1. CODE OF ETHICS/CONDUCT

2. NATIONAL COMPETENCY PROFILE FOR DENTURISTS

3. QUALITY ASSURANCE
   3.1 Role and Responsibilities of the Quality Assurance Committee
   3.2 Practice Assessment & Enhancement
   3.3 Quality Assurance Assessment Report
   3.4 Self-Evaluation & Professional Portfolio
   3.5 Continuing Education Program
   3.6 Premises
   3.7 Infection Control
   3.8 Behavior and Remarks of A Sexual Nature

4. REGISTRATION
   4.1 Role and Responsibilities of the Registration Committee
   4.2 Registration Renewal Process

5. INQUIRIES, COMPLAINTS AND REPORTS
   5.1 Role and Responsibilities of the Inquiries, Complaints and Reports Committee
   5.2 Guide to the Complaints Process
   5.3 What happens when a complaint is made against me?

6. DISCIPLINE
   6.1 Role and Responsibilities of the Discipline Committee

7. PATIENT RELATIONS
   7.1 Role and Responsibilities of the Patient Relations Committee

8. POLICIES
   8.1 Certificate of Authorization for a Professional Corporation Policy
   8.2 Clinic Name Approval Policy
   8.3 Advertising & Professional Designations Policy
   8.4 Continuing Education Policy
   8.5 Consent to Treatment Policy
   8.6 Criminal Record Screening Policy
   8.7 Nightguards/Bruxism Guards Policy
   8.8 Record Keeping Policy
9. LEGISLATION & BY-LAWS

9.1 Regulated Health Professions Act, 1991
9.2 Ontario Regulation 39/02 - Certificates of Authorization
9.3 Ontario Regulation 107/96 - Controlled Acts
9.4 Ontario Regulation 59/94 – Funding for Therapy or Counseling for Patient Sexually Abused by Members
9.5 Denturism Act, 1991
9.6 Ontario Regulation 833/93 - Registration Regulation
9.7 Ontario Regulation 854/93 - Professional Misconduct
9.8 Ontario Regulation 206/94 - General
9.9 College of Denturists of Ontario By-Laws
9.10 Personal Health Information Protection Act, 2004
9.11 Health Care Consent Act, 1996
PREAMBLE

Denturists have been self-regulated. The profession is regulated by the Regulated Health Professions Act, 1991 (RHPA), Denturism Act, 1991, Ontario Regulations: 652/93, 793/93, 657/93, 206/94, 854/93, 833/93 and 188/99, and the By-laws of the College of Denturists of Ontario. This status obliges them to act competently and ethically in the practice of their profession. They shall maintain recognized standards of care while observing professional values.

Their commitment to such practice shall ensure public trust, collaboration with their colleagues, and integrity and dignity of the profession.

1. Ethical Obligations to the Individual Patient
   Ethical Denturists shall:
   1. Practice only within the limits of professional and personal competence, in surroundings that shall not compromise the quality of care offered.
   2. Act with personal integrity.
   3. Render care to those who seek it, without discrimination based on race, culture, age, gender or religion.

2. Ethical Obligations to the General Public
   Ethical Denturists shall:
   1. Claim only qualifications properly attained, possessed and up to date.
   2. Comply with all governing legislation as it applies to the profession of Denturism.
   3. Endeavor to improve the standards of Denturist services within the community.

3. Ethical Obligations to the Profession
   Ethical Denturists shall:
   1. Conduct themselves with dignity to bring honour to the profession.
   2. Bring their practice to public attention only in accordance with the professional standards within the applicable legislation, regulations or by-laws.
   3. Encourage continuing professional and public education regarding Denturism and assist in the education of new members of the profession.
   4. Recognize that ongoing professional research is necessary to advance Denturism.
4. **Ethical Obligations to Professional Colleagues**
   Ethical Denturists shall:
   1. Not judge fellow practitioners, their qualifications or the procedures they use except as may be required in the interest of the health of patients.
   2. Work collaboratively with other practitioners in the terms of patient care.

5. **Ethical Obligations to the College of Denturists of Ontario**
   Ethical Denturists shall:
   3. Co-operate and assist the College of Denturists of Ontario in its professional work and its regulatory requirements.
Denturists are primary healthcare providers who fabricate, fit, and maintain a wide variety of dental prostheses and oral devices. The practice of denturism is regulated in all Canadian jurisdictions.

The competency profile is structured around six major competency areas, which are defined below. Within each competency area, observable performance elements are described.

### Competency Areas and their Definitions

<table>
<thead>
<tr>
<th>Competency Area</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Clinical Practice</strong></td>
<td>Denturists as primary healthcare providers use their knowledge and skills to meet patients’ needs related to denturist services.</td>
</tr>
<tr>
<td><strong>Laboratory Procedures</strong></td>
<td>Denturists design, fabricate, and maintain a wide variety of dental prostheses and/or oral devices.</td>
</tr>
<tr>
<td><strong>Professional Collaboration</strong></td>
<td>Denturists work in collaboration with other healthcare professionals to optimize patient treatment and improve health outcomes.</td>
</tr>
<tr>
<td><strong>Practice Management</strong></td>
<td>Denturists apply knowledge, principles, and the skills of management with the goal of providing effective and efficient denturist services.</td>
</tr>
<tr>
<td><strong>Jurisprudence, Ethics and Professional Responsibilities</strong></td>
<td>Denturists practice within legal requirements and demonstrate professional behaviour that is ethical, supersedes self-interest, strives for excellence, is committed to continued professional development, and is accountable to individual patients, society, and the profession</td>
</tr>
<tr>
<td><strong>Communication</strong></td>
<td>Denturists communicate with patients, colleagues, and other healthcare professionals, to promote and support optimal patient care and well-being.</td>
</tr>
</tbody>
</table>

The competency elements within each of these areas appear on the following pages. The statements are written broadly, in order to be inclusive of current permitted acts in the different jurisdictions as well as anticipated future competency requirements.

Some competency elements (for example, radiography, tooth whitening, and anti-snoring and anti-bruxism devices) are not currently performed in all provinces; however, each competency element is currently within the scope of practice in at least one jurisdiction.
NATIONAL COMPETENCY PROFILE FOR DENTURISTS

COMPETENCY AREA 1: CLINICAL PRACTICE

**Definition:** Denturists as primary healthcare providers use their knowledge and skills to meet patients’ needs related to denturist services.

**Competency Elements**

1. **Develop a professional relationship with the patient.**
   1.1. Elicit the patient’s needs and expectations regarding dental services.
   1.1.1. Demonstrate a respectful and professional attitude.
   1.1.2. Identify the patient’s physical and psychosocial concerns as they relate to treatment.

1.2. **Gather and document patient information.**
   1.2.1. Obtain a patient’s personal information and medical and dental history.
   1.2.2. Perform intraoral and extraoral examinations.
   1.2.3. Perform diagnostic/screening tests.

1.3. **Apply knowledge to assess and interpret patient’s needs and requirements.**
   1.3.1. Recognize the relationship between general and oral health.
   1.3.2. Apply foundational knowledge in biomedical, behavioural, and dental sciences.
   1.3.3. Order and/or take and interpret radiographs.
   1.3.4. Assess existing prosthesis.
   1.3.5. Consider physical and psychosocial factors that may affect the provision of denturist services.
   1.3.6. Determine and communicate the findings of assessments/examinations.

1.4. **Develop treatment plans.**
   1.4.1. Determine treatment options appropriate to patient’s oral and general health status and needs.
   1.4.2. Describe and communicate treatment options and prognoses to the patient so as to enable the patient to make informed decisions.

1.5. **Perform and manage clinical procedures including but not limited to the provision of removable prostheses and fixed and removable implant prostheses:**
   1.5.1. Tissue treatments
   1.5.2. Impression taking techniques
   1.5.3. Prosthetic modifications
   1.5.4. Maxillary and mandibular registrations
   1.5.5. Try in of prostheses and/or oral devices
   1.5.6. Insertion of prostheses and/or oral devices
   1.5.7. Adjustments/recalls/follow-up care
   1.5.8. Tooth whitening procedures

1.6. **Provide patient education regarding use, care and maintenance of provided dental prostheses and oral devices, and related oral healthcare.**
1.7. Perform continued patient care for provided denturist services.
1.7.1. Recognize indicators of problems related to dental prostheses and oral devices and related oral tissues and structures.
1.7.2. Solve identified problems related to dental prostheses and oral devices.

1.8. Maintain certification as required in cardiopulmonary resuscitation, first aid, and management of medical emergencies.

1.9. Maintain accurate and complete patient records in a confidential manner.

COMPETENCY AREA 2: LABORATORY PROCEDURES

Denturists design, fabricate, and maintain a wide variety of dental prostheses and/or oral devices.

Competency Elements
2.1 Apply knowledge and skills in designing and fabricating:
2.1.1 Complete dentures.
2.1.2 Partial dentures.
2.1.3 Overdentures.
2.1.4 Immediate/surgical dentures.
2.1.5 Diagnostic splints.
2.1.6 Surgical and radiographic stents.
2.1.7 Implant supported/retained dentures.
2.1.8 Implant supported/retained crowns/bridges.
2.1.9 Mouthguards.
2.1.10 Bruxism devices.
2.1.11 Anti-snoring devices.
2.1.12 Other devices related to the practice of denturism.

2.2 Modify dental prostheses and oral devices as needed by:
2.2.1 Adjusting.
2.2.2 Altering existing prostheses.
2.2.3 Laboratory and clinical remounting.
2.2.4 Relining.
2.2.5 Rebasing.
2.2.6 Repairing.
2.2.7 Resetting.
COMPETENCY AREA 3: PROFESSIONAL COLLABORATION

Denturists work in collaboration with other healthcare professionals to optimize patient treatment and improve health outcomes.

Competency Elements

3.1 Collaborate with other members of the dental team and other healthcare professionals to provide and receive information related to patient care.

3.2 Refer patients to other healthcare providers for necessary services and prepare related documentation.

COMPETENCY AREA 4: PRACTICE MANAGEMENT

Denturists apply knowledge, principles, and the skills of management with the goal of providing effective and efficient denturist services.

Competency Elements

4.1 Apply basic principles of practice administration, and financial and personnel management, to the practice of denturism.

4.2 Adhere to federal, provincial/territorial and municipal laws and regulations applicable to the practice.

COMPETENCY AREA 5: JURISPRUDENCE, ETHICS AND PROFESSIONAL RESPONSIBILITIES

Denturists practice within legal requirements and demonstrate professional behaviour that is ethical, supersedes self-interest, strives for excellence, is committed to continued professional development, and is accountable to individual patients, society, and the profession.

Competency Elements

5.1 Adhere to legislation and regulations, including Federal, Provincial/Territorial and Municipal, related to:

5.1.1 health and safety
5.1.2 infection prevention and control
5.1.3 patient records and data protection
5.1.4 patient rights
5.1.5 staff rights

5.2 Obtain informed consent including the patient’s acceptance of the treatment plan and any modifications to treatment.

5.3 Adhere to Standards of Practice and Code of Ethics in accordance with provincial regulations and continuing professional development requirements.

5.4 Engage in lifelong learning and support denturist education.
COMPETENCY AREA 6: COMMUNICATION

Denturists communicate with patients, colleagues, and other healthcare professionals, to promote and support optimal patient care and well-being.

**Competency Elements**

6.1 Demonstrate effective oral communication skills.

6.2 Demonstrate effective written communication skills.

6.3 Use effective interpersonal skills.

6.4 Adapt communication to meet the needs of the audience.
QUALITY ASSURANCE
College of Denturists of Ontario
QUALITY ASSURANCE COMMITTEE

MISSION OF THE QUALITY ASSURANCE COMMITTEE

The Quality Assurance Committee is responsible for ensuring that there is a mechanism in place to monitor and maintain the competency of all practising denturists and to develop standards and guidelines for the provision of denture services in Ontario.

The Quality Assurance Committee is composed of at least two (2) members of Council, at least one (1) public member who is a member of Council, and at least (2) or more members who are not members of Council.

REGULATED HEALTH PROFESSIONS ACT STATUTORY COMMITTEE

The Quality Assurance Committee is a statutory committee under the Regulated Health Professions Act (RHPA), 1991

QUALITY ASSURANCE COMPONENTS

The Quality Assurance Committee oversees the Quality Assurance Program consisting of the following components:

- Self-Evaluation/Assessment
- Standards and Practices
- Practice Assessment and Enhancement
- Remediation of Behaviour and Remarks of a Sexual Nature

QUALITY ASSURANCE EXPECTATIONS

As required by the Denturism Act, 1991 - General Part III Quality Assurance Regulations - General O. Reg. 206/94 amended to O. Reg. 188/89, every member of the College of Denturists of Ontario shall comply with the requirements of the Quality Assurance Program. Failure to comply is professional misconduct.

Each year the College selects at random the names of members required to undergo a practice assessment. Once a member has been selected for and completed a practice assessment his/her name is removed from the selection process for five years immediately following the year of selection.

Selection of names is conducted on the basis of 5% of the professional population of each of the eight electoral districts of the College of Denturists of Ontario.
PRACTICE ASSESSMENT & ENHANCEMENT

The purpose of this standard is to ensure ongoing compliance with the College standards to ensure protection for the public, while enhancing the member's knowledge, skills and judgment; and to regulate the methodology for administering the Quality Assurance Program.

As per s. 10.(2) of the Quality Assurance Regulation every member of the College of Denturists of Ontario shall comply with the requirements of the Quality Assurance program. It is important to note, that the process is not designed to be punitive. Instead, members should be aware that the goal of the Quality Assurance program is to educate members while ensuring that their knowledge, skills and judgment meet the standards of practice of the College.

To fulfill the requirements outlined in the Quality Assurance Regulation every member should be familiar with the following components:

1. Self-evaluation.
2. Standards and guidelines.
3. Practice assessment and enhancement.

SELF-EVALUATION

Each year, all members are required to complete a self-evaluation document issued by the Quality Assurance Committee. The document, designed to be a helpful guide for members, includes a checklist of clinical standards and descriptions of training, educational and other quality improvement activities. Documents are to be saved and maintained for a period of five (5) years and should be provided to the Committee or an Assessor on request.

In the event that concerns are identified, the Committee may appoint an assessor to determine whether the member's self-evaluation document has been properly completed and verify that the member has carried out training, educational and other quality improvement activities to ensure that the member's knowledge, skills and judgment are satisfactory. If the member fails to comply with any of the requirements in this section the assessor may recommend to the Committee that the member undergo a practice assessment.

PRACTICE ASSESSMENT AND ENHANCEMENT

Each year, 5% of all members from each of the 8 electoral districts are randomly selected for a practice assessment. Once selected, the Committee shall appoint an assessor and the selected member will receive a notice which will include further instructions and an
explanation of the practice assessment process. The purpose of the practice assessment is to assess the member’s knowledge, skills and judgment as exhibited through clinical performance. The assessment may include:

a) Inspecting and reviewing the member’s premises and records, including self-
evaluations.
b) Interviewing the member and his or her staff.
c) Requiring the member to answer, orally or in writing questions that relate to the member’s type of practice.
d) Requiring the member to examine simulations that relate to the member’s type of practice.

Once the assessment is complete, the assessor will prepare a written report and submit it to the Committee for review. After considering the report, the Committee may decide that the assessment is satisfactory and therefore choose to take no further action.

In other cases, the report may be deemed unsatisfactory and opportunities for improvement may be identified. In this case, the Committee will send a written notice, providing the member with at least fifteen (15) days to provide a written response, with one of the following:

a) Give the member an opportunity to enhance his or her knowledge, skills or judgment as exhibited by clinical performance, as specified by the Committee.
b) Require the member to participate in an enhancement program specified by the Committee if the Committee finds the member’s knowledge, skills or judgment to be unsatisfactory.
c) Direct the Registrar to impose terms, conditions or limitations on the member’s certificate of registration for a period not exceeding six months in the Committee finds the member’s knowledge, skills or judgment to be unsatisfactory and that requiring the member to participate in an enhancement program under clause (b) will not adequately address the concerns raised by the report.

As per the Regulation, an enhancement program means an education program, whether delivered by lecture, mentoring, self-study with examination or other similar means designed to improve a member’s knowledge, skills or judgment as exhibited by clinical performance. If the member fails to comply with the Committee’s request or fails to complete an enhancement program, as demonstrated by a follow up assessment, the Committee may direct the Registrar to impose terms, conditions or limitations on the member’s certificate of registration for a period not exceeding six months.

The Registrar will only impose terms, conditions and limitations where significant deficiencies are raised and can only be imposed no more than twice with respect to any one assessment. Furthermore, the Committee may direct the Registrar to remove them before the end of the specified period if the Committee is satisfied that the member’s knowledge, skills and judgment are now satisfactory. Finally, it is important to note that, due to the educational mandate of the Quality Assurance program, a member cannot be suspended,
instead in extreme an circumstance a referral can be made to the Investigation, Complaints and Reports Committee (ICRC).

The Committee may appoint an assessor to conduct a follow up assessment within a reasonable time to determine whether the member's knowledge, skills and judgment are now satisfactory.

For further information Practice Assessment and Enhancement, please refer to the Quality Assurance Regulation located in the “Legislation and By-Laws” section of the Professional Guide. If you have any questions, feel free to contact the Quality Assurance coordinator at the College.
# Quality Assurance Assessment Report

## Demographic & Practice Information

<table>
<thead>
<tr>
<th>Practitioner Name:</th>
<th>Registration Number:</th>
</tr>
</thead>
</table>

**Type of Practice:**
* (e.g., Sole Proprietor, Incorporation, Associate)

## Assessment Information

<table>
<thead>
<tr>
<th>Practice Name:</th>
<th>Assessment Address:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Assessor Name:</th>
<th>Assessment Date:</th>
</tr>
</thead>
</table>

## ASSESSMENT COMMUNICATION LOG

<table>
<thead>
<tr>
<th>Date Practitioner Contacted</th>
<th>Purpose of Communication</th>
<th>Outcome of Communication</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
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</tbody>
</table>

## Assessor Signature:

Total Time to Complete the Assessment: **hr(s)**
INTRODUCTION

For each assessment category, please check the box that best reflects your opinion of the identified statement. If you select Appropriate with Suggestions and/or Concerns, you are required to document the specific suggestions and/or clarify your concerns in the Details/Comments section.

For each Section Summary, please reflect on the category and provide your overall feedback for that section. Again, if you select Appropriate with Suggestions and/or Concerns, you are required to document the specific suggestions and/or clarify your concerns in the Details/Comments section.

