

# Discipline Committee Process

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**Hearing Guidelines for Committee and College Staff  
Discipline Committee of the College of Optometrists of Ontario**

**Note:** These Guidelines are intended as a guide for members of College staff and members of the Discipline Committee to better understand the necessary steps in the Discipline Hearing process. They should be read in conjunction with the Rules of procedure of the Discipline Committee (the “Rules”) which are the procedural requirements for the discipline process and are more specifically geared to the conduct of the parties and their counsel.

**Pre-hearing Conference**

1. Pre-hearing conferences are required by rule 6 of the Rules of procedure of the Discipline Committee. They are informal in comparison to a hearing and their purpose is to make the hearing run more smoothly by helping the parties narrow the issues, schedule the hearing, prepare for the hearing and reach agreement, if possible, with regard to the evidence and any or all of the allegations and penalty.
2. The Chair of the Discipline Committee chooses a member to act as the Presiding Officer and this member cannot sit on the panel that presides at the hearing.
3. The Presiding Officer will consult with all the parties and the College in order to fix a date for the conference. He or she may also decide that it should be held as a teleconference.
4. The people who attend the Pre-hearing are the member, his or her lawyer, the prosecutor and the College staff instructing him or her, independent legal counsel to the Discipline Committee and the Presiding Officer.
5. Note that the Rules make it mandatory for the senior most lawyers for each side to attend. This is to ensure that if any agreements are to be negotiated, all the people are present to make that happen.
6. The parties are required by the Rules to exchange pre-hearing conference memoranda. These documents will set out the issues and evidence and give an indication of whether or not the parties have talked about settlement. They will also indicate whether the party intends to bring any motions at the hearing
7. The prosecution is required to deliver their memorandum 20 days before the date of the Pre-hearing Conference and the defence counsel must deliver it 10 days before the date. Counsel need to deliver it to each other and to the College. The hearing coordinator should forward them as they are received to the Presiding Officer.
8. The Pre-hearing should follow the procedure set out at rule 6.03 of the Rules.
9. After the Pre-hearing the Presiding Officer prepares a report (in the form provided in the Rules) which summarizes the Pre-hearing. He or she may ask the independent counsel to assist with this. It is then sent to the parties.

10. The parties may request a further Pre-hearing Conference if something new arises before the Hearing.

### **Motions**

11. Motions are a request by a party for the Discipline Committee to make a decision about something other than the allegations or penalty. Either party may bring a motion at any stage of the discipline process after the Notice of Hearing has been served. For example, a party could bring a motion to adjourn the Hearing, defence counsel could bring a motion to obtain more disclosure from the prosecution, or a motion could be brought in the hearing to exclude evidence.
12. The procedure for bringing a motion is set out in detail at rule 5 of the Rules.
13. A party bringing a motion has to deliver a notice of motion and supporting materials at least 10 days before the motion is heard. The motion may be brought in person at the Pre-Hearing or Hearing. It may also be brought by way of teleconference (or in person if the Discipline Committee so directs) at any other date provided that it has been approved by the hearing coordinator.
14. The Chair of the Discipline Committee assigns one member to hear the motion. That person will be one of the members on the Discipline Panel who presides at the hearing unless the parties ask for direction otherwise in their notice of motion or cross motion.
15. Once the decision is released, the party who brought the motion needs to prepare an order in accordance with the form in the Rules and circulate it to other party and submit it to the Discipline Committee for review and ultimately signature.

### **Prior to Hearing**

16. One member of the College staff should be assigned to handle all of the administrative details regarding for the hearing. (the "hearing coordinator")
17. Ordinarily members of the Discipline Panel will not be entitled to see any documentation with respect to the hearing prior to the hearing itself other than the Notice of Hearing.
18. The hearing coordinator should send the Notice of Hearing to the Discipline Panel at least 7 days before the hearing so that they may review it before the hearing begins.
19. If counsel for the College and counsel for the member have notified the College that they wish to file documents on consent (usually in the case of a guilty plea) and have indicated that the members of the Committee can have them prior to the hearing, then these too can be sent to the members of the Committee along with the Notice of Hearing.
20. Members of the Discipline Committee should each be provided with a legislation binder containing the following which they should bring to the hearing:

- a. The *Regulated Health Professions Act*, including Schedule 2 which is the Health Professions Procedural Code;
  - b. The Optometry Act;
  - c. Professional Misconduct Regulations;
  - d. General Regulation;
  - e. Registration Regulation;
  - f. Drug and Pharmacies Regulation Act (re Conflict of Interest); and
  - g. Rules of Procedure of the Discipline Committee of the College of Optometrists of Ontario.
21. There should be a total of 4 rooms booked at the hearing venue: the hearing room, a break out rooms for the member and his or her counsel, one for the College counsel and staff and one for the members of the Discipline Panel. If there are only 3 then the Discipline Panel can use the hearing room but any members of the public would have to move to a common area when they are meeting privately.
  22. The hearing room should have a table at the front with enough chairs for the number of panel members. There should be a separate table at the front for the court reporter and another separate table for the independent legal counsel. There should be two tables facing the panel's table with two chairs at each of them for the prosecution and the defence.
  23. Also somewhere at the front and off to one side there should be a witness table and chair.
  24. There should be pitchers of water and glasses available to all as well as tissues for the witnesses.

### **Hearing**

25. Members of the Discipline Panel should arrive at least half an hour before the start time of the hearing. This will allow time to meet with one another and the independent legal counsel to the Discipline Committee before the start of the hearing.
26. Members of the Panel should have their legislation binder as well as a block of paper or a bound notebook and ample pens.
27. To avoid the perception of any bias and/or the creation of any bias:
28. Members of the Discipline Panel and College staff and/or prosecutor should not hold any private conversations during breaks. Any conversation they do have should be restricted to non-College matters or purely administrative topics such as expenses.
29. Members of the Discipline Panel and the member and/or defence counsel should not hold any private conversations during breaks. Any conversation they do have should be restricted to non-College matters.
30. Members of the Discipline Panel should be courteous and attentive to all counsel and witnesses during the hearing and should never leave the room, talk to each other when another person is

speaking, or engage in any other activity such as reading or sending emails or texts during the course of the hearing.

31. Members of the Discipline Panel should not show any emotion, nod or shake their heads when a witness is testifying or a lawyer is speaking. This too will avoid the appearance of any bias.
32. Members of the Discipline Panel are always able to ask questions of the independent legal counsel. They may at any time during the hearing ask the independent counsel for advice and then both parties will have the right to comment on that advice. They may also ask questions of the independent counsel when the hearing is not in session but when the hearing resumes the question and advice given will be shared during the hearing and counsel have the right to respond to that advice.
33. The prosecution bears the burden of proving the case against the member and so they put their case in first. They might give an opening statement and then will proceed to introduce their case through calling witnesses or introduction documentary evidence.
34. Defence counsel may choose to make an opening statement before the prosecution calls evidence or they may choose to do it at the conclusion of the prosecution's evidence and prior to calling their own witnesses.
35. At the conclusion of the prosecution's case, the defence will call their case.
36. At the conclusion of the defence's case the prosecution may call reply evidence which can only address new matters that arose during the defence case which the prosecution did not call evidence about during their case.
37. When witnesses are called to testify the party who called them first asks questions then the other party cross examines them. The Panel may ask questions of the witness at the conclusion of the cross examination for clarification. The lawyers may then have an opportunity to ask additional questions of the witness if new information comes out in questioning from the Panel.
38. The parties may introduce documentary or other evidence. Each piece of evidence should be marked in ascending numeric order by the court reporter.
39. The party introducing the evidence should have enough copies of documentary evidence for each member of the Discipline Panel, the other counsel and the court reporter.
40. Each member of the Panel should mark their own set of exhibits and keep a list of the exhibits for reference purposes.
41. Each party will make closing remarks with the prosecution going first and the member's counsel second. The prosecution will then have the right to make reply submission which should only address new points that were made in the defence counsel's submissions.
42. If the member has pleaded guilty to the allegations, once the plea is accepted and the Discipline Panel finds the member is guilty of professional misconduct the penalty part of the hearing can take place immediately. One or both counsel may introduce evidence or they may submit

evidence jointly. Counsel will either make a joint submission on penalty if they have agreed on what the appropriate penalty ought to be or they will each make their own submission. In both cases each counsel will make submissions and the prosecution will lead, followed by defence counsel and the prosecution will have a chance to reply.

43. According to rule 12.02 the Discipline Panel can limit the length of oral submissions. In addition they can direct that the parties provide written arguments on some or all of the issues at the hearing.

### **After the Hearing on Finding**

#### **A. Reasons for Decision**

44. If the member pleaded guilty to the allegations, and the submissions on penalty were made, the Panel can proceed to write their reasons for decision for both the finding and the penalty.
45. If it is a contested hearing, as opposed to a guilty plea, then the Discipline Panel will need to make a decision and write reasons with respect to their finding on the allegations. If the member is found not guilty then the matter will be concluded. However, if the member is found guilty of one or more allegations of professional misconduct then there will need to be a hearing on penalty.
46. When the member pleaded not guilty, the Discipline Panel should meet at the conclusion of the hearing to discuss their decision if possible. This is best done immediately so that the evidence and submissions are fresh in everyone's minds.
47. Once a decision is reached one or more members of the Discipline Panel should be assigned to write the reasons with the help of the independent legal counsel.
48. The decision should then be circulated to all members of the Discipline Panel for their approval before being sent to the parties.

#### **B. Penalty Hearing**

49. The penalty hearing although shorter than the hearing on finding will proceed in the same way. The prosecution will introduce evidence and call any witnesses and then the defence will do the same. The prosecution will then make submissions on penalty followed by the defence counsel and the prosecution will have the right to reply.
50. At the conclusion of the hearing on penalty, the Discipline Panel should meet to determine the appropriate penalty. It is best if this is done immediately.
51. Once a decision is reached one or more members of the Discipline Panel should be assigned to write the reasons with the help of the independent legal counsel.
52. The decision should then be circulated to all members of the Discipline Panel for their approval before being sent to the parties.

### **C. Order and Entry in Register**

53. Once the reasons for penalty are completed and sent to the parties, the prosecutor will prepare an Order for the Discipline Committee. This is the official document which sets out the decision of the Discipline Panel stating what the finding was on the allegations and what the penalty is.
54. The prosecutor will have sent this to the defence counsel for their review and then send it to the Chair of the Discipline Panel for his or her signature.
55. The hearing coordinator needs to enter the finding of professional misconduct on the Register. The finding on penalty also needs to be entered on the Register unless the Discipline Panel has specifically ordered otherwise.



**RULES OF PROCEDURE**  
**of**  
**THE DISCIPLINE COMMITTEE**  
**of**  
**THE COLLEGE OF OPTOMETRISTS OF ONTARIO**  
**2010**

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**RULES OF PROCEDURE OF THE DISCIPLINE COMMITTEE OF  
THE COLLEGE OF OPTOMETRISTS OF ONTARIO**

**RULE 1 - INTERPRETATION AND APPLICATION**

**1.01 Definitions**

1.01 In these rules, unless the context requires otherwise,

"chair" means the chair of the full Discipline Committee or his or her designate;

"Code" means the *Health Professions Procedural Code* which is Schedule 2 to the *Regulated Health Professions Act*;

"College" means the College of Optometrists of Ontario;

"certified court reporter" is a professional court reporter that regularly records examinations in matters before the civil courts and has the appropriate credentials;

"defence counsel" means the lawyer or lawyers retained by or on behalf of a member;

"deliver" means to serve on every other party or, in the case of a motion, motion participant and to file with the discipline staff with proof of service, and "delivery" and "delivering" have corresponding meanings;

"Discipline Committee" means the Discipline Committee of the College, and includes a panel of the Discipline Committee or, where appropriate, the presiding officer;

"discipline staff" means the employee or employees of the College who are specifically assigned the duty of providing administrative assistance to the Discipline Committee;

"electronic" with respect to a proceeding means a proceeding held by telephone conference call or some other form of electronic technology allowing persons to communicate with and hear one another;

"holiday" means,

(a) any Saturday or Sunday,

(b) New Year's Day,

(c) Good Friday,

(d) Easter Monday,

(e) Victoria Day,

(f) Canada Day,

(g) Civic Holiday,

(h) Labour Day,

(i) Thanksgiving Day,

(j) Christmas Day,

(k) Boxing Day,

(l) any special holiday proclaimed by the Governor General or the Lieutenant Governor, and

(m) any other day designated by the College as a holiday,

and where New Year's Day, Canada Day, Christmas Day or Boxing Day falls on a Saturday or Sunday, the day designated by the College is a holiday;

"independent legal counsel" means the lawyer or lawyers appointed by the Discipline Committee to provide advice in accordance with section 44 of the *Code*;

"lawyer" means a person who is authorized to practise law in Ontario under the *Law Society Act*;

"member" means a member of the College who is the subject of a hearing before the Discipline Committee and includes a former member;

"motion" is a request made to the Discipline Committee to make an order in a particular proceeding;

"motion participant" is a party and any other person who would be affected by the order sought on a motion;

"order" means any decision made by the Discipline Committee and includes a direction given by the Discipline Committee;

"party" means a party under section 41 of the *Code*;

"presiding officer", in respect of a pre-hearing conference, means a member of the Discipline Committee designated by the chair to preside over the pre-hearing conference;

"proceeding" means any step in the discipline hearing process and includes a motion, a pre-hearing conference and the hearing itself; and

"prosecutor" means the lawyer or lawyers appointed by the College to prosecute allegations against one or more members before the Discipline Committee.

## **1.02 Interpretation of Rules**

1.02(1) These rules shall be liberally construed to secure a just and expeditious determination of the allegations against the member.

1.02(2) Where matters are not provided for in these rules, the practice shall be determined by analogy to them.

1.02(3) Where a member is not represented by a lawyer, anything these rules require or permit a lawyer to do shall be done by the member either personally or through his or her agent.

## **1.03 Application of Rules**

1.03 These rules apply to all proceedings before the Discipline Committee of the College including, with all necessary modifications, applications for reinstatement made under sections 72 and 73 of the *Code*.

## **RULE 2 - TIME**

### **2.01 Computation, Extension or Abridgment of Time**

2.01(1) In the computation of time under these rules or under an order, except where the contrary intention appears, (a)where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even where the words "at least" are used;

(b)where a period of less than seven days is required, holidays shall not be counted;

(c)where the time for doing an act under these rules expires on a holiday, the act may be done on the next day that is not a holiday; and

(d)service of a document made after 4:00 p.m. or at any time on a holiday shall be deemed to have been made on the next day that is not a holiday.

2.01(2) Where a time of day is mentioned in these rules, in an order or in any document in a proceeding, the time referred to shall be taken as the time observed locally.

2.01(3)The Discipline Committee may extend or abridge any time required by these rules or an order on such terms or conditions as the Discipline Committee considers just either before or after the expiration of the time.

## **RULE 3 – DOCUMENTS**

### **3.01 Form of Documents**

3.01(1)Every document prepared for the Discipline Committee shall, to the extent practical, comply with the standards and requirements for documents filed under the Rules of Civil Procedure.

3.01(2)The front and back page of documents shall be coloured as follows:

(a)buff if prepared by the prosecutor;

(b)blue if prepared by defence counsel; and

(c)green if prepared by any other person.

### **3.02 Notice to be in Writing**

3.02 Where these rules require notice to be given, it shall be given in writing.

### **3.03 Filing of Documents**

3.03(1)All documents to be filed in a proceeding shall be filed with the discipline staff, except where they are filed in the course of a proceeding.

3.03(2)Any document may be filed with the discipline staff by leaving it with a person at the College office or by mailing it or by sending it by courier to the College of Optometrists of Ontario, 65 St. Clair Ave. E., Suite 900, Toronto, Ontario, M4T 2Y3, or, if it is less than 10 pages, by facsimile to the College's facsimile number (416-962-4073).

## **RULE 4 - WAIVER OF A RULE**

### **4.01 Methods of Waiving a Rule**

4.01(1)Any provision of these rules may be waived upon an order of the Discipline Committee.

4.01(2)A party or motion participant requesting that a provision of these rules be waived shall bring a motion to the Discipline Committee permitting the waiver.

4.01(3)A motion under this rule may be made after a failure to comply with these rules has occurred.

4.01(4)The Discipline Committee may refuse to grant a motion for a waiver from a provision of these rules where a party or motion participant does not act on a timely basis.

4.01(5)The Discipline Committee may waive a provision of these rules on its own initiative if it first gives notice to the parties or motion participants and provides an opportunity for submissions to be made in writing.

## **RULE 5 - MOTIONS**

### **5.01Initiating Motions**

5.01(1)A motion shall be made by a notice of motion in accordance with Form 5A unless the nature of the motion or the circumstances make a notice of motion impractical.

5.01(2)A motion, such as a motion for disclosure, that may result in an adjournment or delay of the hearing, except a motion described in rule 8.03, shall be brought as soon as possible and shall be heard on a day that is at least two weeks before the day upon which the hearing is scheduled to commence. All other motions shall be brought at the commencement of the hearing unless the Discipline Committee directs otherwise.

5.01(3)A person bringing a motion shall deliver the notice of motion and materials in support of the motion at least 10 days before the motion is to be heard.

5.01(4)The other motion participants shall deliver their materials at least 3 days before the motion is to be heard.

### **5.02Scheduling a Motion**

5.02(1)A person bringing a motion to be heard other than at a scheduled pre-hearing conference or at a hearing shall obtain available dates and times for the hearing of the motion from the Discipline Committee by contacting the discipline staff and shall attempt to obtain agreement from the other motion participants as to a date and time for the hearing of the motion.

5.02(2)A person bringing a motion shall inform the discipline staff of the estimated length of time it will take to argue the motion when first seeking available dates and times.

5.02(3)If the person bringing the motion cannot, after reasonable efforts, obtain agreement for a date and time under subrule (1), the person shall seek directions from the Discipline Committee or, where there is insufficient time to do so, shall choose an available date and time under subrule (1).

### **5.03Evidence on Motions**

5.03(1)Evidence on a motion shall be given by affidavit unless the Discipline Committee directs that it be given in some other form or unless otherwise provided by law.

5.03(2)All affidavits used on a motion shall,

(a)be confined to the statement of facts within the personal knowledge of the deponent, except that the affidavit may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit; and

(b)be signed by the deponent and sworn or affirmed before a person authorized to administer oaths or affirmations, which person shall also mark all exhibits as such to the affidavit.

5.03(3)A motion participant may cross-examine the deponent of an affidavit filed by another motion participant.

5.03(4)The cross-examination shall take place before a certified court reporter.

5.03(5)A person who has been cross-examined on a motion may be cross-examined again at the hearing itself.

### **5.04Materials on Motions**

5.04(1)The person bringing a motion shall deliver the notice of motion and other materials in support of the motion in the form of a motion record.

5.04(2)The motion record shall contain the notice of motion, all affidavits to be relied upon and any other material to be relied upon.

5.04(3)If another motion participant intends to rely upon materials not contained in the moving party's record, the motion participant shall deliver those materials in the form of a responding motion record.

5.04(4) A motion record and responding motion record shall have consecutively numbered pages and a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter.

5.04(5) Despite subrules (2) and (3), a motion participant may deliver separately from the motion record or responding motion record a book of authorities and a factum consisting of a concise statement of the facts and law relied on by the motion participant.

#### **5.05 Assigning a Motion Panel**

5.05(1) The chair shall, in accordance with section 4.2 of the *Statutory Powers Procedure Act*, assign a panel of one or more members of the Discipline Committee to hear each motion. The quorum of a panel to hear a motion is one.

5.05(2) A motion participant who believes that the motion ought to be heard by members of the Discipline Committee who will not sit on the hearing panel shall request a direction from the motion panel on the matter in the notice of motion or a notice of cross-motion.

#### **5.06 Hearing Motions Electronically**

5.06 Motions other than motions brought at a scheduled pre-hearing conference or at a hearing shall be heard electronically in accordance with these rules unless the Discipline Committee directs otherwise.

#### **5.07 Written Order**

5.07(1) Immediately after a motion has been determined, the motion participant initiating the motion shall, and any other motion participant affected by an order may, prepare a draft of the formal order and deliver it.

5.07(2) The order shall be in accordance with Form 5B.

5.07(3) After providing a reasonable opportunity for the other motion participants to comment in writing on the draft order, it shall be reviewed, amended if necessary and signed by a representative of the Discipline Committee.

5.07(4) This rule does not apply to orders made on the record during the hearing.

#### **5.08 Renewing or Rearguing a Motion**

5.08(1) A motion participant shall not renew or reargue a matter that has previously been determined on a motion unless permission has been obtained from the Discipline Committee by means of written submissions.

5.08(2) Despite subrule (1), a motion participant may renew or reargue a matter that has previously been determined on a motion if that is provided for in the order of the panel hearing the motion.

### **RULE 6 - PRE-HEARING CONFERENCES**

#### **6.01 Initiating Pre-hearing Conferences**

6.01(1) By standing order, the Discipline Committee directs the parties to participate in a pre-hearing conference.

6.01(2) The chair shall designate a member of the Discipline Committee who is not a member of the hearing panel to act as the presiding officer.

6.01(3) The presiding officer shall, after consultation with the discipline staff, defence counsel and the prosecutor, schedule a date for the pre-hearing conference to be held and shall notify the parties of the date.

6.01(4) The senior prosecutor and the member and, where the member is represented by counsel, the senior defence counsel shall attend at the pre-hearing conference.

6.01(5) The presiding officer may direct a pre-hearing conference to be held electronically.

#### **6.02 Pre-hearing Conference Memorandum**

6.02(1) The parties shall complete a pre-hearing conference memorandum in accordance with Form 6A to the satisfaction of the presiding officer.

6.02(2) The prosecutor shall deliver its pre-hearing conference memorandum 20 days before the date of the conference and defence counsel shall deliver its pre-hearing conference memorandum 10 days before the date of the conference.

6.02(3)Where the presiding officer concludes that a pre-hearing conference memorandum is inadequate for the most effective use of the pre-hearing conference, he or she may require the party to deliver a more adequate memorandum by a specified date and may adjourn the date of the conference.

### **6.03 Procedure at Pre-hearing Conference**

6.03(1)At the pre-hearing conference, the presiding officer shall first discuss the following with the parties on a without prejudice basis:

- (a)whether any or all of the issues can be settled;
- (b)whether the issues can be simplified;
- (c)whether there are any agreed facts; and
- (d)the advisability of attempting other forms of resolution of the matter.

6.03(2)After the discussion referred to in subrule (1), the presiding officer shall discuss with the parties and then may give directions or make orders about the following:

- (a)the scheduling of any motions that can be heard before the hearing;
- (b)the content and timing of any additional disclosure;
- (c)the delivery and form of any documents to be used at the hearing and whether the documents can appropriately be reviewed by the Discipline Committee before the commencement of the hearing;
- (d)the delivery of written arguments and books of authorities and whether these can appropriately be reviewed by the Discipline Committee before the commencement of the hearing;
- (e)the scheduling of the hearing;
- (f)the scheduling of any motions that cannot be heard before the commencement of the hearing;
- (g)when the witnesses to be called at the hearing must be available to testify;
- (h)the use and scheduling of panels of expert witnesses; and
- (i)any other matter that may assist in the just and most expeditious disposition of the proceeding.

6.03(3)The presiding officer shall prepare a report after the pre-hearing conference in accordance with Form 6B listing every agreement reached under subrule (1), every agreement reached, direction given or order made under subrule (2) and every undertaking given by the parties and shall send a copy of the report to the parties.

6.03(4)If a party becomes aware of additional circumstances that would materially affect the conduct of the hearing before the commencement of the hearing, the party shall immediately deliver a written notice of the circumstances and the presiding officer may schedule a supplementary pre-hearing conference.

6.03(5)The provisions of Rule 6 apply to further or supplementary pre-hearing conferences with necessary modifications.

### **6.04 Motions at the Pre-hearing Conference**

6.04 A party may bring a motion to be heard at the pre-hearing conference in accordance with Rule 5.

## **RULE 7 - ELECTRONIC HEARINGS AND PROCEEDINGS**

### **7.01 Procedure on Electronic Proceedings**

7.01(1)This rule applies to any proceeding held electronically, particularly motions and pre-hearing conferences, under these rules or at the direction of the Discipline Committee.

7.01(2)At least 48 hours before an electronic proceeding is scheduled to commence, every person participating in the proceeding shall give notice to the discipline staff of the telephone number where he or she can be reached for the proceeding.

7.01(3)Unless otherwise provided in the rules, every person participating in the proceeding shall deliver every document, in consecutively numbered pages, he or she intends to rely upon at least 3 days before the proceeding.

7.01(4)Every person participating in the proceeding shall ensure that he or she, as arranged by the discipline staff, calls in to the number provided by the discipline staff or can be reached at the telephone number provided to the discipline staff beginning at five minutes before the proceeding is scheduled to commence.

## **RULE 8 - DISCLOSURE AND PRODUCTION**

### **8.01 Disclosure**

8.01(1) By standing order, the Discipline Committee directs the College to make disclosure to the member of all relevant information that is not privileged.

8.01(2) If the prosecutor directly or indirectly communicates information to a witness that was obtained on a without prejudice basis, the prosecutor shall promptly disclose the communication to defence counsel.

8.01(3) The member shall make disclosure in accordance with s. 42.1 of the *Health Professions Procedural Code*<sup>1</sup> or as directed by the pre-hearing conference officer.

8.01(4) If a party fails to make proper disclosure, another party may comment on that fact during the hearing if the failure to disclose might be relevant to the Discipline Committee's consideration of the evidence.

8.01(5) Any person who receives disclosure relating to a proceeding before the Discipline Committee, whether under these rules or otherwise, shall only use the information for the purposes of the proceeding, and shall not use it for any other purpose. The person shall also ensure that any other person to whom he or she gives the information undertakes to similarly restrict the use of the information.

### **8.02 Motions for Disclosure**

8.02(1) All motions for disclosure shall be brought in accordance with subrule 5.01(2) unless special circumstances require that the motion be brought later.

8.02(2) The Discipline Committee may, to protect the privacy of any person, impose terms or conditions upon the extent and method of disclosure or the use of the information disclosed.

### **8.03 Production of Documents**

8.03(1) A summons for the production of documents that are not in the possession of a party shall not require the production of any documents before the commencement of the hearing.

8.03(2) A motion relating to the production of documents that will likely require the examination of the documents by the Discipline Committee, including motions to which the provisions of the *Mental Health Act* or the *Personal Health Information Protection Act, 2004* may apply, shall not be heard until the commencement of the hearing.

8.03(3) Notice of a motion relating to the production of documents shall be served on the person possessing the documents and on any other person with a significant interest, including a privacy interest, in the documents.

## **RULE 9 - TAKING EVIDENCE BEFORE THE HEARING**

### **9.01 Initiating the Taking of Evidence Before the Hearing**

9.01(1) A party who intends to introduce the evidence of a person at the hearing and who has made all required disclosure in respect of the evidence of that witness may, with the consent of the parties or by order of the Discipline Committee, examine the witness on oath or affirmation before the hearing for the purpose of having the witness' testimony available to be tendered as evidence at the hearing.

9.01(2) The Discipline Committee may make an order under subrule (1) if it is satisfied that the order would not cause significant prejudice to a party and would not prevent the Discipline Committee from fully and fairly understanding the evidence.

<sup>1</sup> Section 42.1 of the *Code* reads as follows:

#### **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.



9.01(3)The party who intends to introduce the evidence of the witness shall ensure that the examination is recorded, at the party's cost, by a certified court reporter or a person with similar qualifications acceptable to the Discipline Committee and shall deliver a copy of the transcript of the evidence at least 3 days before the hearing is scheduled to commence.

9.01(4)The party who intends to introduce the evidence of the witness shall also ensure that the examination is videotaped, at the party's cost, unless the parties consent or the Discipline Committee orders otherwise and shall file a copy of the videotape at least 3 days before the hearing is scheduled to commence.

9.01(5)The examination shall take place at the date, time and place consented to or ordered by the Discipline Committee.

9.01(6)The Discipline Committee may impose terms or conditions in the order for an examination including a term or condition that the party intending to call the witness pay for the reasonable travel expenses of the lawyers for the other parties and the member (where the member is not the party intending to call the witness).

### **9.02 Procedure at the Examination**

9.02(1)A witness examined under subrule 9.01(1) may, after being sworn or affirmed by a person authorized to do so, be examined, cross-examined and re-examined in the same manner as a witness at a hearing.

9.02(2)Where a question is objected to, the objector shall state briefly the reason for the objection, and the question and the brief statement shall be recorded.

9.02(3)The party objecting to a question may, after the objection, permit the question to be answered subject to a ruling being obtained from the Discipline Committee before the evidence is used at a hearing.

9.02(4)A ruling on the propriety of a question that is objected to and not answered may be obtained on motion to the Discipline Committee.

9.02(5)Where the question is not answered under subrule (3) and the objection is found not to be valid, the person who objected shall ensure that the witness is produced at the expense of the person who objected for another examination before the hearing or at the hearing to answer the question.

9.02(6)Any document used during the examination that is intended to be filed as an exhibit at the hearing shall be marked at the examination by the person introducing it so it can be identified later and the person introducing it shall deliver a copy of it.

### **9.03 Use of Examination at the Hearing**

9.03(1)At the hearing, any party may use the transcript and videotape of an examination made under this rule as the evidence of the witness unless the Discipline Committee orders otherwise.

9.03(2)A witness who has been examined under this rule shall not be called to give evidence at the hearing except on the order of or at the request of the Discipline Committee.

9.03(3)Where a witness is ordered or requested to give evidence at the hearing under subrule (2), the party who tendered the evidence under subrule (1) shall arrange for the witness to attend at the party's expense.

9.03(4)The transcript and any videotape need not be read or played during the hearing with the parties present unless a party or the Discipline Committee requires the reading of a transcript or the playing of a videotape.

9.03(5)Where the reading of a transcript or the playing of a videotape is required under subrule (4), the party who initiated the examination under subrule 9.01(1) shall conduct the reading or playing during the presentation of that party's case unless the Discipline Committee orders otherwise.

## **RULE 10 - NON-PARTY PARTICIPATION**

### **10.01 General Non-Party Participation**

10.01(1)A person including an unincorporated association who is not a party who wishes to participate in the hearing shall bring a motion in accordance with these rules and, despite rule 5.05, the chair shall assign the panel that will be conducting the hearing to hear the motion.

10.01(2)The notice of motion shall set out the extent of participation the person proposes to have in the hearing and shall be accompanied by the evidence upon which the person intends to rely in support of the motion and written submissions in support of the motion.

10.01(3) If the Discipline Committee allows the person to participate in the hearing, the person shall comply with the rules as much as is practical unless to do so would be inconsistent with the Discipline Committee's determination of the extent of the person's participation in the hearing.

10.01(4) If the Discipline Committee allows the person to participate in the hearing, the other parties shall apply the rules to the person as much as is practical unless to do so would be inconsistent with the Discipline Committee's determination of the extent of the person's participation in the hearing.

### **10.02 Notice of Constitutional Questions**

10.02(1) Where a party intends to raise a question about the constitutional validity or applicability of legislation, a regulation or by-law made under legislation, or a rule of common law, or where a party claims a remedy under subsection 24(1) of the *Canadian Charter of Rights and Freedoms*, notice of a constitutional question shall be delivered and shall also be served on the Attorneys General of Canada and Ontario as soon as the circumstances requiring notice become known and, in any event, at least 15 days before the question is to be argued.

10.02(2) Where the Attorneys General of Canada and Ontario are entitled to notice, he or she or both of them are entitled to adduce evidence and to make submissions to the Discipline Committee regarding the constitutional question.

## **RULE 11 – EXPEDITED HEARINGS**

### **11.01 Requesting Expedited Hearings**

11.01 A party can request, by motion, that the Discipline Committee expedite a hearing where circumstances warrant one.

## **RULE 12 - PROCEDURE DURING THE HEARING**

### **12.01 Electronic Devices and Publication of Proceedings**

12.01(1) No person shall:

(a) take or attempt to take a photograph, motion picture, audio or video recording or other record capable of producing visual or aural representations by any means,

(i) of any person at a hearing of the Discipline Committee,

(ii) of any person entering or leaving a hearing of the Discipline Committee, or

(iii) of any person in the building in which a hearing of the Discipline Committee is held, where there is

a reasonable ground for believing that the person is there for the purpose of attending the hearing; or

(b) publish, broadcast, reproduce or otherwise disseminate a photograph, motion picture, audio or video recording or other record taken in contravention of clause (a).

12.01(2) Subrule (1) does not apply to:

(a) a person unobtrusively making handwritten or typewritten notes or sketches at a hearing;

(b) a party or an agent or lawyer representing a party unobtrusively making an audio recording at a hearing that is used only as a substitute for handwritten or typewritten notes for the purposes of the hearing;

(c) a person taking a photograph, motion picture, audio or video recording or other record with the authorization of the Discipline Committee for any purpose of the hearing;

(d) a person taking a photograph, motion picture, audio or video recording or other record with the authorization of the Discipline Committee and the consent of the parties and of the witnesses to be recorded, for such educational or instructional purposes as the Discipline Committee approves; or

(e) a disabled person using a device to compensate for a disability.

