) unless the proposed regulation is circulated to every member at least 60 days before it is approved by the Council. 1998, c. 18, Sched. G, s. 23 (1).

### **Same**

(1.5) Subsection (1.4) does not apply to a regulation if the Minister required that the Council make the regulation under clause 5 (1) (c) of the *Regulated Health Professions Act, 1991*. 1998, c. 18, Sched. G, s. 23 (1).

### **Exception**

(1.6) Despite subsection (1.4), the Council may, with the approval of the Minister, exempt a regulation from the requirement that it be circulated or abridge the 60-day period referred to in subsection (1.4) to such lesser period as the Minister may determine. 1998, c. 18, Sched. G, s. 23 (1).

### **Adopted documents**

(1.7) Subsections (1.4) and (1.6) apply with necessary modifications to an amendment to a scientific, administrative or technical document adopted by reference under subsection (1.1). 2007, c. 10, Sched. M, s. 74 (3).

### **Quality assurance program – continuing education**

(2) Regulations made under clause (1) (r) may require members to participate in continuing education programs. 1991, c. 18, Sched. 2, s. 95 (2); 2000, c. 26, Sched. H, s. 3 (2).

(2.1), (2.2) Repealed: 2007, c. 10, Sched. M, s. 74 (4).

### **Scope of regulations**

(3) A regulation may be general or particular in its application. 1991, c. 18, Sched. 2, s. 95 (3).

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