Continuing Education (CE) Activities

All members must complete a minimum of 10 CE credit hours per year and 100 CE credit hours over 5 years.

<table>
<thead>
<tr>
<th>Continuing Education Activities</th>
<th>Appropriate</th>
<th>Appropriate with Suggestions</th>
<th>Concerns</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The evidence provided supports a minimum of 10 credit hours for the past renewal period.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>2. The evidence provided reflects a cross-section of the identified CE categories (as illustrated in the 2013/2014 Continuing Education Program).</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

☐ No concerns/suggestions

Details/Comments:
INFECTION CONTROL

The following have been identified for effective infection control in the operatory, sterilization area, and laboratory.

<table>
<thead>
<tr>
<th>INFECTION CONTROL</th>
<th>APPROPRIATE</th>
<th>APPROPRIATE WITH SUGGESTIONS</th>
<th>CONCERNS</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Proper hand hygiene protocol maintained.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>OPERATORY</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. There is evidence of surface and equipment disinfection and cleaning.</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>3. There is evidence of barrier protection (e.g., gloves, masks, headrest covers, barrier tape).</td>
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<td></td>
</tr>
<tr>
<td>STERILIZATION AREA</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. There is evidence of instrument cleaning, disinfection, sterilization, and safe storage.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>LABORATORY</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. There is evidence of asepsis.</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>6. Surface cleaning and disinfection are appropriate.</td>
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</tr>
<tr>
<td>7. There is an area dedicated to the fabrication of prostheses.</td>
<td></td>
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</tr>
<tr>
<td>8. There is a system in place for adequate asepsis control for work entering and exiting the laboratory area.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

SECTION SUMMARY

<table>
<thead>
<tr>
<th>INFECTION CONTROL : OPERATORY</th>
<th>APPROPRIATE</th>
<th>APPROPRIATE WITH SUGGESTIONS</th>
<th>CONCERNS</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>INFECTION CONTROL : STERILIZATION AREA</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>INFECTION CONTROL : LABORATORY</td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

☐ No concerns/suggestions

Details/Comments:
Collection and Documentation of Patient Information

The following have been identified for the effective collection and documentation of patient information.

<table>
<thead>
<tr>
<th>COLLECTION AND DOCUMENTATION OF PATIENT INFORMATION</th>
<th>APPROPRIATE</th>
<th>APPROPRIATE WITH SUGGESTIONS</th>
<th>CONCERNS</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The record system allows for ready retrieval of the patient file.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>2. The record is legible.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>3. The record contains the patient's necessary personal and contact information.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>4. The record contains the patient's dental history.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>5. The record contains the patient's medical history.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>6. Intraoral and extraoral examinations are performed.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>7. Patient allergies are identified.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>8. Treatment options are recorded.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>9. Necessary follow-up is recorded.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>10. Notation of particulars of any referral made by the denturist is recorded where indicated.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>15. The record reflects that informed consent was obtained, including the patient's acceptance of the treatment plan and any modifications.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>16. The record contains a privacy policy for patients to sign.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>17. There is documented evidence of patient appointments.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>18. Measures are in place to ensure the security of patient records.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

SECTION SUMMARY

<table>
<thead>
<tr>
<th>COLLECTION AND DOCUMENTATION OF PATIENT INFORMATION</th>
<th>APPROPRIATE</th>
<th>APPROPRIATE WITH SUGGESTIONS</th>
</tr>
</thead>
</table>
| ☐ No concerns/suggestions

Details/Comments:

Updated: July 18, 2013
Electronic Patient Records

The following have been identified for the maintenance of electronic patient records.

<table>
<thead>
<tr>
<th>ELECTRONIC PATIENT RECORDS</th>
<th>APPROPRIATE</th>
<th>APPROPRIATE WITH SUGGESTIONS</th>
<th>CONCERNS</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The system provides a visual display of the recorded information.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. The system allows easy access to each patient record.</td>
<td></td>
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</tr>
<tr>
<td>3. The system is capable of printing the recorded patient information for each patient in chronological order.</td>
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<tr>
<td>4. The system assures that confidentiality is maintained.</td>
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</table>

SECTION SUMMARY

<table>
<thead>
<tr>
<th>ELECTRONIC PATIENT RECORDS</th>
<th>APPROPRIATE</th>
<th>APPROPRIATE WITH SUGGESTIONS</th>
<th>CONCERNS</th>
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</table>

☐ No concerns/suggestions

Details/Comments:
Assessment and Interpretation of Patient Needs and Requirements

The following have been identified for the effective assessment and interpretation of patient needs and requirements.

<table>
<thead>
<tr>
<th>ASSESSMENT AND INTERPRETATION OF PATIENT NEEDS AND REQUIREMENTS</th>
<th>APPROPRIATE</th>
<th>APPROPRIATE WITH SUGGESTIONS</th>
<th>Concerns</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. There is evidence of the assessment of existing prostheses.</td>
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<tr>
<td>2. The practitioner has:</td>
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<tr>
<td>a. considered factors that may affect the provision of denturist services;</td>
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<tr>
<td>b. determined viable treatment options appropriate to the patient’s oral and general health status and needs; and</td>
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<tr>
<td>c. communicated viable treatment options and the prognosis to the patient to enable the patient to make an informed decision.</td>
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</table>

SECTION SUMMARY

<table>
<thead>
<tr>
<th>ASSESSMENT AND INTERPRETATION OF PATIENT NEEDS AND REQUIREMENTS</th>
<th>APPROPRIATE</th>
<th>APPROPRIATE WITH SUGGESTIONS</th>
<th>CONCERNS</th>
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</table>

☐ No concerns/suggestions

Details/Comments:
Post-Insertion Patient Education and Continuity of Care

The following have been identified for the effective post-insertion education and continuity of care.

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<thead>
<tr>
<th>ASSESSMENT AND INTERPRETATION OF PATIENT NEEDS AND REQUIREMENTS</th>
<th>APPROPRIATE</th>
<th>APPROPRIATE WITH SUGGESTIONS</th>
<th>Concerns</th>
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</thead>
<tbody>
<tr>
<td>POST-INSERTION EDUCATION</td>
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<tr>
<td>1. There is evidence that patients are being provided patient education regarding the use, care and maintenance and follow-up of dental prostheses and oral appliances.</td>
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<tr>
<td>CONTINUITY OF CARE</td>
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<tr>
<td>2. There is an indication that the practitioner has made adequate arrangements for ongoing care where warranted.</td>
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</tbody>
</table>

☐ No concerns/suggestions

Details/Comments:
GENERAL COMMENTS

Please provide any additional comments that are relevant to the assessment, but are not covered in any of the preceding categories.
SELF EVALUATION & PROFESSIONAL PORTFOLIO

SELF EVALUATION

PROFESSIONAL PORTFOLIO
The purposes of the standards are to:
1. Emphasize the concept that continuing competency and professional growth are the responsibility of the individual practitioner; and
2. Enable the Quality Assurance Committee to assist a practitioner with specific remediation if it is requested or is necessary; and
3. Enhance the development of the Quality Assurance Program of the College of Denturists of Ontario.

SELF EVALUATION

Every member of the College of Denturists of Ontario is required to develop and maintain a professional portfolio. The portfolio shall be consistent with the attached outline and will be available to the College of Denturists of Ontario’s Quality Assurance Committee and/or a Quality Assurance Assessor on verbal request.

The Quality Assurance Committee requires all members of the College of Denturists to maintain their professional knowledge through appropriate continuous learning and professional education on an annual basis.

Denturists must obtain a minimum of 100 hours of CE credits every five years with a minimum of 10 credits per year. The areas of learning should relate to topics in the field of Clinical Dental, Dental Practice Management, Jurisprudence and Other Dental.
# PERSONAL DATA

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<th>Surname</th>
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<th>Certificate No.</th>
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# MAILING ADDRESS

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# EDUCATION

**Post Secondary/Academic Degree(s):**

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<th>Year Graduated</th>
<th>University/College</th>
<th>Degree/Diploma</th>
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**Certificates:**

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**Fellowships (if applicable):**

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<th>Year of Completion</th>
<th>Fellowship Obtained</th>
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PROFESSIONAL HISTORY:

Practice History & Description:

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<tr>
<th>Dates</th>
<th>Type of Practice (include location)</th>
<th>Role (Sole Proprietor, Associate etc)</th>
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PROFESSIONAL MEMBERSHIP & SERVICE:
Names of professional organizations in which you hold current membership


Services and Activities provided to professional organizations (including positions held)

<table>
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<tr>
<th>From</th>
<th>To</th>
<th>Professional Organization</th>
<th>Services/Activity Provided or Position Held</th>
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Volunteer Work – Service to Profession & Community

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<th>From</th>
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<th>Professional Organization</th>
<th>Services/Activity Provided or Position Held</th>
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### Awards/Recognition:

<table>
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<tr>
<th>Year Awarded</th>
<th>Awarding Body</th>
<th>Award</th>
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</table>

### OTHER PROFESSIONAL ACTIVITIES:

#### Professional Presentations:

<table>
<thead>
<tr>
<th>Date</th>
<th>Topic</th>
<th>Audience/Publication Source</th>
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### REFERENCES:

(Professional, Financial, Character)

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PART II – CONTINUING EDUCATION

It is the denturists’ responsibility to maintain documentation and evidence of continuing education credit completion (i.e., course descriptions, certificates, receipts, course syllabi, etc.).

PERSONAL DATA

<table>
<thead>
<tr>
<th>Surname</th>
<th>First Name</th>
<th>Certificate No.</th>
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</table>

MAILING ADDRESS

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</table>

CREDITS REQUIRED: All members must obtain a minimum of 100 hours of CE credits every five years with a minimum of 10 credits per year.

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>DESCRIPTION</th>
<th>CREDITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>CLINIC DENTAL</td>
<td>Relates directly to the provision of patient care and treatment (clinical or laboratory), includes hands-on courses.</td>
<td>Minimum 50 credits over 5 years</td>
</tr>
<tr>
<td>DENTAL PRACTICE MANAGEMENT</td>
<td>Relates directly to the operation and management of a dental practice. Does not include courses related to personal financial or retirement planning, or marketing products or marketing services to patients.</td>
<td>Minimum 16 credits over 5 years</td>
</tr>
<tr>
<td>JURISPRUDENCE</td>
<td>Courses related to the study of ethics and Denturism law and regulation.</td>
<td>Minimum 10 credits over 5 years</td>
</tr>
<tr>
<td>PROFESSIONAL ORGANIZATIONS</td>
<td>Participation in professional organizations is encouraged. Professional organizations include CDO, DAO, DAC etc. Participation can involve being not only an executive member but also includes committee member as well as volunteer positions.</td>
<td>Maximum of 8 credits per year.</td>
</tr>
<tr>
<td>DENTAL MEETINGS &amp; CONFERENCES</td>
<td>Single or multi-day dental lectures or conferences/conventions.</td>
<td>Hour-for-hour credit is given for educational activities at a convention.</td>
</tr>
<tr>
<td>DENTAL/MEDICAL EMERGENCIES</td>
<td>First aid/CPR and other emergency management courses.</td>
<td>Maximum 8 credit per course.</td>
</tr>
<tr>
<td>STUDY CLUBS</td>
<td>Study clubs and other forms of peer to peer learning are encouraged but must be approved by the Quality Assurance Committee to be eligible for credit. To obtain approval submit an agenda.</td>
<td>1 credit per meeting (1-3 hours long).</td>
</tr>
<tr>
<td>PUBLICATION AUTHORSHIP</td>
<td>Dental articles written and published in a peer reviewed journal of dental or medical literature may qualify subject to the approval by the Quality Assurance Committee.</td>
<td>3 credits per 1000 words may be granted per article at the discretion of the Quality Assurance Committee to a maximum of 10 credits per publication.</td>
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</tbody>
</table>
| Category                        | Description                                                                                                                                                                                                 | Credits
<table>
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<tbody>
<tr>
<td>College or Association Meetings</td>
<td>College or Association meetings can include board meetings, council meetings or district meetings.</td>
<td>Maximum of 2 credits per meeting. Minimum of 2 credits within the five year cycle.</td>
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</tbody>
</table>
| Journals                        | Internet and print-based journal material. The Quality Assurance Committee will determine the number of credits eligible and will grant credit only to those journals that include:  
  · a clearly defined learning objective;  
  · post-course knowledge assessment or other mechanism accepted by the Quality Assurance Committee | Maximum of 1 credit per year.                                                                                              |
<p>| Dental Teaching Programs        | Faculty (full and part-time) lecturers, presenters, study club mentors or instructors who occasionally provide educational and/or clinical instruction.                                                           | Maximum of 8 credits per year.                                                                                              |</p>
<table>
<thead>
<tr>
<th>Course Date</th>
<th>Course Name</th>
<th>Course Speaker</th>
<th>Course Sponsor</th>
<th>CE Hours</th>
<th>Category</th>
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INTRODUCTION

The mandate of the College of Denturists of Ontario (the College) is to regulate and govern the profession of denturism in the public interest.

Under the *Regulated Health Professions Act, 1991*, the Quality Assurance Committee endorses continuing education or professional development designed to promote continuing competence and practice improvement.

The College requires its members to maintain their professional knowledge through appropriate continuous learning and professional education on an annual basis.

The College promotes the philosophy that denturists keep their knowledge up to date and maintain competence in their practices throughout their careers. Members must strive to deliver the highest standard of professional care and keep current with changes in technology and innovations in the profession.

The College has established continuing education requirements for denturists as part of the Quality Assurance Regulation.

This manual outlines the guidelines for fulfilling the requirements set out by the College.

PROGRAM OBJECTIVES

The objectives of the Continuing Education (CE) Program are to promote competence and professionalism at all stages of a denturist's career. To be eligible for credit, activities must have significant intellectual and/or practical content related to the practice of denturism and/or the management of the denturist practice. Activities can also be related to the professional responsibilities or ethical obligations of the participant.
QUALITY ASSURANCE REGULATION

The College of Denturists of Ontario is required to have a Quality Assurance Program that includes (but is not limited to) self-evaluation and practice assessment and enhancement. The Quality Assurance Committee has created the continuing education as part of the self-evaluation program and, if necessary, to assist with the practice enhancement requirements.

Members are required to self-evaluate their areas of strength and need for professional development and then are expected to maintain currency of their professional knowledge by successfully completing continuing education. Member participation in continuing education is monitored by a yearly reporting and a five-year reporting cycle basis.

FAILING TO DEMONSTRATE EFFORTS TO MAINTAIN KNOWLEDGE, SKILLS AND JUDGMENT

The Committee may appoint an assessor or assessors to assess and verify that the member has properly completed the self-evaluation and carried out training, educational and other quality improvement activities to a level sufficient to ensure that the member’s knowledge, skills and judgment are satisfactory. Where a member has not engaged in sufficient activities (e.g., not adequately pursued training, education and other quality improvement activities), the assessor may recommend to the Committee that the member undergo a practice assessment.

The Committee may appoint an assessor to conduct a practice assessment. After reviewing the report of the assessor, the Committee may decide to not take any further action or may require the member to participate in an enhancement program. As per the Regulation, an enhancement program means an education program, whether delivered by lecture, mentoring, self-study with examination or other similar means designed to improve a member’s knowledge, skills or judgment as exhibited by clinical performance.
QUALITY ASSURANCE REQUIREMENTS

Practitioners are required to obtain continuing education credits on a per year basis within the registration term. Members need to submit all of their hours prior to the April 15th registration renewal deadline.

REPORTING CREDITS

It is the responsibility of all denturists to report their continuing education credit hours. Credit hours should be reported as they are acquired. Credit hours in excess of those required in a five-year cycle can be carried forward to the subsequent cycle.

Denturists are responsible for ensuring that their continuing education credit hours are reported online (visit the College website at www.denturists-cdo.com). Denturists must also maintain proof of all CE taken during the five-year cycle.

RECORDS OF CONTINUING EDUCATION ACTIVITY

It is the denturist’s responsibility to maintain evidence of CE completion (i.e., course descriptions, certificates, receipts, course syllabi, etc.), as this information may be requested by an assessor and/or the Quality Assurance Committee.

CREDIT HOURS

One hour = 1 credit
Only active hours of lecture, instruction or participation are eligible.

CREDITS REQUIRED

Denturists must obtain a minimum of 100 CE hours every five years, with a minimum of 10 CE hours per year.
CATEGORIES OF CONTINUING EDUCATION

CLINIC DENTAL

Relates directly to the provision of patient care and treatment (clinical or laboratory), and includes hands-on courses.

MINIMUM REQUIRED CREDIT HOURS PER FIVE YEARS: 50

DENTAL PRACTICE MANAGEMENT

Relates directly to the operation and management of a dental practice. Does not include courses related to personal financial or retirement planning, marketing products or marketing services to patients.

MINIMUM REQUIRED CREDIT HOURS PER FIVE YEARS: 16

JURISPRUDENCE

Relates to the study of ethics, denturism law and regulation.

MINIMUM REQUIRED CREDIT HOURS PER FIVE YEARS: 10

OTHER DENTAL

Includes faculty/teaching positions, self-study courses, participation in professional organizations (CDO, DAO, DGO, DAC, etc.), or study clubs.

MINIMUM REQUIRED CREDIT HOURS PER FIVE YEARS: 50 (Credit hours are variable, refer to the learning modalities on the following page)
LEARNING MODALITIES

The following are examples of CE learning modalities and the credit limits for each one within the five-year cycle. These learning modalities are for allocation in the "other dental" category.