### **12.02 Oral and Written Argument**

12.02(1) The Discipline Committee may place reasonable limits on the length of oral submissions.

12.02(2)The Discipline Committee may, after hearing submissions, order the parties to submit written arguments on some or all of the issues at the hearing and may give directions as to the form, length and timing of such written arguments.

### **RULE 13 - GIVING NOTICE OF FINAL DECISION**

#### **13.01 Methods of Giving Notice of Final Decision**

13.01(1)In addition to the methods described in section 18 of the *Statutory Powers Procedure Act*, the Discipline Committee may send each party a copy of its final decision or order, including the reasons if any have been given,

- (a)by courier; or
- (b)by personal service.

13.01(2)If a copy is sent by courier, it shall be sent to the most recent address known to the Discipline Committee and shall be deemed to be received by the party on the day the copy is signed for by a person who appears to be employed at or reside at that address.

### **RULE 14 - COSTS**

#### **14.01 Costs for Non-compliance with Rules**

14.01 Where the Discipline Committee is entitled to order the payment of costs or expenses by a party, the Discipline Committee may consider the failure of a party to comply with these rules.

#### **14.02 Costs Against the College**

14.02 Where the member seeks costs against the College pursuant to section 53 of the *Code*, the Discipline Committee may direct that the issue be dealt with by a motion conducted separately from the hearing under Rule 5 with any necessary modifications.

#### **14.03 Costs Against the Member**

14.03 Where the College seeks costs and expenses<sup>2</sup> against the member pursuant to section 53.1 of the *Code*, the Discipline Committee may direct that the issue be dealt with by a motion conducted separately from the hearing under Rule 5 with any necessary modifications.

#### **14.04 Costs Against Either Party**

14.04(1)The Discipline Committee may order a party to pay part or all of the costs of another party where the conduct or course of conduct of a party has been unreasonable, frivolous or vexatious or a party has acted in bad faith.

14.04(2)Where a party seeks costs against another party under subrule (1), the Discipline Committee may direct that the issue be dealt with by a motion conducted separately from the hearing under Rule 5 with any necessary modifications.

#### **14.05 Procedure for Requesting Costs**

14.05(1)A party specified in rules 14.02, 14.03 or 14.04 requesting an order for costs or expenses shall, where practicable, deliver a detailed written explanation of the basis upon which the costs or expenses requested are calculated.

14.05(2)Where the request for costs or expenses includes disbursements or out-of-pocket expenses, these may be proved by delivering a copy of any invoice or receipt with or without a supporting affidavit.

14.05(3)The Discipline Committee may direct that the amount of costs and expenses be calculated at a motion conducted separately from the hearing under Rule 5 with any necessary modifications.

### **RULE 15 - REINSTATEMENT APPLICATIONS**

#### **15.01 Initiating Reinstatement Applications**

15.01(1)This rule applies to applications for reinstatement made under sections 72 and 73 of the *Code*.

15.01(2)A member making an application for reinstatement shall deliver a notice of the application specifying the order sought, the reasons for the application, the documentary and oral evidence that the member will introduce and the anticipated length of the hearing.

<sup>2</sup> Section 53.1 of the *Health Professions Procedural Code* authorizes the Discipline Committee to award both costs and expenses. The other provisions under both the *Health Professions Procedural Code* and the *Statutory Powers Procedure Act* only authorize the ordering of costs in those contexts.

15.01(3)Unless the Discipline Committee directs otherwise, the member making an application for reinstatement shall deliver copies of the record of the original hearing and the record of any previous applications for reinstatement, copies of the transcript of the original hearing and any previous applications for reinstatement (whether or not the transcript has previously been ordered), and copies of any document the member will introduce.

15.01(4)The discipline staff shall not schedule a reinstatement application for a hearing until the member complies with subrules (2) and (3).

15.01(5)When a reinstatement application has been scheduled, the Discipline Committee shall serve a notice of hearing on the parties.

FORM 5A - NOTICE OF MOTION

---

[General Heading]

**NOTICE OF MOTION**

**THE [IDENTIFY MOVING MOTION PARTICIPANT] WILL** make a motion to the Discipline Committee of the College of Optometrists of Ontario on [day], [date], at [time], or as soon after that time as the motion can be heard, at [insert address or that the matter will be heard electronically with details of the manner in which it will be held], Toronto, Ontario. [Choose one of the following if the motion is to be heard electronically: "This motion deals only with procedural matters." or "If a party satisfies the Discipline Committee on a motion brought under Rule 5 of the Rules of Procedure of the Discipline Committee that holding the hearing as an electronic hearing is likely to cause the party significant prejudice, the party may require the Discipline Committee to hold the hearing of this motion as an oral hearing."] If you do not participate in the hearing in accordance with this notice, the Discipline Committee may proceed without you and you will not be entitled to any further notice in the proceeding.

**THE MOTION IS FOR** [state here the precise relief sought].

**THE GROUNDS FOR THE MOTION ARE** [specify the grounds to be argued, including a reference to any statutory provision or rule to be relied on].

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL** be used at the hearing of the motion: [list the affidavits or other documentary evidence to be relied on].

[Date]

[Name, address, telephone and facsimile numbers of moving motion participant's lawyer or moving motion participant]

TO: [Name, address, telephone and facsimile numbers of responding motion participant's lawyer or responding motion participant]

FORM 5B - ORDER

File No. \_\_\_\_\_

DISCIPLINE COMMITTEE OF THE  
COLLEGE OF OPTOMETRISTS OF ONTARIO

[names of panel members] )  
 ) [day and date of order]  
 )

BETWEEN:

COLLEGE OF OPTOMETRISTS OF ONTARIO

- and -

[NAME OF MEMBER]

**ORDER**

**THIS MOTION**, made by [identify moving motion participant] for [state the relief sought in the notice of motion, except to the extent that it appears in the operative part of the order], was heard this day [or heard on (date)], at [insert address], Toronto, Ontario [or by conference call].

**ON READING** the [give particulars of the material filed on the motion] and on hearing the submissions of counsel for [identify motion participants], [where applicable, add "(identify motion participant) appearing in person" or "no one appearing for (identify motion participant), although properly served as appears from (indicate proof of service)"],

1. **THE DISCIPLINE COMMITTEE ORDERS** that ...
2. **THE DISCIPLINE COMMITTEE ORDERS** that ...

\_\_\_\_\_  
[signature of chair]

**FORM 6A - PRE-HEARING CONFERENCE MEMORANDUM**

---

*[General Heading]*

**PRE-HEARING CONFERENCE MEMORANDUM  
OF THE COLLEGE  
[OR OF THE MEMBER, AS THE CASE MAY BE]**

***Date of Pre-Hearing Conference:***

***Prosecutor:***

***Defence Counsel:***

---

**BACKGROUND INFORMATION**

1. Please attach a copy of the notice of hearing to this memorandum.
2. Set out a brief statement of the theory of the College's case as you understand it, including factual contentions.
3. Set out a brief statement of the theory of the Member's case as you understand it, including factual contentions.
4. Provide a description of the legal issues to be determined at the hearing.
5. For every witness you may call at the hearing, set out or attach a statement of the substance of the evidence of the witness.
6. Attach a copy of any document that would assist the pre-hearing conference to be more effective.

**SETTLEMENT AND AGREEMENTS**

7. What are the prospects for settlement?
8. Have counsel discussed the matter and sought instructions?
9. Would this be a suitable case to attempt informal resolution?
10. Set out the facts in numbered paragraphs that you believe should be agreed to.
11. Set out a numbered list of documents that you believe should be admitted on agreement.

**ADDITIONAL STEPS BEFORE THE HEARING**

12. On the subject of motions:

- Will you be bringing any motions before or during the hearing?
- If so, what order will you seek and on what grounds?
- When do you intend to bring each motion?
- Are there any issues with respect to disclosure?
- Has the College made full disclosure to the member?
- Have you produced all of the expert reports upon which you intend to rely?
- If you have not yet made all required disclosure, why not and by what date will it be done?

13. On the subject of a documents brief:

- Who will prepare and deliver a brief containing the notice of hearing, the documents admitted by agreement, and the presiding officer's report?
- By what date will the brief be delivered?
- Should the Discipline Committee be able to review the brief before the hearing?

14. On the subject of written arguments:

- Are there any issues which should be the subject of written argument? If so, identify them.
- When should the written arguments be delivered by?
- Should the Discipline Committee be able to review the written arguments before the hearing?

15. On the subject of a book of authorities:

- Will you be referring to any authorities other than the *Statutory Powers Procedure Act*, the *Regulated Health Professions Act*, the *Health Professions Procedural Code* and the regulations defining professional misconduct? If so, list them.
- Should those authorities be copied for the Discipline Committee or for independent legal counsel?
- If so, who should prepare the authorities brief and when should it be delivered?
- Should the Discipline Committee or independent legal counsel be able to review the authorities brief before the hearing?



## PLANNING THE HEARING

16. On the subject of scheduling the hearing:

- Are you ready for the hearing?
- Are there any special considerations affecting the setting of a date arising from the availability of witnesses or otherwise?
- How long will the hearing last?
- Other than the motions listed above, the witnesses listed above and the normal submissions, is there anything else that will have to be dealt with during the hearing itself?
- Estimate the length of time it will take to dispose of any motions you will bring during the hearing including adequate time for deliberation by the Discipline Committee:
- In numbered paragraphs, list your witnesses in the order that you will call them and estimated length of time it will take to hear their entire evidence, including cross-examination and questions from the Discipline Committee:

<u>Number</u>	<u>Witness' Name</u>	<u>Estimated Time</u>
1.		
2.		
3.		

- Is there any reason why the witness list cannot be circulated to the Discipline Committee?
- How long will it take you to make your opening and closing submissions on the issue of finding?

17. Do you believe the Discipline Committee would be assisted by hearing expert evidence by a panel of experts on any particular issue?

[Date]  
the hearing]

[Signature of most responsible counsel who will be attending at  
the hearing]

FORM 6B - REPORT OF PRESIDING OFFICER

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[General Heading]

**REPORT OF PRESIDING OFFICER**

A pre-hearing conference was held in this matter on [date]. In attendance were [list people and their capacity].

**Agreements**

The parties agreed that the following facts can be assumed to be correct for the purpose of the hearing:  
[list facts]

The parties agreed that the following documents can be admitted in the hearing on consent:  
[list documents]

**Directions and Orders**

The outstanding pre-hearing motions and the dates that they will be heard are as follows:

<u>Number</u>	<u>Nature of Motion</u>	<u>Date to be Heard</u>
1.		

The following motions will be argued at the hearing itself:

<u>Number</u>	<u>Nature of Motion</u>	<u>Estimate Length of Argument</u>
1.		

Other than for information that is discovered after the conference, disclosure is now complete [or will be completed by (date)].

The following documents brief(s) will be delivered before the hearing:

<u>Number</u>	<u>Description</u>	<u>Party Preparing</u>	<u>Date to be Delivered</u>
1.			

The Discipline Committee may/should not [choose one] review them before the hearing.

The following written arguments and book of authorities will be delivered before the hearing:

<u>Number</u>	<u>Description</u>	<u>Party Preparing</u>	<u>Date to be Delivered</u>
1.			

The Discipline Committee may/should not [choose one] review them before the hearing.

The hearing is scheduled to begin on [date] for [number] day(s).

The proposed schedule for the hearing is as follows:

<u>Date</u>	<u>Motions/Arguments/Witnesses</u>	<u>Estimated Length of Time</u>
-------------	------------------------------------	---------------------------------

The witnesses will be immediately available when their evidence is reached on the day scheduled for their testimony and will be available on any following days. There are no other matters anticipated to occur during the hearing itself.

**Other Matters**

*[Insert any other matters the parties should be aware of]*

The parties are reminded of the provisions of subrule 6.03(4) regarding notifying the presiding officer of any circumstances that would materially affect the conduct of the hearing.

*[Date]*

*[Signature of Presiding Officer]*

To: *[list parties' counsel]*

## Regulated Health Professions Act, 1991

### S.O. 1991, CHAPTER 18

**Consolidation Period:** From January 1, 2018 to the [e-Laws currency date](#).

Last amendment: 2017, c. 25, Sched. 9, s. 115.

Legislative History: 1993, c. 37; 1996, c. 1, Sched. G, s. 27; 1998, c. 18, Sched. G, s. 1-23; 2000, c. 26, Sched. H, s. 3; 2000, c. 42, Sched., s. 29-40; 2001, c. 8, s. 217-225; 2002, c. 24, Sched. B, s. 25; 2004, c. 3, Sched. B, s. 11; 2005, c. 28, Sched. B, s. 2; 2006, c. 19, Sched. C, s. 1 (1); 2006, c. 19, Sched. L, s. 10, 11 (2); 2006, c. 27, s. 18; 2006, c. 31, s. 35; 2006, c. 35, Sched. C, s. 116; 2007, c. 10, Sched. B, s. 21; 2007, c. 10, Sched. L, s. 32; 2007, c. 10, Sched. M; 2007, c. 10, Sched. O, s. 14; 2007, c. 10, Sched. P, s. 20; 2007, c. 10, Sched. Q, s. 14; 2007, c. 10, Sched. R, s. 19; 2008, c. 18; 2009, c. 6; 2009, c. 24, s. 33; 2009, c. 26, s. 24; 2009, c. 33, Sched. 6, s. 84; 2009, c. 33, Sched. 18, s. 17 (2), 29; 2010, c. 15, s. 241; Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006*; 2013, c. 9; 2014, c. 14, Sched. 2, s. 9-12; 2015, c. 8, s. 38; 2015, c. 18, s. 2, 3; 2015, c. 30, s. 28; 2016, c. 6, Sched. 1, s. 4; 2017, c. 2, Sched. 9, s. 10-12; 2017, c. 11, Sched. 5; 2017, c. 25, Sched. 6, s. 17; 2017, c. 25, Sched. 9, s. 115.

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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 health information” has the same meaning as in section 4 of the *Personal Health Information Protection Act, 2004*; (“renseignements personnels sur la santé”)

“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); 2017, c. 11, Sched. 5, s. 1.

## 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).

## Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. G, s. 1 - 01/02/1999

2000, c. 42, Sched., s. 29 - 01/11/2001

2006, c. 19, Sched. L, s. 11 (2) - 22/06/2006

2007, c. 10, Sched. M, s. 1 - 04/06/2007

2009, c. 33, Sched. 18, s. 17 (2) - 15/12/2009

2017, c. 11, Sched. 5, s. 1 - 30/05/2017

### **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 co-ordinated 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).

### **Section Amendments with date in force (d/m/y)**

2009, c. 26, s. 24 (1) - 15/12/2009

### **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. 2014, c. 14, Sched. 2, s. 9.

### **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).

## **Section Amendments with date in force (d/m/y)**

2009, c. 26, s. 24 (2) - 15/12/2009

2014, c. 14, Sched. 2, s. 9 - 01/08/2016

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

**5.1** The *Fair Access to Regulated Professions and Compulsory Trades Act, 2006* does not apply to any College. 2006, c. 31, s. 35 (1); 2017, c. 2, Sched. 9, s. 10.

## **Section Amendments with date in force (d/m/y)**

2006, c. 31, s. 35 (1) - 01/03/2007

2017, c. 2, Sched. 9, s. 10 - 22/03/2017

## ***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).

## **Section Amendments with date in force (d/m/y)**

2009, c. 24, s. 33 (1) - 15/12/2009

## **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).

### **Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. G, s. 2 (1, 2) - 01/02/1999

2007, c. 10, Sched. M, s. 2 (1, 2) - 04/06/2009

2009, c. 26, s. 24 (3) - 15/12/2009

## **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).

### **Section Amendments with date in force (d/m/y)**



2006, c. 35, Sched. C, s. 116 (1) - 20/08/2007

#### **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.

#### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 3 - 04/06/2009

#### **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).

#### **Section Amendments with date in force (d/m/y)**

2009, c. 26, s. 24 (4) - 15/12/2009

#### **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).

#### **Section Amendments with date in force (d/m/y)**

2009, c. 26, s. 24 (5) - 15/12/2009

### **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).

### **Section Amendments with date in force (d/m/y)**

2006, c. 35, Sched. C, s. 116 (2) - 20/08/2007

### **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**

**18-22** REPEALED: 1998, c. 18, Sched. G, s. 3.

### **Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. G, s. 3 - 01/02/1999

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

### **Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. G, s. 3 - 01/02/1999

2007, c. 10, Sched. B, s. 21 - 04/06/2007

### **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).

### **Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. G, s. 4 - 01/02/1999

2006, c. 35, Sched. C, s. 116 (3) - 20/08/2007

2007, c. 10, Sched. M, s. 4 (1, 2) - 04/06/2009

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

### **Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. G, s. 5 - 01/02/1999

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

### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 5 - 04/06/2009

## **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.
  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. 1991, c. 18, s. 27 (2); 2007, c. 10, Sched. L, s. 32; 2007, c. 10, Sched. R, s. 19 (1).

#### **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).

#### **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).

#### **Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. G, s. 6 - 01/02/1999

2007, c. 10, Sched. L, s. 32 - 04/06/2007; 2007, c. 10, Sched. R, s. 19 (1, 2) - 30/12/2017

#### **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.

### **Sexual orientation and gender identity treatments**

**29.1** (1) No person shall, in the course of providing health care services, provide any treatment that seeks to change the sexual orientation or gender identity of a person under 18 years of age. 2015, c. 18, s. 2.

### **Exception**

- (2) The treatments mentioned in subsection (1) do not include,
- (a) services that provide acceptance, support or understanding of a person or the facilitation of a person's coping, social support or identity exploration or development; and
  - (b) sex-reassignment surgery or any services related to sex-reassignment surgery. 2015, c. 18, s. 2.

### **Person may consent**

(3) Subsection (1) does not apply if the person is capable with respect to the treatment and consents to the provision of the treatment. 2015, c. 18, s. 2.

### **Substitute decision-maker cannot consent**

(4) Despite the *Health Care Consent Act, 1996*, a substitute decision-maker may not give consent on a person's behalf to the provision of any treatment described in subsection (1). 2015, c. 18, s. 2.

### **Regulations**

- (5) Subject to the approval of the Lieutenant Governor in Council, the Minister may make regulations,
- (a) clarifying the meaning of "sexual orientation", "gender identity" or "seek to change" for the purposes of subsection (1);
  - (b) exempting any person or treatment from the application of subsection (1). 2015, c. 18, s. 2.

### **Section Amendments with date in force (d/m/y)**

2015, c. 18, s. 2 - 04/06/2015

### **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).

### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 6 - 04/06/2009

### **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).

### **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).

### **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).

### **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).

### **Definition**

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

### **Section Amendments with date in force (d/m/y)**

2006, c. 27, s. 18 (1) - 30/12/2016

2007, c. 10, Sched. P, s. 20 (1) - 01/07/2015

### **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).

### **Section Amendments with date in force (d/m/y)**

2009, c. 26, s. 24 (6) - 30/12/2017

### **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.

### **Section Amendments with date in force (d/m/y)**

2000, c. 42, Sched., s. 30 - 01/11/2001

## 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 *Health Protection and Promotion Act*, the *Independent Health Facilities Act*, the *Laboratory and Specimen Collection Centre Licensing Act*, the *Long-Term Care Homes Act, 2007*, the *Retirement Homes Act, 2010*, the *Ontario Drug Benefit Act*, the *Coroners Act*, the *Controlled Drugs and Substances Act (Canada)* and the *Food and Drugs Act (Canada)*;

**Note: On a day to be named by proclamation of the Lieutenant Governor, clause 36 (1) (d) of the Act is amended by striking out “the *Healing Arts Radiation Protection Act*”. (See: 2017, c. 25, Sched. 9, s. 115 (1))**

**Note: On a day to be named by proclamation of the Lieutenant Governor, clause 36 (1) (d) of the Act is amended by striking out “the *Independent Health Facilities Act*”. (See: 2017, c. 25, Sched. 9, s. 115 (2))**

**Note: On a day to be named by proclamation of the Lieutenant Governor, clause 36 (1) (d) of the Act is amended by adding “the *Oversight of Health Facilities and Devices Act, 2017*” after “the *Long-Term Care Homes Act, 2007*”. (See: 2017, c. 25, Sched. 9, s. 115 (3))**

- (d.1) for a prescribed purpose, to a public hospital that employs or provides privileges to a member of a College, where the College is investigating a complaint about that member or where the information was obtained by an investigator appointed pursuant to subsection 75 (1) or (2) of the Code, subject to the limitations, if any, provided for in regulations made under section 43;
- (d.2) for a prescribed purpose, to a person other than a public hospital who belongs to a class provided for in regulations made under section 43, where a College is investigating a complaint about a member of the College or where the information was obtained by an investigator appointed pursuant to subsection 75 (1) or (2) of the Code, subject to the limitations, if any, provided for in the regulations;
- (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;
- (j) with the written consent of the person to whom the information relates; or
- (k) to the Minister in order to allow the Minister to determine,
  - (i) whether the College is fulfilling its duties and carrying out its objects under this Act, a health profession Act, the *Drug and Pharmacies Regulation Act* or the *Drug Interchangeability and Dispensing Fee Act*, or
  - (ii) whether the Minister should exercise any power of the Minister under this Act, or any Act mentioned in subclause (i). 2007, c. 10, Sched. M, s. 7 (1); 2014, c. 14, Sched. 2, s. 10; 2017, c. 11, Sched. 5, s. 2 (1, 2).

### **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).

### **Restriction**

(1.6) Information disclosed to the Minister under clause (1) (k) shall only be used or disclosed for the purpose for which it was provided to the Minister or for a consistent purpose. 2017, c. 11, Sched. 5, s. 2 (3).

### **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).

### **Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 1 - 31/12/1993; 1996, c. 1, Sched. G, s. 27 (2) - 27/05/1996; 1998, c. 18, Sched. G, s. 7 (1, 2) - 01/02/1999

2007, c. 10, Sched. M, s. 7 (1-5) - 04/06/2007

2014, c. 14, Sched. 2, s. 10 - 01/08/2016

2017, c. 11, Sched. 5, s. 2 (1-3) - 30/05/2017

2017, c. 25, Sched. 9, s. 115 (1-3) - not in force

### **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 health human resources planning or research. 2017, c. 11, Sched. 5, s. 3 (1).

### **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, collection, disclosure and publication**

(5) The following applies to information collected under subsection (1):

1. The information may only be used for the purposes set out under subsection (1).
2. The Minister shall not collect personal information if other information will serve the purposes set out under subsection (1).

3. The Minister shall not collect more personal information than is necessary for the purposes set out under subsection (1).
4. The Minister may disclose the information only for the purposes set out in subsection (1).
5. Reports and other documents using information collected under this section may be published for the purposes set out under subsection (1), and for those purposes only, but personal information about a member of a College shall not be included in those reports or documents. 2017, c. 11, Sched. 5, s. 3 (2).

(6) REPEALED: 2017, c. 11, Sched. 5, s. 3 (2).

#### **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 about members, but does not include personal health information; ("renseignements")

"Ministry" means the Ministry of Health and Long-Term Care; ("ministère")

"research" means the study of data and information in respect of health human resources planning. ("recherche") 2007, c. 10, Sched. M, s. 8; 2017, c. 11, Sched. 5, s. 3 (3, 4).

#### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 8 - 04/06/2007

2009, c. 26, s. 24 (7) - 15/12/2009

2017, c. 11, Sched. 5, s. 3 (1-4) - 30/05/2017

#### **Electronic health record**

**36.2** (1) The Minister may make regulations,

- (a) requiring one or more Colleges to collect from their members information relating to their members that is specified in those regulations and that is, in the Minister's opinion, necessary for the purpose of developing or maintaining the electronic health record under Part V.1 of the *Personal Health Information Protection Act, 2004*, including ensuring that members are accurately identified for purposes of the electronic health record;
- (b) requiring the College or Colleges to provide the information to the prescribed organization in the form, manner and timeframe specified by the prescribed organization;
- (c) respecting the notice mentioned in subsection (4). 2016, c. 6, Sched. 1, s. 4.

#### **Members to provide information**

(2) Where the Minister has made a regulation under subsection (1), and a College has requested information from a member in compliance with the regulation, the member shall comply with the College's request. 2016, c. 6, Sched. 1, s. 4.

#### **Use and disclosure by prescribed organization**

(3) Despite a regulation made under subsection (1), the prescribed organization,

- (a) may only collect, use or disclose information under this section for the purpose provided for in subsection (1);

- (b) shall not use or disclose personal information collected under this section if other information will serve the purpose; and
- (c) shall not use or disclose more personal information collected under this section than is necessary for the purpose. 2016, c. 6, Sched. 1, s. 4.

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

- (4) Where the Minister has made a regulation under subsection (1), and a College is required to collect personal information from its members, 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 prescribed organization’s website; or
  - (b) any other public method that may be prescribed in regulations made by the Minister under subsection (1). 2016, c. 6, Sched. 1, s. 4.

**Same**

(5) If the prescribed organization publishes a notice referred to under subsection (4), the prescribed organization 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. 2016, c. 6, Sched. 1, s. 4.

**Definitions**

- (6) In this section,
- “information” includes personal information, but does not include personal health information; (“renseignements”)
- “prescribed organization” has the same meaning as in section 2 of the *Personal Health Information Protection Act, 2004*. (“organisation prescrite”) 2016, c. 6, Sched. 1, s. 4; 2017, c. 11, Sched. 5, s. 4.

**Section Amendments with date in force (d/m/y)**

2016, c. 6, Sched. 1, s. 4 - 03/06/2016  
2017, c. 11, Sched. 5, s. 4 - 30/05/2017

**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).

**Section Amendments with date in force (d/m/y)**

2000, c. 42, Sched., s. 31 - 01/11/2001  
2007, c. 10, Sched. M, s. 9 (1, 2) - 04/06/2009

**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).

**Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. G, s. 8 - 01/02/1999

2007, c. 10, Sched. M, s. 10 - 04/06/2007

2009, c. 26, s. 24 (8) - 15/12/2009

### **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.

#### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 11 - 04/06/2007

### **Offences**

**40** (1) Every person who contravenes subsection 27 (1), 29.1 (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; 2015, c. 18, s. 3.

### **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.

#### **Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 2 - 31/12/1993

2000, c. 42, Sched., s. 32 (1, 2) - 01/11/2001

2001, c. 8, s. 217 - 01/11/2001

2007, c. 10, Sched. M, s. 12 - 04/06/2007

2015, c. 18, s. 3 - 06/04/2015

### **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.

#### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 13 - 04/06/2007

## 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).

**Note:** On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out “Part III of the *Corporations Act*” and substituting “the *Not-for-Profit Corporations Act, 2010*”. See: 2010, c. 15, ss. 241 (1), 249.

## Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 14 (1, 2) - 04/06/2007

2010, c. 15, s. 241 (1) - not in force

## 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.

## Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 15 - 04/06/2007

## 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;
- (g.1) prescribing purposes and providing for limitations for the purposes of clauses 36 (1) (d.1) and (d.2);
- (g.2) providing for classes of persons for the purposes of clause 36 (1) (d.2);
- (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.0.1) requiring that decisions made under subsections 15 (1) and (4), 18 (2) and (4) and 19 (6) and (8) of the Code be made within a reasonable time;
  - (h.0.2) requiring that notices required under subsections 15 (3) and 20 (1) of the Code and written reasons required under subsection 20 (1) of the Code be provided within a reasonable time;
  - (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 and Compulsory Trades 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;

**Note:** On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by adding the following clause:

- (n) prescribing for the purposes of subsection 2 (2) of the Code, the provisions of the *Not-for-Profit Corporations Act, 2010* that apply to a College.

See: 2010, c. 15, ss. 241 (2), 249.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, subsection 43 (1) of the Act is amended by adding the following clause: (See: 2017, c. 11, Sched. 5, s. 5 (1))

- (o) establishing criteria for the definition of “patient” in relation to professional misconduct involving the sexual abuse of a patient for the purposes of subsection 1 (3) of the Code.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, subsection 43 (1) of the Act is amended by adding the following clauses: (See: 2017, c. 11, Sched. 5, s. 5 (2))

- (p) respecting the composition of committees that a College is required to have pursuant to subsection 10 (1) of the Code and governing the relationship between such regulations and the by-laws of the College;
- (q) respecting the qualification, selection, appointment and terms of office of members of committees that a College is required to have pursuant to subsection 10 (1) of the Code and governing the relationship between such regulations and the by-laws of the College;
- (r) prescribing conditions that disqualify committee members from sitting on committees that a College is required to have pursuant to subsection 10 (1) of the Code and governing the removal of disqualified committee members and governing the relationship between such regulations and the by-laws of the College;
- (s) specifying the composition of panels selected from amongst the members of the Registration Committee, Inquiries, Complaints and Reports Committee, Discipline Committee and Fitness to Practise Committee for the purposes of subsections 17 (2), 25 (2), 38 (2) and 64 (2) of the Code, and providing for quorum for such panels.
- (t) prescribing additional information to be contained in a College’s register for the purposes of paragraph 19 of subsection 23 (2) of the Code and designating such information as information subject to subsection 23 (13.1) of the Code;
- (u) prescribing conduct for the purposes of subparagraph 3 vii of subsection 51 (5) of the Code;
- (v) prescribing offences for the purposes of clause 51 (5.2) (a) of the Code.
- (w) clarifying how a College is required to perform its functions under sections 25 to 69 and 72 to 74 of the Code with respect to matters involving allegations of a member’s misconduct of a sexual nature, and providing for further functions and duties that are not inconsistent with those functions.
- (x) prescribing additional functions of the patient relations program for the purposes of subsection 84 (3.1) of the Code.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, subsection 43 (1) of the Act is amended by adding the following clause: (See: 2017, c. 11, Sched. 5, s. 5 (7))

- (y) prescribing additional purposes for which funding may be provided under the program which Colleges are required to maintain under section 85.7 of the Code, and prescribing additional persons or classes of persons to whom funding may be paid for the purposes of subsection 85.7 (8) of the Code.

- (z) governing transitional matters arising from the enactment of Schedule 5 to the *Protecting Patients Act, 2017*. 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); 2014, c. 14, Sched. 2, s. 11; 2015, c. 8, s. 38 (1); 2017, c. 2, Sched. 9, s. 10; 2017, c. 11, Sched. 5, s. 5 (3-6, 8).

### **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).

### **Section Amendments with date in force (d/m/y)**

2000, c. 42, Sched., s. 33 - 01/11/2001

2006, c. 31, s. 35 (2) - 01/03/2007

2007, c. 10, Sched. M, s. 16 (1) - 04/06/2007; 2007, c. 10, Sched. M, s. 16 (2) - 04/06/2009

2009, c. 24, s. 33 (2) - 15/12/2009

2010, c. 15, s. 241 (2) - not in force

2014, c. 14, Sched. 2, s. 11 - 01/08/2016

2015, c. 8, s. 38 (1) - 01/01/2018

2017, c. 2, Sched. 9, s. 10 - 22/03/2017; 2017, c. 11, Sched. 5, s. 5 (3-6, 8) - 30/05/2017; 2017, c. 11, Sched. 5, s. 5 (1, 2, 7) - not in force

### **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.

### **Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 3 - 31/12/1993

### **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).

### **Section Amendments with date in force (d/m/y)**

2009, c. 26, s. 24 (9) - 15/12/2009

### **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

Item	Column 1	Column 2
1.	person registered as a chiroprapist under the <i>Chiroprapody Act</i>	member of the College of Chiroprapodists 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.	REPEALED. See: Table of Public Statute Provisions Repealed Under Section 10.1 of the <i>Legislation Act, 2006</i> – December 31, 2011.	
7.	person registered as a physiotherapist under the <i>Drugless Practitioners Act</i>	member of the College of Physiotherapists of Ontario
7.1	person registered under the <i>Drugless Practitioners Act</i>	member of the College of Naturopaths of Ontario
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 V of the <i>Health Disciplines Act</i>	member of the College of Optometrists of Ontario
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; See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2011; 2007, c. 10, Sched. P, s. 20 (2).

**Note: On a day to be named by proclamation of the Lieutenant Governor, item 16 of the Table to the Act is struck out and the following substituted: (See: 2017, c. 25, Sched. 6, s. 17 (1))**

16.	person registered under the <i>Radiological Technicians Act</i>	member of the College of Medical Radiation and Imaging Technologists of Ontario
17.	member of the College of Medical Radiation Technologists of Ontario	member of the College of Medical Radiation and Imaging Technologists of Ontario

**Section Amendments with date in force (d/m/y)**

Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2011

2007, c. 10, Sched. P, s. 20 (2) - 01/07/2015

2017, c. 25, Sched. 9, s. 17 (1) - not in force

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
Chiroprapody Act, 1991	Chiroprapody
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
Homeopathy Act, 2007	Homeopathy

Kinesiology Act, 2007	Kinesiology
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
Naturopathy Act, 2007	Naturopathy
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
Psychotherapy Act, 2007	Psychotherapy
Respiratory Therapy Act, 1991	Respiratory Therapy
Traditional Chinese Medicine Act, 2006	Traditional Chinese Medicine

1991, c. 18, Sched. 1; 1998, c. 18, Sched. G, s. 9; 2006, c. 27, s. 18 (2); 2007, c. 10, Sched. O, s. 14; 2007, c. 10, Sched. Q, s. 14; 2007, c. 10, Sched. R, s. 19 (3); 2007, c. 10, Sched. P, s. 20 (3).