- **Professional Organizations**
  Participation in professional organizations is encouraged. Professional organizations include the CDO, DAO, DGO, DAC, etc. Participation includes being an assessor, examiner, item writer/developer, focus group and/or committee member, as well as other volunteer positions.
  *Credit limit: maximum of 10 credit hours per year.*

- **Dental Meetings & Conferences**
  Single or multi-day dental lectures or conferences/seminars.
  *Credit limit: hour-for-hour credit is given for educational activities at a convention.*

- **Dental/Medical Emergencies**
  First aid/cpr and other emergency management courses.
  *Credit limit: maximum of 8 credit hours per course.*

- **Study Clubs**
  Study clubs and other forms of peer-to-peer learning are encouraged. Evidence of an agenda and/or speaker notes must be maintained.
  *Credit limit: maximum of 1 credit hour per meeting (1-3 hours long).*

- **Publication Authorship**
  Dental articles written and published in a peer reviewed journal of dental or medical literature qualify for credits on a 3 credits per 1000 words basis.
  *Credit limit: maximum of 9 credit hours per article.*

- **College or Association Annual General Meetings**
  *Credit limit: maximum of 2 credit hours per meeting.*
  *Minimum of 2 credit hours within the five-year cycle.*

- **Journals**
  Internet and print-based journal material. Credits apply only to those journals that include:
  - a clearly defined learning objective;
  - post-course knowledge assessment
  *Credit limit: maximum of 1 credit hour per journal.*

- **Dental Teaching Programs**
  Faculty (full and part-time) lecturers, presenters, study club mentors or instructors who occasionally provide educational and/or clinical instruction.
  *Credit limit: maximum of 8 credit hours per year.*

- **Trade Shows**
  Hour-for-hour credit is given for educational activities at trade shows.
  *Credit limit: maximum of 4 credit hours per year.*
EDUCATION SOURCES

The following list includes (but is not limited to) sources where denturists may obtain courses, lectures or equivalents that are recognized for CE credit:

- A recognized educational institution
- College of Denturists Courses
- An international, national or provincial dental association (examples: Denturist Association of Ontario, Denturist Group of Ontario, Denturist Association of Canada, Ontario Dental Association, etc.)
- Dental manufacturers or suppliers

The Quality Assurance Committee reserves the right to deny eligibility of credits for programs that do not meet the objectives of the Continuing Education Program.

FOR MORE INFORMATION

If you would like to talk to someone about the Continuing Education program or Quality Assurance Regulation, please contact the College:

Telephone:  416-925-6331  ext.222
            1-888-236-4326  ext.222

Fax:  416-925-6332

E-mail:  info@denturists-cdo.com

Mail:  College of Denturists of Ontario
       Attention: Continuing Education
       180 Bloor Street West, Suite 903
       Toronto, ON  M5S 2V6

Website:  www.denturists-cdo.com
PREMISES

PURPOSE OF THE STANDARD

The purpose of this standard is to ensure clinics maintain a degree of services, decorum and sanitation appropriate for the delivery of a health service to the public.

DESCRIPTION OF THE STANDARD

Standards for the premises regarding the physical conditions are as follows by the College of Denturists of Ontario. Accepted standards for sterilization procedures are detailed in section 2.4.

The College recognizes the common accepted practice of most health professions regarding the wearing of disposable gloves. It is recommended that gloves be used to minimize the transmission of germs and communicable diseases. The non-use of gloves must be undertaken only with the patient’s written consent.

The following standards and guidelines have been established to ensure the safe delivery of denture care. Denturists are encouraged to utilize accepted standards that will serve to protect their patients.

The College of Denturists of Ontario recognizes the need to make exceptions in circumstances where the treatment is provided outside their clinical environment e.g. home visits/nursing homes.

It is expected that denturists will take measures and extra care to compensate for standards that cannot be met because of location. Lack of adequate standards, or appropriate accommodations that cannot be met, may place a practitioner at risk in the Courts if there are adverse results due to treatment rendered. The College may also subject a Denturist to a review if a concern or patient complaint is received.

Practitioners are encouraged to familiarize themselves with appropriate WHMIS requirements.

SUMMARY AND CONCLUSION

Non-compliance with this standard has widespread consequences including patient and practitioner health and legal issues.
STANDARDS FOR DENTURE CLINICS
AND DENTURIST’S PRACTICE
COLLEGE OF DENTURISTS OF ONTARIO

SECTION 1: EXTERNAL STANDARDS
   i. Access and availability of staff and patient parking.
   ii. Stationery identifying the clinic and member according to College Regulations.
   iii. External signage as per College regulations.
   iv. Internal signage as per College regulations.
   v. Proof of clinic name approved by College.

SECTION 2: STANDARDS FOR CLINIC PREMISES

At a minimum a denture clinic must have a telephone, fire extinguisher, first aid kit, Certificate displayed, and Certificate of Authorization for a Health Professional Corporation (if applicable) displayed; patient access to a washroom, secure business area, an operatory, a laboratory and sterilization area. In any communication materials, appropriate professional designation must be used.

As well, a denture clinic should be composed of a waiting room, a washroom, business area, operatory and laboratory (where these are present the following minimum standards apply). To best accommodate a clinic it is recommended that the minimum space required is approximately 1,000 square feet.

OPERATORY

As of June 1st, 2011 new clinics are required to have a dental chair, examination light and an evacuator or cuspidor in their operatory. As of December 31st, 2012 all existing clinics must meet the same requirements.

REQUIRED
   • Evidence of instrument cleaning, sterilization, and safe storage (individually bagged)
   • Examination light
   • Dental Chair
   • Cuspidor with running water or evacuator
   • Disposable examination gloves
   • Impression trays (individually bagged after sterilization and sufficient number to meet sterilization time guidelines)
   • Mouth mirrors (sufficient number to meet sterilization time guidelines)
   • Waste disposal (lined)
   • Soap Dispenser
   • Sink (with running hot & cold water)
   • Single use disposable towel/air drying mechanism
   • Disposable cups
RECOMMENDED
- Storage area
- Ventilation (windows, exhaust fans)
- Bibs (disposable)
- Facial tissue
- Hand mirror (5” x 7”)
- Shade guides
- Safety Glasses
- Scrubs
- Lab Coat
- N-95 masks

LABORATORY
REQUIRED
- Evidence of asepsis
- Evidence of surface cleaning & disinfection
- Ventilation
- Sink and running hot and cold water supply
- Plaster/polishing impermeable work surface
- Packing/curing impermeable work surface
- Polishing lathe
-Trimming lathe
- Work pans
- Waste disposal
- Safety Glasses
- Workplace Hazardous Material Information System (WHMIS) information sheets

RECOMMENDED
- Gas
- Technician bench/stools/chairs
- Storage space
- Boil out unit
- Processing unit
- Bunsen burner
- Splash pans
- Articulators
- Scrubs
- Lab Coat

WASHROOM
REQUIRED
- Toilet
- Sink with running hot and cold water
• Hand soap (dispenser)
• Single-use/disposable towels or air dryer
• Waste disposal (lined)
• Cleanliness (adequate asepsis and hygiene practiced)

**RECOMMENDED**
• Light
• Ventilation
• Mirror

**WAITING ROOM**

**REQUIRED**
• Cleanliness

**RECOMMENDED**
• Adequate light
• Ventilation
• Chairs
• Coat rack/hangers

**SECURE BUSINESS AREA**

**REQUIRED**
• Secure file cabinet (record storage)
• Computer screen not observable to non-staff
• Computer records password protected
• Patient treatment records
• Consent to Information Collection document identifying practitioner
• Privacy policy for patients to sign
• Patient receipts
• Patient appointment mechanism
• Consent to Treatment Plan

**RECOMMENDED**
• Desk and chair
• Business appointment cards
• Statements/letterhead/envelopes
• Bookkeeping and stationery supplies
INFECTION CONTROL

Reprinted from the Denturist Association of Canada

INFECTION CONTROL

OVERVIEW

Infection Control in the Denturist Office is a necessary yet sometimes difficult goal. In view of the potentially life-threatening consequences of disease transmission, infection control deserves the utmost serious consideration and effort on the part of the practitioner. This document will attempt to simplify and clarify the procedures necessary to minimize the potential for cross-contamination in the Denturist clinic.

For the purposes of this guideline, infection control will be broken down into the following areas:

- Occupational Health
- Patient Evaluation
- Instrument/Equipment Cleaning, Disinfection and Sterilization
- Surface Cleaning and Disinfection
- Laboratory Asepsis and Aseptic Techniques

The aim of infection control is to:

1) Reduce the number of pathogenic microbes to a level where the normal resistance mechanisms of the body can prevent infection;
2) Break the chain of infection and eliminate cross-contamination;
3) Treat every patient and instrument as though capable of transmitting infectious diseases; and
4) Protect patients and staff from infection and its consequences.

Infection Control Protocol is determined by the procedure, not by the patient.

Universal precautions should be used routinely with every patient, regardless of the perception of the patient’s potential “threat”. It is the ethical and legal responsibility of the Denturist to ensure that all reasonable precautions have been taken to protect the safety and health of all involved.
SECTION 1

OCCUPATIONAL HEALTH ISSUES

Personal protection covers a broad area in infection control, from immunization to barrier use. Use the following guidelines to minimize the risk to yourself, your staff, your family and your patients.

A. VACCINATION

Several vaccines are routinely administered during childhood and adolescence. Some of them require updating (boosters).

  i. Rubella (R)
  ii. Hepatitis B
  iii. Influenza
  iv. Mumps (m)
  v. Measles (M)
  vi. Tetanus (T)
  vii. Diphtheria (d)

If in doubt about your vaccination status, talk to your physician. He/she may recommend either testing you for antibodies or having a booster. Boosters are generally not required after MMR immunization. Td booster is needed every 10 years. Influenza vaccine is given yearly in October. Current recommendations are that the hepatitis B vaccination does not require boosters after the initial series of vaccines is given.

B. HAND WASHING

In order to reduce the likelihood of cross-contamination, hand washing facilities should be designed to minimize hand contact with inanimate objects such as water tap handles and soap dispensers. Faucets with foot controls, sensors, or any other method of water dispensing which does not require manual contact help avoid the possibility of contaminating taps.

HANDS SHOULD BE WASHED:

  a) at the beginning of each day
  b) prior to gloving
  c) after the removal of gloves
  d) if a glove is torn or punctured
  e) when hands come in contact with an object or surface which may be contaminated; and
  f) whenever coming back to work after a break.

Single use disposable towels should be used to dry the hands. Regular liquid soap is appropriate for the procedures of a Denturist practice. Antimicrobial soap is necessary for surgical procedures only.
C. GLOVES

Gloves must be worn when hand contact with bodily fluid or mucous membranes is anticipated, or when touching surfaces that may be contaminated. A latex, non-sterile glove is recommended for most non-invasive dental procedures. A well-fitting, comfortable glove which does not tear easily is recommended. Non-sterile latex, vinyl or other impervious material are acceptable alternatives.

Hands should be washed prior to gloving and must be washed after removal of gloves. Do not wash gloves with hand soap or use gloves after they have been in contact with disinfectants, as their effectiveness is diminished by exposure to chemicals. Remove and discard gloves after each and every patient. Gloves cannot be effectively disinfected and should not be re-used.

Practitioners are encouraged to try different brands to assess the comfort, strength, cost and irritability of a glove. Hypoallergenic gloves are available. Any health care worker who has exudative lesions or weeping dermatitis on his or her hands should refrain from all direct patient care and from handling patient-care equipment until the condition resolves. Some problems related to the wearing of gloves can be reduced by wearing the gloves only when required, changing the gloves frequently, or by using vinyl, nylon, or cotton gloves as a “liner”.

Gloves should not be worn when handling charts, radiographs or telephones. Always remove and replace gloves before performing these activities. When cleaning the operatory between patients or using chemical disinfectants, utility gloves should be used.

Washing hands and donning a new pair of gloves in the presence of the patient at the beginning of each procedure will assure him or her that infection control procedures are being used in your clinic. Promote your practice by using infection control procedures.

D. MASKS

Routine use of masks is not necessary; rather, they should be donned for procedures in which splashing or spattering of blood or other body fluids is likely. However, due to the close proximity of the Denturist to the patient’s oral cavity, many patients and Denturists feel more secure when a mask is used. Disposable masks serve as a filter and a barrier to splashes and splatter of fluids. Masks lose effectiveness if moist. In addition, as they become contaminated during any procedure, they should be replaced for each patient. When removing your mask, handle it by the strings only, to prevent potential contamination of your hands.

An important feature of a mask is its fit. It has been estimated that approximately 20% of air breathed passes around the mask and is unfiltered. Purchase masks that fit snugly against the face and meet the minimum standard of 95% filtration of particles 5 microns or smaller.
E. EYE PROTECTION

As with masks, eye protection is necessary only if splashing or spattering are likely. Protective eye wear prevents infection (such as by the viral infections influenza and hepatitis B) from being transmitted by spattering of the conjunctiva of the eye, by saliva, or other body fluids. Protective eye wear or prescription glasses fitted with side-shields usually offer sufficient frontal and side splash protection for the Denturist in the clinical setting.

Eye wear should be cleaned between patients. To clean glasses, wear gloves and wash the glasses under running water and dry thoroughly. Check with the individual manufacturer to see which, if any, disinfectant can be used on the glasses.

F. LAB COATS AND CLINIC JACKETS

Clinic coats and jackets should be worn only at the office and should not be worn to and from work, or outside of the office during the day. Both short sleeved and long sleeved jackets offer benefits. Short sleeves allow the arms of the Denturist to be washed if they should come in contact with a contaminated item. Long sleeved jackets offer protection against injury to the Denturist’s arms. As both sleeve lengths offer benefits, the selection is up to the personal requirements of the wearer. Polyester-cotton blends or a tight cotton weave launder well and can be washed in hot water. Jackets should be changed daily and when they become visibly soiled. Washing clinic clothing in a normal laundry cycle is sufficient.

SECTION 2

PATIENT EVALUATION

It is important that the Denturist use a comprehensive health questionnaire to identify medical problems which, in conjunction with denture therapy, adversely affect the patient. Denturists must, however, be aware that patients may have no symptoms from many infections which can be transmitted in the Denturist’s office. This is particularly true of hepatitis B, hepatitis C and HIV infection. The majority of patients with these infections do not know themselves that they are infected, and thus cannot tell their Denturist.

Relying on information provided by the patient to assess infectious disease risk is not advisable. All patients must be treated safely in order to protect both the denturist and patient.

Occasionally, patients can give “socially convenient” answers to medical questions. Untruthful replies to medical inquiries can be intentional, but the vast majority are unintentional. Language difficulties or sheer ignorance can prevent a patient from understanding the meaning or intention of a question. In a recent study of 377 confirmed hepatitis B carriers, only 80 persons (21%) reported on their dental medical questionnaire that they had been exposed to hepatitis.
Only about one-third of hepatitis cases present with the clinical manifestations of severe illness and jaundice, leaving two-thirds of persons having had hepatitis unknowingly. These persons cannot inform the Denturist of a past history of hepatitis that they may have assumed was merely a bout of influenza. These same people are unable to accurately report their carrier status.

Infection control practice is the best way to protect your patients and yourself against infection and to protect yourself against litigation.

Follow a written infection control protocol and use the same infection control procedures for every patient.

SECTION 3

INSTRUMENT CLEANING AND STERILIZATION

Infection control techniques based upon the current knowledge of disease transmission demand that all instruments and devices used in and around the oral cavity should either be sterilized or subjected to high level disinfection. Nearly all instruments that are used in a Denturist practice are classified as “semi-critical” (those items that contact but do not penetrate the oral mucous) or as “non-critical” (items or surfaces that are touched during treatment but are not directly in contact with the oral mucosa). Semi-critical items require a minimum high level disinfection, not necessarily sterilization.

Discussion on this topic requires that terms be defined:

Sterilization refers to the killing of all life forms.

Disinfection is the destruction of some – but not all – micro-organisms, and varies from a low level (when only minimally resistant organisms are destroyed) to a high level (when all but very resistant organisms are destroyed).

Cleaning is the removal of visible debris, blood and saliva from an instrument, reducing the number of – but not all - micro-organisms.

In the practice of Denturism, there are four methods of sterilization which are recognized as acceptable techniques. Each method has distinct advantages, disadvantages and applications. No single method of sterilization is suitable for all items or materials; therefore, a combination of methods is required. The acceptable methods of sterilization are:

i) Water Vapor under pressure – AUTOCLAVE
ii) Chemical Vapor under pressure – CHEMICLAVE
iii) Dry Heat – DRY HEAT OVEN
iv) Chemical – CHEMICAL STERILANTS
All recommended methods except for chemical sterilants allow for biological monitoring to ensure that the sterilization process is effective. Biological monitoring is critical; “colour change” indicators on packaging do not indicate or guarantee sterility. Each sterilization procedure is tested using a different spore tester and it is imperative that the appropriate product be used to test sterilization equipment. A written record of the monitoring results should be kept. Chemical sterilants must be properly mixed and maintained at the recommended temperature for the recommended length of time to be effective. There is no way to monitor a chemical sterilant; therefore, it is the least desirable method of sterilization. If chemical sterilants are to be used, the frequency with which solutions are used and changed must be monitored and documented.

NO INSTRUMENT OR ITEM CAN BE EFFECTIVELY STERILIZED UNLESS IT IS THOROUGHLY CLEANED FIRST.

The most effective method of cleaning an item prior to sterilization is ultrasonic cleansing. Ultrasonic cleansing is preferred to hand scrubbing because it is 16 times more efficient and it significantly reduces the potential for the splashing of contaminants during scrubbing. Utility gloves should be worn when hand scrubbing instruments.

**INSTRUMENT CLEANING AND STERILIZATION**

After cleaning, instruments can be rinsed, dried and visually inspected for debris. If the item is still dirty, it will be necessary to hand scrub it. Once clean, the items are placed into sterilization bags and sealed. Bags must have either a chemical indicator on the paper side or have a piece of indicating tape placed on the bag to verify that it has been exposed to the sterilizing cycle. Staples or paper clips should not be used to close the bags, as they do not provide a seal.

**YOUR STERILIZATION TECHNIQUES ARE ONLY AS GOOD AS YOUR CLEANING AND PACKAGING.**

| SUMMARY OF STERILIZATION CONDITIONS FOR PACKAGED ITEMS |
|----------------|----------------|----------|--------|
| STERILIZER     | TEMPERATURE    | PRESSURE | TIME   |
| Steam autoclave| 121 °C         | 15 psi   | 20 minutes |
| Steam autoclave| 132 °C         | 30 psi   | 10 minutes |
| Chemical vapor | 132 °C         | 20 - 40 psi | 20 minutes |
| Dry Heat       | 170 °C         |          | 60 minutes |
| Dry Heat       | 160 °C         |          | 120 minutes |
| Dry Heat       | 150 °C         |          | 150 minutes |
| Dry Heat       | 121 °C         |          | 12 hours |
| Dry Heat (rapid flow) | 190 °C | | 12 hours |

Heat has been recognized as the most reliable method of dental instrument sterilization and should therefore be used for all instruments and items that can withstand repeated exposure to high temperatures. Only when an item cannot withstand steam, chemical vapor or dry heat sterilization should it be sterilized using a chemical sterilant. It is recommended that GLUTARALDEHYDE be used as a chemical sterilant. Choose a product which is 3.2% Alkaline, 2% alkaline or 2% Acidic and totally immerse the cleaned item for a
minimum of 10 hours at the manufacturer’s recommended temperature. Use of a chemical sterilant should be followed by aseptic rinsing with sterile water, drying, and, if the instrument is not used immediately, placement in a sterile container. Occupational Health and Safety issues dictate a need for adequate ventilation.

Attention must be paid to the use-life of a product, as it can be affected by the number of loads of items sterilized in a particular batch of solution. Consult the product label and package insert to verify the active ingredients of a product and the instructions for use. Non-critical items which have not had direct contact with the mucosa can be disinfected using an approved high-level disinfectant solution.

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<th>ITEM</th>
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<td>tungsten / carbide</td>
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<td>FOX PLANES</td>
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<td>HAND INSTRUMENTS</td>
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<td>stainless steel</td>
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<td>plastic handled</td>
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<td>IMPRESSION TRAYS</td>
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<td>chrome plated</td>
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<tr>
<td>custom acrylic resin</td>
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<td>stock plastic</td>
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<td>INTRAROTAL TRACERS</td>
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<td>MIRRORS</td>
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<td>PLIERS</td>
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<td>stainless steel</td>
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<td>POLISHING WHEELS</td>
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<td>rag/felt</td>
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<tr>
<td>brushes</td>
<td>-</td>
<td>+</td>
<td>+</td>
<td></td>
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<tr>
<td>WAX ITEMS, DENTURES, OCCLUSION RIMS ETC</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>+</td>
</tr>
</tbody>
</table>

* EFFECTIVE & PREFERRED METHOD
* EFFECTIVE BUT RISK OF DAMAGE TO ITEM
(D) DISINFECTABLE ONLY

1 Adapted from Accepted Dental Therapeutics, Dentist’s Desk Reference Materials, Instruments and Equipment and Merchant V. Prosthodontics & infection control Oral Health, Nov 1989, Vol 79, No. 11.
SECTION 4

SURFACE CLEANING AND DISINFECTION

The need for surface cleaning can be reduced somewhat by the use of “barriers” and disposable items. Any surface that can be covered and will be in contact with the Denturist’s hands or the patient’s head should be covered. Whenever possible, foot controls should be used to operate taps and chairs. Plastic wrap or disposable covers having an impermeable plastic layer should be used to cover head rests, light handles, light control switches, and manual chair switches.

Surface cleaning and disinfection should take place after treatment of each patient and at the completion of daily work activities. Acceptable surface disinfectants must have documented evidence of bactericidal, tuberculocidal and virucidal activity. Products whose labels state only “hospital-level disinfectant” are not acceptable for use in a Denturist office. Check the label and product enclosure to ensure that a disinfectant will kill Staphylococcus aureus, Salmonella cholernesuis & Pseudomonas aeruginosa. The disinfectant must be tuberculocidal and must be effective on both lipophilic viruses (e.g. HIV) and hydrophilic viruses (e.g. Polio and Coxsackie) in 10 minutes or less.

Just as it is important to clean an instrument before it is sterilized, it is equally important to clean a surface before it is disinfected. As all disinfectants are inactivated by protein and blood, surfaces should be cleaned before they are disinfected. For surfaces which are not obviously dirty or contaminated, the “spray-wipe-spray” technique is adequate. A disinfectant is first sprayed on and the damp surface wiped with a paper towel to remove any debris (the cleaning stage), then disinfectant is sprayed on again as the disinfectant step. This spray is left on to allow for time for disinfection.

Chlorine products, iodophore products and complex phenolics are all good disinfectants. All three of these products have disadvantages which are listed below:

- Chlorines - corrosive; damages clothes, plastic, rubber, metal and steel. Usually must be prepared daily
- Iodophores - stains (removable), must be prepared daily.
- Synthetic phenols - film accumulation, damages plastics and rubber.

In addition, 6% hydrogen peroxide and 70% isopropyl alcohol are adequate disinfectants. Hydrogen peroxide may corrode certain metals.

Water-based products in a pump spray/squirt bottle are preferable to alcohol-based or aerosol products. Alcohol makes the proteins in blood and saliva more difficult to remove from a surface and tends to evaporate quickly, thus reducing the contact time on the contaminated surface. Because alcohol makes the proteins in blood and saliva more difficult to remove, alcohol or alcohol based solutions should not be used for the first spray and clean phase, or to clean any obviously contaminated surfaces.

Sodium hypochlorite (household bleach) can be used in a 1:10 to a 1:100 dilution, depending on the amount of organic matter (blood and mucous) present on the surface to
be disinfected. A fresh mix of sodium hypochlorite must be made daily (every 24 hours). Spray the disinfectant onto the surface to be cleaned, not onto disposable towel.

**SECTION 5**

**ASEPTIC TECHNIQUE & LABORATORY ASEPSIS**

Impressions and prostheses should be rinsed under gently running tap water to remove excess blood and saliva. All items that have been used intraorally (wax rims etc.) must be disinfected by immersion or by using the "spray-wipe-spray" technique. Stone casts must be immersed in hypochlorite or an iodophore. Dentures and impressions should be immersed in a disinfecting solution for the time recommended for TB disinfection. After the necessary immersion time has elapsed (check product directions) it is necessary to rinse the impression under running tap water to remove any residual disinfectant.

The following table can be used as a guide when selecting disinfecting solutions for impressions and prostheses:

<table>
<thead>
<tr>
<th></th>
<th>GLUTARALDAHYDES</th>
<th>IODOPHORES</th>
<th>CHLORINE COMPOUNDS</th>
<th>COMPLEX PHENOLIC</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mixing Ratio:</strong></td>
<td><strong>Manufacturer's Directions</strong></td>
<td>1:213 dilution</td>
<td>1:10</td>
<td><strong>Manufacturer's Directions</strong></td>
</tr>
<tr>
<td><strong>Impressions</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Alginate</td>
<td>-</td>
<td>+</td>
<td>+</td>
<td>-</td>
</tr>
<tr>
<td>Polysulfides</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
</tr>
<tr>
<td>Silicons</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
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<tr>
<td>Polyethers</td>
<td>-</td>
<td>-</td>
<td>+</td>
<td>-</td>
</tr>
<tr>
<td>Hydrocolloid</td>
<td>-</td>
<td>+</td>
<td>+</td>
<td>?</td>
</tr>
<tr>
<td>Compound</td>
<td>-</td>
<td>+</td>
<td>+</td>
<td>-</td>
</tr>
<tr>
<td><strong>Prostheses</strong></td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>Complete Dentures (Acrylic / Porcelain)</td>
<td>-</td>
<td>+</td>
<td>+</td>
<td>-</td>
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<tr>
<td>Removable Partial Dentures (metal components)</td>
<td>-</td>
<td>+</td>
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<td></td>
</tr>
</tbody>
</table>

# = recommended method
+ = could damage metal
* = not recommended
? = insufficient
# = data

Note: Solutions must be prepared according to the manufacturer’s recommendations for surface disinfection or immersion in disinfection. Sodium Hypochlorite diluted 1:10.

Warning: Materials vary in their response to chemicals. If damage or distortion occurs, shorten the immersion time or spray the impression, wrap in a paper towel and store in a sealed plastic bag.

Any instruments or materials to be used on new uncontaminated prostheses should be kept and used separately from those to be used with prostheses that have already been inserted in the mouth. Any laboratory equipment such as a bur which has come into contact with a denture that is being adjusted, repaired, or relined or otherwise altered must be cleaned and sterilized after each patient denture case using the method

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recommended on page 7 of this document. Exercise caution to ensure that no damage occurs to the prosthesis during the disinfection procedure.

Use an approved disinfectant solution (iodophore or sodium hypochlorite) in place of water in the pumice pan. It is advisable to have two pumice pans, one for use on new prostheses and the other for contaminated prostheses. If a single pumice pan is used on all dentures, the pumice must be changed after each case. If a separate pan is used for new prostheses only, that pumice should be changed daily.

Use only rag wheels which are autoclavable/sterilizable. Soak brushes and other non-sterilizable, non-disposable items overnight in an approved disinfecting solution such as glutaraldehyde, iodophore, complex phenolic or sodium hypochlorite. Some rag wheels can be autoclaved and should be sterilized when possible.

Countertops must be kept clean throughout the day and must be disinfected frequently, at minimum, at the end of each day. Clean and disinfect around sinks and taps daily. Clean and disinfect work pans each time a case is completed.

Any items that are being sent to a laboratory should be disinfected and packaged before it leaves the clinic. Any item returning from a laboratory should be disinfected immediately upon arrival.
BEHAVIOUR AND REMARKS OF A SEXUAL NATURE

PURPOSE OF THE STANDARD

The purpose of this standard is to ensure that the public is provided with care in an atmosphere, which places no sexual demands upon them and is free of any sexual connotations or contexts.

DESCRIPTION OF THE STANDARD

This standard is detailed in the complaints and discipline procedures with respect to professional misconduct of a sexual nature/patient relations program, and is summarized in the College of Denturists of Ontario prevention plan previously distributed in June 1998 to all practitioners and as follows.

The Quality Assurance Committee formally acknowledges and recognizes the separate statutory Patient Relations Committee of the College of Denturists of Ontario.

SUMMARY AND CONCLUSION

Failure to comply with this standard may lead to the revoking of a member's certificate of registration.
SEXUAL ABUSE PREVENTION PLAN

COLLEGE OF DENTURISTS OF ONTARIO

STATEMENT OF PHILOSOPHY

The College of Denturists of Ontario views the matter of sexual impropriety and sexual abuse with the utmost seriousness and will not tolerate any actions of this kind on the part of Denturists of Ontario.

EVALUATION OF PRESENT PRACTICES

Although the College has traditionally demonstrated a prompt and thorough approach to the investigation of allegations of sexual abuse and/or impropriety, the approach to these investigations has largely been of an ad hoc nature rather than the result of following an established protocol. In general, the investigations of the past have incorporated many appropriate characteristics:

i. the participation of a female member of the registrar staff;
ii. prompt follow-up, often involving an interview of the complainant, carried out in a supportive and sympathetic fashion;
iii. a prompt office visit with the Denturist alleged to have committed the offense in which he/she is confronted with the allegations.

Nevertheless, the College believes that the goal of eliminating sexual abuse/impropriety is more efficiently reached by creating a sexual abuse protocol. This protocol ensures that all reported incidents will be dealt with by the College in a consistent fashion. The major components of the protocol consist of the following:

1. Appointment of a Sexual Abuse Officer
2. Complaints Investigation Process
3. Collection of Sexual Abuse/Impropriety Data
4. Guidelines for Professional Behavior
5. Professional Education Program
6. Staff Education
7. Public Education
8. Recommendations for Change to Relevant Legislation
SEXUAL ABUSE/IMPROPRIETY PROTOCOL

1. Sexual Abuse Officer

The services of a Sexual Abuse Officer will be provided by appointment through the Patient Relations Committee.

Role of the Sexual Abuse Officer
The Sexual Abuse Officer will have primary responsibility for the investigation of complaints or reported incidents of sexual abuse/impropriety. The Sexual Abuse Officer's duties will include primary responsibility for:

i. communication with the victims of sexual abuse/impropriety;
ii. follow-up office visits with the alleged perpetrator/denturist;
iii. assisting complainants in the compilation of required information or submissions necessary for the complainants or discipline process;
iv. the collection of data to facilitate reporting on trends, identification of solutions to problems, etc.;
v. informing survivors of sexual abuse of effective treatment centres and counseling resources;
vi. such other duties as are outlined in the sexual abuse/impropriety protocol.

2. Complaints Investigation Process

2.a. Initial Contact with the Complainant
In the vast majority of cases, the College's initial contact with the complainant of sexual abuse/impropriety occurs over the telephone. Whenever possible, all College employees will direct such telephone calls to the Sexual Abuse Officer. When the Sexual Abuse Officer is not available, the call will be directed to an available member of the registrar staff. However, this staff member will bring the matter to the attention of the Sexual Abuse Officer when he/she becomes available.

Whenever possible, any staff member dealing with such a call will extend an invitation to the complainant of sexual abuse/impropriety to meet with the Sexual Abuse Officer.

b. Meeting with the Sexual Abuse Officer
Should the complainant wish to meet the Sexual Abuse Officer, such meeting shall be arranged by the Sexual Abuse Officer and shall take place in accordance with the following criteria:
The meeting will take place in a setting in which the complainant's privacy may reasonably be expected to be respected (such meeting place need not necessarily be located at College headquarters).

The complainant will be advised prior to the meeting that he/she may bring other persons of her/his choosing to the meeting if he/she wishes, such as friends, relatives or other support figures, counselors (including legal counsel if desired) and interpreters. The Sexual Abuse Officer will offer to assist the complainant to draft any submissions required by the College's complaint or discipline processes.

c. Follow-up Visit to Denturist Alleged to Have Committed the Sexual Abuse/Impropriety

Following the meeting with the complainant (or following the initial contact with the complainant should the complainant decline a meeting), the Sexual Abuse Officer will arrange to visit the office of the Denturist alleged to have committed the sexual abuse/impropriety. During this office visit, the Sexual Abuse Officer will present the Denturist with the allegations made by the complainant and will attempt to obtain any information which he/she feels is relevant to the matter. On completion of the office visit, the Sexual Abuse Officer will draft a report respecting the office visit which shall be provided to the appropriate College committee investigating the matter.

The office visit will be conducted as promptly as reasonably possible following the meeting with the complainant or the initial contact with the complainant if the complainant declines the offer to meet with the Sexual Abuse Officer.

3. Collection of Sexual Abuse/Impropriety Data

The Sexual Abuse Officer shall maintain in a systematic fashion a record of all complaints or reports of sexual abuse and/or impropriety which come to the attention of the College, including:

1. The names and addresses of all complainants or reporters of sexual abuse and/or impropriety.
2. The names and registration numbers of all Denturists alleged to have committed the sexual abuse impropriety.
3. A description of all reported incidents, including the date and location.
4. The disposition of the complaint or report of sexual abuse/impropriety, including the steps taken in the investigation, the outcome of the investigation and any disciplinary activity which ensued, including penalties assigned to the Denturist.

4. Guidelines for Professional Behavior

The following document will be distributed to all members of the profession: Guidelines for the Prevention of Sexual Abuse/Impropriety in the Denturist Office
This document has been drafted in accordance with legislation which calls for the development of a sexual abuse plan by the College. The primary objective of this plan is to eliminate incidents of sexual abuse and/or sexual impropriety in the Denturist office.

**Professionalism in the Sexual Context**

The College takes the position that professional conduct requires a Denturist to conduct a Denturist practice observing the following principle:

**PATIENTS HAVE THE RIGHT TO EXPECT DENTURIST CARE WHICH PLACES NO SEXUAL DEMANDS UPON THEM.**

Blatant types of sexual demands (often referred to as sexual abuse or sexual violation) usually include some form of overt sexual physical contact with the patient. There is no place in a Denturist practice for such physical contact.

However, more subtle types of sexual demands are often unrecognized and occasionally may occur inadvertently. These more subtle sexual demands include the following:

1. Behavior, gestures, or expressions that are seductive or sexually demeaning to a patient.
2. Inappropriate draping practices which reflects a lack of respect for the patient’s privacy.
3. The placement of dental instruments upon the patient’s chest.
4. Making sexual comments about a patient’s body or underclothing.
5. Making sexually demeaning comments to a patient.
7. Initiation of conversations regarding sexual problems, preferences or fantasies.
8. Inappropriately affectionate behavior involving hugging and kissing.

**5. Professional Education Program**

The College recognizes the importance of ongoing professional education respecting the issue of sexual abuse and/or impropriety. Accordingly, the following initiatives will be incorporated into the College’s professional education program:

- The distribution of the above Guidelines for Professional Behavior to all Denturists practising in the province.
- The underwriting of seminars and lectures concerning the subject of sexual abuse and/or impropriety in the Denturist office. These seminars and lectures will be made available to local denturist societies.
• The encouragement of the Faculties of Denturism to incorporate appropriate training respecting sexual abuse and/or impropriety in their undergraduate and graduate programs.

6. Staff Education

The College is committed to the development of an education program for appropriate members who have contact with individuals who complain of sexual abuse or who are involved in investigating and adjudicating cases of this nature.

This education program will include the following:

1. The nature of sexual abuse, the magnitude of the problem, the consequences to victims and issues of race, gender and class related to abuse.
2. The range of ways the victim of sexual abuse may initiate a complaint and how to facilitate and handle complaints in an appropriate, empathetic and supportive manner.
3. How to fully and appropriately explain the complaints and discipline process of the College to potential or actual complainants.
4. The options available to a complainant to lodge a complaint of sexual abuse through the criminal and civil justice systems.
5. How to address victims of sexual abuse and those making inquiries with sensitivity and respect (for example, not implying that the problem is the victim's fault).
6. The characteristics of sexual impropriety and sexual abuse and/or sexual violation.
7. How to inform survivors of sexual abuse of effective treatment centers and counseling resources.

7. Public Education

The College is committed to a public education process designed to improve communication with the public and increase awareness of the College’s regulatory role. The issues of sexual abuse and impropriety including public awareness constitutes a substantive part of the College's overall public communication program.

8. Recommendations for Change to Relevant Legislation

With the drafting of the Regulations under the new Denturism Act, 1991 the College will have an opportunity to make recommendations respecting any relevant sections.

In particular, the College will develop recommendations respecting the definition of sexual impropriety/abuse for the purposes of defining professional misconduct.
GUIDELINES

THE PROFESSIONAL BEHAVIOUR REGARDING THE PREVENTION OF SEXUAL ABUSE IN THE DENTURIST OFFICE

College Guidelines contain practice parameters and standards that should be considered by all Ontario Denturists in the care of their patients. It is important to note the following guidelines may be used by the College or other bodies in determining whether appropriate standards of practice and professional responsibilities have been maintained.

INTRODUCTION

Ontario government legislation now requires all health regulatory colleges to have in place a patient relations program that includes measures for preventing and dealing with "sexual abuse" of patients. These mandated measures under the Regulated Health Professions Act, 1991, RHPA include the publishing of guidelines regarding the conduct of members of the College toward their patients. This bulletin outlines and explains these Guidelines.

Sexual impropriety with patients is considered an extremely serious matter. The College previously approved a policy of zero tolerance in this regard. The sanctions mandated by the RHPA against members who are found guilty of professional misconduct in connection with sexually abusing patients are very severe. (These penalties are detailed below.) All members are well advised to read and understand the following Guidelines and to keep them for frequent reference. If you have any questions or concerns, you are encouraged to contact the College office (416) 925-6331.

WHAT IS "SEXUAL ABUSE?"