<b>Note: On a day to be named by proclamation of the Lieutenant Governor, Schedule 1 to the Act is amended by striking out,</b>	
<b><i>Medical Radiation Technology Act, 1991</i></b>	<b>Medical Radiation Technology</b>
<b>and substituting the following: (See: 2017, c. 25, Sched. 6, s. 17 (2))</b>	
<b><i>Medical Radiation and Imaging Technology Act, 2017</i></b>	<b>Medical Radiation and Imaging Technology</b>

**Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. G, s. 9, 23 (2-4) - 01/02/1999

2006, c. 27, s. 18 (2) - 01/04/2013

2007, c. 10, Sched. O, s. 14 - 01/04/2013; 2007, c. 10, Sched. P, s. 20 (3) - 01/07/2015; 2007, c. 10, Sched. Q, s. 14 - 01/04/2015; 2007, c. 10, Sched. R, s. 19 (3) - 01/04/2015

2017, c. 25, Sched. 9, s. 17 (2) - not in force

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.

#### **Exception, spouses**

(5) If the Council has made a regulation under clause 95 (1) (0.a), conduct, behaviour or remarks that would otherwise constitute sexual abuse of a patient by a member under the definition of “sexual abuse” in subsection (3) do not constitute sexual abuse if,

- (a) the patient is the member’s spouse; and
- (b) the member is not engaged in the practice of the profession at the time the conduct, behaviour or remark occurs. 2013, c. 9, s. 1 (1).

#### **Definition**

(6) For the purposes of subsection (5),

“spouse”, in relation to a member, means,

- (a) a person who is the member’s spouse as defined in section 1 of the *Family Law Act*, or
- (b) a person who has lived with the member in a conjugal relationship outside of marriage continuously for a period of not less than three years. 2013, c. 9, s. 1 (1).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 1 (6) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 6)**

#### **Definitions**

(6) For the purposes of subsections (3) and (5),

“patient”, without restricting the ordinary meaning of the term, includes,

- (a) an individual who was a member’s patient within one year or such longer period of time as may be prescribed from the date on which the individual ceased to be the member’s patient, and
- (b) an individual who is determined to be a patient in accordance with the criteria in any regulations made under clause 43 (1) (o) of the *Regulated Health Professions Act, 1991*; (“patient”)

“spouse”, in relation to a member, means,

- (a) a person who is the member’s spouse as defined in section 1 of the *Family Law Act*, or
- (b) a person who has lived with the member in a conjugal relationship outside of marriage continuously for a period of not less than three years. (“conjoint”) 2017, c. 11, Sched. 5, s. 6.

#### **Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 4 - 31/12/1993; 1998, c. 18, Sched. G, s. 10 - 01/02/1999  
2000, c. 42, Sched., s. 34 - 01/11/2001  
2006, c. 19, Sched. L, s. 11 (2) - 22/06/2006  
2007, c. 10, Sched. M, s. 17 (1, 2, 4) - 04/06/2009; 2007, c. 10, Sched. M, s. 17 (3) - 04/06/2007  
2009, c. 26, s. 24 (10) - 15/12/2009; 2009, c. 33, Sched. 18, s. 17 (2) - 15/12/2009  
2013, c. 9, s. 1 (1) - 06/11/2013  
2017, c. 11, Sched. 5, s. 6 - not in force

### **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.

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 1.1 of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 7)**

### **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 in connection with allegations of sexual abuse by members and, ultimately, to eradicate the sexual abuse of patients by members. 2017, c. 11, Sched. 5, s. 7.

### **Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 5 - 31/12/1993  
2017, c. 11, Sched. 5, s. 7 - not in force

## COLLEGE

### **College is body corporate**

**2 (1)** The College is a body corporate without share capital with all the powers of a natural person. 1991, c. 18, Sched. 2, s. 2 (1).

### **Corporations Act**

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

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:**

### ***Not-for-Profit Corporations Act, 2010***

(2) The *Not-for-Profit Corporations Act, 2010* does not apply to the College, except as may be prescribed by regulation made under clause 43 (1) (n) of the *Regulated Health Professions Act, 1991*. 2010, c. 15, s. 241 (3).

**See: 2010, c. 15, ss. 241 (3), 249.**

### **Section Amendments with date in force (d/m/y)**

2010, c. 15, s. 241 (3) - not in force

### **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.

### **Section Amendments with date in force (d/m/y)**

2008, c. 18, s. 1 - 27/11/2008

### **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).

#### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 18 - 04/06/2009

2009, c. 26, s. 24 (11) - 15/12/2009

#### **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.

#### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 19 - 04/06/2009

#### **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).

### **Posting of meeting information**

(1.1) The College shall post on its website information regarding upcoming meetings of the Council, including the dates of those meetings, matters to be discussed at those meetings, and information and documentation that will be provided to members of the Council for the purpose of those meetings. 2017, c. 11, Sched. 5, s. 8.

### **Items where public excluded**

(1.2) If the Registrar anticipates that the Council will exclude the public from any meeting or part of a meeting under subsection (2), the grounds for doing so shall be noted in the information posted under subsection (1.1) and information and documentation related to that meeting or part of that meeting shall not be posted under subsection (1.1). 2017, c. 11, Sched. 5, s. 8.

### **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).

### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 20 (1-3) - 04/06/2009

2017, c. 11, Sched. 5, s. 8 - 30/05/2017

### **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).

### **Section Amendments with date in force (d/m/y)**

2006, c. 19, Sched. L, s. 10 (1) - 22/06/2006

### **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.

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 10 (3) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 9)**

#### **Composition**

(3) The composition of the committees shall be in accordance with the by-laws and with any regulations made pursuant to clauses 43 (1) (p) to (r) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 9.

#### **Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. G, s. 11 - 01/02/1999

2007, c. 10, Sched. M, s. 21 (1, 2) - 04/06/2009

2009, c. 26, s. 24 (12) - 15/12/2009

2017, c. 11, Sched. 5, s. 9 - not in force

#### **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.

**Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 22 - 04/06/2009

**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).

**Section Amendments with date in force (d/m/y)**

2009, c. 26, s. 24 (13) - not in force

**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).

**Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 23 (1, 2) - 04/06/2009

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).

### **Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 6 - 31/12/1993

2009, c. 24, s. 33 (3) - 15/12/2009

### **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.

### **Process for dealing with request**

(3) The Registrar shall establish a process for the purposes of dealing with an applicant's request under subsection (1). 2015, c. 8, s. 38 (2).

### **Fee for access**

(4) The Registrar may require an applicant to pay a fee for making information and documents available to the applicant if the Registrar first gives the applicant an estimate of the fee. 2015, c. 8, s. 38 (2).

### **Amount of fee**

(5) The amount of the fee shall not exceed the amount of reasonable cost recovery. 2015, c. 8, s. 38 (2).

### **Waiver of fee**

(6) The Registrar may waive the payment of all or any part of the fee that an applicant is required to pay under subsection (4) if, in the Registrar's opinion, it is fair and equitable to do so. 2015, c. 8, s. 38 (2).

### **Section Amendments with date in force (d/m/y)**

2015, c. 8, s. 38 (2) - 01/01/2018

### **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).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 17 (2) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 10)**

### **Composition of panels**

(2) The panel selected by the chair shall be composed in accordance with regulations made pursuant to clauses 43 (1) (p) to (s) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 10.

### **Quorum**

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

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 17 (3) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 10)**

### **Quorum**

(3) Quorum for the panel shall be in accordance with regulations made pursuant to clause 43 (1) (s) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 10.

### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 24 (1, 2) - 04/06/2009

2017, c. 11, Sched. 5, s. 10 - not in force

### **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).

## **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 25 (1-3) - 04/06/2009

## **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.

## **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 26 - 04/06/2009

## **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).

#### **Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. G, s. 12 - 01/02/1999

2007, c. 10, Sched. M, s. 27 (1, 2) - 04/06/2007; 2007, c. 10, Sched. M, s. 27 (3) - 04/06/2009

#### **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 and Compulsory Trades 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); 2017, c. 2, Sched. 9, s. 10.

#### **Section Amendments with date in force (d/m/y)**

2006, c. 31, s. 35 (3) - 01/03/2007

2017, c. 2, Sched. 9, s. 10 - 22/03/2017

#### **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).

#### **Section Amendments with date in force (d/m/y)**

2006, c. 31, s. 35 (3) - 01/03/2007

#### **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).



**Section Amendments with date in force (d/m/y)**

2006, c. 31, s. 35 (3) - 01/03/2007

2009, c. 24, s. 33 (4) - 15/12/2009

**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).

**Section Amendments with date in force (d/m/y)**

2006, c. 31, s. 35 (3) - 01/03/2007

**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).

**Section Amendments with date in force (d/m/y)**

2006, c. 31, s. 35 (3) - 01/03/2007

### **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).

#### **Section Amendments with date in force (d/m/y)**

2006, c. 31, s. 35 (3) - 01/03/2007

### **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).

#### **Section Amendments with date in force (d/m/y)**

2006, c. 31, s. 35 (3) - 01/03/2007

### **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).

### **Section Amendments with date in force (d/m/y)**

2006, c. 31, s. 35 (3) - 01/03/2007

### **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).

### **Section Amendments with date in force (d/m/y)**

2006, c. 31, s. 35 (3) - 01/03/2007

### **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).

### **Section Amendments with date in force (d/m/y)**

2006, c. 31, s. 35 (3) - 01/03/2007

### **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).

### **Section Amendments with date in force (d/m/y)**

2006, c. 31, s. 35 (3) - 01/03/2007

### **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 in the Office of the Fairness Commissioner;
- (b) obstructs the Fairness Commissioner or a person employed in the Office of the Fairness Commissioner 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); 2017, c. 2, Sched. 9, s. 11 (1).

### **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 in the Office of the Fairness Commissioner 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); 2017, c. 2, Sched. 9, s. 11 (2).

### **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).

### **Section Amendments with date in force (d/m/y)**

2006, c. 31, s. 35 (3) - 01/03/2007

2009, c. 33, Sched. 18, s. 29 (1, 2) - 15/12/2009

2017, c. 2, Sched. 9, s. 11 (1, 2) - 01/09/2017

### **Immunity**

**22.13** (1) No proceeding shall be commenced against the Fairness Commissioner or anyone employed in the Office of the Fairness Commissioner 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); 2017, c. 2, Sched. 9, s. 12.

### **Testimony**

(2) Neither the Fairness Commissioner nor anyone employed in the Office of the Fairness Commissioner 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); 2017, c. 2, Sched. 9, s. 12.

### **Section Amendments with date in force (d/m/y)**

2006, c. 31, s. 35 (3) - 01/03/2007

2017, c. 2, Sched. 9, s. 12 - 01/09/2017

### **Limitation on powers**

**22.14** Neither the Fairness Commissioner nor anyone employed in the Office of the Fairness Commissioner,

- (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); 2017, c. 2, Sched. 9, s. 12.

### **Section Amendments with date in force (d/m/y)**

2006, c. 31, s. 35 (3) - 01/03/2007

2017, c. 2, Sched. 9, s. 12 - 01/09/2017

### **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).

#### **Section Amendments with date in force (d/m/y)**

2009, c. 24, s. 33 (5) - 15/12/2009

#### **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).

#### **Section Amendments with date in force (d/m/y)**

2009, c. 24, s. 33 (5) - 15/12/2009

#### **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).

#### **Section Amendments with date in force (d/m/y)**

2009, c. 24, s. 33 (5) - 15/12/2009

#### **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.

**Note: On a day to be named by proclamation of the Lieutenant Governor, subparagraph 1 iv of subsection 22.18 (5) of Schedule 2 to the Act is amended by striking out “criminal background check” and substituting “police record check”. (See: 2015, c. 30, s. 28)**

- 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).

## **Section Amendments with date in force (d/m/y)**

2009, c. 24, s. 33 (5) - 15/12/2009

2015, c. 30, s. 28 - not in force

## **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).

## **Section Amendments with date in force (d/m/y)**

2009, c. 24, s. 33 (5) - 15/12/2009

## **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).

## **Section Amendments with date in force (d/m/y)**

2009, c. 24, s. 33 (5) - 15/12/2009

## **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).



**Section Amendments with date in force (d/m/y)**

2009, c. 24, s. 33 (5) - 15/12/2009

**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).

**Section Amendments with date in force (d/m/y)**

2009, c. 24, s. 33 (5) - 15/12/2009

**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).

**Section Amendments with date in force (d/m/y)**

2009, c. 24, s. 33 (5) - 15/12/2009

**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. Where a member is deceased, the name of the deceased member and the date upon which the member died, if known to the Registrar.
3. The name, business address and business telephone number of every health profession corporation.
4. The names of the shareholders of each health profession corporation who are members of the College.
5. Each member's class of registration and specialist status.
6. The terms, conditions and limitations that are in effect on each certificate of registration.
7. A notation of every caution that a member has received from a panel of the Inquiries, Complaints and Reports Committee under paragraph 3 of subsection 26 (1), and any specified continuing education or remedial programs required by a panel of the Inquiries, Complaints and Reports Committee using its powers under paragraph 4 of subsection 26 (1).
8. A notation of every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 and that has not been finally resolved, including the date of the referral and the status of the hearing before a panel of the Discipline Committee, until the matter has been resolved.
9. A copy of the specified allegations against a member for every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 and that has not been finally resolved.
10. Every result of a disciplinary or incapacity proceeding.
11. A notation and synopsis of any acknowledgements and undertakings in relation to matters involving allegations of professional misconduct or incompetence before the Inquiries, Complaints and Reports Committee or the Discipline Committee that a member has entered into with the College and that are in effect.
12. 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.

13. A notation of every revocation or suspension of a certificate of registration.
14. A notation of every revocation or suspension of a certificate of authorization.
15. Information that a panel of the Registration Committee, Discipline Committee or Fitness to Practise Committee specifies shall be included.
16. Where findings of the Discipline Committee are appealed, a notation that they are under appeal, until the appeal is finally disposed of.
17. 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.
18. Where the College has an inspection program established under clause 95 (1) (h) or (h.1), the outcomes of inspections conducted by the college.
19. Information that is required to be kept in the register in accordance with regulations made pursuant to clause 43 (1) (t) of the *Regulated Health Professions Act, 1991*.
20. Information that is required to be kept in the register in accordance with the by-laws. 2017, c. 11, Sched. 5, s. 11 (1).

#### **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 15 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; 2017, c. 11, Sched. 5, s. 11 (2).

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

(5) All of the information required by paragraphs 1 to 19 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 within a reasonable amount of time of the Registrar having received the information and in a manner that is accessible to the public or in any other manner and form specified by the Minister. 2017, c. 11, Sched. 5, s. 11 (3).

#### **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 10 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), (b) or (c) of the definition of "sexual abuse" in subsection 1 (3). 2007, c. 10, Sched. M, s. 28; 2017, c. 11, Sched. 5, s. 11 (4, 5).

### **Other cases when information may be withheld**

(11.1) The Registrar shall refuse to disclose to an individual or to post on the College's website information required by paragraph 10 of subsection (2) if,

- (a) the result of a discipline proceeding was that no finding of professional misconduct or incompetence was made against the member; and
- (b) more than 90 days have passed since the information was prepared or last updated, unless before the expiry of the 90 days the member to whom the information relates specifically requests in writing that the Registrar continue to maintain public access to the information. 2017, c. 11, Sched. 5, s. 11 (6).

### **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.

### **Correction of information**

(13.1) The Registrar shall correct any information contained in the register that is required by paragraph 12 of subsection (2) or that is both required by paragraph 19 of subsection (2) and designated as subject to this subsection in a regulation made under clause 43 (1) (t) of the *Regulated Health Professions Act, 1991*, where a member demonstrates, to the satisfaction of the Registrar, that the information contained in the register is incomplete or inaccurate and where the member provides the Registrar with the information that is necessary to enable the Registrar to correct the incomplete or inaccurate information. 2017, c. 11, Sched. 5, s. 11 (7).

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

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

"result",

- (a) when used in reference to a disciplinary proceeding, means the panel's finding that the member committed an act of professional misconduct or was incompetent, particulars of the grounds for the finding, a synopsis of the decision and the order made, including any reprimand, and where the panel has made no such finding, includes a notation that no such finding was made and the reason why no such finding was made, and
- (b) when used in reference to an incapacity proceeding, means the panel's finding that the member is incapacitated and the order made by the panel. 2017, c. 11, Sched. 5, s. 11 (8).

### **Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 7 (1-5) - 31/12/1993; 1998, c. 18, Sched. G, s. 13 (1-3) - 01/02/1999

2000, c. 42, Sched., s. 35 (1, 2) - 01/11/2001

2001, c. 8, s. 218 (1-3) - 01/11/2001

2007, c. 10, Sched. M, s. 28 - 04/06/2009

2017, c. 11, Sched. 5, s. 11 (1-8) - 30/05/2017

### **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.

### **Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. G, s. 14 - 01/02/1999

2007, c. 10, Sched. M, s. 29 - 04/06/2009

## 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.

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 25 (2) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 12)**

### **Composition of panels**

(2) The panel selected by the chair shall be composed in accordance with regulations made pursuant to clauses 43 (1) (p) to (s) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 12.

### **Quorum**

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

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 25 (3) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 12)**

### **Quorum**

(3) Quorum for the panel shall be in accordance with regulations made pursuant to clause 43 (1) (s) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 12.

### **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.

### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 30 - 04/06/2009

2017, c. 11, Sched. 5, s. 12 - not in force

### **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 Registrar of the resolution, and the Registrar may,

- (a) adopt the proposed resolution; or
- (b) refer the decision of whether or not to adopt the proposed resolution to the panel. 2017, c. 11, Sched. 5, s. 13.

### **Referral to panel**

(5) Where the Registrar makes a referral to the panel under clause (4) (b), the panel may,

- (a) adopt the proposed resolution; or
- (b) continue with its investigation of the complaint. 2017, c. 11, Sched. 5, s. 13.

### **Time limit for ADR**

(6) If the complainant and the member do not reach a resolution of the complaint within 60 days of a referral to alternative dispute resolution under subsection (1), the Registrar or the panel shall not adopt any resolution reached after that date and the panel shall proceed with its investigation of the complaint. 2017, c. 11, Sched. 5, s. 13.

### **Extension of time**

(7) Despite subsection (6), the Registrar or the panel may, where the Registrar or the panel believes it is in the public interest to do so, and with the agreement of the complainant and the member, adopt a resolution reached within 120 days of a referral to alternative dispute resolution under subsection (1). 2017, c. 11, Sched. 5, s. 13.

### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 30 - 04/06/2009

2017, c. 11, Sched. 5, s. 13 - 30/05/2017

### **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.

### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 30 - 04/06/2009

### **Withdrawal of complaint by Registrar**

**25.3** (1) At any time following the receipt of a complaint regarding the conduct or actions of a member and prior to any action being taken by a panel of the Inquiries, Complaints and Reports Committee under subsection 26 (1), the Registrar may, at the request of the complainant, withdraw the complaint if the Registrar believes that the withdrawal is in the public interest. 2017, c. 11, Sched. 5, s. 14.

### **Notice**

(2) The Registrar shall give the complainant and the member, within 14 days of the Registrar having withdrawn the complaint, notice that the complaint has been withdrawn. 2017, c. 11, Sched. 5, s. 14.

### **Section Amendments with date in force (d/m/y)**

2017, c. 11, Sched. 5, s. 14 - 30/05/2017

### **Interim suspension**

**25.4** (1) The Inquiries, Complaints and Reports Committee may, subject to subsections (2) and (6), at any time following the receipt of a complaint or following the appointment of an investigator pursuant to subsection 75 (1) or (2), make an interim order directing the Registrar to suspend, or to impose terms, conditions or limitations on, a member's certificate of registration if it is of the opinion that the conduct of the member exposes or is likely to expose the member's patients to harm or injury. 2017, c. 11, Sched. 5, s. 14.

### **No gender-based terms, conditions, limitations**

(2) Despite subsection (1), the Inquiries, Complaints and Reports Committee shall not make an interim order directing the Registrar to impose any gender-based terms, conditions or limitations on a member's certificate of registration. 2017, c. 11, Sched. 5, s. 14.

### **Procedure following interim suspension**

- (3) If an order is made under subsection (1) by the Inquiries, Complaints and Reports Committee,
- (a) the matter shall be investigated and prosecuted expeditiously; and
  - (b) the Inquiries, Complaints and Reports Committee, the Discipline Committee or the Fitness to Practise Committee, as the case may be, shall give precedence to the matter. 2017, c. 11, Sched. 5, s. 14.

### **Duration of order**

(4) An order under subsection (1) continues in force until it is varied by the Inquiries, Complaints and Reports Committee or until the matter is withdrawn, resolved by way of an alternative dispute resolution process or otherwise finally disposed of by a panel of the Inquiries, Complaints and Reports Committee, the Discipline Committee or the Fitness to Practise Committee. 2017, c. 11, Sched. 5, s. 14.

### **Panel's order**

(5) In a matter in which an order under subsection (1) was made, an order of a panel of the Discipline Committee or the Fitness to Practise Committee directing the Registrar to revoke, suspend or impose conditions on a member's certificate takes effect immediately despite any appeal. 2017, c. 11, Sched. 5, s. 14.

### **Restrictions on orders**

- (6) No order shall be made under subsection (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 Committee; and
  - (c) a copy of the provisions of this section. 2017, c. 11, Sched. 5, s. 14.

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

(7) Despite subsection (6), 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 the member's patients to harm or injury and urgent intervention is needed. 2017, c. 11, Sched. 5, s. 14.

### **Section Amendments with date in force (d/m/y)**

2017, c. 11, Sched. 5, s. 14 - 30/05/2017

### **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.

### **Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. G, s. 15 - 01/02/1999

2007, c. 10, Sched. M, s. 30 - 04/06/2009

### **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.

### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 30 - 04/06/2009

### **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.

### **Impact of ADR on timelines**

(2) Time spent by a complainant and member in an alternative dispute resolution process pursuant to a referral under section 25.1 shall not be included in the calculation of time under this section. 2017, c. 11, Sched. 5, s. 15.

### **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.

### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 30 - 04/06/2009

2017, c. 11, Sched. 5, s. 15 - 30/05/2017



### **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.

### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 30 - 04/06/2009

### **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.

### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 30 - 04/06/2009

### **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).

### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 31 (1, 2) - 04/06/2009

### **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.

**Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. G, s. 16 - 01/02/1999

**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).

**Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 32 (1-3) - 04/06/2009

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).

**Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 9 - 31/12/1993

2007, c. 10, Sched. M, s. 33 (1, 2) - 04/06/2009

**37** REPEALED: 2017, c. 11, Sched. 5, s. 16.

**Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 34 (1-3) - 04/06/2009

2017, c. 11, Sched. 5, s. 16 - 30/05/2017

**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).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 38 (2) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 17 (1))**

### **Composition**

(2) The panel selected by the chair shall be composed in accordance with regulations made pursuant to clauses 43 (1) (p) to (s) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 17 (1).

### **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).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 38 (3) of Schedule 2 to the Act is repealed. (See: 2017, c. 11, Sched. 5, s. 17 (1))**

### **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).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 38 (5) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 17 (2))**

### **Quorum**

(5) Quorum for the panel shall be in accordance with regulations made pursuant to clause 43 (1) (s) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 17 (2).

### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 35 - 04/06/2009

2017, c. 11, Sched. 5, s. 17 (1, 2) - not in force

### **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.

**Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 10 - 31/12/1993

2007, c. 10, Sched. M, s. 36 - 04/06/2009

**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).

**Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 11 - 31/12/1993

**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.

**Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 12 - 31/12/1993; 1998, c. 18, Sched. G, s. 17 - 01/02/1999

**Note: On a day to be named by proclamation of the Lieutenant Governor, Schedule 2 to the Act is amended by adding the following section: (See: 2017, c. 11, Sched. 5, s. 18)**

**Production orders**

**42.2** (1) Where, in relation to a hearing involving allegations of a member's misconduct of a sexual nature, the member seeks an order of the panel of the Discipline Committee for the production and disclosure of a record that contains information for which there is a reasonable expectation of privacy from a person who is not a party to the hearing, any one or more of the following assertions made by the member are not sufficient on their own to establish that the record is likely relevant to an issue in the hearing or to the competence of a witness to testify:

- 1. That the record exists.
- 2. That the record relates to medical or psychiatric treatment, therapy or counselling that the complainant or a witness has received or is receiving.
- 3. That the record relates to the incident that is the subject-matter of the proceedings.
- 4. That the record may disclose a prior inconsistent statement of the complainant or a witness.
- 5. That the record may relate to the credibility of the complainant or a witness.
- 6. That the record may relate to the reliability of the testimony of the complainant or a witness merely because the complainant or witness has received or is receiving psychiatric treatment, therapy or counselling.
- 7. That the record may reveal allegations of sexual abuse of the complainant or a witness by a person other than the member.
- 8. That the record relates to the sexual activity of the complainant or a witness with any person, including the member.
- 9. That the record relates to the presence or absence of a recent complaint.

10. That the record relates to the sexual reputation of the complainant or a witness.
11. That the record was made close in time to a complaint or report or to the activity that forms the subject-matter of the allegation against the member. 2017, c. 11, Sched. 5, s. 18.

#### **Same**

(2) A panel of the Discipline Committee may order the person who has possession or control of the record to produce the record or part of the record if the panel is satisfied that the member has established that the record is likely relevant to an issue in the hearing or to the competence of a witness to testify in the hearing and the production of the record is necessary in the interest of justice. 2017, c. 11, Sched. 5, s. 18.

#### **Factors to be considered**

(3) In determining whether to grant an order for the production of records in accordance with this section, the panel shall consider,

- (a) the regulatory nature of the proceedings;
- (b) the primary purpose of the proceedings, which is to protect the public and regulate the profession in the public interest;
- (c) the privacy interest of the complainant or a witness in the record sought; and
- (d) the nature and purpose of the record sought in the motion. 2017, c. 11, Sched. 5, s. 18.

#### **Standing**

(4) Despite subsection 41.1 (1), the panel shall, upon the application of any person who has a privacy interest in the records referred to in subsection (1) of this section, grant the person standing on the member's motion for production of the records. 2017, c. 11, Sched. 5, s. 18.

#### **Interpretation**

(5) 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 a patient. 2017, c. 11, Sched. 5, s. 18.

#### **Section Amendments with date in force (d/m/y)**

2017, c. 11, Sched. 5, s. 18 - not in force

#### **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).

### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 37 - 04/06/2009

### **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.

### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 38 - 04/06/2009

### **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.

### **Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 13 - 31/12/1993

### **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 another health profession in Ontario, or 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 under this section or 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); 2017, c. 11, Sched. 5, s. 19 (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).

### **No gender-based terms, conditions, limitations**

(4.1) In making an order under paragraph 3 of subsection (2), a panel shall not make any order directing the Registrar to impose any gender-based terms, conditions or limitations on a member's certificate of registration. 2017, c. 11, Sched. 5, s. 19 (2).



### **Interim suspension of certificate**

(4.2) The panel shall immediately make an interim order suspending a member's certificate of registration until such time as the panel makes an order under subsection (5) or (5.2) if the panel finds that the member has committed an act of professional misconduct,

- (a) under clause (1) (a) and the offence is prescribed for the purposes of clause (5.2) (a) in a regulation made under clause 43 (1) (v) of the *Regulated Health Professions Act, 1991*;
- (b) under clause (1) (b) and the misconduct includes or consists of any of the conduct listed in paragraph 3 of subsection (5); or
- (c) by sexually abusing a patient and the sexual abuse involves conduct listed under subparagraphs 3 i to vii of subsection (5). 2017, c. 11, Sched. 5, s. 19 (2).

### **Non-application to mandatory orders**

(4.3) For greater certainty, subsection (4) does not apply to a mandatory order made under subsection (5) or a mandatory order made under subsection (5.2). 2017, c. 11, Sched. 5, s. 19 (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. Suspend the member's certificate of registration if the sexual abuse does not consist of or include conduct listed in paragraph 3 and the panel has not otherwise made an order revoking the member's certificate of registration under subsection (2).
3. 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. Encouraging the patient to masturbate in the presence of the member.
  - vi. Touching of a sexual nature of the patient's genitals, anus, breasts or buttocks.
  - vii. Other conduct of a sexual nature prescribed in regulations made pursuant to clause 43 (1) (u) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 19 (3).

### **Interpretation**

(5.1) For greater certainty, for the purposes of subsection (5),

“sexual nature” does not include touching or conduct of a clinical nature appropriate to the service provided. 2017, c. 11, Sched. 5, s. 19 (3).

### **Mandatory revocation**

(5.2) The panel shall, in addition to anything else the panel may do under subsection (2), reprimand the member and revoke the member's certificate of registration if,

- (a) the member has been found guilty of professional misconduct under clause (1) (a) and the offence is prescribed in a regulation made under clause 43 (1) (v) of the *Regulated Health Professions Act, 1991*; or
- (b) the member has been found guilty of professional misconduct under clause (1) (b) and the misconduct includes or consists of any of the conduct listed in paragraph 3 of subsection (5). 2017, c. 11, Sched. 5, s. 19 (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).

## **Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 14 (1-3) - 31/12/1993

2007, c. 10, Sched. M, s. 39 (1, 2) - 04/06/2009

2017, c. 11, Sched. 5, s. 19 (1-3) - 30/05/2017

## **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).

## **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 40 (1-3) - 04/06/2009

## **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.

## **Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 15 - 31/12/1993

## **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.

## **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 41 - 04/06/2009

### **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.

### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 42 - 04/06/2009

### **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.

### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 43 - 04/06/2009

### **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.

**Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 44 - 04/06/2009

**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.

**Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 44 - 04/06/2009

**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.

**Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 44 - 04/06/2009

**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 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. 2017, c. 11, Sched. 5, s. 20.

**No gender-based terms**

(2) Despite subsection (1), the panel shall not make an interim order directing the Registrar to impose any gender-based terms, conditions or limitations on a member's certificate of registration. 2017, c. 11, Sched. 5, s. 20.

**Procedure following interim suspension**

(3) If an order is made under subsection (1) in relation to a matter,

- (a) the College shall inquire into and prosecute the matter expeditiously; and
- (b) the Inquiries, Complaints and Reports Committee and the Fitness to Practise Committee shall give precedence to the matter. 2017, c. 11, Sched. 5, s. 20.

**Duration of order**

(4) An order under subsection (1) continues in force until it is varied by the panel of the Inquiries, Complaints and Reports Committee or until the matter is finally disposed of by a panel of the Inquiries, Complaints and Reports Committee or the Fitness to Practise Committee. 2017, c. 11, Sched. 5, s. 20.

**Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 45 (1, 2) - 04/06/2009

2017, c. 11, Sched. 5, s. 20 - 30/05/2017

**Restrictions on orders**

**63** (1) No order shall be made with respect to a member under subsection 59 (2) or subsection 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. 2017, c. 11, Sched. 5, s. 21.

**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.

**Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 46 - 04/06/2009

2017, c. 11, Sched. 5, s. 21 - 30/05/2017

### **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).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 64 (2) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 22)**

### **Composition of panels**

(2) The panel selected by the chair shall be composed in accordance with regulations made pursuant to clauses 43 (1) (p) to (s) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 22.

### **Quorum**

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

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 64 (3) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 22)**

### **Quorum**

(3) Quorum for the panel shall be in accordance with regulations made pursuant to clause 43 (1) (s) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 22.

### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 47 (1, 2) - 04/06/2009

2017, c. 11, Sched. 5, s. 22 - not in force

### **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.

### **Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. G, s. 18 - 01/02/1999

### **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.

**Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 16 - 31/12/1993

2007, c. 10, Sched. M, s. 48 - 04/06/2009

**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).

**Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 49 (1, 2) - 04/06/2009

**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).

### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 50 (1-3) - 04/06/2009

## **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 paragraph 3 of subsection 51 (5) or an act of professional misconduct described in subsection 51 (5.2). 2017, c. 11, Sched. 5, s. 23.

### **Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 17 - 31/12/1993

2017, c. 11, Sched. 5, s. 23 - 30/05/2017

### **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.

### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 51 - 04/06/2009

## **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.

### **Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 18 - 31/12/1993

2007, c. 10, Sched. M, s. 52 - 04/06/2009

### **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).

**Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 3 of subsection 73 (3) of Schedule 2 to the Act is repealed. (See: 2017, c. 11, Sched. 5, s. 24)**

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).

### **Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 19 - 31/12/1993

2017, c. 11, Sched. 5, s. 24 - not in force

### **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.

### **Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 20 - 31/12/1993

## **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.

### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 53 - 04/06/2009

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

- 76** (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.

### **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).

### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 54 - 04/06/2007

2009, c. 6, s. 1 - 23/04/2009

2009, c. 33, Sched. 6, s. 84 - 01/06/2011

### **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).

**Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 55 - 04/06/2007

**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.

**Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 56 - 04/06/2009

## QUALITY ASSURANCE COMMITTEE

**79.1** REPEALED: 2007, c. 10, Sched. M, s. 57.

### Section Amendments with date in force (d/m/y)

1993, c. 37, s. 21 - 31/12/1993

2007, c. 10, Sched. M, s. 57 - 04/06/2009

### 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).

### Section Amendments with date in force (d/m/y)

2000, c. 26, Sched. H, s. 3 (1) - 06/12/2000

### 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.

### Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 58 - 04/06/2009

2009, c. 26, s. 24 (14) - not in force

### 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.

## **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 58 - 04/06/2009

## **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).

### **Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. G, s. 19 - 01/02/1999

2004, c. 3, Sched. B, s. 11 (1) - 01/11/2004

2007, c. 10, Sched. M, s. 59 (1-3) - 04/06/2009

### **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”, “divulgation”)

“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).

### **Section Amendments with date in force (d/m/y)**

2004, c. 3, Sched. B, s. 11 (2) - 01/11/2004

## **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).

### **Other functions**

(3.1) The patient relations program shall perform any other functions that are prescribed in regulations made under clause 43 (1) (x) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 25.

### **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).

### **Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 22 (1, 2) - 31/12/1993

2007, c. 10, Sched. M, s. 60 (1, 2) - 04/06/2009

2017, c. 11, Sched. 5, s. 25 - 30/05/2017

## **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.

#### **Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 23 - 31/12/1993

### **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.

#### **Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 23 - 31/12/1993

2007, c. 10, Sched. M, s. 61 - 04/06/2009

### **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.

#### **Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 23 - 31/12/1993

2007, c. 10, Sched. M, s. 62 (1, 2) - 04/06/2009

#### **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.

#### **Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 23 - 31/12/1993

#### **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) Where a member resigns, or voluntarily relinquishes or restricts his or her privileges or practice, and the circumstances set out in paragraph 1 or 2 apply, a person referred to in subsection (3) shall act in accordance with those paragraphs:

1. Where a person referred to in subsection (3) has reasonable grounds to believe that the resignation, relinquishment or restriction, as the case may be, is related to the member's professional misconduct, incompetence or incapacity, the person shall file with the Registrar within 30 days after the resignation, relinquishment or restriction a written report setting out the grounds upon which the person's belief is based.
2. Where the resignation, relinquishment or restriction, as the case may be, takes place during the course of, or as a result of, an investigation conducted by or on behalf of a person referred to in subsection (3) into allegations related to professional misconduct, incompetence or incapacity on the part of the member, the person referred to in subsection (3) shall file with the Registrar within 30 days after the resignation, relinquishment or restriction a written report setting out the nature of the allegations being investigated. 2014, c. 14, Sched. 2, s. 12.

#### **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.

#### **Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 23 - 31/12/1993

2000, c. 42, Sched., s. 36 - 01/11/2001

2014, c. 14, Sched. 2, s. 12 - 01/08/2016

### **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.

#### **Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 23 - 31/12/1993

### **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.

#### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 63 - 04/06/2009

2009, c. 26, s. 24 (15) - 15/12/2009

### **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.

### **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 63 - 04/06/2009

2009, c. 26, s. 24 (16) - 15/12/2009

**Note: On a day to be named by proclamation of the Lieutenant Governor, Schedule 2 to the Act is amended by adding the following section: (See: 2017, c. 11, Sched. 5, s. 26)**

### **Reporting by members re: other professional memberships and findings**

**85.6.3** (1) A member shall advise the Registrar in writing if the member is a member of another body that governs a profession inside or outside of Ontario. 2017, c. 11, Sched. 5, s. 26.

### **Findings of misconduct or incompetence**

(2) A member shall file a report in writing with the Registrar if there has been a finding of professional misconduct or incompetence made against the member by another body that governs a profession inside or outside of Ontario. 2017, c. 11, Sched. 5, s. 26.

### **Timing of report**

(3) The report must be filed as soon as reasonably practicable after the member receives notice of the finding made against the member. 2017, c. 11, Sched. 5, s. 26.

### **Contents of report**

(4) 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 body that made the finding against the member; and
- (e) the status of any appeal initiated respecting the finding made against the member. 2017, c. 11, Sched. 5, s. 26.

### **Publication ban**

(5) The report shall not contain any information that violates a publication ban. 2017, c. 11, Sched. 5, s. 26.

### **Same**

(6) 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. 2017, c. 11, Sched. 5, s. 26.

### **Additional reports**

(7) 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. 2017, c. 11, Sched. 5, s. 26.

### **Section Amendments with date in force (d/m/y)**

2017, c. 11, Sched. 5, s. 26 - not in force

**Note: On a day to be named by proclamation of the Lieutenant Governor, Schedule 2 to the Act is amended by adding the following section: (See: 2017, c. 11, Sched. 5, s. 27)**

**Reporting by members re: charges and bail conditions, etc.**

**85.6.4** (1) A member shall file a report in writing with the Registrar if the member has been charged with an offence, and the report shall include information about every bail condition or other restriction imposed on, or agreed to, by the member in connection with the charge. 2017, c. 11, Sched. 5, s. 27.

**Timing of report**

(2) The report must be filed as soon as reasonably practicable after the member receives notice of the charge, bail condition or restriction. 2017, c. 11, Sched. 5, s. 27.

**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 charge;
- (c) the date the charge was laid against the member;
- (d) the name and location of the court in which the charge was laid or in which the bail condition or restriction was imposed on or agreed to by the member;
- (e) every bail condition imposed on the member as a result of the charge;
- (f) any other restriction imposed on or agreed to by the member relating to the charge; and
- (g) the status of any proceedings with respect to the charge. 2017, c. 11, Sched. 5, s. 27.

**Publication ban**

(4) The report shall not contain any information that violates a publication ban. 2017, c. 11, Sched. 5, s. 27.

**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. 2017, c. 11, Sched. 5, s. 27.

**Additional reports**

(6) A member who files a report under subsection (1) shall file an additional report if there is a change in the status of the charge or bail conditions. 2017, c. 11, Sched. 5, s. 27.

**Section Amendments with date in force (d/m/y)**

2017, c. 11, Sched. 5, s. 27 - not in force

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.

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 85.7 (1) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 28 (1))**

**Funding provided by College**

(1) There shall be a program, established by the College, to provide funding for the following purposes in connection with allegations of sexual abuse by members:

- 1. Therapy and counselling for persons alleging sexual abuse by a member.
- 2. Any other purposes prescribed in regulations made under clause 43 (1) (y) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 28 (1).

**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.

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 85.7 (4) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 28 (2))**

### **Eligibility**

(4) A person is eligible for funding if,

- (a) it is alleged, in a complaint or report, that the person was sexually abused by a member while the person was a patient of the member; or
- (b) the alternative requirements prescribed in the regulations made by the Council are satisfied. 2017, c. 11, Sched. 5, s. 28 (2).

### **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.

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 85.7 (5) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 28 (2))**

### **Timing**

(5) Where a request is made for funding pursuant to subsection (1), a determination of the person's eligibility for such funding in accordance with subsection (4) shall be made within a reasonable period of time of the request having been received. 2017, c. 11, Sched. 5, s. 28 (2).

### **Not a finding**

(5.1) The determination of a person's eligibility for funding in accordance with subsection (4) does not constitute a finding against the member and shall not be considered by any other committee of the College dealing with the member. 2017, c. 11, Sched. 5, s. 28 (2).

### **Cessation of eligibility**

(5.2) Despite subsection (4), a person's eligibility to receive funding pursuant to subsection (1) ceases upon the occurrence of any of the prescribed circumstances. 2017, c. 11, Sched. 5, s. 28 (2).

### **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.

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 85.7 (8) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 28 (3))**

### **Payment**

(8) Funding shall be paid only to the therapist or counsellor chosen by the person or to other persons or classes of persons prescribed in any regulation made under clause 43 (1) (y) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 28 (3).

### **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.

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 85.7 (9) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 28 (3))**

### **Use of funding**

(9) Funding shall be used only to pay for therapy or counselling and for any other purposes prescribed in any regulation made under clause 43 (1) (y) of the *Regulated Health Professions Act, 1991* and shall not be applied directly or indirectly for any other purpose. 2017, c. 11, Sched. 5, s. 28 (3).

### **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.

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 85.7 (10) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 28 (3))**

### **Same**

(10) Funding may be used to pay for therapy or counselling that was provided at any time after the alleged sexual abuse took place. 2017, c. 11, Sched. 5, s. 28 (3). 2017.

### **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.

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 85.7 (11) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 28 (3))**

### **Other coverage**

(11) The funding that is provided to a person for therapy and counselling 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 the person under the program. 2017, c. 11, Sched. 5, s. 28 (3).

### **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.

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 85.7 (12) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 28 (3))**

### **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 an eligible person referred to in subsection (4). 2017, c. 11, Sched. 5, s. 28 (3).

### **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.

### **Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 23 - 31/12/1993

2007, c. 10, Sched. M, s. 64 - 04/06/2009

2017, c. 11, Sched. 5, s. 28 (1-3) - not in force

## 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).

#### Section Amendments with date in force (d/m/y)

2000, c. 42, Sched., s. 37 - 01/11/2001

2001, c. 8, s. 219 - 01/11/2001

2005, c. 28, Sched. B, s. 2 (1) - 01/01/2006

#### 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.

#### Section Amendments with date in force (d/m/y)

2000, c. 42, Sched., s. 37 - 01/11/2001

2007, c. 10, Sched. M, s. 69 - 04/06/2009

#### 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.

#### Section Amendments with date in force (d/m/y)

2001, c. 8, s. 220 - 01/11/2001

2007, c. 10, Sched. M, s. 65 - 04/06/2009

### 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).

#### **Section Amendments with date in force (d/m/y)**

2000, c. 42, Sched., s. 37 - 01/11/2001

2001, c. 8, s. 221 (1, 2) - 01/11/2001

2007, c. 10, Sched. M, s. 66 - 04/06/2009

#### **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.

#### **Section Amendments with date in force (d/m/y)**

2001, c. 8, s. 222 - 01/11/2001

#### **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.

#### **Section Amendments with date in force (d/m/y)**

2000, c. 42, Sched., s. 37 - 01/11/2001

#### **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).

#### **Section Amendments with date in force (d/m/y)**

2001, c. 8, s. 223 - 01/11/2001

2005, c. 28, Sched. B, s. 2 (2) - 01/01/2006

2007, c. 10, Sched. M, s. 67 - 04/06/2009

### 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).

## **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 68 - 04/06/2009

## **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).

## **Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. G, s. 20 - 1/02/1999

2000, c. 42, Sched., s. 38 - 01/11/2001

2001, c. 8, s. 224 - 01/11/2001

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006

## **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.

## **Section Amendments with date in force (d/m/y)**

2001, c. 8, s. 225 - 01/11/2001

2002, c. 24, Sched. B, s. 25 - 01/01/2004

**90** REPEALED: 1993, c. 37, s. 24.

## **Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 24 - 31/12/1993

**91** REPEALED: 2007, c. 10, Sched. M, s. 70.

## **Section Amendments with date in force (d/m/y)**

2007, c. 10, Sched. M, s. 70 - 04/06/2007

## **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.

**Section Amendments with date in force (d/m/y)**

2000, c. 42, Sched., s. 39 - 01/11/2001

2007, c. 10, Sched. M, s. 71 - 04/06/2007

**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.

**Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 25 - 31/12/1993

**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 \$50,000. 2017, c. 11, Sched. 5, s. 29.

**Sexual abuse reporting by facilities**

(3) Despite subsection (1), every person who contravenes subsection 85.2 (1) in respect of a matter concerning the sexual abuse of a patient is guilty of an offence and on conviction is liable,

- (a) in the case of an individual to a fine of not more than \$50,000; or
- (b) in the case of a corporation to a fine of not more than \$200,000. 2017, c. 11, Sched. 5, s. 29.

**Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 26 (1, 2) - 31/12/1993

2007, c. 10, Sched. M, s. 72 - 04/06/2007

2009, c. 26, s. 24 (17) - 15/12/2009

2017, c. 11, Sched. 5, s. 29 - 30/05/2017

**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.

**Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. G, s. 21 - 01/02/1999

**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;

**Note: On a day to be named by proclamation of the Lieutenant Governor, clause 94 (1) (h.1) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 30 (1))**

- (h.1) subject to the regulations made under clauses 43 (1) (p) to (s) of the *Regulated Health Professions Act, 1991*,
  - (i) respecting the filling of vacancies on the Council or on committees,
  - (ii) providing for the composition of committees,
  - (iii) 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,
  - (iv) prescribing conditions that disqualify committee members from sitting on committees required under subsection 10 (1) and governing the removal of disqualified committee members;

- (h.2) providing for the composition of committees;

**Note: On a day to be named by proclamation of the Lieutenant Governor, clause 94 (1) (h.2) of Schedule 2 to the Act is repealed. (See: 2017, c. 11, Sched. 5, s. 30 (1))**

- (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;

**Note: On a day to be named by proclamation of the Lieutenant Governor, clause 94 (1) (h.3) of Schedule 2 to the Act is repealed. (See: 2017, c. 11, Sched. 5, s. 30 (1))**

- (h.4) prescribing conditions disqualifying committee members from sitting on committees required under subsection 10 (1) and governing the removal of disqualified committee members;

**Note: On a day to be named by proclamation of the Lieutenant Governor, clause 94 (1) (h.4) of Schedule 2 to the Act is repealed. (See: 2017, c. 11, Sched. 5, s. 30 (1))**

- (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);
- (1.1) 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) specifying information as information to be kept in the register for the purposes of paragraph 20 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); 2017, c. 11, Sched. 5, s. 30 (2).

#### **Circulation of certain by-laws**

(2) A by-law shall not be made under clause (1) (l.2), (l.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).

#### **Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. G, s. 22 (1-6) - 01/02/1999

2000, c. 42, Sched., s. 40 - 01/11/2001

2007, c. 10, Sched. M, s. 73 (1-3) - 04/06/2009

2017, c. 11, Sched. 5, s. 30 (1) - not in force; 2017, c. 11, Sched. 5, s. 30 (2) - 30/05/2017

#### **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,

- (0.a) providing that the spousal exception in subsection 1 (5) applies in respect of the College;

- (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);

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 95 (1) of Schedule 2 to the Act is amended by adding the following clause: (See: 2017, c. 11, Sched. 5, s. 31)**

- (q.1) prescribing the circumstances in respect of which a person's eligibility for funding ceases for the purposes of subsection 85.7 (5.2);
- (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); 2007, c. 10, Sched. M, s. 74 (1); 2009, c. 6, s. 2; 2013, c. 9, s. 1 (2).

**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).

### **Section Amendments with date in force (d/m/y)**

1993, c. 37, s. 27 (2) - 31/12/1993; 1998, c. 18, Sched. G, s. 23 (1) - 01/02/1999

2000, c. 26, Sched. H, s. 3 (2, 3) - 06/12/2000

2004, c. 3, Sched. B, s. 11 (3) - 20/05/2004

2006, c. 19, Sched. L, s. 10 (2) - 22/06/2006

2007, c. 10, Sched. M, s. 74 (1-4) - 04/06/2009

2009, c. 6, s. 2 - 23/04/2009

2013, c. 9, s. 1 (2) - 06/11/2013

2017, c. 11, Sched. 5, s. 31 - not in force

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## Statutory Powers Procedure Act

R.S.O. 1990, CHAPTER S.22

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### Interpretation

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

“electronic hearing” means a hearing held by conference telephone or some other form of electronic technology allowing persons to hear one another; (“audience électronique”)

“hearing” means a hearing in any proceeding; (“audience”)

“licence” includes any permit, certificate, approval, registration or similar form of permission required by law; (“autorisation”)

“municipality” has the same meaning as in the *Municipal Affairs Act*; (“municipalité”)

“oral hearing” means a hearing at which the parties or their representatives attend before the tribunal in person; (“audience orale”)

“proceeding” means a proceeding to which this Act applies; (“instance”)

“representative” means, in respect of a proceeding to which this Act applies, a person authorized under the *Law Society Act* to represent a person in that proceeding; (“représentant”)

“statutory power of decision” means a power or right, conferred by or under a statute, to make a decision deciding or prescribing,

(a) the legal rights, powers, privileges, immunities, duties or liabilities of any person or party, or

(b) the eligibility of any person or party to receive, or to the continuation of, a benefit or licence, whether the person is legally entitled thereto or not; (“compétence légale de décision”)

“tribunal” means one or more persons, whether or not incorporated and however described, upon which a statutory power of decision is conferred by or under a statute; (“tribunal”)

“written hearing” means a hearing held by means of the exchange of documents, whether in written form or by electronic means. (“audience écrite”) R.S.O. 1990, c. S.22, s. 1 (1); 1994, c. 27, s. 56 (1-3); 2002, c. 17, Sched. F, Table; 2006, c. 21, Sched. C, s. 134 (1, 2).

### Meaning of “person” extended

(2) A municipality, an unincorporated association of employers, a trade union or council of trade unions who may be a party to a proceeding in the exercise of a statutory power of decision under the statute conferring the power shall be deemed to be a person for the purpose of any provision of this Act or of any rule made under this Act that applies to parties. R.S.O. 1990, c. S.22, s. 1 (2).

### Liberal construction of Act and rules

2. This Act, and any rule made by a tribunal under subsection 17.1 (4) or section 25.1, shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits. 1999, c. 12, Sched. B, s. 16 (1); 2006, c. 19, Sched. B, s. 21 (1).

### Application of Act

3. (1) Subject to subsection (2), this Act applies to a proceeding by a tribunal in the exercise of a statutory power of decision conferred by or under an Act of the Legislature, where the tribunal is required by or under such Act or otherwise by law to hold or to afford to the parties to the proceeding an opportunity for a hearing before making a decision. R.S.O. 1990, c. S.22, s. 3 (1); 1994, c. 27, s. 56 (5).

### Where Act does not apply

(2) This Act does not apply to a proceeding,

- (a) before the Assembly or any committee of the Assembly;
- (b) in or before,
  - (i) the Court of Appeal,
  - (ii) the Superior Court of Justice,
  - (iii) the Ontario Court of Justice,
  - (iv) the Family Court of the Superior Court of Justice,
  - (v) the Small Claims Court, or
  - (vi) a justice of the peace;
- (c) to which the Rules of Civil Procedure apply;
- (d) before an arbitrator to which the *Arbitrations Act* or the *Labour Relations Act* applies;
- (e) at a coroner's inquest;
- (f) of a commission appointed under the *Public Inquiries Act, 2009*;
- (g) of one or more persons required to make an investigation and to make a report, with or without recommendations, where the report is for the information or advice of the person to whom it is made and does not in any way legally bind or limit that person in any decision he or she may have power to make; or
- (h) of a tribunal empowered to make regulations, rules or by-laws in so far as its power to make regulations, rules or by-laws is concerned. R.S.O. 1990, c. S.22, s. 3 (2); 1994, c. 27, s. 56 (6); 2006, c. 19, Sched. C, s. 1 (1, 2, 4); 2009, c. 33, Sched. 6, s. 87.

#### **Waiver**

##### **Waiver of procedural requirement**

4. (1) Any procedural requirement of this Act, or of another Act or a regulation that applies to a proceeding, may be waived with the consent of the parties and the tribunal. 1997, c. 23, s. 13 (1).

##### **Same, rules**

(2) Any provision of a tribunal's rules made under section 25.1 may be waived in accordance with the rules. 1994, c. 27, s. 56 (7).

##### **Disposition without hearing**

4.1 If the parties consent, a proceeding may be disposed of by a decision of the tribunal given without a hearing, unless another Act or a regulation that applies to the proceeding provides otherwise. 1997, c. 23, s. 13 (2).

##### **Panels, certain matters**

4.2 (1) A procedural or interlocutory matter in a proceeding may be heard and determined by a panel consisting of one or more members of the tribunal, as assigned by the chair of the tribunal. 1994, c. 27, s. 56 (8).

##### **Assignments**

(2) In assigning members of the tribunal to a panel, the chair shall take into consideration any requirement imposed by another Act or a regulation that applies to the proceeding that the tribunal be representative of specific interests. 1997, c. 23, s. 13 (3).

##### **Decision of panel**

(3) The decision of a majority of the members of a panel, or their unanimous decision in the case of a two-member panel, is the tribunal's decision. 1994, c. 27, s. 56 (8).

##### **Panel of one, reduced panel**

##### **Panel of one**

4.2.1 (1) The chair of a tribunal may decide that a proceeding be heard by a panel of one person and assign the person to hear the proceeding unless there is a statutory requirement in another Act that the proceeding be heard by a panel of more than one person.

##### **Reduction in number of panel members**

(2) Where there is a statutory requirement in another Act that a proceeding be heard by a panel of a specified number of persons, the chair of the tribunal may assign to the panel one person or any lesser number of persons than the number specified in the other Act if all parties to the proceeding consent. 1999, c. 12, Sched. B, s. 16 (2).

**Expiry of term**

4.3 If the term of office of a member of a tribunal who has participated in a hearing expires before a decision is given, the term shall be deemed to continue, but only for the purpose of participating in the decision and for no other purpose. 1997, c. 23, s. 13 (4).

**Incapacity of member**

4.4 (1) If a member of a tribunal who has participated in a hearing becomes unable, for any reason, to complete the hearing or to participate in the decision, the remaining member or members may complete the hearing and give a decision. 1994, c. 27, s. 56 (9).

**Other Acts and regulations**

(2) Subsection (1) does not apply if another Act or a regulation specifically deals with the issue of what takes place in the circumstances described in subsection (1). 1997, c. 23, s. 13 (5).

**Decision not to process commencement of proceeding**

4.5 (1) Subject to subsection (3), upon receiving documents relating to the commencement of a proceeding, a tribunal or its administrative staff may decide not to process the documents relating to the commencement of the proceeding if,

- (a) the documents are incomplete;
- (b) the documents are received after the time required for commencing the proceeding has elapsed;
- (c) the fee required for commencing the proceeding is not paid; or
- (d) there is some other technical defect in the commencement of the proceeding.

**Notice**

(2) A tribunal or its administrative staff shall give the party who commences a proceeding notice of its decision under subsection (1) and shall set out in the notice the reasons for the decision and the requirements for resuming the processing of the documents.

**Rules under s. 25.1**

(3) A tribunal or its administrative staff shall not make a decision under subsection (1) unless the tribunal has made rules under section 25.1 respecting the making of such decisions and those rules shall set out,

- (a) any of the grounds referred to in subsection (1) upon which the tribunal or its administrative staff may decide not to process the documents relating to the commencement of a proceeding; and
- (b) the requirements for the processing of the documents to be resumed.

**Continuance of provisions in other statutes**

(4) Despite section 32, nothing in this section shall prevent a tribunal or its administrative staff from deciding not to process documents relating to the commencement of a proceeding on grounds that differ from those referred to in subsection (1) or without complying with subsection (2) or (3) if the tribunal or its staff does so in accordance with the provisions of an Act that are in force on the day this section comes into force. 1999, c. 12, Sched. B, s. 16 (3).

**Dismissal of proceeding without hearing**

4.6 (1) Subject to subsections (5) and (6), a tribunal may dismiss a proceeding without a hearing if,

- (a) the proceeding is frivolous, vexatious or is commenced in bad faith;
- (b) the proceeding relates to matters that are outside the jurisdiction of the tribunal; or
- (c) some aspect of the statutory requirements for bringing the proceeding has not been met.

**Notice**

(2) Before dismissing a proceeding under this section, a tribunal shall give notice of its intention to dismiss the proceeding to,

- (a) all parties to the proceeding if the proceeding is being dismissed for reasons referred to in clause (1) (b); or

(b) the party who commences the proceeding if the proceeding is being dismissed for any other reason.

**Same**

(3) The notice of intention to dismiss a proceeding shall set out the reasons for the dismissal and inform the parties of their right to make written submissions to the tribunal with respect to the dismissal within the time specified in the notice.

**Right to make submissions**

(4) A party who receives a notice under subsection (2) may make written submissions to the tribunal with respect to the dismissal within the time specified in the notice.

**Dismissal**

(5) A tribunal shall not dismiss a proceeding under this section until it has given notice under subsection (2) and considered any submissions made under subsection (4).

**Rules**

(6) A tribunal shall not dismiss a proceeding under this section unless it has made rules under section 25.1 respecting the early dismissal of proceedings and those rules shall include,

- (a) any of the grounds referred to in subsection (1) upon which a proceeding may be dismissed;
- (b) the right of the parties who are entitled to receive notice under subsection (2) to make submissions with respect to the dismissal; and
- (c) the time within which the submissions must be made.

**Continuance of provisions in other statutes**

(7) Despite section 32, nothing in this section shall prevent a tribunal from dismissing a proceeding on grounds other than those referred to in subsection (1) or without complying with subsections (2) to (6) if the tribunal dismisses the proceeding in accordance with the provisions of an Act that are in force on the day this section comes into force. 1999, c. 12, Sched. B, s. 16 (3).

**Classifying proceedings**

4.7 A tribunal may make rules under section 25.1 classifying the types of proceedings that come before it and setting guidelines as to the procedural steps or processes (such as preliminary motions, pre-hearing conferences, alternative dispute resolution mechanisms, expedited hearings) that apply to each type of proceeding and the circumstances in which other procedures may apply. 1999, c. 12, Sched. B, s. 16 (3).

**Alternative dispute resolution**

4.8 (1) A tribunal may direct the parties to a proceeding to participate in an alternative dispute resolution mechanism for the purposes of resolving the proceeding or an issue arising in the proceeding if,

- (a) it has made rules under section 25.1 respecting the use of alternative dispute resolution mechanisms; and
- (b) all parties consent to participating in the alternative dispute resolution mechanism.

**Definition**

(2) In this section,

“alternative dispute resolution mechanism” includes mediation, conciliation, negotiation or any other means of facilitating the resolution of issues in dispute.

**Rules**

(3) A rule under section 25.1 respecting the use of alternative dispute resolution mechanisms shall include procedural guidelines to deal with the following:

- 1. The circumstances in which a settlement achieved by means of an alternative dispute resolution mechanism must be reviewed and approved by the tribunal.
- 2. Any requirement, statutory or otherwise, that there be an order by the tribunal.

**Mandatory alternative dispute resolution**

(4) A rule under subsection (3) may provide that participation in an alternative dispute resolution mechanism is mandatory or that it is mandatory in certain specified circumstances.

**Person appointed to mediate, etc.**

(5) A rule under subsection (3) may provide that a person appointed to mediate, conciliate, negotiate or help resolve a matter by means of an alternative dispute resolution mechanism be a member of the tribunal or a person independent of the tribunal. However, a member of the tribunal who is so appointed with respect to a matter in a proceeding shall not subsequently hear the matter if it comes before the tribunal unless the parties consent.

**Continuance of provisions in other statutes**

(6) Despite section 32, nothing in this section shall prevent a tribunal from directing parties to a proceeding to participate in an alternative dispute resolution mechanism even though the requirements of subsections (1) to (5) have not been met if the tribunal does so in accordance with the provisions of an Act that are in force on the day this section comes into force. 1999, c. 12, Sched. B, s. 16 (3).

**Mediators, etc.: not compellable, notes not evidence****Mediators, etc., not compellable**

4.9 (1) No person employed as a mediator, conciliator or negotiator or otherwise appointed to facilitate the resolution of a matter before a tribunal by means of an alternative dispute resolution mechanism shall be compelled to give testimony or produce documents in a proceeding before the tribunal or in a civil proceeding with respect to matters that come to his or her knowledge in the course of exercising his or her duties under this or any other Act.

**Evidence in civil proceedings**

(2) No notes or records kept by a mediator, conciliator or negotiator or by any other person appointed to facilitate the resolution of a matter before a tribunal by means of an alternative dispute resolution mechanism under this or any other Act are admissible in a civil proceeding. 1999, c. 12, Sched. B, s. 16 (3).

**Parties**

5. The parties to a proceeding shall be the persons specified as parties by or under the statute under which the proceeding arises or, if not so specified, persons entitled by law to be parties to the proceeding. R.S.O. 1990, c. S.22, s. 5.

**Written hearings**

5.1 (1) A tribunal whose rules made under section 25.1 deal with written hearings may hold a written hearing in a proceeding. 1997, c. 23, s. 13 (6).

**Exception**

(2) The tribunal shall not hold a written hearing if a party satisfies the tribunal that there is good reason for not doing so.

**Same**

(2.1) Subsection (2) does not apply if the only purpose of the hearing is to deal with procedural matters. 1999, c. 12, Sched. B, s. 16 (4).

**Documents**

(3) In a written hearing, all the parties are entitled to receive every document that the tribunal receives in the proceeding. 1994, c. 27, s. 56 (10).

**Electronic hearings**

5.2 (1) A tribunal whose rules made under section 25.1 deal with electronic hearings may hold an electronic hearing in a proceeding. 1997, c. 23, s. 13 (7).

**Exception**

(2) The tribunal shall not hold an electronic hearing if a party satisfies the tribunal that holding an electronic rather than an oral hearing is likely to cause the party significant prejudice.

**Same**

(3) Subsection (2) does not apply if the only purpose of the hearing is to deal with procedural matters.

**Participants to be able to hear one another**

(4) In an electronic hearing, all the parties and the members of the tribunal participating in the hearing must be able to hear one another and any witnesses throughout the hearing. 1994, c. 27, s. 56 (10).

**Different kinds of hearings in one proceeding**

5.2.1 A tribunal may, in a proceeding, hold any combination of written, electronic and oral hearings. 1997, c. 23, s. 13 (8).

**Pre-hearing conferences**

5.3 (1) If the tribunal's rules made under section 25.1 deal with pre-hearing conferences, the tribunal may direct the parties to participate in a pre-hearing conference to consider,

- (a) the settlement of any or all of the issues;
- (b) the simplification of the issues;
- (c) facts or evidence that may be agreed upon;
- (d) the dates by which any steps in the proceeding are to be taken or begun;
- (e) the estimated duration of the hearing; and
- (f) any other matter that may assist in the just and most expeditious disposition of the proceeding. 1994, c. 27, s. 56 (11); 1997, c. 23, s. 13 (9).

**Other Acts and regulations**

(1.1) The tribunal's power to direct the parties to participate in a pre-hearing conference is subject to any other Act or regulation that applies to the proceeding. 1997, c. 23, s. 13 (10).

**Who presides**

(2) The chair of the tribunal may designate a member of the tribunal or any other person to preside at the pre-hearing conference.

**Orders**

(3) A member who presides at a pre-hearing conference may make such orders as he or she considers necessary or advisable with respect to the conduct of the proceeding, including adding parties.

**Disqualification**

(4) A member who presides at a pre-hearing conference at which the parties attempt to settle issues shall not preside at the hearing of the proceeding unless the parties consent. 1994, c. 27, s. 56 (11).

**Application of s. 5.2**

(5) Section 5.2 applies to a pre-hearing conference, with necessary modifications. 1997, c. 23, s. 13 (10).

**Disclosure**

5.4 (1) If the tribunal's rules made under section 25.1 deal with disclosure, the tribunal may, at any stage of the proceeding before all hearings are complete, make orders for,

- (a) the exchange of documents;
- (b) the oral or written examination of a party;
- (c) the exchange of witness statements and reports of expert witnesses;
- (d) the provision of particulars;
- (e) any other form of disclosure. 1994, c. 27, s. 56 (12); 1997, c. 23, s. 13 (11).

**Other Acts and regulations**

(1.1) The tribunal's power to make orders for disclosure is subject to any other Act or regulation that applies to the proceeding. 1997, c. 23, s. 13 (12).

**Exception, privileged information**

(2) Subsection (1) does not authorize the making of an order requiring disclosure of privileged information. 1994, c. 27, s. 56 (12).

**Notice of hearing**

6. (1) The parties to a proceeding shall be given reasonable notice of the hearing by the tribunal. R.S.O. 1990, c. S.22, s. 6 (1).

**Statutory authority**

(2) A notice of a hearing shall include a reference to the statutory authority under which the hearing will be held.

**Oral hearing**

- (3) A notice of an oral hearing shall include,
- (a) a statement of the time, place and purpose of the hearing; and
  - (b) a statement that if the party notified does not attend at the hearing, the tribunal may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (13).

**Written hearing**

- (4) A notice of a written hearing shall include,
- (a) a statement of the date and purpose of the hearing, and details about the manner in which the hearing will be held;
  - (b) a statement that the hearing shall not be held as a written hearing if the party satisfies the tribunal that there is good reason for not holding a written hearing (in which case the tribunal is required to hold it as an electronic or oral hearing) and an indication of the procedure to be followed for that purpose;
  - (c) a statement that if the party notified neither acts under clause (b) nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (13); 1997, c. 23, s. 13 (13); 1999, c. 12, Sched. B, s. 16 (5).