"Sexual abuse" is very broadly defined in the legislation, to include not only physical actions but also behaviour or remarks. Here is how "sexual abuse of a patient" is defined under the RHPA's Health Professions Procedural Code:

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.

The Code does allow touching, behaviour and remarks that are of a clinical nature and that are appropriate to the services rendered.

*Although, the RHPA requires that these Guidelines relate to the "sexual abuse" of patients, the College takes equally seriously the sexual abuse or sexual harassment of dental office staff.*
There are other provisions set out in the professional misconduct Regulations that deal with this type of behaviour.

GUIDELINES FOR PROFESSIONAL BEHAVIOUR

As a general guiding principle, you, as a member of the College, are required to ensure that your patients receive dental care in an atmosphere that places no sexual demands upon them and is free of any sexual connotation or context.

Blatant types of sexual misconduct (often referred to as sexual abuse or sexual violation) usually include some form of overt sexual physical contact with the patient or touching of sexual nature. Section 1(4) of the Health Professions Procedural Code (RHPA, 1991) states that "sexual nature" does not include touching, behaviour or remarks of a clinical nature that are appropriate to the services provided.

In the context of the practice of Denturism, clinical touching of a patient that is related to the examination, assessment and treatment of conditions of the oro-facial complex is appropriate.

In most cases, if touching must involve areas beyond the oro-facial complex, you should explain beforehand to the patient the context of the treatment and/or investigation in order to avoid any misinterpretation or misunderstanding. As with all phases of dental examination, assessment and treatment, the principles of "informed consent" should be followed at all times.

DOS AND DON'TS

More subtle types of sexually inappropriate behaviour are often unrecognised and occasionally maybe committed inadvertently. While the College recognises that these Guidelines do not cover all eventualities, most sexually demeaning conduct could be prevented by the following:

DO:

- BE aware that recent publicity about sexual abuse of patients, the proclamation of the RHPA, the issuing of these Guidelines and their availability to the public have changed the climate of practise of Denturism in Ontario. Behaviour engaged in without consequence in the past may now leave you vulnerable to patient complaints and possible prosecution.
- RESPECT cultural differences and be aware of sensitivities of individual patients.
- ENSURE that any and all conversations between you and your office staff would not be found offensive by a patient.
- USE appropriate draping practices that respect a patient's privacy and ensure that the placement of patient bibs or drapes is carried out in a professional manner.
ENSURE or attempt to ensure that a third party is present when treatment is rendered outside of regular office hours.

DOCUMENT on the patient record any and all comments or concerns made by a patient relative to alleged sexual abuse and any other unusual incident that may have occurred during the course of or after an appointment. These chart entries should be made as soon as possible after the incident occurred and should contain statements from you and the office staff who were present.

DO NOT:

- USE gestures or expressions or engage in any other behaviour that may be interpreted as seductive or sexually demeaning to a patient or as sexual abuse.
- PLACE dental instruments or supplies upon a patient's chest or lap.
- MAKE sexual comments about a patient's body or clothing.
- TELL jokes or stories of a sexual nature to a patient.
- COMMENT on patient's sexual orientation.
- INITIATE conversations with patients regarding sexual problems, preferences or fantasies and refuse to participate if such discussions are initiated by a patient.
- ENGAGE in inappropriate "affectionate" behaviour with a patient such as hugging and kissing.

DATING PATIENTS

Because of the very broad definition of "sexual abuse" in the legislation, it is unacceptable for you to date a current patient. Even the most casual dating relationship may lead to forms of affectionate behaviour that would fall under this definition and could leave you open to possible accusations.

If you intend to date a patient, the denturist/patient relationship should first be terminated, the account settled and the patient information and/or duplicate records transferred to another practitioner according to the College's Guidelines Respecting the Release and Transfer of Patient Records.

Under the RHPA all health professionals, including Denturists are prohibited from treating current or past sexual partners, including spouses.

PENALTIES

The legislation says that when a panel of the Discipline Committee finds a member guilty of committing an act of professional misconduct by "sexually abusing" a patient, as a minimum, it must:

1. Reprimand the member.
2. Revoke the member's certificate of registration if the sexual abuse consisted of, or included any of the following:
a. sexual intercourse;
b. genital to genital, genital to anal, oral to genital, or oral to anal contact;
c. masturbation of the member by, or in the presence of, the patient;
d. masturbation of the patient by the member;
e. encouragement of the patient by the member to masturbate in the presence of the member;

As required by the RHPA, 1991, the member may also be ordered to reimburse the College for funding provided for therapy and counselling for the patients who were "sexually abused" by the member, to the maximum of $10,000.00 per patient.

These Guidelines have been developed by the College as part of the "College's Sexual Abuse Prevention Plan" and in accordance with the legislated requirements under the Regulated Health Professions Act 1991. They are not intended to interfere with the traditional denturist/patient relationship, that of providing appropriate dental treatment in a professional and caring manner.

The College recognises the importance of ongoing professional education respecting the prevention of sexual and/or impropriety and will be developing strategies to further this objective.

Patient Relations Committee – Guidelines – Preventing Sexual Abuse
REGISTRATION
College of Denturists of Ontario
REGISTRATION COMMITTEE

MISSION OF THE REGISTRATION COMMITTEE

The Registration Committee reviews all applications for registration that the Registrar refers to it. The Registrar is required to refer an application if he/she has doubts that the applicant meets the legislated requirements, considers imposing terms, conditions and limitations, or intends to refuse the application.

Only individuals who are registered with the College of Denturists of Ontario can practise denturism or use the title “Denturist”. It is illegal to use this title in Ontario, if you do not hold a current certificate of registration with the College of Denturists of Ontario. The provision of denturist services in Ontario is a controlled act. For further clarifications of a controlled act and other definitions, please refer to sections 27 - 34 of the RHPA.

The Registration Committee is composed of at least two (2) members of Council, at least one (1) public member who is a member of Council, and at least one (1) or more members who are not members of Council.

REGULATED HEALTH PROFESSIONS ACT STATUTORY COMMITTEE

The Registration Committee is a statutory committee under the Regulated Health Professions Act (RHPA), 1991.
REGISTRATION RENEWAL PROCESS

Every member of the College of Denturists of Ontario must renew their registration online by responding and completing the Health Professions Database (HPD) questionnaire and Registration Renewal form, as well as paying the annual registration fees. Responses to the HPD questionnaire, Registration Renewal form and payment of the fees must be received electronically at the College website by the end of day on April 15. Completed renewals received after April 15, will be deemed late payments. Late payment fees will be applied and charged to the registrant.

HEALTH PROFESSIONS DATABASE (HPD) REQUIREMENTS

Online completion of data from registrants:

Each member of the College of Denturists of Ontario must complete the Health Professions data questionnaire online. As members proceed through the questionnaire, the data provided is saved to the database.

1. Collection of data for the Allied Health Database. The allied health regulatory Colleges, including the College of Denturists of Ontario, are expanding their collection of personal information about their registrants, including basic demographic, geographic, education and employment information, and providing this information to the Ministry of Health and Long-Term Care in de-identified form for health human resources planning.

2. Under the authority for the collection of data for the Allied Health Database, under section 36.1 of the Regulated Health Professions Act (RHPA), 1991, the Ministry of Health and Long-Term Care (Ministry) can request that regulatory Colleges collect information, including personal information, from their registrants, and that this information be provided to the Ministry. The RHPA provisions authorize the Ministry to collect this information from the Colleges, and use and disclose it only for the purpose of health human resources planning. Health human resources planning is used to ensure the right amount and appropriate distribution of health providers.

ONLINE RENEWAL

Online renewal immediately follows the HPD questionnaire. Fee payments online may be made by credit card or by cheque. Credit card payments will be processed in real time. Cheque payments may be made using online renewal. On completion of the online form, select the option to pay by cheque and mail the cheque to the College by the end of day on April 15.

Online renewal is open only to members who are maintaining their current registration status. Members renewing online will complete their HPD questionnaire and renewal form, as well as submit their payment online by credit card or cheque. Members, who are renewing online and elect to pay by cheque, must mail the cheque to the College office by the end of day on April 15.

PAPER RENEWAL

Paper renewal is not available. If you need assistance with your online registration, please contact the College at (416) 925-6331 or 1 (888) 236-4326 prior to April 15.
INQUIRIES, COMPLAINTS & REPORTS

COLLEGE OF DENTURISTS OF ONTARIO
INQUIRIES, COMPLAINTS AND REPORTS COMMITTEE

MISSION OF THE INQUIRIES, COMPLAINTS AND REPORTS COMMITTEE

The mandate of the Inquiries, Complaints and Reports Committee (ICRC) is to investigate inquiries, complaints and reports. When the nature of the allegations are warranted, the panel of the ICRC may refer the matter to a discipline or incapacity hearing in order to ensure public safety and trust in denturists as health practitioners.

The ICRC is composed of at least two (2) members of Council, at least two (2) public members who are a member of Council, and at least one (1) or more members who are not members of Council.

REGULATED HEALTH PROFESSIONS ACT STATUTORY COMMITTEE

The ICRC is a statutory committee under the Regulated Health Professions Act (RHPA), 1991.
The College of Denturists of Ontario (the “College”) is one of Ontario’s 21 self-governing health-care regulatory colleges and operates under the Regulated Health Professions Act, 1991 (“RHPA”), legislation which sets out the processes that must be used in dealing with the investigation of complaints.

The College has a formal complaints process which gives everyone the right to have their complaint investigated by the Inquiries, Complaints and Reports Committee (“ICR Committee”).

Each step of the process is designed to ensure fairness to both the person filing the complaint, and the denturist who is named in the complaint.

Every complaint that is received by the College is thoroughly and objectively investigated to determine if there is any evidence of professional misconduct, incompetence or incapacity.

What should I do if I have a problem with my denturist?

Before you make a formal complaint to the College about unsatisfactory denture care, it is highly recommended you discuss your concerns directly with your denturist.

If you are unsure of the quality or appropriateness of care a patient has a right to expect from a denturist, you can contact the College at 416-925-6331 or 1-888-236-4326 extension 224.

How do I make a complaint?

A formal complaint must be sent to the College in writing, by E-mail, surface mail, audio, videotape, film, or a recordable medium. The College cannot accept a verbal complaint by telephone or anonymous complaints.

To make a formal complaint, the College require the following information:

- Your full name and a clear statement that you are submitting a complaint;
- Your mailing address and day time phone number;
- The full name of the denturist;
- As much detail as possible about your concerns such as type of complaint (denture problem, conduct problem, other), type of denture (full/partial/upper/lower);
- Names of other denturists, health-care practitioners or persons that may have relevant information.

Once the College receives a formal complaint, we will forward a letter acknowledging receipt of your formal complaint. All correspondence from the College will be sent by regular mail to preserve confidentiality.

Is there a time limit for making a complaint?

While there is not typically a time limit on complaints, the College recognizes the diverse nature of complaints and maintains that certain complaints must be made within a reasonable time frame.

Who deals with the complaint?

The ICR Committee will consider your complaint. The mandate of the ICR Committee is outlined in provincial law. The ICR Committee members include both denturists and members of the public who are appointed by the provincial government to represent the view of the consumers.

How does the process begin?

When the College receives your complaint, a copy is forwarded to the denturist. The denturist has 30 days to submit a written response to the College. The complainant usually has an opportunity to review the denturist’s response. Your name and the nature of your complaint will be shared with the denturist, unless there is a question of personal safety or risk involved.
What happens next?
Your complaint is fully and impartially investigated by College staff, with the investigation limited to your specific complaint.

This investigation includes written submissions from both you and the denturist, any other denturists or health-care practitioners who have treated you or consulted on your treatment. An investigator may also formally get in touch with any third-party insurers involved, such as your insurance company.

As part of this process, the College may request relevant records, patient charts and other relevant information from other regulated health-care professionals who have a duty to cooperate with the investigation.

The ICR Committee may also engage an expert to help with the investigation.

The ICR Committee makes a decision based on the documentation placed before it.

How long does it take to complete the complaints process?
The ICR Committee strives to complete the investigation and render a decision on every complaint within 150 days of having received the original complaint. The College will advise both parties of any delays over 150 days at regular intervals.

Do you or the denturist meet with the ICR Committee?
The ICR Committee is authorized to conduct a review of the documentation only. Neither you nor the denturist will meet with the ICR Committee.

Can the ICR Committee award money or damages?
The law governing health professions only permits the ICR Committee to make a decision about the denturist’s conduct and actions. The ICR Committee cannot award compensation of any kind. Only the courts have that authority.

If you are considering suing your denturist for compensation, be aware that there is a time limit for civil litigation. Your legal advisor can answer any questions that you might have about your rights to sue a denturist.

How will the ICR Committee deal with my complaint?
The ICR Committee decides whether the information gathered during the investigation supports the claims made in the complaint.

There are a number of options available to the ICR Committee under the RHPA, including:

- Take no further action if the information does not support the claims made in the complaint.
- Remind, counsel, or caution the denturist in writing, if the ICR Committee believes the denturist would benefit from some advice or direction as to how to conduct him or herself in the future.
- Requiring the denturist to appear before the panel of the ICR Committee in Toronto to be cautioned.
- Direct or accept the denturist’s agreement to participate in training or educational programs to improve his or her practice.
- Refer the denturist to a panel of the ICR Committee if there are concerns about the denturist’s health that may be affecting his or her ability to practise.
- Decide not to investigate because the complaint is frivolous, vexatious, made in bad faith or is an abuse of process.
- Referring specified allegations of professional misconduct or incompetence to the Discipline Committee.
What happens once a decision is made?

Once the panel of the ICR Committee reaches a decision, both you and the denturist will be sent a written copy of the decision.

College staff are not members of the ICR Committee, nor are they involved in any way in the ICR Committee’s decision-making.

Are the ICR Committee’s decisions publicly available?

No. All information relating to the investigation and resolution of a complaint is held in the strictest confidence, as required by current legislation.

Is there an appeal process?

In most cases, there is an appeal process available that provides additional protection for both the patient and the denturist. On request of either party, an arms-length provincial board called the Health Professions Appeal and Review Board may review the ICR Committee’s decision.

The only exception to this right of review is in cases where the ICR Committee has referred the matter to the Discipline Committee for a hearing or to the Fitness to Practise Committee for an Incapacity Proceedings.

Do I need a lawyer?

No, you do not need a lawyer during for the complaints process; however, you are entitled to have a legal representative if you wish.

Can information gathered by the College be used in court?

No. In accordance with section 36 (3) of the RHPA, no report or decision of a proceeding is admissible in a civil proceeding.

What happens at a public hearing?

Hearings at the College are similar to proceedings in a court of law. If the ICR Committee refers your complaint to the Discipline Committee, the College will present evidence before a panel of the Discipline Committee consisting of denturists and members of the public whose role is similar to that of a jury. The panel is independent of the College. College staff have no influence on the panel’s decision.

If a panel of the Discipline Committee finds that a denturist has committed an act of professional misconduct, it may:
- Suspend or revoke the denturist’s license.
- Require the denturist to complete remedial education.
- Impose terms, conditions and limitations on the denturist’s license.
- Reprimand the denturist.
- Require the denturist to pay a fine to the Ontario government.
- Publish a summary of the matter.

The panel of the Discipline Committee does not have the authority to request jail time for the denturist or seek financial compensation for you.

Contact the College

If you would like to talk to someone about the denture service or conduct of a denturist or about the complaints process, please contact the College:

Telephone: 416-925-6331 ext. 224
1-888-236-4326 ext. 224

Fax: 416-925-6332

E-mail: info@denturists-cdo.com

Mail: College of Denturists of Ontario
Attention: Complaints
180 Bloor St. West, Suite 903
Toronto, ON M5S 2V6

Website: www.denturists-cdo.com
What happens when a complaint is made against me?

College of Denturists of Ontario
WHAT HAPPENS WHEN A COMPLAINT IS MADE AGAINST ME?

INTRODUCTION
The purpose of this material is to assist you, as the member who is the subject of a complaint, in understanding the College’s complaints process and your rights.

YOUR RIGHTS
The College of Denturists of Ontario must investigate every complaint made against its members. If you are the subject of a complaint, you are afforded many rights to protect your interests.

You have the right to:
- Know the specifics of the complaint;
- Know the identity of the complainant;
- Obtain legal advice and/or representation;
- Have a fair, impartial, adequate, reasonable and timely investigation;
- Provide a written response;
- Provide any and all relevant information to the investigator, including any notes, records, observations, comments, expert opinions, and witness statements;
- Have the complaint reviewed and investigated by a panel of the Inquiries, Complaints and Reports (“ICR”) Committee;
- Have a written decision from the ICR Committee panel with detailed reasons*;
- Request a review of the decision by an independent board, if you are not satisfied with the adequacy of the investigation or the reasonableness of the decision*.

* Except if allegations of professional misconduct or incompetence are referred to the Discipline Committee or the matter is referred to an Inquiry Panel.

THE COMPLAINTS PROCESS

NOTIFICATION OF THE COMPLAINT
If the College receives a complaint about you, we will provide you with a copy or a summary of the complaint, along with information regarding the complaints process, and copies of any prior decisions involving you. You will be asked to respond in writing within 30 days. Please note that the complainant is not sent copies of prior decisions and you may wish to make any submissions regarding those decisions separately from your response to the complaint.

We suggest that you take some time to digest the complaint and formulate a meaningful response. Please understand that the College has a statutory obligation under Ontario’s Regulated Health Professions Act, 1991 (“RHPA”), to investigate every complaint it receives. Please also remember that a copy of your response will be sent to the complainant.

YOUR RESPONSE
Although you are not required by law to respond in writing to a complaint, the College strongly encourages you to do so. The College wants to hear your account of events. This is your opportunity to convey your understanding/interpretation of the events that led to the complaint.

You are required to provide to the College all relevant photocopies of the original records with your written response. The College must make every reasonable effort to obtain and review all relevant documentation pertaining to the complaint.

You can also assist the investigation by providing other important information, such as names of witnesses or any other relevant information and documentation. The panel’s ability to make a fair and reasonable decision will depend heavily upon the quality of information it receives from both you and the complainant.
GUIDELINE TO COMPLAINT RESPONSE

- Read the complaint carefully and note each allegation or concern raised by the complainant.
- Attempt to respond fully and clearly to each allegation or concern.
- Be factual and thorough.
- Include all relevant documents and/or records in your possession.
- If the complaint relates to a specific incident and you did not keep detailed notes about the incident, write down everything you can recall and ask office staff to do the same. However do not, under any circumstances, alter your records.
- Provide typed transcripts of illegible chart entries or handwritten notes.
- Review your response carefully prior to submitting it to the College.

Your response will be shared with the complainant for their review and comment.

As this may be the only chance you have to provide information to the College, you are well advised to provide everything that you wish the ICR Committee to review.

We suggest that you do not contact the complainant. All communications should be facilitated through the College’s complaints process, by writing to the College directly.

LEGAL REPRESENTATION

The decision to obtain legal advice is up to you, and you have the right to do so at any stage of the investigation. Some members feel comfortable preparing a response themselves, while others wish to hire a lawyer to help guide them through the process.

WHEN OTHER DENTURISTS ARE INVOLVED IN THE COMPLAINT

Other denturists or health care personnel who treated the complainant, either before or after the complaint, may be asked to provide information and/or records to the College to assist in the investigation.

If another denturist is named in the complaint, that member will also receive a copy or summary of the complaint and will be asked to provide an independent response in respect of his or her conduct. The College will maintain the anonymity of each of the denturists named. In some cases, the denturists involved may be asked to consent to the sharing of information, depending on the complexity of the matter and the level of interrelated issues.

COLLEGE OF DENTURISTS OF ONTARIO COMPLAINT PROCESS
TIME FRAME FOR THE INVESTIGATION
Although unforeseeable delays can occur, investigations are usually completed within four to six months of the complaint being received by the College. It is the ICR Committee that directs the investigation of the complaint. When the investigation is complete, the ICR Committee reviews the record of investigation. After reviewing all of the information, the ICR Committee decides what action to take, if any.

COORDINATOR/INVESTIGATOR’S ROLE
The College Complaints Coordinator or, if assigned, a College investigative staff, is the best person to answer your questions regarding the process or the status of your file. The Coordinator/investigator is neither an adversary nor an advocate. The Coordinator/investigator’s job is to undertake the investigation directed by the ICR Committee.

The Coordinator/investigator, if assigned, may do any of the following during the course of the investigation:

- Obtain further information at the request of the ICR Committee
- Correspond directly with you and with the complainant;
- Correspond with other peripheral practitioners;
- Correspond with witnesses;
- Interview relevant persons;
- Gather documents, patient records, and other relevant information;

THE INQUIRIES, COMPLAINTS AND REPORTS (ICR) COMMITTEE
The College’s ICR Committee is comprised of denturists and government-appointed members of the public who serve on the College’s Council. The ICR Committee reviews complaints and reports in panels consisting of a minimum of three people, two denturists and one public member.

THE DECISION
There are a number of options available to the ICR Committee under the RHPA.

NO FURTHER ACTION
If the ICR Committee is of the view that the denturist’s conduct and/or actions meet reasonable and acceptable standards of practice, or if there is insufficient information for the ICR Committee to take action, the ICR Committee will take no further action.

CAUTION
The ICR Committee may require a denturist to appear to be cautioned. During the caution, the ICR Committee will discuss its concerns in person with the denturist and make suggestions for avoiding similar circumstances in the future. A caution may also be in writing and included in the panel’s reasons for decision.

REFER ALLEGATIONS OF PROFESSIONAL MISCONDUCT OR INCOMPETENCE TO THE DISCIPLINE COMMITTEE
The ICR Committee may refer specified allegations of professional misconduct or incompetence to the Discipline Committee.

REFER THE DENTURIST TO THE ICR COMMITTEE FOR INCAPACITY PROCEEDINGS
When the ICR Committee has concerns regarding the denturist’s fitness to practise (mental or physical capacity), it may refer the member to an Inquiry Panel.

UNDERTAKING
The ICR Committee may propose that the denturist sign an undertaking to complete a course or have their practice assessed or monitored. Undertakings are voluntary but failure to comply with an undertaking is professional misconduct.

SPECIFIED CONTINUING EDUCATION OR REMEDIATION PROGRAM
The ICR Committee may require a denturist to complete a specified continuing education or remediation program.

The ICR Committee has no authority to award compensation, damages, refunds, or to determine if fees are owing. The matters can only be dealt with by the courts.

Once a decision is made, the College provides you and the complainant with a copy of the written decision and reasons.
**YOUR RIGHT TO REQUEST A REVIEW**

If you believe that the ICR Committee made an inappropriate decision, you may request a review by the Health Professions Appeal and Review Board (“HPARB”), an independent adjudicative agency. Its members are appointed by Cabinet on recommendation by the Minister of Health and Long-Term Care. The mandate of HPARB is to review the adequacy of the investigation and the reasonableness of the decision.

*Except if allegations of professional misconduct or incompetence are referred to the Discipline Committee or the matter is referred to an Inquiry Panel.*

**CONFIDENTIALITY**

All proceedings and decisions of the ICR Committee are confidential, except where allegations of professional misconduct are referred to the Discipline Committee. A summary of those allegations is available on the public register of denturists which is accessible from the College’s website.

If, however, you or the complainant requests a review of the decision of the ICR Committee by HPARB, the College must provide HPARB with a complete record of the investigation and HPARB reviews are open to the public.

**CAN INFORMATION GATHERED BY THE COLLEGE BE USED IN COURT?**

No. In accordance with section 26 (3) of the *RHPA*, no report or decision of a proceeding is admissible in a civil proceeding.

**COLLEGE CONTACTS**

During the investigation of a complaint, your primary contact person at the College is the Complaints Coordinator or the investigative staff, if assigned. Feel free to contact the Coordinator at any time during the process.

- Telephone: 416-925-6331 ext. 224
- Toll Free: 1-888-236-4326 ext. 224
- Fax: 416-925-6332
- E-mail: info@denturists-cdo.com
- Mail: College of Denturists of Ontario
  - Attention: Complaints
  - 180 Bloor St. West, Suite 903
  - Toronto, ON M5S 2V6
- Website: www.denturists-cdo.com
DISCIPLINE

College of Denturists of Ontario
DISCIPLINE COMMITTEE

MISSION OF THE DISCIPLINE COMMITTEE

The Discipline Committee is responsible for hearing and determining allegations of professional misconduct or incompetence referred to it by the Inquiries, Complaints and Reports Committee. A Panel of the Discipline Committee considers each case and decides whether the allegations have been proven and if so, what penalty is appropriate.

The Discipline Committee is composed of every member of Council and at least one (1) or more members who are not members of Council.

REGULATED HEALTH PROFESSIONS ACT STATUTORY COMMITTEE

The Discipline Committee is a statutory committee under the Regulated Health Professions Act (RHPA), 1991.
PATIENT RELATIONS
College of Denturists of Ontario
PATIENT RELATIONS COMMITTEE

MISSION OF THE PATIENT RELATIONS COMMITTEE

The Committee’s mandate is to deal with all issues related to informing the public and the profession of various programs and activities of the College and their rights under the Regulated Health Professions Act, 1991. In addition, the Committee also administers the funding program for therapy and counselling for patients who have been sexually abused.

The Patient Relations Committee is composed of at least two (2) members of Council, at least two (2) public members who are a member of Council, and at least (1) or more members who are not members of Council.

REGULATED HEALTH PROFESSIONS ACT STATUTORY COMMITTEE

The Patient Relations Committee is a statutory committee under the Regulated Health Professions Act (RHPA), 1991.
CERTIFICATE OF AUTHORIZATION FOR A PROFESSIONAL CORPORATION POLICY

LESGISLATIVE REFERENCE: Regulated Health Professions Act, 1991

COLLEGE CONTACT: Executive Committee

As a result of amendments to the Regulated Health Professions Act, 1991 (the “RHPA”) (including regulations), the Health Professions Procedural Code and the Business Corporations Act (the “BCA”), denturists are permitted to incorporate for the purpose of practising denturism, providing they obtain Certificates of Authorization from the College of Denturists of Ontario (the “College”). The new provisions outline the conditions and requirements that must be met in order to obtain a Certificate of Authorization from the College, and include:

- All of the issued and outstanding shares of the corporation shall be legally and beneficially owned, directly or indirectly, by one or more members of the College, who hold a certificate of registration issued by the College.
- All officers and directors of the corporation must be shareholders of the corporation.
- The articles of the professional corporation must provide that the corporation cannot carry on a business other than the practice of denturism governed by the College and activities related to or ancillary to the practice of denturism.
- The name of the corporation must include the words "Professional Corporation" or "Société Professionnelle" and comply with the rules respecting the names of professional corporations set out in the regulations under the Act or by-laws governing denturism.

In order to obtain an initial Certificate of Authorization from the College, a corporation must complete and submit to the College an application, in a form approved by the College, along with certain information and documents as required by regulation.
GUIDE TO THE APPLICATION FORM

SECTION A: NAME AND ADDRESS OF CORPORATION

Corporate Name
The name of the corporation must meet the requirements set out in section 3.2 of the BCA and the regulation as follows:

- The corporation shall not have a number name.
- The corporate name must include the words "Professional Corporation" or "Société Professionnelle".
- The corporate name must include the surname of one or more shareholders of the corporation as the surname is set out in the College Register.
- The corporate name must also include the denturist shareholders’ given name, one or more of the denturist shareholders’ given names or initials or a combination of his or her given name and initials (i.e. John Doe Denturist Professional Corporation, J. Doe and P. Smith Denturists Professional Corporation, or Jane Doe Denture Clinic Professional Corporation.
- The corporate name must indicate the health profession practised, in this case denturism, by the shareholders.
- The corporate name must not include any information other than that permitted or required under the BCA or the regulation as outlined above.
- The corporate name must not violate the provisions of any other Act.

Practice Name
If the practice name (clinic name) is different from the corporate name, provide the name under which the corporation practices.

Business Address of the Corporation
This must be the actual corporate address of the corporation and not the address of the corporation’s legal counsel, or a virtual address.

SECTION B: COMPLETION OF APPLICATION
Complete each statement in this section as directed on the form, noting the following:

1. The denturist applying for a Certificate of Authorization on behalf of the corporation must hold a current certificate of registration with the College and be a director of the corporation.
2. Each shareholder of the corporation must hold a current certificate of registration as a denturist issued by the College.
3. Each director and officer must be a shareholder of the corporation.
4. The director applying on behalf of the corporation must sign and date the application.
5. The following documentation must accompany the application for a Certificate of Authorization:
   - A completed, dated and signed Undertaking (Section C) by all shareholders of
the corporation.

- A completed, dated and signed Statutory Declaration (Section D) by a director of the corporation executed not more than 15 days before the application is submitted.
- A Certificate of Status of the corporation issued by the Ministry of Consumer and Business Services not more than 30 days before the application is submitted to the Registrar, which indicates that the corporation is active.
- A certified copy of every Certificate of Incorporation for each corporation including their respective Articles of Incorporation that has been endorsed under the Business Corporations Act as of the day the application is submitted.
- The fee for the Certificate of Authorization in the amount of $1,130.00 (includes HST).

**SECTION C: UNDERTAKING**

Each shareholder of the corporation must sign and date the Undertaking which is to be submitted with the application for a Certificate of Authorization. Note that each shareholder must be listed in the application and must hold a current certificate of registration issued by the College.

**SECTION D: STATUTORY DECLARATION**

The statutory declaration must be completed, dated and signed by a director of the corporation. The statutory declaration cannot be executed more than 15 days before the application is submitted to the Registrar.

**RENEWAL**

The Certificate of Authorization must be renewed annually on or before April 15th of each year. Notice to renew the Certificate of Authorization will be sent by mail and is to be completed online.

**FEES**

As per the College By-Laws, the fee for an initial Certificate of Authorization is $1,130.00 (includes HST) and the fee for the annual renewal of a Certificate of Authorization is $395.50 (includes HST).

**SUBMISSION OF THE APPLICATION**

The application for a Certificate of Authorization must be submitted to the College Registrar, along with the required supporting documentation and fee to the following address:

Registrar
Attn: Professional Corporation
College of Denturists of Ontario
180 Bloor Street West, Suite 903
Toronto, ON M5S 2V6
CLINIC NAME APPROVAL POLICY

LEGISLATIVE REFERENCE: Denturism Act, Professional Misconduct 325/07

COLLEGE CONTACT: Executive Committee

As a practicing denturist, you need to get your clinic name approved by the CDO Executive prior to you registering your clinic name with the government. The only exception to this case would be you using your own name as recorded in the College Register e.g. “John Doe DD Denture Clinic”. When proposing a clinic name to the Executive Committee, please make sure that you have completed a name search. You should make a provincial business name search, and search your local Yellow Pages Directory to confirm the name is not already in use by a practitioner in your area. Please also note that the abbreviation is DD and not D.D.

In accordance to our standards of practice guidelines, it is required that the practicing denturist has his or her name posted on exterior signage (signage prior to entering the practice).

New owner of an existing clinic cannot use the name of the previous owner when the business is purchased or of the previous member deceased, but can advertise as “Formerly John Doe DD Denture Clinic”.

If the name represents a street name or geographical location, then you should be aware that you risk losing the name of the clinic when relocating. As the location name may not meet the Advertising criteria.

2. (1) A member shall not use a name or title other than his or her name as set out in the register in the course of providing or offering to provide denturist services, unless the name or title,

   (a) reasonably refers to and describes the location of the practice;
(b) has been approved by the Executive Committee; and
(c) is accompanied by the name of the member, as set out in the register. O. Reg. 854/93, s. 2 (1).
(2) When a member practises denturism in association or in partnership with one or more other members and uses a name or title approved under subsection (1), the member shall notify the College within thirty days of a change in the association or partnership.

The criteria for Clinic Name approval are:
    i) Shall not be perceived as superior (“better than...”).
    ii) Can be based on immediate geographic location.
    iii) Similar sounding names shall not be permitted within same municipality or proximity.
    iv) Shall not hold profession in disrepute.
    v) Shall not misrepresent themselves.
    vi) Is in keeping with our Advertisement Regulations.

If you are currently using a business name that is neither approved by the College of Denturists of Ontario nor registered with the Ontario government, you are vulnerable to having other professional members in your locale adopt your business name. If this was to occur and you lodged a complaint of professional misconduct, the College will not be able to pursue the complaint. **Do note that the College takes no responsibility for the name search nor the protection of your name title other than the placing of your name in the College Register.**
ADVERTISING & PROFESSIONAL DESIGNATIONS POLICY

APPROVED BY COUNCIL: Thursday, September 15, 2005

REVIEWED AND UPDATED: Amended September 8, 2008
Amended September 19, 2008
Amended March 5, 2009
Amended March 2, 2012

PUBLICATION DATE: March 22, 2012

COLLEGE CONTACT: Registrar

PURPOSE
This policy will set out the requirements for how and in what order denturists qualifications are to be conveyed in communications with the public, such as business cards and advertisements.

1. In this Part, “advertisement” means any advertisement, announcement or information related to the member’s practice or that of a health professional corporation which the member or a health professional corporation of which the member is an officer or shareholder has published, displayed, distributed or used or has caused or permitted, directly or indirectly, its publication, display, distribution or use.

2. Advertisements must include relevant information that is verifiable by and comprehensible to whom it is directed, including the member’s name and the name of the clinic, as approved by the Executive Committee, if different from the member's name as it appears in the register.

3. No advertisement shall include information that:
   a. Is false, misleading or deceptive including by omission or by making partial disclosure only;
b. Is not relevant to the public’s ability to make an informed choice;

c. Is not readily comprehensible to the persons to whom it is directed;

d. Is not verifiable by facts independent of personal feelings, beliefs, opinions or interpretations;

e. Creates false or unjustified expectations of favorable results or uses fear to motivate the reader;

f. Claims superiority over another practice or member.

4. All claims made in testimonials/endorsements must be true and verifiable.

5. Advertisements may refer to fees so long as the advertisements clearly states that fees and services may vary.

PROFESSIONAL DESIGNATION & TITLES

6. Professional Titles and Designations must be in chronological order as they were received based on the date of the certificate or diploma.

7. Registered Denturists are not allowed to use any professional title or a designation that does not appear in the College Register.

8. Proof of any titles or designations used must be provided to the College and approved by the College before appearing in the College Register.

9. Education history for each registrant will appear in the College Register.

10. Additional titles and designations must be from an accredited institution form the Country that the designation was received in.

11. If the designation was received in another country other than Canada the registrant must provide proof that the designation/profession is accredited in the Country that it was obtained in.

12. If the title or designation was received in another Country other than Canada the country must follow the title or designation in brackets and written in full. The only country abbreviations that will be accepted is UK or USA.

SAMPLES

<table>
<thead>
<tr>
<th>NAME</th>
<th>DESIGNATIONS</th>
<th>NAME WITH DESIGNATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. John Smith</td>
<td>Denturism Diploma June 2006</td>
<td>Mr. John Smith, DD</td>
</tr>
<tr>
<td>Ms. Sophia Davidson</td>
<td>Denturists Diploma May 1985</td>
<td>Ms. Sophia Davidson, RDH, DD</td>
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<td>Dental Hygiene Diploma May 1980</td>
<td></td>
</tr>
<tr>
<td>Mr. Jack Simpson</td>
<td>Denturists Diploma May 1995</td>
<td>Mr. Jack Simpson, B.Sc, DD</td>
</tr>
<tr>
<td></td>
<td>Bachelor of Science May 1990</td>
<td></td>
</tr>
</tbody>
</table>
Mr. Paul Frank  
Denturists Diploma May 1982  
Bachelor of Science May 1974  
Registered Dental Technician since May 1978

Mr. Peter Lawrence  
Denturists Diploma May 2007  
Doctorate in Dentistry April 1980 - India

NOTE:
Please note that according to the Regulated Health Profession Act no one can call themselves a Doctor unless they are registered with one of the following Colleges:
(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.

REGULATED HEALTH PROFESSIONS ACT
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).
CONTINUING EDUCATION POLICY

APPROVED BY COUNCIL: March 2, 2012

REVIEWED AND UPDATED: December 14, 2012

PUBLICATION DATE: March 22, 2012 & December 19, 2012 (Updated)

LESGISLATIVE REFERENCE: Regulated Health Professions Act, 1991: 26(3), 80(1), 80(2), 94(1.3), 94(1.4), 95(2)
Denturism Act, General Regulation 206/94

COLLEGE CONTACT: Quality Assurance Committee

The Regulated Health Professions Act, 1991, mandates that each college, including the College of Denturists of Ontario, includes continuing education as part of its Quality Assurance Program. The components of this College’s Quality Assurance Program are set out in s. 10 of Ontario Regulation 206/94.

The College is required to have a Quality Assurance Program that includes (but is not limited to) self-evaluation and practice assessment and enhancement. The Quality Assurance Committee has created the continuing education as part of the self-evaluation program and, if necessary, to assist with the practice enhancement requirements.