**Electronic hearing**

- (5) A notice of an electronic hearing shall include,
- (a) a statement of the time and purpose of the hearing, and details about the manner in which the hearing will be held;
  - (b) a statement that the only purpose of the hearing is to deal with procedural matters, if that is the case;
  - (c) if clause (b) does not apply, a statement that the party notified may, by satisfying the tribunal that holding the hearing as an electronic hearing is likely to cause the party significant prejudice, require the tribunal to hold the hearing as an oral hearing, and an indication of the procedure to be followed for that purpose; and
  - (d) a statement that if the party notified neither acts under clause (c), if applicable, nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (13).

**Effect of non-attendance at hearing after due notice**

7. (1) Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding. R.S.O. 1990, c. S.22, s. 7; 1994, c. 27, s. 56 (14).

**Same, written hearings**

(2) Where notice of a written hearing has been given to a party to a proceeding in accordance with this Act and the party neither acts under clause 6 (4) (b) nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party is not entitled to any further notice in the proceeding.

**Same, electronic hearings**

(3) Where notice of an electronic hearing has been given to a party to a proceeding in accordance with this Act and the party neither acts under clause 6 (5) (c), if applicable, nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party is not entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (15).

**Where character, etc., of a party is in issue**

8. Where the good character, propriety of conduct or competence of a party is an issue in a proceeding, the party is entitled to be furnished prior to the hearing with reasonable information of any allegations with respect thereto. R.S.O. 1990, c. S.22, s. 8.

**Hearings to be public; maintenance of order****Hearings to be public, exceptions**

9. (1) An oral hearing shall be open to the public except where the tribunal is of the opinion that,
- (a) matters involving public security may be disclosed; or



- (b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public,

in which case the tribunal may hold the hearing in the absence of the public. R.S.O. 1990, c. S.22, s. 9 (1); 1994, c. 27, s. 56 (16).

#### **Written hearings**

(1.1) In a written hearing, members of the public are entitled to reasonable access to the documents submitted, unless the tribunal is of the opinion that clause (1) (a) or (b) applies. 1994, c. 27, s. 56 (17).

#### **Electronic hearings**

(1.2) An electronic hearing shall be open to the public unless the tribunal is of the opinion that,

- (a) it is not practical to hold the hearing in a manner that is open to the public; or
- (b) clause (1) (a) or (b) applies. 1997, c. 23, s. 13 (14).

#### **Maintenance of order at hearings**

(2) A tribunal may make such orders or give such directions at an oral or electronic hearing as it considers necessary for the maintenance of order at the hearing, and, if any person disobeys or fails to comply with any such order or direction, the tribunal or a member thereof may call for the assistance of any peace officer to enforce the order or direction, and every peace officer so called upon shall take such action as is necessary to enforce the order or direction and may use such force as is reasonably required for that purpose. R.S.O. 1990, c. S.22, s. 9 (2); 1994, c. 27, s. 56 (18).

#### **Proceedings involving similar questions**

9.1 (1) If two or more proceedings before a tribunal involve the same or similar questions of fact, law or policy, the tribunal may,

- (a) combine the proceedings or any part of them, with the consent of the parties;
- (b) hear the proceedings at the same time, with the consent of the parties;
- (c) hear the proceedings one immediately after the other; or
- (d) stay one or more of the proceedings until after the determination of another one of them.

#### **Exception**

(2) Subsection (1) does not apply to proceedings to which the *Consolidated Hearings Act* applies. 1994, c. 27, s. 56 (19).

#### **Same**

(3) Clauses (1) (a) and (b) do not apply to a proceeding if,

- (a) any other Act or regulation that applies to the proceeding requires that it be heard in private;
- (b) the tribunal is of the opinion that clause 9 (1) (a) or (b) applies to the proceeding. 1994, c. 27, s. 56 (19); 1997, c. 23, s. 13 (15).

#### **Conflict, consent requirements**

(4) The consent requirements of clauses (1) (a) and (b) do not apply if another Act or a regulation that applies to the proceedings allows the tribunal to combine them or hear them at the same time without the consent of the parties. 1997, c. 23, s. 13 (16).

#### **Use of same evidence**

(5) If the parties to the second-named proceeding consent, the tribunal may treat evidence that is admitted in a proceeding as if it were also admitted in another proceeding that is heard at the same time under clause (1) (b). 1994, c. 27, s. 56 (19).

#### **Right to representation**

10. A party to a proceeding may be represented by a representative. 2006, c. 21, Sched. C, s. 134 (3).

#### **Examination of witnesses**

10.1 A party to a proceeding may, at an oral or electronic hearing,

- (a) call and examine witnesses and present evidence and submissions; and

- (b) conduct cross-examinations of witnesses at the hearing reasonably required for a full and fair disclosure of all matters relevant to the issues in the proceeding. 1994, c. 27, s. 56 (20).

**Rights of witnesses to representation**

11. (1) A witness at an oral or electronic hearing is entitled to be advised by a representative as to his or her rights, but such representative may take no other part in the hearing without leave of the tribunal. 2006, c. 21, Sched. C, s. 134 (4).

**Idem**

(2) Where an oral hearing is closed to the public, the witness's representative is not entitled to be present except when that witness is giving evidence. R.S.O. 1990, c. S.22, s. 11 (2); 1994, c. 27, s. 56 (22); 2006, c. 21, Sched. C, s. 134 (5).

**Summonses**

12. (1) A tribunal may require any person, including a party, by summons,  
(a) to give evidence on oath or affirmation at an oral or electronic hearing; and  
(b) to produce in evidence at an oral or electronic hearing documents and things specified by the tribunal,  
relevant to the subject-matter of the proceeding and admissible at a hearing. R.S.O. 1990, c. S.22, s. 12 (1); 1994, c. 27, s. 56 (23).

**Form and service of summons**

- (2) A summons issued under subsection (1) shall be in the prescribed form (in English or French) and,  
(a) where the tribunal consists of one person, shall be signed by him or her;  
(b) where the tribunal consists of more than one person, shall be signed by the chair of the tribunal or in such other manner as documents on behalf of the tribunal may be signed under the statute constituting the tribunal. 1994, c. 27, s. 56 (24).

**Same**

- (3) The summons shall be served personally on the person summoned. 1994, c. 27, s. 56 (24).

**Fees and allowances**

(3.1) The person summoned is entitled to receive the same fees or allowances for attending at or otherwise participating in the hearing as are paid to a person summoned to attend before the Superior Court of Justice. 1994, c. 27, s. 56 (24); 2006, c. 19, Sched. C, s. 1 (1).

**Bench warrant**

- (4) A judge of the Superior Court of Justice may issue a warrant against a person if the judge is satisfied that,  
(a) a summons was served on the person under this section;  
(b) the person has failed to attend or to remain in attendance at the hearing (in the case of an oral hearing) or has failed otherwise to participate in the hearing (in the case of an electronic hearing) in accordance with the summons; and  
(c) the person's attendance or participation is material to the ends of justice. 1994, c. 27, s. 56 (25); 2006, c. 19, Sched. C, s. 1 (1).

**Same**

(4.1) The warrant shall be in the prescribed form (in English or French), directed to any police officer, and shall require the person to be apprehended anywhere within Ontario, brought before the tribunal forthwith and,  
(a) detained in custody as the judge may order until the person's presence as a witness is no longer required; or  
(b) in the judge's discretion, released on a recognizance, with or without sureties, conditioned for attendance or participation to give evidence. 1994, c. 27, s. 56 (25).

**Proof of service**

(5) Service of a summons may be proved by affidavit in an application to have a warrant issued under subsection (4). 1994, c. 27, s. 56 (26).

**Certificate of facts**

(6) Where an application to have a warrant issued is made on behalf of a tribunal, the person constituting the tribunal or, if the tribunal consists of more than one person, the chair of the tribunal may certify to the judge the facts relied on to establish

that the attendance or other participation of the person summoned is material to the ends of justice, and the judge may accept the certificate as proof of the facts. 1994, c. 27, s. 56 (26).

**Same**

(7) Where the application is made by a party to the proceeding, the facts relied on to establish that the attendance or other participation of the person is material to the ends of justice may be proved by the party's affidavit. 1994, c. 27, s. 56 (26).

**Contempt proceedings**

13. (1) Where any person without lawful excuse,

- (a) on being duly summoned under section 12 as a witness at a hearing makes default in attending at the hearing; or
- (b) being in attendance as a witness at an oral hearing or otherwise participating as a witness at an electronic hearing, refuses to take an oath or to make an affirmation legally required by the tribunal to be taken or made, or to produce any document or thing in his or her power or control legally required by the tribunal to be produced by him or her or to answer any question to which the tribunal may legally require an answer; or
- (c) does any other thing that would, if the tribunal had been a court of law having power to commit for contempt, have been contempt of that court,

the tribunal may, of its own motion or on the motion of a party to the proceeding, state a case to the Divisional Court setting out the facts and that court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of that person and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he or she had been guilty of contempt of the court. R.S.O. 1990, c. S.22, s. 13; 1994, c. 27, s. 56 (27).

**Same**

(2) Subsection (1) also applies to a person who,

- (a) having objected under clause 6 (4) (b) to a hearing being held as a written hearing, fails without lawful excuse to participate in the oral or electronic hearing of the matter; or
- (b) being a party, fails without lawful excuse to attend a pre-hearing conference when so directed by the tribunal. 1997, c. 23, s. 13 (17).

**Protection for witnesses**

14. (1) A witness at an oral or electronic hearing shall be deemed to have objected to answer any question asked him or her upon the ground that the answer may tend to criminate him or her or may tend to establish his or her liability to civil proceedings at the instance of the Crown, or of any person, and no answer given by a witness at a hearing shall be used or be receivable in evidence against the witness in any trial or other proceeding against him or her thereafter taking place, other than a prosecution for perjury in giving such evidence. R.S.O. 1990, c. S.22, s. 14 (1); 1994, c. 27, s. 56 (28).

(2) REPEALED: 1994, c. 27, s. 56 (29).

**Evidence**

**What is admissible in evidence at a hearing**

15. (1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,

- (a) any oral testimony; and
- (b) any document or other thing,

relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

**What is inadmissible in evidence at a hearing**

(2) Nothing is admissible in evidence at a hearing,

- (a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or
- (b) that is inadmissible by the statute under which the proceeding arises or any other statute.

**Conflicts**

(3) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence in any proceeding.

#### **Copies**

(4) Where a tribunal is satisfied as to its authenticity, a copy of a document or other thing may be admitted as evidence at a hearing.

#### **Photocopies**

(5) Where a document has been filed in evidence at a hearing, the tribunal may, or the person producing it or entitled to it may with the leave of the tribunal, cause the document to be photocopied and the tribunal may authorize the photocopy to be filed in evidence in the place of the document filed and release the document filed, or may furnish to the person producing it or the person entitled to it a photocopy of the document filed certified by a member of the tribunal.

#### **Certified copy admissible in evidence**

(6) A document purporting to be a copy of a document filed in evidence at a hearing, certified to be a copy thereof by a member of the tribunal, is admissible in evidence in proceedings in which the document is admissible as evidence of the document. R.S.O. 1990, c. S.22, s. 15.

#### **Use of previously admitted evidence**

15.1 (1) The tribunal may treat previously admitted evidence as if it had been admitted in a proceeding before the tribunal, if the parties to the proceeding consent. 1994, c. 27, s. 56 (30).

#### **Definition**

(2) In subsection (1),

“previously admitted evidence” means evidence that was admitted, before the hearing of the proceeding referred to in that subsection, in any other proceeding before a court or tribunal, whether in or outside Ontario.

#### **Additional power**

(3) This power conferred by this section is in addition to the tribunal’s power to admit evidence under section 15. 1997, c. 23, s. 13 (18).

#### **Witness panels**

15.2 A tribunal may receive evidence from panels of witnesses composed of two or more persons, if the parties have first had an opportunity to make submissions in that regard. 1994, c. 27, s. 56 (31).

#### **Notice of facts and opinions**

16. A tribunal may, in making its decision in any proceeding,

(a) take notice of facts that may be judicially noticed; and

(b) take notice of any generally recognized scientific or technical facts, information or opinions within its scientific or specialized knowledge. R.S.O. 1990, c. S.22, s. 16.

#### **Interim decisions and orders**

16.1 (1) A tribunal may make interim decisions and orders.

#### **Conditions**

(2) A tribunal may impose conditions on an interim decision or order.

#### **Reasons**

(3) An interim decision or order need not be accompanied by reasons. 1994, c. 27, s. 56 (32).

#### **Time frames**

16.2 A tribunal shall establish guidelines setting out the usual time frame for completing proceedings that come before the tribunal and for completing the procedural steps within those proceedings. 1999, c. 12, Sched. B, s. 16 (6).

#### **Decision; interest**

#### **Decision**

17. (1) A tribunal shall give its final decision and order, if any, in any proceeding in writing and shall give reasons in writing therefor if requested by a party. R.S.O. 1990, c. S.22, s. 17; 1993, c. 27, Sched.

**Interest**

(2) A tribunal that makes an order for the payment of money shall set out in the order the principal sum, and if interest is payable, the rate of interest and the date from which it is to be calculated. 1994, c. 27, s. 56 (33).

**Costs**

17.1 (1) Subject to subsection (2), a tribunal may, in the circumstances set out in rules made under subsection (4), order a party to pay all or part of another party's costs in a proceeding. 2006, c. 19, Sched. B, s. 21 (2).

**Exception**

- (2) A tribunal shall not make an order to pay costs under this section unless,
- (a) the conduct or course of conduct of a party has been unreasonable, frivolous or vexatious or a party has acted in bad faith; and
  - (b) the tribunal has made rules under subsection (4). 2006, c. 19, Sched. B, s. 21 (2).

**Amount of costs**

(3) The amount of the costs ordered under this section shall be determined in accordance with the rules made under subsection (4). 2006, c. 19, Sched. B, s. 21 (2).

**Rules**

- (4) A tribunal may make rules with respect to,
- (a) the ordering of costs;
  - (b) the circumstances in which costs may be ordered; and
  - (c) the amount of costs or the manner in which the amount of costs is to be determined. 2006, c. 19, Sched. B, s. 21 (2).

**Same**

(5) Subsections 25.1 (3), (4), (5) and (6) apply with respect to rules made under subsection (4). 2006, c. 19, Sched. B, s. 21 (2).

**Continuance of provisions in other statutes**

(6) Despite section 32, nothing in this section shall prevent a tribunal from ordering a party to pay all or part of another party's costs in a proceeding in circumstances other than those set out in, and without complying with, subsections (1) to (3) if the tribunal makes the order in accordance with the provisions of an Act that are in force on February 14, 2000. 2006, c. 19, Sched. B, s. 21 (2).

**Submissions must be in writing**

(7) Despite sections 5.1, 5.2 and 5.2.1, submissions for a costs order, whether under subsection (1) or under an authority referred to in subsection (6), shall be made by way of written or electronic documents, unless a party satisfies the tribunal that to do so is likely to cause the party significant prejudice. 2015, c. 23, s. 5.

- (8), (9) REPEALED: 2015, c. 23, s. 5.

**Notice of decision**

18. (1) The tribunal shall send each party who participated in the proceeding, or the party's representative, a copy of its final decision or order, including the reasons if any have been given,

- (a) by regular lettermail;
- (b) by electronic transmission;
- (c) by telephone transmission of a facsimile; or
- (d) by some other method that allows proof of receipt, if the tribunal's rules made under section 25.1 deal with the matter. 1994, c. 27, s. 56 (34); 1997, c. 23, s. 13 (19); 2006, c. 21, Sched. C, s. 134 (6).

**Use of mail**

(2) If the copy is sent by regular lettermail, it shall be sent to the most recent addresses known to the tribunal and shall be deemed to be received by the party on the fifth day after the day it is mailed. 1994, c. 27, s. 56 (34).

**Use of electronic or telephone transmission**

(3) If the copy is sent by electronic transmission or by telephone transmission of a facsimile, it shall be deemed to be received on the day after it was sent, unless that day is a holiday, in which case the copy shall be deemed to be received on the next day that is not a holiday. 1994, c. 27, s. 56 (34).

**Use of other method**

(4) If the copy is sent by a method referred to in clause (1) (d), the tribunal's rules made under section 25.1 govern its deemed day of receipt. 1994, c. 27, s. 56 (34).

**Failure to receive copy**

(5) If a party that acts in good faith does not, through absence, accident, illness or other cause beyond the party's control, receive the copy until a later date than the deemed day of receipt, subsection (2), (3) or (4), as the case may be, does not apply. 1994, c. 27, s. 56 (34).

**Enforcement of orders**

19. (1) A certified copy of a tribunal's decision or order in a proceeding may be filed in the Superior Court of Justice by the tribunal or by a party and on filing shall be deemed to be an order of that court and is enforceable as such. 1994, c. 27, s. 56 (35); 2006, c. 19, Sched. C, s. 1 (1).

**Notice of filing**

(2) A party who files an order under subsection (1) shall notify the tribunal within 10 days after the filing. 1994, c. 27, s. 56 (35).

**Order for payment of money**

(3) On receiving a certified copy of a tribunal's order for the payment of money, the sheriff shall enforce the order as if it were an execution issued by the Superior Court of Justice. 1994, c. 27, s. 56 (35); 2006, c. 19, Sched. C, s. 1 (1).

**Record of proceeding**

20. A tribunal shall compile a record of any proceeding in which a hearing has been held which shall include,
- (a) any application, complaint, reference or other document, if any, by which the proceeding was commenced;
  - (b) the notice of any hearing;
  - (c) any interlocutory orders made by the tribunal;
  - (d) all documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which any such documents may be used in evidence in any proceeding;
  - (e) the transcript, if any, of the oral evidence given at the hearing; and
  - (f) the decision of the tribunal and the reasons therefor, where reasons have been given. R.S.O. 1990, c. S.22, s. 20.

**Adjournments**

21. A hearing may be adjourned from time to time by a tribunal of its own motion or where it is shown to the satisfaction of the tribunal that the adjournment is required to permit an adequate hearing to be held. R.S.O. 1990, c. S.22, s. 21.

**Correction of errors**

21.1 A tribunal may at any time correct a typographical error, error of calculation or similar error made in its decision or order. 1994, c. 27, s. 56 (36).

**Power to review**

21.2 (1) A tribunal may, if it considers it advisable and if its rules made under section 25.1 deal with the matter, review all or part of its own decision or order, and may confirm, vary, suspend or cancel the decision or order. 1997, c. 23, s. 13 (20).

**Time for review**

- (2) The review shall take place within a reasonable time after the decision or order is made.

**Conflict**

- (3) In the event of a conflict between this section and any other Act, the other Act prevails. 1994, c. 27, s. 56 (36).

**Administration of oaths**

22. A member of a tribunal has power to administer oaths and affirmations for the purpose of any of its proceedings and the tribunal may require evidence before it to be given under oath or affirmation. R.S.O. 1990, c. S.22, s. 22.

## **Powers re control of proceedings**

### **Abuse of processes**

23. (1) A tribunal may make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes. R.S.O. 1990, c. S.22, s. 23 (1).

### **Limitation on examination**

(2) A tribunal may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding. 1994, c. 27, s. 56 (37).

### **Exclusion of representatives**

(3) A tribunal may exclude from a hearing anyone, other than a person licensed under the *Law Society Act*, appearing on behalf of a party or as an adviser to a witness if it finds that such person is not competent properly to represent or to advise the party or witness, or does not understand and comply at the hearing with the duties and responsibilities of an advocate or adviser. 2006, c. 21, Sched. C, s. 134 (7).

### **Notice, etc.**

24. (1) Where a tribunal is of the opinion that because the parties to any proceeding before it are so numerous or for any other reason, it is impracticable,

- (a) to give notice of the hearing; or
- (b) to send its decision and the material mentioned in section 18,

to all or any of the parties individually, the tribunal may, instead of doing so, cause reasonable notice of the hearing or of its decision to be given to such parties by public advertisement or otherwise as the tribunal may direct.

### **Contents of notice**

(2) A notice of a decision given by a tribunal under clause (1) (b) shall inform the parties of the place where copies of the decision and the reasons therefor, if reasons were given, may be obtained. R.S.O. 1990, c. S.22, s. 24.

### **Appeal operates as stay, exception**

25. (1) An appeal from a decision of a tribunal to a court or other appellate body operates as a stay in the matter unless,
- (a) another Act or a regulation that applies to the proceeding expressly provides to the contrary; or
  - (b) the tribunal or the court or other appellate body orders otherwise. 1997, c. 23, s. 13 (21).

### **Idem**

(2) An application for judicial review under the *Judicial Review Procedure Act*, or the bringing of proceedings specified in subsection 2 (1) of that Act is not an appeal within the meaning of subsection (1). R.S.O. 1990, c. S.22, s. 25 (2).

### **Control of process**

- 25.0.1 A tribunal has the power to determine its own procedures and practices and may for that purpose,
- (a) make orders with respect to the procedures and practices that apply in any particular proceeding; and
  - (b) establish rules under section 25.1. 1999, c. 12, Sched. B, s. 16 (8).

### **Rules**

25.1 (1) A tribunal may make rules governing the practice and procedure before it. 1994, c. 27, s. 56 (38).

### **Application**

(2) The rules may be of general or particular application. 1994, c. 27, s. 56 (38).

### **Consistency with Acts**

(3) The rules shall be consistent with this Act and with the other Acts to which they relate. 1994, c. 27, s. 56 (38).

### **Public access**

(4) The tribunal shall make the rules available to the public in English and in French. 1994, c. 27, s. 56 (38).

## **Legislation Act, 2006, Part III**

(5) Rules adopted under this section are not regulations as defined in Part III (Regulations) of the *Legislation Act, 2006*. 1994, c. 27, s. 56 (38); 2006, c. 21, Sched. F, s. 136 (1).

**Additional power**

(6) The power conferred by this section is in addition to any power to adopt rules that the tribunal may have under another Act. 1994, c. 27, s. 56 (38).

**Regulations**

26. The Lieutenant Governor in Council may make regulations prescribing forms for the purpose of section 12. 1994, c. 27, s. 56 (41).

**Rules, etc., available to public**

27. A tribunal shall make any rules or guidelines established under this or any other Act available for examination by the public. 1999, c. 12, Sched. B, s. 16 (9).

**Substantial compliance**

28. Substantial compliance with requirements respecting the content of forms, notices or documents under this Act or any rule made under this or any other Act is sufficient. 1999, c. 12, Sched. B, s. 16 (9).

29.-31. REPEALED: 1994, c. 27, s. 56 (40).

**Conflict**

32. Unless it is expressly provided in any other Act that its provisions and regulations, rules or by-laws made under it apply despite anything in this Act, the provisions of this Act prevail over the provisions of such other Act and over regulations, rules or by-laws made under such other Act which conflict therewith. R.S.O. 1990, c. S.22, s. 32; 1994, c. 27, s. 56 (42).

33., 34. REPEALED: 1994, c. 27, s. 56 (43).

FORMS 1, 2 REPEALED: 1994, c. 27, s. 56 (44).

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## Optometry Act, 1991

### S.O. 1991, CHAPTER 35

**Consolidation Period:** From October 29, 2015 to the [e-Laws currency date](#).

Last amendment: 2015, c. 20, Sched. 15, s. 18.

#### Definitions

1. In this Act,

“College” means the College of Optometrists of Ontario; (“Ordre”)

“Health Professions Procedural Code” means the Health Professions Procedural Code set out in Schedule 2 to the *Regulated Health Professions Act, 1991*; (“Code des professions de la santé”)

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

“profession” means the profession of optometry; (“profession”)

“this Act” includes the Health Professions Procedural Code. (“la présente loi”) 1991, c. 35, s. 1.

#### Health Professions Procedural Code

2. (1) The Health Professions Procedural Code shall be deemed to be part of this Act.

#### Terms in Code

(2) In the Health Professions Procedural Code as it applies in respect of this Act,

“College” means the College of Optometrists of Ontario; (“ordre”)

“health profession Act” means this Act; (“loi sur une profession de la santé”)

“profession” means the profession of optometry; (“profession”)

“regulations” means the regulations under this Act. (“règlements”)

#### Definitions in Code

(3) Definitions in the Health Professions Procedural Code apply with necessary modifications to terms in this Act. 1991, c. 35, s. 2.

#### Scope of practice

3. The practice of optometry is the assessment of the eye and vision system and the diagnosis, treatment and prevention of,

(a) disorders of refraction;

(b) sensory and oculomotor disorders and dysfunctions of the eye and vision system; and

(c) prescribed diseases. 1991, c. 35, s. 3.

#### Authorized acts

4. In the course of engaging in the practice of optometry, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to perform the following:

1. Communicating a diagnosis identifying, as the cause of a person’s symptoms, a disorder of refraction, a sensory or oculomotor disorder of the eye or vision system or a prescribed disease.

2. Applying a prescribed form of energy.

2.1 Prescribing drugs designated in the regulations.

3. Prescribing or dispensing, for vision or eye problems, subnormal vision devices, contact lenses or eye glasses. 1991, c. 35, s. 4; 2007, c. 10, Sched. B, s. 17 (1).

**College continued**

5. The College is continued under the name College of Optometrists of Ontario in English and Ordre des optométristes de l'Ontario in French. 1991, c. 35, s. 5.

**Council**

6. (1) The Council shall be composed of,
- (a) at least eight and no more than nine persons who are members elected in accordance with the by-laws;
  - (b) at least seven and no more than eight persons appointed by the Lieutenant Governor in Council who are not,
    - (i) members,
    - (ii) members of a College as defined in the *Regulated Health Professions Act, 1991*, or
    - (iii) members of a Council as defined in the *Regulated Health Professions Act, 1991*; and
  - (c) one person selected, in accordance with a by-law made under section 12.1, from among members who are members of a faculty of optometry of a university in Ontario. 1991, c. 35, s. 6 (1); 1998, c. 18, Sched. G, s. 40 (1, 2).

**Who can vote in elections**

(2) Subject to the by-laws, every member who practises or resides in Ontario and who is not in default of payment of the annual membership fee is entitled to vote in an election of members of the Council. 1991, c. 35, s. 6 (2); 1998, c. 18, Sched. G, s. 40 (3).

**President and Vice-President**

7. The Council shall have a President and Vice-President who shall be elected annually by the Council from among the Council's members. 1991, c. 35, s. 7.

8. REPEALED: 2015, c. 20, Sched. 15, s. 18.

**Restricted titles**

9. (1) No person other than a member shall use the title "optometrist", a variation or abbreviation or an equivalent in another language.

**Representations of qualification, etc.**

(2) No person other than a member shall hold himself or herself out as a person who is qualified to practise in Ontario as an optometrist or in a specialty of optometry.

**Definition**

(3) In this section,

"abbreviation" includes an abbreviation of a variation. 1991, c. 35, s. 9.

**Notice if suggestions referred to Advisory Council**

10. (1) The Registrar shall give a notice to each member if the Minister refers to the Advisory Council, as defined in the *Regulated Health Professions Act, 1991*, a suggested,

- (a) amendment to this Act;
- (b) amendment to a regulation made by the Council; or
- (c) regulation to be made by the Council.

**Requirements re notice**

(2) A notice mentioned in subsection (1) shall set out the suggestion referred to the Advisory Council and the notice shall be given within thirty days after the Council of the College receives the Minister's notice of the suggestion. 1991, c. 35, s. 10.

**Offence**

11. Every person who contravenes subsection 9 (1) or (2) 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. B, s. 17 (2).

**Regulations**

12. (1) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations,

- (a) specifying the drugs that a member may use in the course of engaging in the practice of optometry;
- (b) designating drugs for the purposes of paragraph 2.1 of section 4;
- (c) regulating and governing the prescribing or using of drugs by members and ancillary matters, including, without limiting the generality of the foregoing,
  - (i) governing the purposes for which, or the circumstances under which, drugs may be prescribed or used,
  - (ii) setting requirements respecting the prescribing or using of drugs, and
  - (iii) setting prohibitions. 2007, c. 10, Sched. B, s. 17 (3); 2009, c. 26, s. 20 (1).

**Individual drugs or categories**

(2) A regulation made under clause (1) (a) or (b) may specify or designate individual drugs or categories of drugs. 2009, c. 26, s. 20 (2).

**Incorporation by reference**

(3) A regulation made under clause (1) (a) or (b) may adopt, by reference, in whole or in part, and with such changes as are considered necessary, one or more documents setting out a list of individual drugs or a list of categories of drugs that may be prescribed by members. 2009, c. 26, s. 20 (2).

**Rolling incorporation**

(4) If a regulation provided for in subsection (3) so provides, a document adopted by reference shall be a reference to it as amended from time to time after the making of the regulation. 2009, c. 26, s. 20 (2).

**Must be made by expert committee**

(5) A document adopted by reference under subsection (3) may only be a document created or approved by an expert committee established under section 43.2 of the *Regulated Health Professions Act, 1991* and no other body. 2009, c. 26, s. 20 (2).

**Availability**

(6) A document adopted by reference under subsection (3) must be named in the regulation and must be available for public inspection during normal business hours in the office of the College and must be posted on the College's website or available through a hyperlink at the College's website. 2009, c. 26, s. 20 (2).

**By-laws**

12.1 The Council may make by-laws respecting the qualifications, selection and terms of office of Council members who are selected. 1998, c. 18, Sched. G, s. 40 (4).

**Transitional**

13. A person who, on the day before this Act comes into force, held a licence issued under Part V of the *Health Disciplines Act* shall be deemed to be the holder of a certificate of registration issued under this Act subject to any term, condition or limitation to which the licence was subject. 1991, c. 35, s. 13.

14., 15. REPEALED: 2007, c. 10, Sched. B, s. 17 (4).

16. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 1991, c. 35, s. 16.

17. OMITTED (ENACTS SHORT TITLE OF THIS ACT). 1991, c. 35, s. 17.

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**Optometry Act, 1991**  
**Loi de 1991 sur les optométristes**

**ONTARIO REGULATION 119/94**  
**GENERAL**

**Consolidation Period:** From April 15, 2014 to the [e-Laws currency date](#).

Last amendment: O. Reg. 24/14.

*This Regulation is made in English only.*

**PART I**  
**PROFESSIONAL MISCONDUCT**

1. The following are acts of professional misconduct for the purposes of clause 51 (1) (c) of the Health Professions Procedural Code:

THE PRACTICE OF THE PROFESSION AND THE CARE OF, AND RELATIONSHIP WITH, PATIENTS

1. Contravening a term, condition or limitation to which the member's certificate of registration is subject.
2. Exceeding the scope of practice of the profession.
3. Doing anything to a patient for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose in a situation in which a consent is required by law, without such a consent.
4. Abusing a patient verbally or physically.
5. Practising the profession while the member's ability to do so is impaired by any substance.
6. Discontinuing professional services that are needed unless,
  - i. the patient requests the discontinuation,
  - ii. the member arranges alternative services,
  - iii. the patient is given a reasonable opportunity to arrange alternative services, or
  - iv. the patient has failed to make payment within a reasonable time for services received, and the services that are needed are not of an emergency nature.
7. Engaging in the practice of the profession while in a conflict of interest as described in Part II.
8. Failing to reveal the exact nature of a secret remedy or treatment used by the member following a patient's request to do so.
9. Making a misrepresentation with respect to a remedy, treatment or device.
10. Treating or attempting to treat an eye or vision system condition which the member recognizes or should recognize as being beyond his or her experience or competence.
11. Failing to refer a patient to another professional whose profession is regulated under the *Regulated Health Professions Act, 1991* when the member recognizes or should recognize a condition of the eye or vision system that appears to require such referral.
12. Failing, without reasonable cause, to provide a patient with a written, signed and dated prescription for subnormal vision devices, contact lenses or eye glasses after the patient's eyes have been assessed by the member and where such a prescription is clinically indicated.
13. Recommending or providing unnecessary diagnostic or treatment services.
14. Failing to maintain the standards of practice of the profession.
15. Delegating a controlled act in contravention of the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts.
16. Performing a controlled act that the member is not authorized to perform.
17. Permitting, counselling or assisting a person who is under the supervision of a member to perform an act in contravention of the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts.

18. Permitting, counselling or assisting any person who is not a member to perform a controlled act which should be performed by a member.

#### REPRESENTATIONS ABOUT MEMBERS AND THEIR QUALIFICATIONS

19. Using a term, title or designation in respect of the member's practice other than "optometrist" or "doctor of optometry".
20. Using, in the course of providing or offering to provide professional services, any reference to the member's education or educational achievement other than the member's university degree, unless the use of the reference is approved by Council.
21. Identifying oneself to a patient as a person who is qualified to practise as a member of a health profession other than optometry, unless lawfully entitled to do so in Ontario under the legislation governing that profession.
22. Publishing or using, or knowingly permitting the publication or use of an advertisement or announcement or information that promotes or relates to the provision of professional services by a member to the public, whether in a document, business card, business sign, website, or any other format, which,
  - i. is false or deceptive, whether by reason of inclusion of or omission of information,
  - ii. suggests that the member is a specialist or is specially educated, trained or qualified other than where the reference is to an educational achievement and the reference has been approved by Council,
  - iii. contains a testimonial or comparative or superlative statements,
  - iv. contains an endorsement other than an endorsement by an individual or organization that has demonstrated, to the satisfaction of Council, that the individual or organization has expertise relevant to the subject matter of the endorsement,
  - v. is not factual, objectively verifiable or readily comprehensible to the persons to whom it is directed, or
  - vi. would be reasonably regarded by members as demeaning the integrity or dignity of the profession or likely to bring the profession into disrepute.
23. Where a member uses, in the course of providing or offering to provide professional services, a name other than the name of the member as it is published on the register of the College, failing to,
  - i. post a list, in a location where patients will likely see it, of the name of every member who practises at that location,
  - ii. notify the Registrar in writing of the name of every member who practises at that location, and
  - iii. notify the Registrar in writing of any change in the members who practise at that location no less than 30 days from the date that the change occurred.