Members are required to self-evaluate their areas of strength and need for professional development and then are expected to maintain currency of their professional knowledge by successfully completing continuing education courses. This is monitored by a yearly reporting and a five-year reporting cycle basis.
ABOUT THE PROGRAM
The College’s members are in a five-year reporting cycle, whereby the members are expected to obtain a minimum of one hundred (100) hours of continuing education in a five-year cycle. As well, members are expected to obtain a minimum of ten (10) hours of continuing education each calendar year.

CONTINUING EDUCATION POLICY
The College’s Continuing Education Policy provides members with guidelines and rules related to the program. The College does not require all courses to be pre-approved. Instead, members are directed to self-manage their continuing education. Please refer to the Continuing Education Program (available on the College's website) for information regarding qualifying continuing education credit hours.

The College requires that all members submit with their annual renewal all continuing education hours completed. Members must maintain evidence related to their reported continuing education to demonstrate validity of their activities, if requested.

FAILING TO DEMONSTRATE SATISFACTORY EFFORTS TO MAINTAIN KNOWLEDGE, SKILLS AND JUDGMENT
The Committee may appoint an assessor or assessors to assess and verify that the member has properly completed the self-evaluation and carried out training, educational and other quality improvement activities to a level sufficient to ensure that the member's knowledge, skills and judgment are satisfactory. Where a member has not engaged in sufficient activities (e.g., not adequately pursued training, education and other quality improvement activities), the assessor may recommend to the Committee that the member undergo a practice assessment.

The Committee may appoint an assessor to conduct a practice assessment. After reviewing the report of the assessor, the Committee may decide to not take any further action or may require the member to participate in an enhancement program. As per the Regulation, an enhancement program means an education program, whether delivered by lecture, mentoring, self-study with examination or other similar means designed to improve a member's knowledge, skills or judgment as exhibited by clinical performance.
CONSENT TO TREATMENT POLICY

APPROVED BY COUNCIL: March 2, 2012

REVIEWED AND UPDATED:

PUBLICATION DATE: March 22, 2012

LESGISLATIVE REFERENCE: Health Care Consent Act, 1996; Ontario Regulation 854/93

COLLEGE CONTACT: Quality Assurance Committee

PURPOSE
The purpose of this document is to clarify when and how Denturists can obtain a patient’s consent to treatment and what constitutes consent.

UNDERLYING PRINCIPLES
1. The best interests of the patient are central to all denturists - patient interactions.
2. Respect for the autonomy and personal dignity of the patient is central to the provision of ethically sound patient care. Through the translation of these ethical principles to law, the Supreme Court of Canada has confirmed the fundamental right of the individual to decide which medical interventions will be accepted and which will not.
3. In order to exercise their autonomy, patients must be capable of making informed decisions about their dental health care.
4. The goals of the Health Care Consent Act (HCCA) include promoting individual autonomy and decision-making capacity, and facilitating communication between health care practitioners and their patients.
5. Denturists have the obligation to secure consent and patients have the legal right to either consent to or refuse treatment.
DUTIES
The duties set out below are codified in the Health Care Consent Act (HCCA). This document does not summarize the Act in its entirety and Denturists are encouraged to consult the Act in order to familiarize themselves with all the legislative provisions. The HCCA sets out the specific requirements for obtaining consent for treatment, and in particular addresses situations where the client is incapable of providing consent, and a substitute decision maker is required.

Briefly, the following must occur when a Denturist proposes a treatment:

• The Denturist determines if a patient is capable of consenting. If the patient is capable, the Denturist must provide information about the treatment. The patient either provides consent or refuses the treatment. If the patient consents, then the Denturist proceeds with the treatment until the patient’s capacity changes or the treatment changes.
• If the patient is determined to be incapable, then the Denturist must identify the substitute decision-maker, and go through the same process to obtain consent.
• Patients may withdraw consent to a treatment at any time, and this must immediately be respected by the Denturist.

A practitioner can only administer treatment without consent in emergency situations. There is an emergency if the person is experiencing severe suffering or is at risk of sustaining serious bodily harm if the treatment is not administered promptly. An examination or diagnostic procedure that is a treatment may be conducted without consent if it is reasonably necessary to determine if there is an emergency.

• It does not include the following activities in the definition of treatment:
  • the assessment of capacity or the general assessment of the client’s condition;
  • the taking of a health history;
  • the communication of the assessment findings;
  • a personal assistance service; or, a treatment that poses little or no risk of harm to the client.
• Even though the above noted activities are outside the definition of treatment in the HCCA, it is the College’s expectation that denturists will obtain consent for any client interaction, specifically assessment and treatment.

DETERMINING CAPACITY
A person has capacity if that person is capable of consenting to treatment. The person must be able to understand the information that is relevant to making a decision about the treatment and must be able to appreciate the reasonably foreseeable consequences of a decision or a lack of decision.

A Denturist must determine that a patient is capable of giving consent and must obtain consent from a patient before providing treatment. A Denturist is entitled to assume that a patient is capable of giving consent unless there are reasonable grounds to believe
otherwise. For example, there could be something in a patient’s history or behaviour that would make a Denturist question the patient’s capacity to consent. But, if a patient knows who they are, where they are, what is being proposed, and the consequences of the decision they are being asked to make, it is likely safe for a Denturist to rely on the presumption that the patient is capable.

Capacity is not static – it can change over time and be different depending on the nature and complexity of the specific treatment decision. What is being determined is whether the patient has the ability to understand the nature and effect of the treatment being proposed, not the “global” capacity of the person.

Two things can trigger the consent to treatment process:
1. when a treatment is proposed or there is going to be a change in the treatment, and
2. there is a change in the person’s ability to understand the nature and effect of the treatment.

A patient who is capable of providing consent is also capable of withdrawing consent to the treatment. The policy also explains what a Denturist must do if he or she determines that a patient is incapable. This is discussed in detail below.

MINORS
The Act does not identify an age at which minors may exercise independent consent for health care because the capacity to exercise independent judgment for health care decisions varies according to the individual and the complexity of the decision at hand. Denturists must make a determination of capacity to consent for a child just as they would for an adult.

ELEMENTS OF CONSENT
Four conditions, which are explained in detail below, must be present in order for consent to treatment to be valid:
1. CONSENT MUST BE RELATED TO TREATMENT
   Subsection 2 (1) of the HCCA sets out the definitions which apply to consent to treatment.
   ‘Treatment’ is “anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health-related purpose, and includes a course of treatment, plan of treatment or community treatment plan...”
   ‘Course of treatment’ is “a series or sequence of similar treatments administered to a person over a period of time for a particular health problem.”
   ‘Plan of treatment’ is “a plan that,
   a) Is developed by one or more health practitioners,
   b) deals with one or more of the health problems that a person has and may, in addition, deal with one or more of the health problems that the person is likely to have in the future, given the person’s current health condition, and
   c) Provides for the administration to the person of various treatments or courses of treatment and may, in addition, provide for the withholding or
withdrawal of treatment in light of the person’s current health condition.”
‘Community treatment plan’ is defined in the Mental Health Act and is a
“plan that is a required part of a community treatment order.”

Although the Act contains exceptions to the definition of “treatment,” the College
advises Denturists to obtain consent for all Denturist-patient interactions. For many
of these interactions, a Denturist can have the patient sign a Consent to Treatment
Plan. Unless it is unreasonable to do so in the circumstances, a Denturist may presume
that consent to treatment includes consent to variations or adjustments in the
treatment, and to the continuation of the same treatment in a different setting
unless there is significant change in the expected benefits, material risks or material
side effects.

2. CONSENT MUST BE INFORMED Consent is not valid unless it is informed. A
Denturist must provide a patient with information about the nature of the
treatment, its expected benefits, its material risks and side effects, alternative
courses of action and the likely consequences of not having the treatment. A
Denturist should not assume that a patient has sufficient background or may not be
interested in the information. Without full information, the patient does not have
sufficient background to make informed health care decisions and consent may not be valid.
If the patient requests additional information, he or she must receive a response.

3. CONSENT MUST BE VOLUNTARY
Consent cannot be given under duress. The patient must be acting for him or herself.
If a Denturist believes otherwise, they should ensure that there has been no
coercion.

4. CONSENT MUST NOT BE OBTAINED THROUGH FRAUD OR MISREPRESENTATION
In conveying the information about the treatment to a patient, a Denturist must be
frank and honest.

EVIDENCE OF CONSENT
Although the Act states that consent to treatment may be express or implied. Denturists are
advised to obtain a signed Consent to Treatment plan by the patient. Denturists should be
aware that the critical element of the consent process is the information given to the
patient by the Denturist. Signed consent forms are simply documentary confirmation that
the consent process has been followed, and the patient has agreed to the proposed
treatment. Denturists are advised to note in the patient’s record that consent has been
obtained by noting what went into the decision-making process. Likewise, Denturists
should note in the patient’s record if the patient has refused consent and the discussion
that took place.

INCAPABLE PATIENTS
If the Denturist determines that a patient is incapable of consenting to a treatment, the
Denturist must identify and obtain consent from an appropriate substitute decision maker. The HCCA sets out the following hierarchy of individuals/agencies who may give or refuse consent:

1. An official guardian appointed by the courts
2. Attorney for personal care
3. Representative appointed by Consent and Capacity Board
4. A spouse, partner or relative in the following order
   a. spouse or partner;
   b. child if 16 years or older or the custodial parent;
   c. parent who has only a right of access;
   d. brother or sister; or
   e. any other relative.
5. Public Guardian and Trustee

The highest-ranking person on this list, if available, capable and willing, is the substitute decision-maker for the incapable person. If there is disagreement between persons described in the same paragraph, which cannot be resolved, then the Public Guardian and Trustee may be called upon to make the decision.

A Denturist must provide the substitute decision-maker with the information that would otherwise have been given to the patient to enable him or her to make an informed decision as to consent.

The substitute decision-maker must make a decision which complies with the most recent wish expressed by the person, while capable, if the following criteria are met: the person was at least 16-years-old at the time; the wish applies to the circumstances; and it is not impossible to comply with the wish. In other words, the substitute decision maker must reflect on what the patient, if capable, would have wanted. At times, this decision will be extremely difficult and the Denturist may be able to help the substitute decision-maker.

In the event the substitute decision-maker does not know of any wish that meets these criteria, he or she must act in the incapable person’s best interests. A number of factors must be considered, including the following: any values and beliefs the incapable person held while capable; any wishes the incapable person expressed that are not binding according to the above criteria; and the nature and likely effects of both providing and withholding the proposed treatment. A Denturist must consider whether the substitute decision-maker is complying with the principles set out in the HCCA. If a Denturist is of the view that the substitute decision maker is not acting in accordance with the HCCA, he or she can call the Office of the Public Guardian and Trustee.

Even when there is a substitute decision-maker, a Denturist must still involve the patient.

The College advises the Denturist to take the following steps:

1. Tell the incapable patient that a substitute decision-maker will assist the patient in understanding the proposed treatment and will be responsible for making the final decision.
2. Involve the incapable patient, to the extent possible, in discussions with the substitute decision-maker.

3. If the patient disagrees with the need for a substitute decision-maker, or disagrees with the involvement of the present substitute, the Denturist must advise the patient of his or her options. These include finding another substitute of the same or more senior rank, and/or applying to the Consent and Capacity Board for a review of the finding of incapacity.

4. Reasonably assist the patient if he or she expresses a wish to exercise the options outlined above in paragraph 3. The person’s behalf will prolong the person’s suffering or will put the person at risk of sustaining serious bodily harm.

**PROFESSIONAL MISCONDUCT**

Under the regulations to the Denturism Act, certain activities can be considered grounds of professional misconduct.
CRIMINAL RECORD SCREENING POLICY

APPROVED BY COUNCIL: March 2, 2012

REVIEWED AND UPDATED:

PUBLICATION DATE: March 22, 2012

COLLEGE CONTACT: Registration Committee

PURPOSE
The purpose of this policy is to clarify the College’s responsibility, as part of its fiduciary duties to the public, to ensure all of Ontario denturists and applicants for certificates of registration to practice denturism in Ontario in order to enhance the safety of the health care environment. The College’s mandate is to protect the public by attempting to ensure that only competent, safe and ethical practitioners are registered. Criminal convictions call into question an applicant’s character, fitness to practice and actual or potential danger to the public.

UNDERLYING PRINCIPLES
1. The Council of the College of Denturists of Ontario affirms that all Ontario citizens have the right to receive and/or provide health care in a safe environment, free from intrusions or threats to their dignity or person. This right applies equally to members of the public, denturists and allied health professionals.

2. While acknowledging the fact that the majority of denturists providing health services in Ontario have not and will not intentionally harm those in their care, or with whom they provide services, the Council asserts that as part of its legislated mandate to regulate denturists in the public interest, its duty is to help ensure the safety of all participants in the health sector.
3. The Council further acknowledges that the results of a criminal record clearance are not predictive of future behaviour, and they cannot guarantee the good character of a denturist or whether he or she might pose a future safety risk. Nevertheless, the Council endorses the criminal record clearance policy as part of its efforts to promote the safety and quality of the health care environment.

4. The Council supports the principles of openness and accountability. Criminal record clearance provides official confirmation of information already self-reported by denturists on CDO applications for certificates of practice, and on the annual information return. This official confirmation of current practices enhances the transparency of College processes and the accountability of the College and the profession.

**COLLEGE POLICY**

**New Applicants**

It is a requirement for registration as a Denturists with the College that all applicants for registration must have a criminal record screen completed, including records or discharges which have not been removed from the CPIC system in accordance with the Criminal Records Act and a report of the results must be submitted to the College with the application for registration.

The costs conducting the criminal record screen will be borne by the applicant.

This screen must be done by running a criminal record check against the Canadian Police Information Centre (CPIC) computerized database which is operated by the RCMP. The CPIC report must have been conducted no more than six months before the date of application.

The full name listed on the application form must match the name appearing on the criminal record check report. The report must also indicate that a search was completed on all names the applicant is currently using or has used (i.e. maiden name).

If the report indicates a criminal record, applicants are required to submit sufficient documentation regarding the criminal charge for an assessment.

The above would also affect the following:

- Suspended Denturists requiring reinstatement
- Revoked Denturists requiring reinstatement
- Resigned Denturists applying for registration
- Retired Denturists applying for registration
- Change of Status Applications
- Denturists transferring from another province under labor mobility
Registered Denturists
All registered denturists regardless of registration status must make an offence declaration on their annual registration renewal.

If the declaration indicates a criminal record, applicants are required to submit sufficient documentation regarding the criminal charge to the Registration Committee for an assessment.

ASSESSMENTS OF POSITIVE REPORTS
1. An applicant or registrant with one or more criminal conviction is required to provide sufficient documentation to the Registrar and the Registration Committee including but not limited to:
   a. Court transcripts and proceedings, particularly sentencing transcripts.
   b. Parole Officer's report.
   c. Probation Officer's report.
   d. The circumstances of the charge or conviction and particulars of the offence.
   e. Efforts made at rehabilitation, likelihood of recurrences, and accomplishments since the offence.
   f. Length of time since the offence occurred.
   g. An updated criminal record check completed within three months of the application.
   h. Any other documentation requested by the Registrar, including fingerprint records.

2. In determining the applicant's eligibility for registration if they have a criminal record, the Registrar or Registration Committee must consider:
   a. The nature of the behavior for which the conviction was made, and any possible threat to patient safety - at the time of application for registration, not at the time of the offence.
   b. The ability of the applicant to provide health care services safely, competently and ethically.
   c. Any matters that may affect the applicant's fitness to practice and the College's actions in the public interest.

3. The Registrar may approve applicants with criminal convictions in the following situations:
   a. The conviction results from a single offence.
   b. The conviction occurred more than four years prior to the application.
   c. There are no outstanding conditions such as completion of sentence, probationary period, license suspension, etc. Applicants still bound by a Court Order (e.g. probation) will not be considered until their sentence is fully satisfied.
   d. The applicant provides satisfactory references, supported by documentation of rehabilitation efforts and accomplishments since the events occurred.
   e. There are no special circumstances warranting the attention of the Registration Committee.
4. Applicants with criminal convictions in addition to those noted above will be encouraged (but due to the wording of the health disciplines legislation, cannot be compelled) to appear before the Registration Committee in person. The Committee will determine:
   a. Whether the applicant will or will not be registered with the College.
   b. Whether any conditions or restrictions should be placed on the registration and/or registration renewal.
   c. Whether to report the matter to the College or another health professional regulatory college's Complaints, if the criminal conviction was related to previous practice as a registrant, and/or
   d. Whether to deny the registration, renewal or registration and/or practice permit due to a real or potential risk to public safety.

5. The Registrar and/or the Registration Committee may become aware that an applicant has intentionally provided false or misleading information, or that there has been a previous failure to disclose criminal convictions on the registration application or renewal forms.

6. Depending upon the circumstances, the applicant may be denied registration for a period specified by the Registration Committee.

PRIVACY
Information regarding criminal records will be held in strict confidence by the College and not made public unless it is the result of disciplinary action taken by the College.

FREQUENTLY ASKED QUESTIONS
What are the consequences for making false statements on the Offence Declaration on my annual renewal?
Arbitrators will likely consider falsifying an Offence Declaration as grounds for discipline. Depending on the circumstances, doing so could result in revocation of license.

What is not considered a Criminal Code conviction?
Members are not required to disclose any information regarding investigations, charges, peace bonds, convictions for which pardons have been granted, conditional or absolute discharges, or information related to convictions under legislation other than the Criminal Code of Canada. For example, convictions under the Highway Traffic Act, the Customs Act or the Food and Substance Act are not included in the regulation and need not be reported. Members do not have to divulge Criminal Code offences for which they were convicted as young offenders. A copy of the criminal code can be found here: http://laws-lois.justice.gc.ca/eng acts/C-46/. If you have any further questions please contact the College or your lawyer.

What is the difference between a Criminal Background Check and an Offence Declaration?
A Criminal Background Check contains an employee’s personal criminal history and is prepared by police using national data from the Canadian Police Information Centre (CPIC). Only new applicants are required to submit a criminal background check. An Offence Declaration is a form completed by the individual denturists that lists any Criminal Code convictions for which a pardon has not been granted on their annual registration renewal.

Why does the College require denturists to provide an Offence Declaration.
The College of Denturists of Ontario began to collect criminal background checks as of January 1, 2011. There has always been a requirement for members to submit a offence declaration annually.