#### RECORD KEEPING AND REPORTS

24. Failing to make or maintain records in accordance with Part IV.
25. Falsifying a record relating to a member's practice.
26. Signing or issuing, in the member's professional capacity, a certificate, report or similar document that contains a statement the member knows or ought to know is false, misleading or otherwise improper, or omits statements or information that the member knows or ought to know should be included.
27. If a member closes his or her office or retires from practice, failing to make reasonable efforts to make arrangements with a patient or his or her authorized representative to transfer the patient's records to,
  - i. the patient or his or her authorized representative,
  - ii. another member, if the patient or his or her authorized representative so requests, or
  - iii. another member, with notice to the patient that his or her records have been transferred to that other member.

#### BUSINESS PRACTICES

28. Submitting or allowing to be submitted an account for professional services that the member knows or ought to know is false or misleading.
29. Charging or allowing a fee to be charged that is excessive or unreasonable in relation to the professional services provided.
30. Failing to issue a statement or receipt that itemizes an account for professional goods or services to the patient or a third party who is to pay, in whole or in part, for the goods or services provided to the patient.

31. Charging or receiving more than the amount payable under the Ontario Health Insurance Plan for performing an insured service to an insured person.
32. Accepting payment in respect of an insured service to an insured person before the member receives notice from the Ontario Health Insurance Plan that the patient has been reimbursed by the Plan, unless the insured person has consented to make the payment on an earlier date.
33. Charging or accepting a fee, in whole or in part, before providing professional services to a patient unless,
  - i. the fee relates to the cost of professional goods to be used in the course of performing the services, or,
  - ii. the member informs the patient, before he or she pays the fee, of the patient's right to choose not to pay the fee before the professional services are performed.

#### MISCELLANEOUS MATTERS

34. Failing to comply with an order of the Inquiries, Complaints and Reports Committee requiring the member to appear before a panel of the committee to be cautioned.
35. Failing to abide by a written undertaking given by the member to the College or a Committee, or to carry out an agreement entered into with the College or a Committee.
36. Contravening, by act or omission, the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts.
37. Failing to co-operate with a representative of another College on production of an appointment under section 75 of the Health Professions Procedural Code or to provide access to or copies of a record, document or thing that may be reasonably required for the purposes of an investigation.
38. Failing to provide a patient or a patient's authorized representative, when requested, with the practice address and telephone number of a member who previously practised with the member when the member knows or ought to know this information.
39. Engaging in conduct or performing an act that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical. O. Reg. 24/14, s. 1.

#### PART II CONFLICT OF INTEREST

2. In this Part,

"benefit" means any incentive of more than nominal value and includes a rebate, credit or gift but does not include a reasonable discount based on volume or prompt payment;

"health centre" means a facility that provides health services funded by the Ministry of Health and Long-Term Care;

"non-arm's length relationship" means a relationship other than that between parties who are unrelated, with each acting in his or her own best interest in the ordinary course of business. O. Reg. 24/14, s. 1.

3. (1) A member shall not engage in the practice of the profession while the member is in a conflict of interest. O. Reg. 24/14, s. 1.

(2) A member is in a conflict of interest where the member,

- (a) has a personal or financial interest that influences or is likely to influence the exercise of the member's professional expertise or judgment in respect of the treatment or referral of a patient;
- (b) enters into an arrangement or agreement that influences or is likely to influence the member's ability to properly exercise his or her professional expertise or judgment in respect of the treatment or referral of a patient;
- (c) offers or confers a benefit to a person in connection with the referral of a patient to the member;
- (d) accepts a benefit that is related to the member referring a patient to any other person;
- (e) accepts or confers a benefit relating to any ophthalmic materials, appliances or equipment, that influences or is likely to influence the exercise of the member's professional judgment respecting the purchase or use of the materials, appliances or equipment;
- (f) enters into any arrangement or agreement respecting a lease or the use of premises or equipment used in the practice of the profession under which any amount payable is related to the amount of fees charged or the volume of business carried out by the member;
- (g) subject to subsection 4 (5), engages in the practice of the profession in a working arrangement with another person except,
  - (i) with a member who is engaged in the practice of the profession,

- (ii) with a member of the College of Physicians and Surgeons of Ontario who is engaged in the practice of medicine,
  - (iii) as an employee or agent of a government or government agency, health centre, university or hospital,
  - (iv) as an employee of a corporation, other than one referred to in subclause (iii) for the purpose of providing services solely to the employees of that corporation, or
  - (v) under an arrangement approved by Council;
- (h) shares fees related to the practice of the profession with any person other than,
- (i) another member, or
  - (ii) a member of the College of Physicians and Surgeons of Ontario engaged in the practice of medicine. O. Reg. 24/14, s. 1.

**4.** (1) Despite clause 3 (2) (a), a member is not in a conflict of interest if the member discloses to the patient the nature of the member's personal or financial interest to the patient before providing professional services. O. Reg. 24/14, s. 1.

(2) A member is not in a conflict of interest in connection with making a recommendation about the referral of a patient that has the potential to benefit a person who is in a non-arm's length relationship with the member, if the member receives no benefit for the referral and if, before making the recommendation, the member discloses to the patient the nature of the relationship between the member and the person who is in a non-arm's length relationship with the member. O. Reg. 24/14, s. 1.

(3) A member is not in a conflict of interest in connection with the member receiving a patient referred from a person who is in a non-arm's length relationship with the member if the member receives no benefit in relation to the referral and if, before providing professional services, the member discloses to the patient the nature of the relationship between the member and the person who is in a non-arm's length relationship with the member. O. Reg. 24/14, s. 1.

(4) A member is not required to disclose his or her financial interest in an optometry professional corporation in which he or she is a shareholder in order to obtain the benefit of subsection (1), (2) or (3) if the fact that the member engages in the practice of optometry in an optometry professional corporation was made known to the patient. O. Reg. 24/14, s. 1.

(5) No conflict of interest arises under clause 3 (2) (g) where the member engages in the practice of the profession as an independent contractor with another person in accordance with a written agreement that states that the member,

- (a) shall control the professional services provided to a patient;
  - (b) shall control who he or she may accept as a patient;
  - (c) shall provide every patient or his or her authorized representative with a copy of his or her prescription;
  - (d) shall set the fee charged or collected in respect of any professional service;
  - (e) shall control the maintenance, custody and access to the records required to be kept in respect of the practice of the profession;
  - (f) shall have access, along with his or her staff, to the premises where the member practises and to the books and records related to his or her practice, at any time of the day or night; and
  - (g) shall ensure that any advertising relating to the professional services provided by the member meets the requirements set out in regulations made under the Act. O. Reg. 24/14, s. 1.
- (6) For the purpose of subsection (5),

"independent contractor" means a person who practises the profession under an agreement with another, but who is independent and not controlled by the other or subject to the other's right to control respecting the member's conduct in the practice of the profession. O. Reg. 24/14, s. 1.

**5.** REVOKED: O. Reg. 56/00, s. 1.

**PART III** (s. 6) REVOKED: O. Reg. 56/00, s. 1.

#### **PART IV RECORDS**

**7.** (1) A member shall take all reasonable steps necessary to ensure that records in relation to his or her practice are kept in accordance with this Part. O. Reg. 749/94, s. 3.

(2) Reasonable steps under subsection (1) shall include the verification by the member, at reasonable intervals, that the records are kept in accordance with this Part. O. Reg. 749/94, s. 3.

**8.** Every member shall keep a daily appointment record that sets out the name of each patient whom the member examines or treats or to whom the member provides any service. O. Reg. 749/94, s. 3.

**9.** (1) Every member shall keep a financial record for each patient. O. Reg. 749/94, s. 3.

- (2) The financial record must include the member's fees for services and any commercial laboratory costs charged to the member. O. Reg. 749/94, s. 3.
- 10.** (1) Every member shall keep a patient health record for each patient. O. Reg. 749/94, s. 3.
- (2) The patient health record must include the following:
1. The name and address of the patient and the name of the member who provided the service.
  2. The date of each visit of the patient.
  3. The name and address of any referring health professional.
  4. The patient's health and oculo-visual history.
  5. The clinical procedures used.
  6. The clinical findings obtained.
  7. The diagnosis, when possible.
  8. Every order made by the member for examinations, tests, consultations or treatments to be performed by any other person.
  9. Particulars of every referral to or from another health professional.
  10. Information about every delegation of a controlled act within the meaning of subsection 27 (2) of the *Regulated Health Professions Act, 1991*, delegated by the member.
  11. Information about a procedure that was commenced but not completed, including reasons for non-completion.
  12. A copy of every written consent to treatment. O. Reg. 749/94, s. 3.
- (3) Every part of a patient health record must be dated and have a reference identifying the patient or the patient health record. O. Reg. 749/94, s. 3.
- (4) Every entry in the patient health record must be dated and the person who made the entry must be readily identifiable. O. Reg. 749/94, s. 3.
- (5) Every patient health record shall be retained for at least 10 years following,
- (a) the patient's last visit; or
  - (b) if the patient was less than 18 years old at the time of his or her last visit, the day the patient became or would have become 18 years old. O. Reg. 749/94, s. 3.
- 11.** (1) The following are acts of professional misconduct for the purposes of clause 51 (1) (c) of the Health Professions Procedural Code:
1. Allowing any person to examine a patient health record or giving a copy of a document or any information from a patient health record to any person except as required by law or as required or allowed by this section.
  2. Failing to provide copies from a patient health record for which the member has primary responsibility, as required by this section. O. Reg. 749/94, s. 3.
- (2) A member shall provide copies from a patient health record for which the member has primary responsibility to any of the following persons on request:
1. The patient.
  2. A personal representative who is authorized by the patient to obtain copies from the record.
  3. If the patient is dead, the patient's legal representative.
  4. If the patient lacks capacity to give an authorization described in paragraph 2,
    - i. a committee of the patient appointed under the *Mental Incompetency Act*,
    - ii. a person to whom the patient is married,
    - iii. a person, with whom the patient is living in a conjugal relationship outside marriage, if the patient and the person,
      - A. have cohabited for at least one year,
      - B. are together the parents of a child, or
      - C. have together entered into a cohabitation agreement under section 53 of the *Family Law Act*,
    - iv. the patient's son or daughter,
    - v. the patient's parent. O. Reg. 749/94, s. 3; O. Reg. 390/06, s. 1.



(3) It is not an act of professional misconduct under paragraph 2 of subsection (1) for a member to refuse to provide copies from a patient health record until the member is paid a reasonable fee. O. Reg. 749/94, s. 3.

(4) A member may provide copies from a patient health record for which the member has primary responsibility to any person authorized by or on behalf of a person to whom the member is required to provide copies under subsection (2). O. Reg. 749/94, s. 3.

(5) A member may, for the purposes of providing health care, allow a health professional to examine the patient health record or give a health professional a copy of a document or any information from the record. O. Reg. 749/94, s. 3.

**12.** For record keeping required by this Part, a member may use computer, electronic or other equipment for recording, storing and retrieval of records if,

- (a) the record keeping system provides ready access by an authorized investigator, inspector or assessor of the College, or the patient or the patient's representative to the records;
- (b) ancillary equipment is readily available for the making of hard copies of the record at no expense to an authorized investigator, inspector or assessor of the College;
- (c) the equipment or software being used is such that no amendment, correction, addition or deletion can be made to any record which obliterates the original record or does not show the date of the change. O. Reg. 749/94, s. 3.

**PARTS V-VII** (ss. 13-20) REVOKED: O. Reg. 56/00, s. 1.

### **PART VIII PRESCRIBED DISEASES**

**21.** For the purposes of clause 3 (c) of the *Optometry Act, 1991*, the following are prescribed diseases:

1. In relation to diagnosis and prevention, diseases of the eye and vision system that can be determined by the findings from an oculo-visual assessment.
2. In relation to treatment, diseases of the eye and vision system that can be treated by other than the application of surgery. O. Reg. 152/97, s. 1; O. Reg. 111/11, s. 1.

**22.** For the purposes of paragraph 1 of section 4 of the *Optometry Act, 1991*, a "prescribed disease" is any disease limited to and manifested in the eye and vision system that was determined by the findings from an oculo-visual assessment. O. Reg. 152/97, s. 1.

### **PART IX QUALITY ASSURANCE**

#### **DEFINITIONS**

**23.** In this Part,

"assessor" means an assessor appointed under section 81 of the Health Professions Procedural Code;

"clinical ability" means, in relation to a member, the member's knowledge, skills and judgment relating to practising optometry;

"Committee" means the Quality Assurance Committee;

"deficiencies in the member's practice" means one or more aspects of the member's practice that are not in accordance with the standards of practice of the profession;

"deficient clinical ability" means, in relation to a member, a level of knowledge, skills or judgment that makes the member's clinical performance unsatisfactory;

"remedial program" means a specific education program that a member is required to undertake for the purpose of correcting deficient clinical ability. O. Reg. 250/99, s. 2.

#### **QUALITY ASSURANCE PROGRAM: OBJECTS AND COMPONENTS**

**24.** The objects of the quality assurance program, which is administered by the Committee, are to maintain and enhance the knowledge, skills and judgment of members so that appropriate care of high quality is provided to the public. O. Reg. 250/99, s. 2.

**25.** The quality assurance program shall include the following components:

1. A mandatory continuing education component.
2. An assessment component to appraise the practice of members.
3. An evaluation component to evaluate a member's clinical ability.
4. A remedial component to assist a member in correcting any deficiencies in the member's practice or clinical ability.

5. A component to assist in appraising the practice or evaluating the clinical ability of an applicant for registration when referred by the Registration Committee or the Registrar.
6. A component to provide for assessment and rehabilitation of a member who has allegedly exhibited inappropriate behaviour or made inappropriate remarks of a sexual nature towards a patient.
7. A component to obtain information from members to assist the Committee in carrying out the program's objects. O. Reg. 250/99, s. 2.

#### MANDATORY CONTINUING EDUCATION

**26.** (1) Every member shall participate in a mandatory continuing education program established and administered by the Committee. O. Reg. 250/99, s. 2.

(2) The requirements of the program and any changes to them shall be approved by the Council, published by the College and distributed to the members. O. Reg. 250/99, s. 2.

#### PRACTICE ASSESSMENT

**27.** (1) A member is required to undergo a practice assessment if,

- (a) the member's name is selected at random in accordance with the random sampling process approved by the Council, published by the College and distributed to the members;
- (b) the member is referred to the Committee by the Registrar pursuant to subsection 8 (2) of Ontario Regulation 837/93; or
- (c) the member is referred to the Committee by the Complaints Committee, Discipline Committee or Executive Committee. O. Reg. 250/99, s. 2.

(2) An assessment shall include the inspection and assessment of the member's records of the care of patients and other records required to be maintained under the regulations under the Act, and may include, but is not limited to, an inspection of the member's office or offices and requiring the member to respond to a practice questionnaire. O. Reg. 250/99, s. 2.

(3) A written report shall be prepared in relation to the assessment of a member's practice. O. Reg. 250/99, s. 2.

(4) The Committee shall provide a copy of the report to the member and notify the member in writing of the right to make written submissions provided under subsection (5). O. Reg. 250/99, s. 2.

(5) A member who receives a report under subsection (4) may make written submissions to the Committee within 14 days after receiving the report. O. Reg. 250/99, s. 2.

(6) The Committee may, after considering an assessment report, any other information that the Committee considers relevant to the assessment and the member's written submissions, if any, decide,

- (a) that no further action is required; or
- (b) that there are deficiencies in the member's practice. O. Reg. 250/99, s. 2.

(7) If the Committee determines that there are deficiencies in the member's practice, the Committee shall,

- (a) make written recommendations to the member on ways to correct the deficiencies and give the member an opportunity to correct them;
- (b) subject to section 29, require the member to successfully complete within the time specified by the Committee continuing education activities approved by the Committee to assist in the correction of deficiencies in the member's practice; or
- (c) subject to section 29, require the member to undergo an evaluation of the member's clinical ability. O. Reg. 250/99, s. 2.

(8) If the Committee acts under clause (7) (a) and the member has had an opportunity to correct the deficiencies, the Committee may require the member to undergo a reassessment of the practice, and subsections (2), (3), (4), (5), (6) and (7) apply to the reassessment. O. Reg. 250/99, s. 2.

(9) If the Committee acts under clause (7) (b), the Committee,

- (a) may require the member to undergo a reassessment of the practice before the completion of the continuing education activities; and
- (b) shall require the member to undergo a reassessment of the practice after completion of the continuing education activities. O. Reg. 250/99, s. 2.

(10) Subsections (2), (3), (4), (5), (6) and (7) apply to a reassessment under subsection (9). O. Reg. 250/99, s. 2.

(11) The Committee may not require more than two reassessments under this section. O. Reg. 250/99, s. 2.

## EVALUATION OF MEMBER'S CLINICAL ABILITY

**28.** (1) If the Committee requires a member to undergo an evaluation of his or her clinical ability under clause 27 (7) (c), the Committee shall appoint a person or persons to carry out the evaluation. O. Reg. 250/99, s. 2.

(2) The evaluation may include,

- (a) requiring the member to answer, orally or in writing, questions that relate to practising optometry;
- (b) requiring the member to answer, orally or in writing, questions that arise from a review of real or simulated patient charts;
- (c) requiring the member to examine persons or clinical simulations exhibiting problems that relate to practising optometry; and
- (d) requiring the member to demonstrate the application of optometric techniques. O. Reg. 250/99, s. 2.

(3) The person or persons shall prepare a written report and submit it to the Committee. O. Reg. 250/99, s. 2.

(4) After receiving the report, the Committee shall provide a copy of the report to the member and notify the member in writing of the right to make written submissions provided under subsection (5). O. Reg. 250/99, s. 2.

(5) A member who receives a report under subsection (4) may make written submissions to the Committee within 14 days after receiving the report. O. Reg. 250/99, s. 2.

(6) After considering the evaluation report, the assessment report, other information the Committee considers relevant to the evaluation and the member's written submissions, if any, the Committee may decide,

- (a) that the deficiencies in the member's practice were not the result of deficient clinical ability; or
- (b) that the member has deficient clinical ability. O. Reg. 250/99, s. 2.

(7) If the Committee decides that the deficiencies in the member's practice are not the result of deficient clinical ability, it may,

- (a) make written recommendations to the member on ways to correct the deficiencies in the member's practice and give the member an opportunity to correct them; or
- (b) subject to section 29, require the member to successfully complete within the time specified by the Committee continuing education activities approved by the Committee to assist in the correction of deficiencies in the member's practice. O. Reg. 250/99, s. 2.

(8) If the Committee decides that the member has deficient clinical ability, it may,

- (a) make written recommendations to the member on ways to correct the deficiencies and give him or her an opportunity to correct them; or
- (b) subject to section 29, require the member to complete a remedial program approved by the Committee, within the time specified by the Committee; or
- (c) subject to section 29 and subsection 30 (1), direct the Registrar to impose terms, conditions or limitations on the member's certificate of registration for a specified period not exceeding six months. O. Reg. 250/99, s. 2.

(9) If the Committee acts under clause (7) (a) or (8) (a) and the member has had an opportunity to correct the deficiencies, the Committee may require the member to undergo a reassessment of the practice, and subsections 27 (2), (3), (4), (5), (6) and (7) apply to the reassessment. O. Reg. 250/99, s. 2.

(10) At such time as it determines after the member has completed the continuing education activities required under clause (7) (b) or the remedial program required under clause (8) (b), the Committee may require the member to undergo a reassessment of the practice, and subsections 27 (2), (3), (4), (5), (6) and (7) apply to the reassessment. O. Reg. 250/99, s. 2.

(11) If the Committee takes action under subsection (8) and the member has had an opportunity to correct the deficiencies, completed or had the opportunity to complete a remedial program or had terms, conditions or limitations placed on his or her certificate of registration under this section, the Committee may require the member to undergo a re-evaluation, and the provisions of this section apply with necessary modifications to such a re-evaluation. O. Reg. 250/99, s. 2.

(12) The Committee may not require more than two reassessments under each of subsections (9) and (10) and more than one re-evaluation under subsection (11). O. Reg. 250/99, s. 2.

**29.** (1) The Committee shall not take action under clause 27 (7) (b) or (c), clause 28 (7) (b) or clause 28 (8) (b) or (c) unless it gives the member,

- (a) written notice that, in the Committee's opinion, there are deficiencies in the member's practice or that the member has deficient clinical ability;
- (b) a copy of all reports and other documents that the Committee considered in forming its opinion;
- (c) at least 14 days after receiving the notice to make written submissions to the Committee; and

(d) if the member so requests in writing within 14 days after receiving the notice, an opportunity to confer with the Committee. O. Reg. 250/99, s. 2.

(2) After considering any submissions, whether written or oral, the Committee shall decide what action to take and, if it decides to take action under the provisions referred to in subsection (1), shall forward its written decision, with reasons, to the member. O. Reg. 250/99, s. 2.

#### IMPOSITION OF TERMS, CONDITIONS OR LIMITATIONS ON A MEMBER'S CERTIFICATE OF REGISTRATION

**30.** (1) Subject to subsection (4), the Committee may direct the Registrar to impose terms, conditions or limitations on the member's certificate of registration for a specified period not exceeding six months if,

- (a) the Committee decides that the member has deficient clinical ability; or
- (b) the member has failed to successfully complete a remedial program within the period of time specified by the Committee. O. Reg. 250/99, s. 2.

(2) If the Committee has given a direction under subsection (1), it may give another direction for a second specified period not exceeding six months but it may not give a third direction for a further period of time. O. Reg. 250/99, s. 2.

(3) The Committee may direct the Registrar to remove any of the terms, conditions or limitations that have been imposed before the end of the period if it is satisfied that the member's knowledge, skills and judgment are satisfactory. O. Reg. 250/99, s. 2.

- (4) The Committee shall not direct the Registrar under subsection (1) unless the member has been given,
  - (a) notice of the Committee's intention to direct the Registrar and of the reasons it believes the direction should be given;
  - (b) a copy of all reports and other documents that have been considered by the Committee in connection with the matter;
  - (c) at least 30 days after receiving the notice under clause (a) to make written submissions to the Committee; and
  - (d) if the member makes such a request in writing within 30 days after receiving the notice, an opportunity to confer with the Committee. O. Reg. 250/99, s. 2.

#### APPLICANTS FOR REGISTRATION

**31.** (1) If a person is applying for registration, the Committee shall, on the request of the Registration Committee or the Registrar, review the applicant's patient records and any other records the Committee considers appropriate in order to assess the applicant's ability to practise in accordance with the standards of practice in Ontario. O. Reg. 250/99, s. 2.

(2) An assessor appointed by the Committee may assist it with the review. O. Reg. 250/99, s. 2.

(3) The Committee shall provide a written report of the results of its review to the Registrar, or to the Registration Committee if the latter requested the review. O. Reg. 250/99, s. 2.

(4) The Registrar shall provide a copy of the report to the applicant. O. Reg. 250/99, s. 2.

**32.** (1) If a person is applying for registration to practise, the Committee shall, on the request of the Registration Committee or the Registrar, ensure that an evaluation of the applicant's clinical ability is carried out. O. Reg. 250/99, s. 2.

(2) The Committee shall appoint a person or persons to carry out the evaluation. O. Reg. 250/99, s. 2.

(3) The evaluation may include,

- (a) requiring the applicant to answer, orally or in writing, questions that relate to practising optometry;
- (b) requiring the applicant to answer, orally or in writing, questions that arise from the review of real or simulated patient charts;
- (c) requiring the applicant to examine persons or clinical simulations exhibiting problems that relate to practising optometry; and
- (d) requiring the applicant to demonstrate the application of optometric techniques. O. Reg. 250/99, s. 2.

(4) The person or persons shall prepare a written report and submit it to the Committee. O. Reg. 250/99, s. 2.

(5) The Committee shall provide a written evaluation of the results of its review to the Registrar, or to the Registration Committee if the latter requested the review. O. Reg. 250/99, s. 2.

(6) The Registrar shall provide a copy of the evaluation to the applicant. O. Reg. 250/99, s. 2.

#### MEASURES FOLLOWING ALLEGED BEHAVIOUR OR REMARKS OF A SEXUAL NATURE

**33.** (1) The Committee may require a member to undergo a psychological assessment or other assessment specified by the Committee if a matter respecting the member is referred to the Committee,

- (a) by a panel of the Complaints Committee acting under paragraph 4 of subsection 26 (2) of the Health Professions Procedural Code with respect to clause (c) of the definition of "sexual abuse" in subsection 1 (3) of the Code; or

- (b) by the Executive Committee, the Complaints Committee or the Board under section 79.1 of the Code. O. Reg. 250/99, s. 2.
- (2) The Committee may require a member to undertake and complete within a specified time a measure specified by the Committee, such as education, therapy or counselling, if,
- (a) the Committee has received a report of an assessment of a member required by the Committee under subsection (1); and
  - (b) the Committee is satisfied that the member suffers from an emotional or personality condition that may adversely affect his or her professional behaviour. O. Reg. 250/99, s. 2.
- (3) The Committee shall not take action under subsection (2) unless it gives the member,
- (a) a copy of the report of the assessment;
  - (b) written notice of the measure the Committee intends to require;
  - (c) at least 14 days after receiving the notice to make written submissions to the Committee; and
  - (d) if the member so requests in writing within 14 days after receiving the notice, an opportunity to confer with the Committee. O. Reg. 250/99, s. 2.
- (4) Subject to subsection (5), the Committee may direct the Registrar to impose terms, conditions or limitations on a member's certificate of registration for a specified period not exceeding six months if,
- (a) the member refuses to undergo an assessment under subsection (1);
  - (b) the member refuses to undertake or complete the measure required by the Committee or complete it within the specified time; or
  - (c) the Committee has been advised that the condition is not likely to be remediable and is of the opinion that the member's condition has exposed or is likely to expose the member's patients to harm or injury. O. Reg. 250/99, s. 2.
- (5) No direction shall be given to the Registrar under subsection (4) unless,
- (a) the member has been given notice of the Committee's intention to give the direction and of the reasons it believes the direction should be given;
  - (b) the member has been given a copy of all reports and other documents that have been considered by the Committee in connection with the matter;
  - (c) the member has been given at least 30 days after receiving the notice and documents under this subsection to make written submissions to the Committee; and
  - (d) if the member so requests in writing within 30 days after receiving the notice and documents under this subsection, the opportunity to confer with the Committee. O. Reg. 250/99, s. 2.
- (6) The Committee may direct the Registrar to remove any of the terms, conditions or limitations imposed on a member's certificate of registration under this section before the end of the specified period if the Committee is satisfied that they are no longer needed. O. Reg. 250/99, s. 2.
- (7) The following shall not be used as evidence that the member has committed an act of professional misconduct:
1. Any admission by the member to the Committee or to a person conducting an assessment under subsection (1) of exhibiting behaviour or making remarks of a sexual nature.
  2. The results of any assessment undergone by the member under subsection (1) or measures undertaken under subsection (2). O. Reg. 250/99, s. 2.
- (8) If terms, conditions or limitations are imposed on a member's certificate of registration under this section, the Committee shall report the matter to the Executive Committee. O. Reg. 250/99, s. 2.

#### INFORMATION

- 34.** (1) At the Committee's request, the Registrar shall forward to the members a request for information from members in order to assist the Committee in carrying out the objects of the quality assurance program. O. Reg. 250/99, s. 2.
- (2) Members shall provide the Registrar with accurate information in response to the request within 30 days of receiving it. O. Reg. 250/99, s. 2.

#### PART X NOTICE OF MEETINGS AND HEARINGS

- 35.** (1) The Registrar shall ensure that notice is given in accordance with this Part with respect to each of the following that is required to be open to the public under the Act:
1. A meeting of the Council.

2. A hearing of the Discipline Committee respecting allegations of a member's professional misconduct or incompetence. O. Reg. 7/08, s. 1.
  - (2) The notice must, where possible, be posted not less than 14 days before the date of the meeting or hearing on the website of the College. O. Reg. 7/08, s. 1.
  - (3) The notice must be published in English and in French. O. Reg. 7/08, s. 1.
  - (4) The notice must include,
    - (a) the date, time and location of the meeting or hearing;
    - (b) a statement of the purpose of the meeting or hearing including, in the case of a hearing, the name of the member against whom the allegations have been made and the member's principal place of practice; and
    - (c) an address and telephone number at which further information about the meeting or hearing may be obtained. O. Reg. 7/08, s. 1.
  - (5) The Registrar shall give notice of a meeting or hearing that is open to the public to every person who requests it. O. Reg. 7/08, s. 1.
  - (6) No meeting or hearing is invalid simply because a person has not complied with a requirement of this Part. O. Reg. 7/08, s. 1.
- 36. REVOKED:** O. Reg. 7/08, s. 1.

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**Optometry Act, 1991**  
**Loi de 1991 sur les optométristes**

**ONTARIO REGULATION 837/93**  
**REGISTRATION**

**Consolidation Period:** From September 14, 2012 to the [e-Laws currency date](#).

Last amendment: O. Reg. 279/12.

*This Regulation is made in English only.*

CLASSES OF CERTIFICATES OF REGISTRATION

1. The following classes of certificates of registration are prescribed:

1. General certificate of registration.
2. Academic certificate of registration. O. Reg. 837/93, s. 1.

GENERAL CERTIFICATES OF REGISTRATION

2. (1) The requirements and qualifications for the issuing of a general certificate of registration to an applicant are:

1. The applicant must have completed an application for a general certificate of registration.
2. The applicant must have one of the following academic qualifications:
  - i. A degree in optometry,
    - A. awarded by the School of Optometry and Vision Science of the University of Waterloo, or
    - B. awarded by an educational institution as a result of the successful completion of a program that has been accredited by the Accreditation Council on Optometric Education or another accrediting body approved by the Council at the time the applicant successfully completed the program, or
  - ii. A degree together with any further education or training, or combination of education and training, as specified by a panel of the Registration Committee that when taken together evidences, in the opinion of the panel, completion of a program that is substantially equivalent to a program the completion of which would result in the awarding of the degree referred to in sub-subparagraph i A.
3. The applicant must be able to speak and write in the English or French language with reasonable fluency.
4. Where the applicant has previously practised optometry, there must not be any finding of, or of any current proceeding involving an allegation of, professional misconduct, incompetence or incapacity or any like finding or proceeding against the applicant.
5. The applicant must not have been found guilty in relation to a criminal offence in any jurisdiction. For the purposes of this paragraph, a “criminal offence” includes, without being limited to, an offence under the *Criminal Code* (Canada), the *Controlled Drugs and Substances Act* (Canada) and the *Food and Drugs Act* (Canada).
6. The applicant must have Canadian citizenship, permanent residency or authorization under the *Immigration and Refugee Protection Act* (Canada) to engage in the practice of optometry.
7. The applicant must meet the criteria set out in one of the following subparagraphs:
  - i. successful completion, not more than three years before applying for registration, of the standards assessment examinations set or approved by the College,
  - ii. successful completion, more than three years before applying for registration, of the standards assessment examinations set or approved by the College and proof, satisfactory to the Registration Committee,
    - A. of having provided at least 750 hours of direct optometric care to patients during the 36-month period immediately prior to applying for a general certificate of registration from the College, and of being competent to practise in accordance with the standards of practice on the basis of an assessment by the Registration Committee of any records that the applicant would have been required to maintain pursuant to the regulations, if the applicant had been a member of the College, or
    - B. of being competent to practise in accordance with the standards of practice on the basis of an evaluation of the applicant’s knowledge, skills and judgment by the Registration Committee,

iii., iv REVOKED: O. Reg. 279/12, s. 1 (4).

7.1 The applicant has successfully completed an examination in jurisprudence set or approved by the College within the following time period:

- i. If the applicant is relying on the requirements described in subparagraph 2 ii in making his or her application, within one year of the applicant satisfying the requirements set out in that paragraph.
- ii. In all other cases, within one year after applying for registration.

7.2 If the applicant is required to undergo an assessment or an evaluation by the Registration Committee pursuant to paragraph 7, the applicant must pay in advance the required fee set out in the by-laws of the College.

7.3 REVOKED: O. Reg. 224/03, s. 1 (3).

8. The applicant must pay the application, examination and certificate of registration fees. O. Reg. 837/93, s. 2 (1); O. Reg. 249/99, s. 1 (1, 2); O. Reg. 224/03, s. 1 (1-3); O. Reg. 279/12, s. 1 (1-6).

(1.1) If the applicant is relying on the requirements set out in subparagraph 2 ii of subsection (1) in making his or her application for a general certificate of registration, the applicant is required to submit his or her application before he or she commences the education or training, or combination of education and training, referred to in that subparagraph. O. Reg. 279/12, s. 1 (7)

(2) An applicant shall be deemed not to have satisfied the requirements for a certificate of registration if the applicant made a false or misleading statement or representation in his or her application. O. Reg. 837/93, s. 2 (2).

(3) Where an assessment or evaluation is performed by the Registration Committee pursuant to paragraph 7 of subsection (1), the Registration Committee shall provide a report to the Registrar, who shall provide a copy of it to the applicant. O. Reg. 224/03, s. 1 (5); O. Reg. 279/12, s. 1 (8).

(4) REVOKED: O. Reg. 224/03, s. 1 (5).

**2.1** (1) Where section 22.18 of the Health Professions Procedural Code applies to an applicant for a general certificate of registration, the applicant is deemed to have met the requirements of paragraphs 2 and 7 of subsection 2 (1) of this Regulation. O. Reg. 279/12, s. 2.

(2) It is a non-exemptible registration requirement that an applicant referred to in subsection (1) provide a certificate, letter or other evidence satisfactory to the Registrar or a panel of the Registration Committee confirming that the applicant is in good standing as an optometrist in every jurisdiction where the applicant holds an out-of-province certificate. O. Reg. 279/12, s. 2.

(3) Without in any way limiting the generality of subsection (2), “good standing” shall include the fact that,

- (a) the applicant is not the subject of any discipline or fitness to practise order or of any proceeding or ongoing investigation or of any interim order or agreement as a result of a complaint, investigation or proceeding; and
- (b) the applicant has complied with the continuing competency and quality assurance requirements of the regulatory authority that issued the applicant that out-of-province certificate as an optometrist. O. Reg. 279/12, s. 2.

(4) Where an applicant referred to in subsection (1) is unable to satisfy the Registrar or a panel of the Registration Committee that the applicant practised the profession of optometry to the extent that would be permitted by a general certificate of registration at any time in the three years immediately before the date of that applicant’s application, the applicant must meet any further requirement to undertake, obtain or undergo material additional training, experience, examinations or assessments that may be specified by a panel of the Registration Committee. O. Reg. 279/12, s. 2.

(5) An applicant referred to in subsection (1) is deemed to have met the requirements of paragraph 3 of subsection 2 (1) where the requirements for the issuance of the applicant’s out-of-province certificate included language proficiency requirements equivalent to those required by that paragraph. O. Reg. 279/12, s. 2.

(6) Despite subsection (1), an applicant is not deemed to have met a requirement if that requirement is described in subsection 22.18 (3) of the Health Professions Procedural Code. O. Reg. 279/12, s. 2.

**3.** It is a condition of a general certificate of registration that the member shall provide the College with details of either of the following that relate to the member and that occur or arise after the member is registered:

1. Where the member is or has been registered or licensed to practise optometry in another jurisdiction, a finding of professional misconduct, incompetence or incapacity or any like finding against the member.
2. A finding of guilt in relation to an offence in any jurisdiction. O. Reg. 224/03, s. 2; O. Reg. 279/12, s. 3.

**4.** A general certificate of registration terminates if the member ceases to be a Canadian citizen or no longer has permanent resident status or authorization under the *Immigration and Refugee Protection Act* (Canada) to engage in the practice of optometry. O. Reg. 837/93, s. 4; O. Reg. 279/12, s. 4.



## ACADEMIC CERTIFICATES OF REGISTRATION

5. (1) The requirements and qualifications for issuing an academic certificate of registration are:

1. The applicant must have completed an application for an academic certificate of registration.
2. The applicant must hold an appointment as a professor, lecturer, resident, supervising clinician or graduate student at the School of Optometry of the University of Waterloo, or another university or optometric educational facility in Ontario approved by the Council.
3. The applicant must have one of the following academic qualifications:
  - i. successful completion of a course in optometry at a university, if the course, at the time the applicant commenced it, was accredited by the Accreditation Council on Optometric Education or another accrediting body approved by the Council, together with the award of a degree of doctor of optometry from that university,
  - ii. successful completion of a course in optometry at a university in the United Kingdom, together with the award of a degree from that university, and current or past membership in the British College of Optometrists,
  - iii. successful completion of a course outside of Ontario, other than one mentioned in subparagraphs i or ii that the Registration Committee, having considered the rest of the applicant's qualifications, determines is acceptable.
4. The applicant must be able to speak and write in either English or French with reasonable fluency.
5. Where the applicant has previously been registered or licensed as an optometrist in any jurisdiction, or has previously practised optometry, there must not be any finding of, or current proceeding involving an allegation of, professional misconduct, incompetence, incapacity or any like finding or proceeding against the applicant.
6. The applicant must not have been found guilty in relation to a criminal offence in any jurisdiction. For the purposes of this paragraph, a "criminal offence" includes, without being limited to, an offence under the *Criminal Code* (Canada), the *Controlled Drugs and Substances Act* (Canada) and the *Food and Drugs Act* (Canada).
7. The applicant must have Canadian citizenship, permanent residency or authorization under the *Immigration and Refugee Protection Act* (Canada) permitting the applicant to engage in the practice of optometry authorized by the academic certificate.
8. The applicant must successfully complete the jurisprudence examination set or approved by the College at the time of the application.
9. The applicant must pay the applicable fees. O. Reg. 224/03, s. 3; O. Reg. 279/12, s. 6.

(2) An applicant shall be deemed not to have satisfied the requirements for a certificate of registration if the applicant made a false or misleading statement or representation in his or her application. O. Reg. 837/93, s. 5 (2).

**5.1** (1) Where section 22.18 of the Health Professions Procedural Code applies to an applicant for an academic certificate of registration, the applicant is deemed to have met the requirements of paragraph 3 of subsection 5 (1) of this Regulation. O. Reg. 279/12, s. 7.

(2) It is a non-exemptible registration requirement that an applicant referred to in subsection (1) provide a certificate, letter or other evidence satisfactory to the Registrar or a panel of the Registration Committee confirming that the applicant is in good standing as an optometrist in every jurisdiction where the applicant holds an out-of-province certificate. O. Reg. 279/12, s. 7.

(3) Without in any way limiting the generality of subsection (2), "good standing" shall include the fact that,

- (a) the applicant is not the subject of any discipline or fitness to practise order or of any proceeding or ongoing investigation or of any interim order or agreement as a result of a complaint, investigation or proceeding; and
- (b) the applicant has complied with the continuing competency and quality assurance requirements of the regulatory authority that issued the applicant that out-of-province certificate as an optometrist. O. Reg. 279/12, s. 7.

(4) Where an applicant referred to in subsection (1) is unable to satisfy the Registrar or a panel of the Registration Committee that the applicant practised the profession of optometry to the extent that would be permitted by an academic certificate of registration at any time in the three years immediately before the date of that applicant's application, the applicant must meet any further requirement to undertake, obtain or undergo material additional training, experience, examinations or assessments that may be specified by a panel of the Registration Committee. O. Reg. 279/12, s. 7.

(5) An applicant referred to in subsection (1) is deemed to have met the requirements of paragraph 4 of subsection 5 (1) where the requirements for the issuance of the applicant's out-of-province certificate included language proficiency requirements equivalent to those required by that paragraph. O. Reg. 279/12, s. 7.

(6) Despite subsection (1), an applicant is not deemed to have met a requirement if that requirement is described in subsection 22.18 (3) of the Health Professions Procedural Code. O. Reg. 279/12, s. 7.

**6.** An academic certificate of registration is subject to the following terms, conditions and limitations:

1. The certificate is automatically revoked if,
  - i. the member ceases to hold an appointment mentioned in paragraph 2 of subsection 5 (1), or
  - ii. the member ceases to be a Canadian citizen or permanent resident of Canada or to have authorization under the *Immigration and Refugee Protection Act* (Canada) permitting the member to engage in the practice of optometry as authorized by the academic certificate.
2. The member may engage in the practice of optometry only at the School of Optometry of the University of Waterloo or at another university or optometric educational facility in Ontario approved by the Council, or a facility formally associated with the School of Optometry, university or optometric educational facility, as the case may be.
3. The member must provide the College with details of either of the following that relate to the member and that occur or arise after the member is registered:
  - i. where the member is or has previously been registered or licensed as an optometrist in another jurisdiction, a finding of professional misconduct, incompetence, incapacity or any like finding or proceeding against the member, or
  - ii. a finding of guilt in relation to an offence in any jurisdiction. O. Reg. 224/03, s. 4; O. Reg. 279/12, s. 8.

**6.1 REVOKED:** O. Reg. 224/03, s. 4.

**7.** (1) Subject to subsections (2) and (3), it is a condition of a certificate of registration of any class that the member,

- (a) provide at least 750 hours of direct optometric care to patients in Canada in every three-year period following the year in which the member is first registered; and
- (b) provide an annual report to the Registrar, at a time set by the Registrar, detailing the member's participation in the mandatory continuing education program of the quality assurance program. O. Reg. 224/03, s. 4.

(2) Subject to subsection (3), the Registration Committee may exempt a member holding a certificate of registration of any class who holds an appointment at the School of Optometry of the University of Waterloo or other optometric educational facility in Ontario approved by the Council from the requirement in clause (1) (a) if the member makes a written request to the Registration Committee and satisfies the Registration Committee that the member's academic duties prevented the member from meeting the requirement. O. Reg. 224/03, s. 4.

(3) The Registrar shall refer a member to the Quality Assurance Committee for a practice assessment under the College's quality assurance program,

- (a) if a member has failed to meet any of the conditions of a certificate of registration set out in subsection (1) or to meet the published minimum requirements of the mandatory continuing education program of the quality assurance program; or
- (b) if the member was granted an exemption under subsection (2) for the three-year period immediately preceding the member's ceasing to hold the appointment mentioned in subsection (2), unless the member can establish to the satisfaction of the Registrar that he or she did provide at least 750 hours of direct optometric care to patients in Canada during that period. O. Reg. 224/03, s. 4.

(4) A member who obtains an exemption pursuant to subsection (2) shall immediately advise the Registrar in writing if the member ceases to hold the appointment mentioned in that subsection. O. Reg. 224/03, s. 4.

**8.** A member who held an academic certificate of registration on April 26, 1999, shall be issued a general certificate of registration if the following requirements are met:

1. The member files an application for the certificate with the College on or before December 31, 2003.
2. The member satisfies the Registration Committee that on the date of filing the application, the member has held the academic certificate of registration for five or more consecutive years and had provided at least 100 hours of direct optometric care to patients in Canada during each of those years.
3. The member satisfies the Registration Committee that on the date of filing the application the member is a Canadian citizen or permanent resident or is authorized under the *Immigration and Refugee Protection Act* (Canada) to engage in the practice of optometry.
4. The member pays the applicable fees. O. Reg. 224/03, s. 4; O. Reg. 279/12, s. 9.

**9.** (1) All qualifications or requirements for the issuing of a general certificate of registration are non-exemptible, other than requirements listed in paragraph 3, 4 or 5 of subsection 2 (1). O. Reg. 224/03, s. 4.

(2) All qualifications or requirements for the issuing of an academic certificate of registration are non-exemptible, other than requirements listed in paragraph 4, 5 or 6 of subsection 5 (1). O. Reg. 224/03, s. 4.

**10.** REVOKED: O. Reg. 224/03, s. 4.

**11.** (1) Subject to subsection (2), the name of the member entered in the register and used on the certificate of registration shall be the same as the name of the member in the documentary evidence of the member's degree in optometry or of a degree that is equivalent to a degree in optometry. O. Reg. 837/93, s. 11 (1).

(2) The Registrar shall issue a certificate of registration using a name other than the name of the member which appears in the documentary evidence referred to in subsection (1) or direct the entry in the register of such a name if,

- (a) in the case of an applicant for a first certificate of registration, the applicant deposits with the Registrar the following information,
  - (i) a certified copy of an order of a court of competent jurisdiction changing the name of the applicant or member,
  - (ii) a certified copy of a valid certificate of marriage or of a decree absolute of divorce from a court with respect to the applicant or member,
  - (iii) documentary evidence as to the use of the name requested, or
  - (iv) any combination of material referred to in subclause (i), (ii) or (iii) and satisfies the Registrar that the use of the name requested is not for any improper purpose; or
- (b) in the case of a member to whom a certificate of registration has already been issued, the member,
  - (i) applies for the change of name to the Registrar,
  - (ii) returns the member's current certificate of registration, and
  - (iii) deposits with the Registrar the information described in clause (a). O. Reg. 837/93, s. 11 (2).

**12., 13.** REVOKED: O. Reg. 57/00, s. 1.

**14.** (1) At least thirty days before the date the annual fees are payable, the Registrar shall mail to each member a notice requesting,

- (a) completion of the annual report;
- (b) completion of the continuing education report; and
- (c) filing of the certificate of proof of professional liability (malpractice) insurance. O. Reg. 837/93, s. 14 (1).

(2) Upon receipt of the annual report and of the certificate of proof of professional liability (malpractice) insurance, the Registrar shall issue a receipt to the member. O. Reg. 837/93, s. 14 (2).

**15.** (1) A member whose certificate of registration was suspended by the Registrar may apply for reinstatement if,

- (a) the application is made within two years of the date of the suspension; and
- (b) the suspension was for,
  - (i) non-payment of fees,
  - (ii) failure to complete and return the annual report and continuing education report, or
  - (iii) failure to provide proof of professional liability insurance. O. Reg. 837/93, s. 15 (1).

(2) The Registrar shall reinstate a member who applies under subsection (1) if the member pays the reinstatement fee set out in the by-laws of the College and,

- (a) where the suspension was due in whole or in part to the non-payment of fees, pays those fees as well as any other money owed to the College;
- (b) where the suspension was due in whole or in part to a failure to complete and return the annual report or the continuing education report, completes and returns the required reports; or
- (c) where the suspension was due in whole or in part to a failure to provide proof of professional liability insurance, provides proof of such insurance. O. Reg. 57/00, s. 2.

(3) Where the Registrar has suspended a member's certificate for any of the reasons mentioned in clause 15 (1) (b) and more than two years have passed since the date of the suspension, the certificate is automatically revoked. O. Reg. 121/94, s. 2.

(4) A member whose certificate of registration was revoked under subsection (3) and who applies to be reinstated must satisfy the requirements for the class of certificate for which reinstatement is sought and pay the application fee and the annual fee payable for the year in which the member wishes to be reinstated. O. Reg. 121/94, s. 2.

**16.** OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 837/93, s. 16.

**Regulated Health Professions Act, 1991**  
**Loi de 1991 sur les professions de la santé réglementées**

**ONTARIO REGULATION 39/02**  
**CERTIFICATES OF AUTHORIZATION**

**Consolidation Period:** From December 12, 2014 to the [e-Laws currency date](#).

Last amendment: O. Reg. 264/14.

*This Regulation is made in English only.*

**Definitions**

**0.1** In this Regulation,

“child”, in relation to a shareholder, includes a person whom the shareholder has demonstrated a settled intention to treat as a child of his or her family, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody;

“family member” means, in relation to a shareholder, the shareholder’s spouse, child or parent;

“parent”, in relation to a shareholder, includes a person who has demonstrated a settled intention to treat the shareholder as a child of his or her family, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody;

“spouse” means, in relation to a shareholder, a person to whom the shareholder is married or with whom the shareholder is living in a conjugal relationship outside marriage;

“voting dentist shareholder” means, in relation to a corporation, a member of the Royal College of Dental Surgeons of Ontario who owns voting shares of the corporation;

“voting physician shareholder” means, in relation to a corporation, a member of the College of Physicians and Surgeons of Ontario who owns voting shares of the corporation. O. Reg. 666/05, s. 1; O. Reg. 264/14, s. 1.

**Eligibility**

**1.** (1) A corporation is eligible to hold a certificate of authorization issued by a College if all the following conditions are met:

1. The articles of the corporation provide that the corporation cannot carry on a business other than the practice of the profession governed by the College and activities related to or ancillary to the practice of that profession.
2. In the case of a certificate of authorization issued by a College other than the College of Physicians and Surgeons of Ontario or the Royal College of Dental Surgeons of Ontario, all of the issued and outstanding shares of the corporation are legally and beneficially owned, directly or indirectly, by one or more members of the issuing College.

2.1 In the case of a certificate of authorization issued by the College of Physicians and Surgeons of Ontario, each issued and outstanding voting share of the corporation is legally and beneficially owned, directly or indirectly, by a member of the College and each issued and outstanding non-voting share of the corporation is owned in one of the following ways:

- i. It is legally and beneficially owned, directly or indirectly, by a member of the College.
- ii. It is legally and beneficially owned, directly or indirectly, by a family member of a voting physician shareholder.
- iii. It is owned legally by one or more individuals, as trustees, in trust for one or more children of a voting physician shareholder who are minors, as beneficiaries.

2.2 In the case of a certificate of authorization issued by the Royal College of Dental Surgeons of Ontario, each issued and outstanding voting share of the corporation is legally and beneficially owned, directly or indirectly, by a member of the College and each issued and outstanding non-voting share of the corporation is owned in one of the following ways:

- i. It is legally and beneficially owned, directly or indirectly, by a member of the College.
- ii. It is legally and beneficially owned, directly or indirectly, by a family member of a voting dentist shareholder.
- iii. It is owned legally by one or more individuals, as trustees, in trust for one or more children of a voting dentist shareholder who are minors, as beneficiaries.

3. The name of the corporation meets the standards described in subsections (2) to (5). O. Reg. 39/02, s. 1 (1); O. Reg. 666/05, s. 2 (1).
- (2) The name of the corporation must meet the requirements in section 3.2 of the *Business Corporations Act* and must not violate the provisions of any other Act. O. Reg. 39/02, s. 1 (2).
- (3) The name of the corporation must include the surname of one or more shareholders of the corporation who are members of the College, as the surname is set out in the College register, and may also include the shareholder's given name, one or more of the shareholder's initials or a combination of his or her given name and initials. O. Reg. 666/05, s. 2 (2).
- (4) The name of the corporation must indicate the health profession to be practised by members of the College through the corporation. O. Reg. 666/05, s. 2 (2).
- (5) The name of the corporation must not include any information other than the information permitted or required by subsections (2), (3) and (4). O. Reg. 39/02, s. 1 (5).

#### **Issuance of certificate**

2. (1) A College shall issue a certificate of authorization to a corporation in respect of a particular profession if the corporation is eligible to hold one and applies for the certificate by giving the following information and documents to the Registrar:

1. A completed application in a form approved by the College.
2. The application fee required by the by-laws of the College.
3. A copy of a corporation profile report, issued by the Ministry of Government and Consumer Services or by a service provider which is under contract with the Ministry of Government and Consumer Services, that is dated not more than 30 days before the application is submitted to the Registrar and that indicates that the corporation is active.
4. A copy of the certificate of incorporation of the corporation.
5. A copy of every certificate of the corporation that has been endorsed under the *Business Corporations Act* as of the day the application is submitted.
6. The declaration of a director of the corporation, signed not more than 15 days before the application is submitted to the Registrar, stating,
  - i. that the corporation is in compliance with section 3.2 of the *Business Corporations Act*, including the regulations made under that section, as of the date the declaration is signed,
  - ii. that the corporation does not carry on, and does not plan to carry on, any business that is not the practice of the profession governed by the College or activities related to or ancillary to the practice of that profession,
  - iii. that there has been no change in the status of the corporation since the date of the corporation profile report referred to in paragraph 3, and
  - iv. that the information contained in the application is complete and accurate as of the day the declaration is signed.
7. In the case of an application submitted to the Registrar of either the College of Physicians and Surgeons of Ontario or the Royal College of Dental Surgeons of Ontario, the name of each person who is both a voting shareholder and a member of the College of Physicians and Surgeons of Ontario or the Royal College of Dental Surgeons of Ontario, as the case may be, as of the day the application is submitted and his or her business address, business telephone number and registration number with the College as of that day.
8. In the case of an application submitted to any College other than the Colleges referred to in paragraph 7, the name of each person who is a shareholder of the corporation as of the day the application is submitted and his or her business address, business telephone number and registration number with the College as of that day.
9. The names of the directors and the officers of the corporation as of the day the application is submitted.
10. The address of the premises at which the corporation carries on activities as of the day the application is submitted. O. Reg. 264/14, s. 2.

(2) A College may issue a revised certificate of authorization to a corporation if the corporation changes its name after the certificate of authorization has been issued to it. O. Reg. 39/02, s. 2 (2).

#### **Refusal to issue**

3. The College shall refuse to issue a certificate of authorization if the corporation is not eligible to hold one or if the corporation does not comply with section 2. O. Reg. 39/02, s. 3.

#### **Duty to notify College of change of name or articles**

4. (1) If a corporation that holds a certificate of authorization changes its name or its articles of incorporation, the corporation shall promptly notify the College and give the College a copy of a certificate of the corporation that has been endorsed under the *Business Corporations Act* indicating the change. O. Reg. 39/02, s. 4 (1).

(2) A corporation ceases to be eligible to hold a certificate of authorization if the corporation fails to notify the College when the corporation changes its name or its articles of incorporation or fails to give the College the certificate described in subsection (1). O. Reg. 39/02, s. 4 (2).

#### **Declaration upon shareholder changes**

**4.1** At the time that a corporation holding a certificate of authorization issued by the College of Physicians and Surgeons of Ontario or the Royal College of Dental Surgeons of Ontario notifies the Registrar under section 85.9 of the Code of a change in the shareholders of the corporation, the corporation shall also give the Registrar the declaration of a director of the corporation, signed after the change of shareholders, stating that the corporation is in compliance with section 3.2 of the *Business Corporations Act*, including the regulations made under that section, as of the date the declaration is signed. O. Reg. 264/14, s. 3.

#### **Annual renewal**

**5.** The College shall renew a certificate of authorization for a corporation in respect of a particular profession on an annual basis if the corporation applies for the renewal by giving the following information and documents to the Registrar:

1. A completed application for renewal in a form approved by the College.
2. The annual renewal fee required by the by-laws of the College.
3. A copy of a corporation profile report issued by the Ministry of Government and Consumer Services or by a service provider which is under contract with the Ministry of Government and Consumer Services that is dated not more than 30 days before the application for renewal is submitted to the Registrar and that indicates that the corporation is active.
4. A copy of every certificate of the corporation that has been endorsed under the *Business Corporations Act* since the corporation's most recent application for a certificate of authorization or for renewal of its certificate of authorization.
5. The declaration of a director of the corporation, signed not more than 15 days before the application for renewal is submitted to the Registrar, stating,
  - i. that the corporation is in compliance with section 3.2 of the *Business Corporations Act*, including the regulations made under that section, as of the date the declaration is signed,
  - ii. that the corporation does not carry on, and does not plan to carry on, any business that is not the practice of the profession governed by the College or activities related to or ancillary to the practice of that profession,
  - iii. that there has been no change in the status of the corporation since the date of the corporation profile report referred to in paragraph 3, and
  - iv. that the information contained in the application for renewal is complete and accurate as of the date the declaration is signed.
6. In the case of an application for renewal submitted to the Registrar of either the College of Physicians and Surgeons of Ontario or the Royal College of Dental Surgeons of Ontario, the name of each person who is both a voting shareholder and a member of the College of Physicians and Surgeons of Ontario or the Royal College of Dental Surgeons of Ontario, as the case may be, as of the day the application is submitted and his or her business address, business telephone number and registration number with the College as of that day.
7. In the case of an application for renewal submitted to any College other than the Colleges referred to in paragraph 6, the name of each person who is a shareholder of the corporation as of the day the application is submitted and his or her business address, business telephone number and registration number with the College as of that day.
8. The names of the directors and officers of the corporation as of the day the application for renewal is submitted.
9. The address of the premises at which the corporation carries on activities as of the day the application for renewal is submitted. O. Reg. 264/14, s. 4.

#### **Revocation of certificate**

- 6.** (1) The following are the grounds upon which a corporation's certificate of authorization may be revoked:
1. The corporation ceases to be eligible to hold a certificate of authorization.
  2. The corporation ceases to practise the profession in respect of which the certificate of authorization was issued.
  3. The corporation fails to comply with one or more of the requirements for a renewal of the certificate.
  4. The corporation carries on any business that is not the practice of the profession governed by the College or activities related to or ancillary to the practice of that profession.
  5. The corporation fails to notify the Registrar of a change in shareholders in accordance with section 85.9 of the Code.
  6. In the case of a corporation that holds a certificate of authorization issued by the College of Physicians and Surgeons of Ontario or the Royal College of Dental Surgeons of Ontario, the corporation fails to give the Registrar a declaration in accordance with section 4.1. O. Reg. 39/02, s. 6 (1); O. Reg. 666/05, s. 6; O. Reg. 264/14, s. 5.

(2) If the College proposes to revoke a corporation's certificate of authorization, the College shall give notice of the proposed revocation, setting out the date the revocation will take effect and the grounds for the proposed revocation. O. Reg. 39/02, s. 6 (2).

(3) The College shall revoke the corporation's certificate of authorization 60 days after the date on which the notice is given if any of the grounds for revocation exist on the revocation date specified in the notice. O. Reg. 39/02, s. 6 (3).

(4) The College shall notify the corporation if a corporation's certificate of authorization is revoked. O. Reg. 39/02, s. 6 (4).

**Reinstatement after revocation**

7. If a corporation's certificate of authorization is revoked, a new certificate of authorization may be issued to the corporation only if the corporation is eligible to hold one and applies for a new certificate in accordance with section 2. O. Reg. 39/02, s. 7.

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**Optometry Act, 1991**  
**Loi de 1991 sur les optométristes**

**ONTARIO REGULATION 859/93**  
**PROFESSIONAL MISCONDUCT**

Note: This Regulation was revoked on April 15, 2014. (See: O. Reg. 26/14, ss. 1, 2)

Last amendment: O. Reg. 26/14.

*This Regulation is made in English only.*

1. (1) The following are acts of professional misconduct for the purposes of clause 51 (1) (c) of the Health Professions Procedural Code:

THE PRACTICE OF THE PROFESSION AND THE CARE OF, AND RELATIONSHIP WITH, PATIENTS

1. Contravening a term, condition or limitation imposed on the member's certificate of registration.
2. Exceeding the scope of practice of the profession.
3. Doing anything to a patient for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose in a situation in which a consent is required by law, without such a consent.
4. Abusing a patient verbally or physically.
5. Practising the profession while the member's ability to do so is impaired by any substance.
6. Discontinuing professional services that are needed unless,
  - i. the patient requests the discontinuation,
  - ii. alternative services are arranged, or
  - iii. the patient is given a reasonable opportunity to arrange alternative services.A member may discontinue services pending payment of an outstanding account for services already provided, unless the needed services are of an emergency nature.
7. Discontinuing professional services contrary to the terms of an agreement between the member and a hospital within the meaning of the *Public Hospitals Act*.
8. Practising the profession while the member is in a conflict of interest.
9. Breaching an agreement with a patient relating to professional services for the patient or fees for such services.
10. Failing to reveal the exact nature of a secret remedy or treatment used by the member following a patient's request to do so.
11. Making a misrepresentation with respect to a remedy, treatment or device.
12. Treating or attempting to treat an eye or vision system condition which the member recognizes or should recognize as being beyond his or her experience or competence.
13. Failing to refer a patient to a regulated health professional when the member recognizes or should recognize a condition of the eye or vision system that appears to require such referral and examination.
14. Failing to make available to a patient who requests one a written, signed and dated prescription for a subnormal vision device, contact lenses or eyeglasses.
15. Dispensing to a patient a contact lens, other than for diagnostic or emergency purposes, that the member knows or should know is not new.
16. Recommending or providing unnecessary diagnostic or treatment services.
17. Failing to maintain the standards of practice of the profession.
18. Delegating a controlled act in contravention of the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts.
19. Performing a controlled act which has not been delegated to the member in accordance with the regulations.



20. Ordering a person who is under the supervision of a member to perform an act, or supervising an act, in the practice of optometry that is not consistent with the regulations.
21. Permitting, counselling or assisting any person who is not a member to perform an act which should be performed by a member.

#### REPRESENTATIONS ABOUT MEMBERS AND THEIR QUALIFICATIONS

22. Using a title, term or designation in respect of the member's practice in contravention of section 2.
23. Using in any way with respect to the member's practice the name of another member whose practice the member acquired, after a period of three years from the date of the acquisition.
24. Engaging in the practice of optometry by employment, association, partnership or otherwise in more than three locations or holding out that the member is doing so, without the approval of the Council.
25. Causing or permitting, directly or indirectly, a publication through any medium of communications that has a relation to or a bearing on a member's practice that,
  - i. is not relevant to the public's ability to make an informed choice,
  - ii. is false or deceptive by reason of inclusion or omission of information including any suggestion that the member is a specialist unless the member holds a specialist certificate recognized by the College,
  - iii. refers to any services that the member does not provide,
  - iv. contains comparative or superlative statements or testimonials by patients, former patients, friends or relatives of patients or former patients,
  - v. contains an endorsement by any person or organization,
  - vi. refers to a particular drug or particular brand of product or equipment used to provide optometric service,
  - vii. contains statements that are persuasive or create expectations of favourable results or appeals to the fears of the persons to whom the statements are directed,
  - viii. is not factual, verifiable and readily comprehensible to the persons to whom it is directed;
  - ix. is part of any communication, advertisement, listing, promotion or offering of any product or service by a non-member, or
  - x. could be regarded by the profession as demeaning the integrity or dignity of the profession or being likely to bring the profession into disrepute.
- 25.1 Appearing in, or permitting the use of a member's name in, an advertisement or communication that implies, or could be reasonably interpreted to imply, that the professional expertise of the member is relevant to the subject matter of the advertisement or communication.

#### RECORD KEEPING AND REPORTS

26. Giving information concerning the condition of a patient or any services rendered to a patient to a person other than the patient or his or her authorized representative except with the consent of the patient or his or her authorized representative or as required by law.
27. Failing to make and maintain records as required by the regulations.
28. Falsifying a record relating to a member's practice, including records of observations, clinical findings or treatment of patients.
29. Signing or issuing, in the member's professional capacity, a certificate, report or similar document that contains a statement the member knows or should know is false, misleading or otherwise improper, or that withholds statements or information that the member knows or ought to know should be disclosed.
30. Failing, without reasonable cause, to provide within a reasonable time any report or certificate requested by a patient or his or her authorized representative in respect of an examination or treatment provided by the member.
31. Failing to make arrangements with a patient for access to or for transfer of the records of the patient to another member when requested to do so by the patient, or when the member closes an office location or retires from practice.

#### BUSINESS PRACTICES

32. Submitting an account for services rendered to a patient that the member knows or should know is false or misleading.
33. Charging fees that are excessive or unreasonable in relation to the services performed.

34. Charging a fee for a service that exceeds the fee set out in the schedule of fees published by the Ontario Association of Optometrists at the time the service was rendered without informing the patient, before the service is performed, of the excess amount that will be charged.
- 34.1 Charging a block fee, which is a fee charged for services that are not insured services as defined in section 1 of the *Health Insurance Act* and is a set fee regardless of how many services are rendered, unless the fee is for, or related to,
  - i. spectacle treatment,
  - ii. binocular vision treatment,
  - iii. contact lens treatment, or
  - iv. subnormal vision treatment.
- 34.2 Charging a fee for an undertaking not to charge for a service or class of services.
- 34.3 Charging a fee for an undertaking to be available to provide services to a patient.
35. Failing to issue a statement or receipt to a patient or to a third party responsible for the payment of the account of a patient.
36. Issuing a statement or receipt which does not,
  - i. itemize the services provided and the fees charged,
  - ii. describe the ophthalmic appliances utilized by the member in the performance of the services, or
  - iii. set out the commercial laboratory cost incurred by the member in the provision of the services.
37. Charging or receiving payment for contact lenses, a subnormal vision device or eyeglasses in excess of the commercial laboratory cost incurred by the member in the provision of the service.
38. Charging or receiving more than the amount payable to an insured person under the Ontario Health Insurance Plan for the insured service.
39. Accepting payment in respect of an insured service to an insured person before the member receives notice from the Ontario Health Insurance Plan that the patient has been reimbursed by the Plan, unless the insured person has consented to make the payment on an earlier date.
40. Accepting payment before performing an optometric service that is not an insured service within the meaning of the *Health Insurance Act*, unless the patient is informed of his or her right to refuse to make payment before the service is performed, and the patient consents to make the payment in advance. This does not apply to the payment of a commercial laboratory fee to be incurred by a member in connection with the service.
41. Accepting a credit card to obtain payment for an optometric service unless the provider of the credit card agrees to rely solely on the provider's agreement with the credit card holder or on the credit card sales slip, and not on the member's patient records, to enforce payment.
42. Requesting payment for a service that is an insured service within the meaning of the *Health Insurance Act* before performing the service.
43. Displaying or permitting the display of ophthalmic appliances that may be seen from the exterior of the premises in which a member is engaged in the practice of optometry.
44. Contacting or communicating personally with, or causing or permitting any person to contact or communicate personally with, potential patients for the purpose of soliciting patients.

#### MISCELLANEOUS MATTERS

45. Refusing to allow an authorized representative of the College to enter at a reasonable time the office or offices where the member practises optometry for the purposes of inspecting or removing the member's records and equipment.
46. Failing to co-operate with the Quality Assurance Committee or its assessors.
47. Failing to comply with an order of the Complaints Committee requiring the member to appear before the committee to be cautioned or admonished.
48. Failing to abide by a written undertaking given by the member to the College or its committees, or to carry out an agreement entered into with the College or its committees.
49. Being convicted of an offence that affects the fitness of a member to practise optometry.
50. Contravening the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts.
51. Failing to co-operate with a representative of another College on production of an appointment under section 76 of the Code or to provide access to or copies of a record, document or thing that may be reasonably required for the purposes of an investigation.

52. Failing to provide to a patient who requests them the practice address and telephone number of a member who formerly practised in association or in partnership with the member when the member knows or ought to know this information.
53. Engaging in conduct or performing an act that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical.
54. Influencing a patient to change his or her will or other testamentary instrument.
55. Selling any debt owed to the member for professional fees or charges. This does not include the assignment of any debt owed or the use of credit cards to pay for professional fees or charges. O. Reg. 859/93, s. 1; O. Reg. 860/93, s. 1 (1); O. Reg. 120/94, s. 1.

(2) Paragraphs 34.1, 34.2 and 34.3 of subsection (1) do not apply in a case where a member charges a fee to a third party for a third party service under the *Health Insurance Act*. O. Reg. 860/93, s. 1 (2).

2. (1) Except as provided in subsections (2) and (3), a member shall not use a title, term or designation other than the member's name, as set out in the register, the occupational designation "optometrist" or "doctor of optometry" and the member's degrees and fellowships. O. Reg. 859/93, s. 2 (1).

(2) If two or more members are in practice together in one office, the name of at least one member and the designation "and associate" or "and associates" may be used, provided that the names of all the members are posted in the office and the College is notified of those names. O. Reg. 859/93, s. 2 (2).

(3) If three or more members are in practice together in one office, the designation "optometric centre" or "optometric clinic", either in conjunction with one or more of the member's names or with a geographical location reasonably referable to the location of the practice may be used, provided that the names of all the members are posted in the office and the College is notified of those names. O. Reg. 859/93, s. 2 (3).

3. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 859/93, s. 3.

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REVOKED

**Drug and Pharmacies Regulation Act**  
**Loi sur la réglementation des médicaments et des pharmacies**

**R.R.O. 1990, REGULATION 550**

**OPTOMETRY**

Note: This Regulation was revoked on April 15, 2014. (See: O. Reg. 25/14, ss. 1, 2)

Last amendment: O. Reg. 25/14.

*This Regulation is made in English only.*

1. For the purpose of the election of members to the Council, the following electoral districts are established:
  1. The Central electoral district, composed of the regional municipalities of Halton, Peel, Waterloo and York together with the County of Wellington and The Municipality of Metropolitan Toronto.
  2. The Eastern electoral district composed of the regional municipalities of Durham and Ottawa-Carleton together with the counties of Dundas, Frontenac, Glengarry, Grenville, Haliburton, Hastings, Lanark, Leeds, Lennox and Addington, Northumberland, Peterborough, Prescott, Prince Edward, Renfrew, Russell, Stormont, Victoria and The District Municipality of Muskoka.
  3. The Northern electoral district composed of the counties of Bruce, Dufferin, Elgin, Grey, Huron, Middlesex and Simcoe together with the territorial districts of Algoma, Cochrane, Kenora, Manitoulin, Nipissing, Parry Sound, Rainy River, Sudbury, Thunder Bay and Timiskaming.
  4. The Western electoral district composed of the regional municipalities of Haldimand-Norfolk, Hamilton-Wentworth and Niagara, together with the counties of Brant, Essex, Kent, Lambton, Oxford and Perth.
  5. The Provincial electoral district composed of the whole of the Province of Ontario. R.R.O. 1990, Reg. 550, s. 1.
2. One member shall be elected to the Council from each of the Eastern, Northern, Provincial and Western electoral districts and two members shall be elected to the Council from the Central electoral district. R.R.O. 1990, Reg. 550, s. 2.
3. (1) A member is eligible for election to the Council who,
  - (a) is engaged in the practice of optometry in the electoral district for which he or she is nominated; and
  - (b) is in good standing in the College. R.R.O. 1990, Reg. 550, s. 3 (1).(2) A member is in good standing in the College for the purpose of subsection (1) where,
  - (a) he or she is not in default of payment of any fees prescribed by the regulations;
  - (b) his or her professional conduct is not the subject of disciplinary proceedings;
  - (c) his or her licence is not under suspension; and
  - (d) his or her licence is not subject to a term, condition or limitation. R.R.O. 1990, Reg. 550, s. 3 (2).
4. (1) The term of office of an elected member of the Council is three years. R.R.O. 1990, Reg. 550, s. 4 (1).  
(2) When an election of members of the Council is not held within the prescribed period, the members of the Council then in office shall continue in office until their successors are elected or appointed. R.R.O. 1990, Reg. 550, s. 4 (2).
5. (1) The election for an electoral district shall be held on or before the 1st day of April in the year in which the term of office of the member or members elected from the electoral district expires. R.R.O. 1990, Reg. 550, s. 5 (1).  
(2) The date of each election shall be set by the Council and elections shall be carried out under the supervision of the Registrar. R.R.O. 1990, Reg. 550, s. 5 (2).  
(3) Where there is an interruption of mail service during a nomination or election, the Registrar shall extend the holding of nominations and election for such minimum period of time as the Registrar considers necessary to compensate for the interruption. R.R.O. 1990, Reg. 550, s. 5 (3).
6. Nomination forms shall be mailed by the Registrar to all members qualified to vote in the electoral district in which an election is to be held, at least forty-five days before the date of the election. R.R.O. 1990, Reg. 550, s. 6.
7. (1) The nomination of candidates for election as members of the Council shall be,
  - (a) in writing;

- (b) in the nomination form that shall be provided by the Registrar; and
  - (c) signed by a proposer and a seconder both of whom shall be members engaged in the practice of optometry in the electoral district for which the candidate has been nominated. R.R.O. 1990, Reg. 550, s. 7 (1).
- (2) The nomination form shall have the candidate's consent signed thereon and shall be filed with the Registrar at least thirty days before the date of the election. R.R.O. 1990, Reg. 550, s. 7 (2).
- (3) The Registrar shall notify without undue delay, after nominations have been closed, all nominated candidates of the members nominated and a candidate may withdraw his or her candidacy by notice of withdrawal delivered to or received by the Registrar not later than twenty-two days before the date of the election. R.R.O. 1990, Reg. 550, s. 7 (3).
- 8.** Voting for elections of members to the Council shall be by mail ballot. R.R.O. 1990, Reg. 550, s. 8.
- 9.** Ballot forms, together with blank envelopes therefor, shall be mailed by the Registrar to all members qualified to vote in the electoral district in which an election is to be held at least ten days before the date of the election. R.R.O. 1990, Reg. 550, s. 9.
- 10.** (1) A ballot shall be marked in the appropriate space with an "X" for the candidate of the voting member's choice, shall be sealed in the blank envelope supplied and shall be inserted and sealed in the outer envelope supplied and the outer envelope shall bear the voting member's signature and address. R.R.O. 1990, Reg. 550, s. 10 (1).
- (2) A ballot that does not comply with subsection (1) shall be deemed to be null and void. R.R.O. 1990, Reg. 550, s. 10 (2).
- 11.** Only ballots received by the Registrar on or before 4 p.m. of the day before the date of the election shall be counted by the Registrar or his or her designated agent. R.R.O. 1990, Reg. 550, s. 11.
- 12.** On the date of an election, the sealed blank envelopes containing the ballots for the election shall be opened and the ballots counted by the Registrar or his or her designated agent. R.R.O. 1990, Reg. 550, s. 12.
- 13.** Representatives of the candidates in an election may be present when the sealed blank envelopes are opened and the ballots counted. R.R.O. 1990, Reg. 550, s. 13.
- 14.** In the event that candidates in an election receive an equal number of votes, the President of the College shall cast the deciding vote but where the President is a candidate, the Vice-President shall cast the deciding vote. R.R.O. 1990, Reg. 550, s. 14.
- 15.** Where only one candidate for election to the Council is nominated in an electoral district, the Registrar shall declare the candidate elected as the member of the Council for that electoral district. R.R.O. 1990, Reg. 550, s. 15.
- 16.** (1) The Registrar shall destroy all ballots thirty-one days after the announcement of the results of an election unless a candidate challenges the election or its results. R.R.O. 1990, Reg. 550, s. 16 (1).
- (2) Within thirty days from the date of the counting of ballots, a candidate may require a recount of the ballots of the electoral district in which he or she was nominated, on depositing with the Registrar the sum of \$150 and a written request for the recount. R.R.O. 1990, Reg. 550, s. 16 (2).
- (3) Where a recount has been requested, the Registrar shall appoint the time and place and arrange for the recount which shall take place within fifteen days from the date of the request and shall be conducted, subject to subsection (4), in the same manner as the original counting of the ballots and the candidate or a representative appointed by the candidate may be present at the recount. R.R.O. 1990, Reg. 550, s. 16 (3).
- (4) The recount shall be conducted by two scrutineers appointed by the President of the College. R.R.O. 1990, Reg. 550, s. 16 (4).
- (5) The portion of the deposit of \$150 remaining after payment of the actual cost to the College of conducting the recount shall be returned to the person who paid the deposit but if the recount changes the result of the election the full amount of the deposit shall be returned to the person who paid the deposit. R.R.O. 1990, Reg. 550, s. 16 (5).
- 17.** (1) An elected member of the Council is disqualified from sitting on the Council and the seat of the member on the Council shall be deemed to be vacant if the member,
- (a) is found to be an incapacitated member;
  - (b) is found guilty of professional misconduct or incompetence;
  - (c) fails to attend without cause three consecutive meetings of a committee or the Council; or
  - (d) ceases to practise in the electoral district for which he or she was elected. R.R.O. 1990, Reg. 550, s. 17 (1).
- (2) Where an elected member of the Council dies or resigns or his or her seat otherwise becomes vacant before the expiry of his or her term of office, the Council shall,

- (a) where the unexpired term of the member whose seat became vacant does not exceed two years, appoint a successor from among the members of the College in the electoral district represented by the member whose seat on the Council became vacant; or
- (b) where the unexpired term of office of the member whose seat became vacant exceeds two years, direct the Registrar to hold a by-election in accordance with the provisions of this Regulation for the electoral district which the member represented,

and the appointed or elected successor shall serve until the expiry of the term of office of the member whose seat became vacant. R.R.O. 1990, Reg. 550, s. 17 (2).

**18.** (1) The requirements and qualifications for the issuing of a licence to an applicant are,

- (a) completion of an application for a licence in a form that shall be supplied by the Registrar;
- (b) one of the following,
  - (i) successful completion of the course in optometry at the School of Optometry of the University of Waterloo and the award of the degree of doctor of optometry by the University,
  - (ii) successful completion of a course considered by the Registration Committee to be comparable to the course at the School of Optometry of the University of Waterloo and the award of a degree comparable to the degree of doctor of optometry of the University of Waterloo,
  - (iii) engaging in the practice of optometry in good standing with the licencing body in the jurisdiction in which the applicant is practising and graduation from a course in Optometry deemed by the Registration Committee to be comparable to the course of the School of Optometry of the University of Waterloo;
- (c) reasonable fluency in the English or French language;
- (d) evidence, where the applicant has previously practised optometry, that there has been no finding of, and that there is no current proceeding involving an allegation of, professional misconduct, incompetence or incapacitation or any like finding or proceeding against the applicant;
- (e) evidence that the applicant has not been convicted of an offence that affects the fitness of the applicant to engage in the practice of optometry;
- (f) Canadian citizenship, permanent resident status under the *Immigration Act* (Canada) or a special authorization under clause 10 (c) of that Act;
- (g) successful completion of the examinations set or approved by the Council at the time of the application, except with respect to an applicant who holds a full-time appointment as a professor, resident, supervising clinician or graduate student at the School of Optometry, University of Waterloo; and
- (h) payment of the examination and licence fees prescribed by this Regulation. R.R.O. 1990, Reg. 550, s. 18 (1).

(2) A licence shall be in Form 1. R.R.O. 1990, Reg. 550, s. 18 (2).

**19.** (1) Subject to subsection (2), the name of the member entered in the register and used on the licence shall be the same as the name of the member in the documentary evidence of the member's degree in optometry or a degree that is equivalent to a degree in optometry. R.R.O. 1990, Reg. 550, s. 19 (1).

(2) The Registrar shall issue a licence or direct the entry of a name in other than the name required by subsection (1) if the applicant or the member applies, and in the case of a member, returns the current licence of the member, and deposits with the Registrar,

- (a) a certified copy of an order of a court of competent jurisdiction changing the name of the applicant or member;
- (b) a certified copy of a valid certificate of marriage or of a decree absolute of divorce from a court with respect to the applicant or member; or
- (c) documentary evidence as to the use of the name requested,

or any combination of material referred to in clause (a), (b) or (c) and satisfies the Registrar that the use of the name requested is not for any improper purpose. R.R.O. 1990, Reg. 550, s. 19 (2).

**20.** (1) It is a condition of every licence, where the holder of the licence has not engaged on a regular basis in the practice of optometry for a period of three years, that the holder not engage in the practice of optometry until the competency of the holder is reviewed by the Registration Committee. R.R.O. 1990, Reg. 550, s. 20 (1).

(2) It is a condition of every licence that is issued to an applicant who is exempted by the Registration Committee from clause 18 (1) (g) and who holds a full-time appointment as a professor, resident, supervising clinician or graduate student at the School of Optometry, University of Waterloo, that the licence is valid only while the applicant holds a full-time appointment as a professor, resident, supervising clinician or graduate student at the said School and performs acts in the practice of optometry as part of his or her duties or requirements as a full-time appointee. R.R.O. 1990, Reg. 550, s. 20 (2).

**21.** (1) The Registrar shall mail to each member an annual report form and a fees payment form at least thirty days before the due date for payment of annual fees. R.R.O. 1990, Reg. 550, s. 21 (1).

(2) The Registrar shall issue a receipt to a member upon receipt of the member's completed annual fees payment form and annual fee. R.R.O. 1990, Reg. 550, s. 21 (2).

**22.** (1) A person whose licence has been cancelled by the Registrar for non-payment of the annual fee may apply to have the licence reissued by the Registrar upon payment of all outstanding fees, together with a penalty fee of \$50, provided a period of not more than two years has elapsed from the date of cancellation of the licence. O. Reg. 550/93, s. 1.

(2) A member whose licence has been suspended shall pay all outstanding fees before resuming the practice of optometry. R.R.O. 1990, Reg. 550, s. 22 (2).

**23.** The registers for members maintained by the Registrar may be inspected by any person during normal business hours. R.R.O. 1990, Reg. 550, s. 23.

**24.** A member in the practice of optometry shall exercise generally accepted standards of practice and procedures in the determination of the physical, optical, sensory and oculomotor state of the eye and adnexa and in the assessment and care of a patient's vision and shall,

(a) record the case history, all clinical procedures used and findings obtained and the counsel given and treatment provided in the assessment and management of the patient's vision performance; and

(b) have in his or her office the usual and necessary instruments, equipment and physical facilities for the provision of the diagnostic and treatment services performed by the member. R.R.O. 1990, Reg. 550, s. 24.

**25.** The following drugs may be used in the practice of optometry for the purposes specified:

1. Topical anaesthetics: proparacaine not over 0.5 per cent and benoxinate not over 0.4 per cent for facilitating the measurement of intraocular pressure and for facilitating contact lens applications.

2. Mydriatic: tropicamide not over 0.5 per cent for facilitating the observation of the fundus of the eye when clinically required.

3. Cycloplegic: cyclopentolate hydrochloride not over 0.5 per cent for determining the refractive status of the eye when clinically required. R.R.O. 1990, Reg. 550, s. 25.

**26.** (1) In this section,

"member of his or her family" means any person connected with a member by blood relationship, marriage or adoption, and,

(a) persons are connected by blood relationship if one is the child or other descendant of the other or one is the brother or sister of the other,

(b) persons are connected by marriage if one is married to the other or to a person who is connected by blood relationship to the other, and

(c) persons are connected by adoption if one has been adopted, either legally or in fact, as the child of the other or as the child of a person who is so connected by blood relationship (otherwise than as a brother or sister) to the other. R.R.O. 1990, Reg. 550, s. 26 (1).

(2) A member shall not engage in the practice of optometry where the member has a conflict of interest. R.R.O. 1990, Reg. 550, s. 26 (2).

(3) It is a conflict of interest for a member where a member or a member of his or her family,

(a) accepts rebates or gifts from a vendor of ophthalmic appliances, materials or equipment or from a person licensed or registered under any Act regulating a health discipline;

(b) accepts credit from a vendor of ophthalmic appliances, materials or equipment, or from a person licensed or registered under any Act regulating a health discipline except where the terms of the credit provide a reasonable time for repayment, a reasonable rate of interest on the amount outstanding at any time during the period of credit, and the credit is not related to the referral of patients to the creditor;

(c) rents or makes available premises to a tenant who is a person licensed or registered under any Act regulating a health discipline except at a rent normal for the area in which the premises are located and the amount of the rent is not related to the volume of business carried out in the premises by the tenant; or

(d) rents or uses any premises from a vendor of ophthalmic appliances, materials or equipment or from a person who has any association with such vendor, or from a person licensed or registered under any Act regulating a health discipline except at a rent normal for the area in which the premises are located and the amount of the rent is not related to the referral of patients to the landlord or to the referral of patients by the member or the amount of fees charged by the member. R.R.O. 1990, Reg. 550, s. 26 (3).

(4) It is a conflict of interest for a member to,

- (a) share fees with any person who has referred a patient or receive fees from any person to whom the member has referred a patient or to engage in any form of fee sharing, rebates or other indirect remuneration;
  - (b) issue a statement or receipt to a patient or to a third party responsible for the payment of the account of a patient which does not itemize the service provided and the fees therefor or does not describe the ophthalmic appliances utilized by the member in the performance of the service or does not set out the laboratory costs incurred by the member in the provision of the service;
  - (c) engage in the practice of optometry where any of the public entrances or exits of the member's premises are within the premises of a retail merchant, optical company or ophthalmic dispenser or interconnecting therewith;
  - (d) charge or receive for an ophthalmic appliance payment in excess of the laboratory costs incurred by the member in the provision of the service provided by the member;
  - (e) engage in the practice of optometry in association, partnership or otherwise with or while employing or under the employment of a vendor of ophthalmic appliances or an ophthalmic dispenser registered under the *Ophthalmic Dispensers Act* or with any other person or corporation other than,
    - (i) with a member who is engaged in the practice of optometry,
    - (ii) with a legally qualified medical practitioner who is engaged in the practice of medicine provided that such practice is not inconsistent with Part V of the Act or regulations or by-laws,
    - (iii) as an employee or agent of a municipal or other government, agency of a municipal or other government, a university, hospital,
    - (iv) with a community health centre if the employment or any arrangement has been approved by Council, or
    - (v) with a corporation for the sole purpose of providing optometrical counsel and service to the employees of the corporation; or
  - (f) own or financially benefit from the operation of a company, firm or business that manufactures, fabricates, supplies or dispenses ophthalmic appliances. R.R.O. 1990, Reg. 550, s. 26 (4).
- (5) Despite clauses (4) (c) and (e) a member may continue to engage in the practice of optometry in the employment of the retail merchant who operates an optical department where the member had been so employed for a continuous period of fifteen years on the 28th day of June, 1974 provided the member has filed with the Registrar a statutory declaration that the member has been so employed. R.R.O. 1990, Reg. 550, s. 26 (5).

**27.** (1) For the purposes of Part V of the Act, "professional misconduct" means:

1. Failure by a member to abide by the terms, conditions or limitations of his or her licence.
2. Failure to maintain the standard of practice of the profession.
3. Failure to maintain the records that are required to be kept in respect of a member's patients or practice.
4. Exceeding the lawful scope of practice.
5. Using or having in the member's place of practice drugs other than those prescribed or using drugs for purposes other than those specified in this Regulation.
6. Having a conflict of interest.
7. Using terms, titles or designations other than those authorized, or using terms, titles or designations that are prohibited by this Regulation.
8. Treating or attempting to treat a vision problem which the member recognizes or should have recognized as being beyond his or her experience or competence.
9. Failure of a member to refer a patient to a legally qualified medical practitioner when the member recognizes or should have recognized a condition of the eye or adnexa that appears to require medical examination.
10. Permitting, counselling or assisting any person who is not licensed under Part V of the Act to engage in the practice of optometry except as provided for in the Act or this Regulation.
11. Using in any way with respect to the member's office the name of another member whose practice the member has acquired after a period of three years from the date of the acquisition.
12. Practising or holding out that the member is engaged in the practice of optometry or is associated in the practice of optometry in more than three offices or locations unless the Council has approved so doing.
13. Changing fees that are in excess of the schedule of fees of the Ontario Association of Optometrists without prior notification to the patient as to the excess amount of the fee.



14. Charging fees that are excessive in relation to the services performed.
15. Charging a fee for a service that is not performed.
16. Accepting a credit card to obtain payment for an optometrical service,
  - i. that is prescribed as an insured service under Regulation 552 of the Revised Regulations of Ontario, 1990 (General), or
  - ii. prior to rendering the optometrical service.
17. Accepting a credit card other than one defined in subsection (3) to obtain payment for an optometrical service.
18. Requesting payment for a service that is insured under the *Health Insurance Act* before providing a completed claim card for submission under that Act or before providing an itemized account of the service where a request is made for an itemized account by the patient or a representative of the patient.
19. Publishing, displaying, distributing or using or permitting, directly or indirectly, the publishing, display, distribution or use of any advertisement related to the practice of optometry by a member other than,
  - i. professional cards that contain only the name of the member, the vocational designation, the member's address, academic degrees, telephone number and office hours,
  - ii. a professional card in a newspaper or a weekly or monthly periodical where the professional card,
    - A. does not exceed one standard newspaper column in width and five centimetres in depth including the margins,
    - B. is not part of an advertisement containing a reference to ophthalmic appliances, and
    - C. does not appear more than twice in any one issue of the newspaper or periodical,
  - iii. appointment cards that do not contain more than the information contained in a professional card and the time and date of the appointment or appointments,
  - iv. reminder notices to patients,
  - v. announcement cards that do not state more than the information contained in a professional card and an announcement of the commencement of the practice of optometry, a change of location or a new association in practice,
  - vi. one sign on the premises where the member is engaged in the practice of optometry, stating the name of the member and his or her vocational designation with lettering on the sign that does not exceed twenty centimetres in diagonal measurement,
  - vii. door plates and listings on building directories on the premises where the member is engaged in the practice of optometry.
20. Associating with or being employed by any person who published, displays, distributes or uses any advertisement related to the practice of optometry by the member other than that which is provided for by paragraph 19.
21. Signing or issuing a certificate, report or similar document that contains a statement the member knows or ought to know is false, misleading or otherwise improper.
22. Signing or issuing a certificate, report or similar document that withholds statements or information the member knows or ought to know should be disclosed to the person to whom the member knows or ought to know the document will be delivered or to whom its contents will be made known.
23. Giving information concerning a patient's vision to any person other than the patient without the consent of the patient unless required to do so by law.
24. Failing to provide within a reasonable time any report or certificate requested by a patient in respect of an examination or treatment provided by the member.
25. Knowingly submitting a false or misleading account or false or misleading charges for services tendered to a patient.
26. Falsifying a record in respect of observation or treatment of a patient.
27. Making a misrepresentation with respect to a remedy, treatment or device.
28. Failure to carry out the terms of an agreement with a patient.
29. Failure to continue to provide professional service to a patient until the services are no longer required or until the patient has had a reasonable opportunity to arrange for the services of another member.
30. Failure to make arrangements with a patient for access to or for transfer of the records of the patient when the member changes office location or retires from practice.

31. Refusal to allow an authorized representative of the Council to enter at a reasonable time the office in which the member is engaged in the practice of optometry for the purpose of inspecting the member's professional records and equipment.
32. Conviction of an offence that affects the fitness of a member to engage in the practice of optometry.
33. Engaging in the practice of optometry while the ability to perform any professional act is impaired by alcohol or a drug.
34. Sexual impropriety with a patient.
35. Failure to make available to a patient a written prescription for an ophthalmic appliance for the patient containing all necessary and relevant clinical and ophthalmic specifications.
36. Providing other than a new contact lens to a patient.
37. Displaying or permitting the display of ophthalmic appliances that can be seen from the exterior of the premises in which a member is engaged in the practice of optometry.
38. The contravention of any provision of Part V of the Act or of the regulations or the *Health Insurance Act*.
39. Conduct or an act relevant to the practice of optometry that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. R.R.O. 1990, Reg. 550, s. 27 (1).
  - (2) Subparagraph ii of paragraph 16 of subsection (1) does not apply to the payment of a laboratory fee that is incurred by a member in connection with an optometrical service or services that may be rendered. R.R.O. 1990, Reg. 550, s. 27 (2).
  - (3) For the purposes of subsection (1),
 

“credit card” means a credit card that is accepted by a member pursuant to a standard form of agreement that requires the provider of the credit card to rely upon the provider's contract with the card holder or card sales slip to enforce payment of money owed and not upon a member's patient records. R.R.O. 1990, Reg. 550, s. 27 (3).
28. (1) A member shall participate in the program of continuing education that is provided related to the maintenance of the member's standard of competence at least once in each three years and shall report upon such participation on an annual basis upon the request of the Registrar. R.R.O. 1990, Reg. 550, s. 28 (1).
  - (2) A member who fails to participate in the program of continuing education referred to in subsection (1) shall be referred by the Registrar to the Registration Committee for review of the qualifications of the member. R.R.O. 1990, Reg. 550, s. 28 (2).
29. (1) The Council shall appoint annually an Appraisal Committee composed of,
  - (a) two members of the Council; and
  - (b) three members of the College, of whom two shall be members of the faculty of the School of Optometry of the University of Waterloo and one shall be a practising optometrist who is not a member of the Council. R.R.O. 1990, Reg. 550, s. 29 (1).
  - (2) The Council shall name one member of the Appraisal Committee as the chair. R.R.O. 1990, Reg. 550, s. 29 (2).
  - (3) A majority of the members of the Appraisal Committee constitutes a quorum. R.R.O. 1990, Reg. 550, s. 29 (3).
  - (4) The Appraisal Committee shall report not less than once a year to the Council and make recommendations concerning the standard of practice in the profession. R.R.O. 1990, Reg. 550, s. 29 (4).
  - (5) The Appraisal Committee, for the purpose of examining and assessing the standard of practice in the profession and the standards of practice of members,
    - (a) may cause general inspections to be made by appointment and at reasonable hours of the records of members and the equipment used by them in the practice of optometry;
    - (b) may make such recommendation to a member as the Committee considers necessary respecting the member's standards of practice, equipment and record keeping. R.R.O. 1990, Reg. 550, s. 29 (5).
  - (6) Where a member fails within a reasonable time to comply with a recommendation of the Appraisal Committee, the Committee shall report its findings and may make recommendations to the Registration Committee or Registrar in respect thereof. R.R.O. 1990, Reg. 550, s. 29 (6).
30. (1) A member, in the practice of optometry, shall use his or her name and the vocational designation “optometrist” on all printed material and signs associated with his or her practice and office but may use academic degrees in association with the member's name. R.R.O. 1990, Reg. 550, s. 30 (1).
  - (2) A member may use the designation “Dr.” or the title “Doctor” on printed office material, published material or office signs in respect of the member's practice provided the member has the academic right to the title by reason of a degree

conferred by the University of Waterloo or by an academic institution that provided a course comparable to that given by the University of Waterloo and accredited by the College. R.R.O. 1990, Reg. 550, s. 30 (2).

(3) A member may list his or her name and office address or addresses once only in light face upper and lower case type under the heading "Optometrists" in the classified section of a telephone directory and may use a geographical street location in association with this listing but a member shall not list his or her name under a "By District" or similar heading in the classified section of a telephone directory. R.R.O. 1990, Reg. 550, s. 30 (3).

**31.** (1) The Discipline Committee shall publish or cause to be published its decisions and the reasons for its decisions in the original or a summary form and,

- (a) the identity of the member shall be made known if the member's licence has been revoked, suspended or restricted;
- (b) the identity of the member shall be made known if the committee has reprimanded the member and directed the fact of such reprimand to be recorded on the register;
- (c) the identity of the member shall not be made known if the Committee has reprimanded the member but not directed that the fact of such reprimand be recorded on the register or has suspended or postponed imposition of a penalty, unless the council directs that the identity of the member shall be known; and
- (d) the identity of the member shall not be made known if the member has been found not guilty of professional misconduct or incompetence, unless the member requests in writing that he or she be identified. R.R.O. 1990, Reg. 550, s. 31 (1).

(2) The Registrar may communicate the decision of the Discipline Committee to any complainant and any witness who testified at the hearing if the complainant or witness so requests and the Registrar may also provide any other information the Registrar considers reasonably necessary to explain the proceedings and the decision to the complainant or witness, including copy of any written reasons of the Committee. R.R.O. 1990, Reg. 550, s. 31 (2).

**32.** The Council shall determine the information required for the compilation of statistics with respect to the supply, distribution and professional activities of members and may direct the Registrar to obtain the required information. R.R.O. 1990, Reg. 550, s. 32.

**33.** The information required for the compilation of statistics may include particulars of the age, sex and anomalies of vision of patients, and the patient case-load of and the referral of patients by members. R.R.O. 1990, Reg. 550, s. 33.

**34.** Upon the written request of the Registrar, members shall provide to the Registrar the information requested for the compilation of statistics. R.R.O. 1990, Reg. 550, s. 34.

**35.** The Registrar is the chief administrative officer of the College and is subject to the direction of the Council. R.R.O. 1990, Reg. 550, s. 35.

**36.** A member shall permit the inspection and examination of the member's office, records and equipment in connection with his or her practice of optometry by inspectors appointed for the purposes of Part V of the Act or by the Registrar or a person appointed as an inspector under subsection 37 (1) of the *Health Insurance Act*. R.R.O. 1990, Reg. 550, s. 36.

**37.** (1) Every member shall make and keep legible clinical and financial records with respect to each patient of the member that shall contain at least,

- (a) the name and address of the patient;
- (b) the date of each visit of the patient;
- (c) the patient's medical history;
- (d) the examination procedures used on the patient;
- (e) the clinical findings obtained with respect to the patient;
- (f) the diagnosis with respect to the patient;
- (g) the treatment prescribed and provided for the patient;
- (h) the advice given to the patient; and
- (i) the members' fees and charges to the patient. R.R.O. 1990, Reg. 550, s. 37 (1).

(2) Every member shall keep a day book, daily diary or appointment record that sets out the name of each patient examined or treated or in respect of whom any professional service is rendered by the member. R.R.O. 1990, Reg. 550, s. 37 (2).

(3) Every member shall keep the records required under subsections (1) and (2) in a systematic manner and shall retain each record for a period of at least six years after the date of the last entry in the record or until the member ceases to engage in the practice of optometry, whichever first occurs. R.R.O. 1990, Reg. 550, s. 37 (3).

**38.** The fee for a licence is \$150. O. Reg. 550/93, s. 2.

39. The fee for each examination subject is \$150. R.R.O. 1990, Reg. 550, s. 39.

40. The annual fee for a member is \$500 and is due and payable on or before December 15 in each year for the following year. O. Reg. 550/93, s. 2.

41. Where a member fails to complete and deliver to the Registrar an annual fees payment form and the annual fee on or before December 15 in any year, the member shall pay a penalty fee of \$50 in addition to the annual fee. O. Reg. 550/93, s. 2.

42. (1) A member who,

- (a) has been registered for a period of twenty-five years under Part V of the Act or a predecessor thereof;
- (b) at the time of application by the member to the Registration Committee is in good standing; and
- (c) has retired from the practice of optometry,

may, upon written request to the Registrar, be designated a member emeritus by the Registration Committee. R.R.O. 1990, Reg. 550, s. 42 (1).

(2) A member emeritus is entitled to remain on the register of the College, is not required to pay any fees and is not entitled to engage in the practice of optometry. R.R.O. 1990, Reg. 550, s. 42 (2).

FORM 1  
LICENCE FOR THE PRACTICE OF OPTOMETRY

*Drug and Pharmacies Regulation Act*

College of Optometrists of Ontario

This is to certify that

.....  
(name)

is duly licensed as a member of the College and is entitled to engage in the practice of optometry.

Given under the Corporate Seal of the College at

Toronto this ..... day of ....., 19 .....

(Seal) .....  
President

Licence Number .....  
Registrar

R.R.O. 1990, Reg. 550, Form 1.

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