What happens if I don’t want to participate in this?
Participation in the Criminal record check of office declaration is NOT optional. If you do not complete it, your registration will be suspended and you will not be able to practice as a Registered Denturists in the province of Ontario.

I am an inactive, non-practicing registrant. Do I have to complete this?
Yes. This policy applies to all registrants in the province of Ontario regardless of your registration status.

INSTRUCTIONS FOR OBTAINING A CPIC CRIMINAL RECORD CHECK
- Submit to the College a valid clearance letter or certificate from a municipal or provincial police service in Canada (as listed in the CPIC National Directory at www.cpic-cipc.ca).
- Ensure your CPIC check covers convictions and current charges – both are required. Please check this with the police service. Some (e.g. London police service) do not include current charges in their basic check.
- Original is required. Must be on police service letterhead and contain original signature(s) and date of issuance.
- A vulnerable sector search is not required.
- CPIC results are valid for six months from date of issue and must be updated if necessary.
- You are responsible for any fee charged by the police service. The College cannot reimburse this fee.
- Some municipal police services will conduct checks only for local residents. If necessary, refer to the CPIC National Directory to locate a Canadian police service that will conduct your check.
- NOTE: Online Checks by Commercial Vendors are NOT accepted.

PARDONS
If a member has a criminal conviction under the Criminal Code, that member may want to consider applying for a pardon, particularly if the conviction occurred some time ago. A pardon is recognition of good conduct. The granting of a pardon by the National Parole Board, under the Criminal Records Act, means that any federal agency or department that
has records of convictions must keep those records separate and apart from other criminal records. The information will be removed from the Canadian Police Information Centre (CPIC) computer system. Once a person has been pardoned, information about the conviction may not be given out without the approval of the Solicitor General of Canada. The pardon application process is lengthy.

Details of how to obtain a pardon are set out in the National Parole Board’s Pardon Application Guide available from the National Parole Board at [www.npb-cncl.gc.ca/pardons/servic_e.htm](http://www.npb-cncl.gc.ca/pardons/servic_e.htm) or at 1-800-874-2652.
NIGHTGUARDS/BRUXISM GUARDS POLICY

APPROVED BY COUNCIL: March 1, 2013

REVIEWED AND UPDATED:

PUBLICATION DATE: June 6, 2013

LEGISLATION REFERENCES: Regulated Health Professions Act, 1991: Denturism Act

COLLEGE CONTACT: Quality Assurance Committee

CDO POSITION

1. Providing and fitting of nightguards/bruxism guards does not fall within the current scope of practice or authorized act for Denturists in Ontario.

2. Denturists in Ontario who provide or fit these devices to their clients are acting outside the permitted scope of practice and the authorized act for denturism in Ontario.

RATIONALE

Scope of Practice
The current scope of practice for denturists in Ontario is defined in the Denturism Act as:

"The practice of denturism is the assessment of arches missing some or all teeth and the design, construction, repair, alteration, ordering and fitting of removable dentures"
Accordingly, fabricating/dispensing/providing night guards or bruxism guards does not fall within the current scope of practice for denturists in Ontario.

**CONTROLLED/AUTHORIZED ACTS**

The sole controlled act authorized to denturists in Ontario is defined in the Denturist Act as:

"In the course of engaging in the practice of denturism, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to fit and dispense removable dentures"

The current authorized act does not include the fitting or dispensing of devices other than removable dentures.

A controlled act does exist in the RHPA that would, in the College's opinion appear to include these products (which are used inside the mouth to protect teeth from abnormal functioning). This is in accordance with the following controlled act in Ontario:

"Fitting or dispensing a dental prosthesis, orthodontic or periodontal appliance or a device used inside the mouth to protect teeth from abnormal functioning"

Night guards and bruxism guards protect the teeth from abnormal functioning and it is clear that denturists in Ontario are not authorized to perform this controlled act.

**CONCLUSION**

The College's position, consistent with that previously taken, is that fitting or dispensing night guards/bruxism guards is a controlled act that is not currently authorized to denturists in Ontario. Accordingly, denturists who fit or dispensed these devices are acting outside the permitted scope and controlled act authorized to denturists in Ontario.
INTRODUCTION
Good medical record keeping is part of providing the best quality of medical care. Denturists are obligated to make records for each of their patients. The primary use of these records is for the treating denturists and other health care professionals to ascertain the patient’s medical history and identify problems or patterns that may help determine the course of dental health care that should follow. In addition, good records can help optimize the use of resources, both financial and human, by reducing duplication of services. They may also provide information essential to others for a wide variety of purposes: billing; research; and response to public complaints, legal proceedings or insurance claims, for example. Some of the elements of the guidance provided below are mandatory: either required by law, or expected by the College as a minimum practice standard. Wherever this is the case, the policy will explicitly indicate that adherence is obligatory. Other components of the policy are offered as recommendations as to the best means of providing patients with quality dental care. The ultimate objective of the policy is to set out what must be kept in medical/dental records and to provide denturists with a tool that will permit them to maintain a record keeping system that is functional, practical and easy to maintain.

TYPES OF RECORDS TO BE MAINTAINED
1. (1) A member shall, in relation to his or her practice, take all reasonable steps necessary to ensure that records are kept in accordance with this regulation.
   (2) Patients Records must be kept either by hardcopy or computerized.
2. A legible daily appointment record shall be kept that sets out the name of each patient who the member examines or treats or to whom the member renders any service.

3. (1) A financial record shall be kept for each patient.
   (2) The financial record must contain:
   • date of service;
   • services billed;
   • payment received; and
   • balance of account

HEALTH RECORD INFORMATION
4. (1) A patient health record shall be kept for each patient.
   (2) The patient health record must include the following:
   • the patient's name, address, telephone number, and birth date;
   • the date of each of the patient's visits to the member;
   • the name and address of the treating denturists;
   • the name of the primary care physician and any referring health professional;
   • dental and relevant medical history of the patient;
   • any medication that the patient is currently taking;
   • reasonable information about every examination performed by the member and reasonable information about every clinical finding and assessment made by the member;
   • reasonable information about every referral made by the member for examinations, tests, consultations, or treatments to be performed by any other person;
   • every written report received by the member with respect to examinations, tests, consultations or treatments performed by other health professionals;
   • reasonable information about every referral of the patient by the member to another health professional;
   • reasonable information about all advice given by the member to the patient;
   • reasonable information about every fee or other amount charged by the member;
   • reasonable information about a procedure that was commenced but not completed, including reasons for non-completion; and
   • a copy of every written consent, which shall be fully informed, voluntarily given, evidenced in a written form signed by the patient or otherwise documents in the patient’s record, and not obtained by fraud or misrepresentation.

(3) Despite subsection 4-(2), if the only service a member provides is a repair of a denture that the member did not fabricate, the records for the repair need only contain,
   a. the patient’s name, address, telephone number, and birth date;
b. the date and nature of the repair;
c. the date of each of the patient’s visits to the member;
d. the name of the treating denturists;
e. reasonable information about all advice given by the member to the patient; and
f. reasonable information about every fee or other amount charged by the member.

(4) Every part of a patient dental health record must have a reference identifying the patient or the patient health record.

(5) Every entry in a patient dental health record shall be dated, and the identity of the person who made the entry must be identifiable.

RECORDS RETENTION
5. Subject to section 6, every patient health record and every financial record shall be retained for at least seven (7) years following the patient’s last visit.

MEMBER RESIGNATION
6. It is an act of professional misconduct for the purpose of clause 51 (1) (c) of the Regulated Health Professions Act for a member to fail to take reasonable steps before resigning as a member, to ensure that for each patient health record for which the member has primary responsibility:
   • The record is transferred to another member and reasonable efforts are made to obtain the consent of the patient; or
   • The patient is notified that the member intends to resign and the patient can obtain copies from the patient health record.

CONFIDENTIALITY OF ACCESS TO RECORDS
7. (1) The following are acts of professional misconduct for the purpose of clause 51 (1) (c) of the Health Professions Procedural Code:
   • allowing any person to examine a patient dental health record or giving any information, copy or thing from a patient dental health record to any person except as required by law or as required or allowed by this section; and
   • failing to provide copies from or access to a patient dental health record for which the member has primary responsibility, as required by this section.

(2) A member shall provide, on request, copies from or access to a patient’s dental health record for which the member has primary responsibility to any of the following persons:
   • the patient;
   • a person representative authorized by the patient to obtain copies from or access to the record;
   • if the patient is deceased, the patient’s legal representative;
• if the patient lacks capacity to give an authorization described in paragraph 2, a committee of the patient appointed under the Mental Incompetency Act;
• a person to whom the patient is married and living in a conjugal relationship;
• a person of the opposite or same sex with whom the patient is living in a conjugal relationship outside marriage if the patient and the person have cohabited for at least one year; are together the parents of a child; or have together entered into a co-habitation agreement under section 53 of the Family Law Act;
• the patient’s son or daughter;
• the patient’s parents.

(3) Despite subsection 2, a member is not require to provide copies from or access to a patient dental health record if the member is of the opinion that disclosure of the dental health record would likely result in,
• serious harm to the care of the patient; or
• serious physical or emotional harm to the patient or another person.

(4) Where the member has primary responsibility for a patient dental health record, the member shall, at the request of the patient, cause a correction to be made to the patient’s dental health record or attach a statement of disagreement reflecting the correction requested but not made.

(5) The member shall give notice of every correction made and statement of disagreement attached to a patient dental health record to every person and organization to whom the record was disclosed during the 12 months preceding the day the correction was requested.

(6) It is not an act of professional misconduct under paragraph (b) of subsection (1) for a member to refuse to provide copies from or access to a patient dental health record until the member is paid a reasonable fee.

(7) It is not an act of professional misconduct under paragraph (b) of subsection (1) for a member to provide copies from or access to a patient dental health record to his/her legal counsel or insurer where the patient dental health record is relevant to advice being sought by the member or required by the member's policy of insurance.

(8) A member may provide copies from or access to a patient dental health record for which the member has primary responsibility to any person authorized by a person to whom the member is required to provide copies or access under subsection (2).

(9) A member may, for the purpose of providing dental care or assisting in the provision of dental care to a patient, allow a health professional to examine the patient health record or give a health professional any information, copy or thing from the record.
(10) A member may provide information or copies from or access to a patient health record to a person if,

- the information or copies are to be used for health administration, planning, health research or epidemiological studies; or
- the use of the information or copies is in the public interest as determined by the Minister; and
- anything that could identify the patient is removed from the information or copies.

**ELECTRONIC EQUIPMENT**

8. (1) Where in this Regulation a notation, report, record, order, entry, signature or transcription is required to be entered, prepared, made, written, kept or copied, the entering, preparing, making, writing, keeping or copying may be done by electronic or optical means or a combination thereof.

(2) The member shall take reasonable steps to ensure that the electronic or optical means referred to in subsection (1) are so designed and operated that the notation, report, record, order, entry, signature or transcription is secure from loss, tampering, interference or unauthorized use or access.

(3) Electronic charting needs to be backup on a regular basis.
LEGISLATION
& BY-LAWS

COLLEGE OF DENTURISTS OF ONTARIO
REGULATED HEALTH PROFESSIONS ACT, 1991
Regulated Health Professions Act, 1991

S.O. 1991, CHAPTER 18

Consolidation Period: From April 1, 2013 to the e-Laws currency date.


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Interpretation

1. (1) In this Act,

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

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

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

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

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

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

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

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

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

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

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

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

Hearing not required unless referred to

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

Administration of Act

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

Duty of Minister

3. It is the duty of the Minister to ensure that the health professions are regulated and 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).

**College supervisor**

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

**Factors to be considered**

(2) In deciding whether to make a recommendation under subsection (1), the Minister may consider any matter he or she considers relevant, including, without limiting the generality of the foregoing,

(a) the quality of the administration and management, including financial management, of the College;

(b) the administration of this Act or the health profession Act as they relate to the health profession; and

(c) the performance of other duties and powers imposed on the College, the Council, the committees of the College, or persons employed, retained or appointed to administer this Act, the health profession Act, the *Drug and Pharmacies Regulation Act* or the *Drug Interchangeability and Dispensing Fee Act*. 2009, c. 26, s. 24 (2).

**Notice**

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

**Review of submissions**

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

**Term of office**

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

**Powers of College supervisor**

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

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

Additional powers of College supervisor

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

Right of access

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

Report to Minister

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

Minister’s directions

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

Directions to be followed

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

Fair Access to Regulated Professions Act, 2006 not applicable

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

Ontario Labour Mobility Act, 2009 not applicable

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

Reports

Annual report

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

(2) REPEALED: 2007, c. 10, Sched. M, s. 2 (1).

Audited financial statement

(3) Each College’s annual report shall include an audited financial statement. 1998, c. 18, Sched. G, s. 2 (2).

Content and form

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

Minister may publish information

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

No personal information

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

Additional audits

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

Auditor to submit results

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

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

Composition

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

Chair and vice-chair

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

Qualification of members

8. A person may not be appointed as a member of the Advisory Council if the person,

(a) is employed under Part III of the Public Service of Ontario Act, 2006 or by a Crown agency as defined in the Crown Agency Act; or

(b) is or has been a member of a Council or College. 1991, c. 18, s. 8; 2006, c. 35, Sched. C, s. 116 (1).

Terms of members

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

Replacement members

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

Reappointments

(3) Members of the Advisory Council are eligible for reappointment. 1991, c. 18, s. 9 (3).

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

Remuneration and expenses

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

Duties of the Advisory Council

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

Matters that may be referred

(2) The matters that the Minister may refer to the Advisory Council are,

(a) whether unregulated professions should be regulated;

(b) whether regulated professions should no longer be regulated;

(c) suggested amendments to this Act, a health profession Act or a regulation under any of those Acts and suggested regulations under any of those Acts;

(d) matters concerning the quality assurance programs undertaken by Colleges;

(e) each College’s patient relations program and its effectiveness; and

(f) any matter the Minister considers desirable to refer to the Advisory Council relating to the regulation of the health professions. 2009, c. 26, s. 24 (4).

Referrals to the Advisory Council

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

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

Form and manner

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

Notice of amendments to Councils

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

Submissions to Advisory Council

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

Function is advisory only

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

Procedure

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

Idem

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

Employees

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

Experts

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

Secretary

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

Duties

(2) The Secretary’s duties are,

(a) to keep a record of matters that the Minister has referred to the Advisory Council;

(b) to have the custody and care of the records and documents of the Advisory Council;

(c) to give written notice of suggested amendments to this Act, a health profession Act or a regulation under any of those Acts and suggested regulations under any of those Acts that have been referred to the Advisory Council to persons who have filed, with the Secretary, a request to be notified; and

(d) to carry out the functions and duties assigned by the Minister or the Advisory Council. 1991, c. 18, s. 17.

HEALTH PROFESSIONS BOARD


Investigations and expert advice


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).


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.

11. Fitting or dispensing a dental prosthesis, orthodontic or periodontal appliance or a device used inside the mouth to protect teeth from abnormal functioning.

12. Managing labour or conducting the delivery of a baby.

13. Allergy challenge testing of a kind in which a positive result of the test is a significant allergic response. 1991, c. 18, s. 27 (2); 2007, c. 10, Sched. L, s. 32.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by the Statutes of Ontario, 2007, chapter 10, Schedule R, subsection 19 (1) by adding the following paragraph:

14. Treating, by means of psychotherapy technique, delivered through a therapeutic relationship, an individual’s serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual’s judgement, insight, behaviour, communication or social functioning.


Exemptions

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

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

Same

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


Delegation of controlled act

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

Idem

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

Exceptions

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

(a) rendering first aid or temporary assistance in an emergency;

(b) fulfilling the requirements to become a member of a health profession and the act is within the scope of practice of the profession and is done under the supervision or direction of a member of the profession;

(c) treating a person by prayer or spiritual means in accordance with the tenets of the religion of the person giving the treatment;

(d) treating a member of the person’s household and the act is a controlled act set out in paragraph 1, 5 or 6 of subsection 27 (2); or

(e) assisting a person with his or her routine activities of living and the act is a controlled act set out in paragraph 5 or 6 of subsection 27 (2).

Counselling

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

Treatment, etc., where risk of harm

30. (1) No person, other than a member treating or advising within the scope of practice of his or her profession, shall treat or advise a person with respect to his or her health in circumstances in which it is reasonably foreseeable that serious
bodily harm may result from the treatment or advice or from an omission from them. 1991, c. 18, s. 30 (1); 2007, c. 10, Sched. M, s. 6.

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

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

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

Exceptions
(5) Subsection (1) does not apply with respect to anything done by a person in the course of,
(a) rendering first aid or temporary assistance in an emergency;
(b) fulfilling the requirements to become a member of a health profession if the person is acting within the scope of practice of the profession under the supervision or direction of a member of the profession;
(c) treating a person by prayer or spiritual means in accordance with the tenets of the religion of the person giving the treatment;
(d) treating a member of the person’s household; or
(e) assisting a person with his or her routine activities of living. 1991, c. 18, s. 30 (5).

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

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

Dental devices, etc.
32. (1) No person shall design, construct, repair or alter a dental prosthetic, restorative or orthodontic device unless,
(a) the technical aspects of the design, construction, repair or alteration are supervised by a member of the College of Dental Technologists of Ontario or the Royal College of Dental Surgeons of Ontario; or
(b) the person is a member of a College mentioned in clause (a).

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

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

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

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

Restriction of title “doctor”

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

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

Same

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

Naturopathic doctor

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


Idem

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

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

Note: On a day to be named by proclamation of the Lieutenant Governor, section 33 is amended by the Statutes of Ontario, 2006, chapter 27, subsection 18 (1) by adding the following subsection:

Same

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

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

Definition

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

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

Psychotherapist title

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

1. The College of Nurses of Ontario.
2. The College of Occupational Therapists of Ontario.

Oral identification

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

**Written identification**

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

1. The full name of the College where he or she is a member.
2. The name of the health profession that the member practises.
3. The restricted title that the member may use under the health profession Act governing the member’s profession.

2009, c. 26, s. 24 (6).

**In accordance with regulations**

(4) A person mentioned in subsection (1) shall use the title “psychotherapist” in accordance with the regulations made under subsection (5). 2009, c. 26, s. 24 (6).

**Regulations**

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

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

**Holding out as a College**

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

Idem

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

**Holding out as a health profession corporation**

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

Same

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

**MISCELLANEOUS**

**Exemption, aboriginal healers and midwives**

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

(a) aboriginal healers providing traditional healing services to aboriginal persons or members of an aboriginal community; or

(b) aboriginal midwives providing traditional midwifery services to aboriginal persons or members of an aboriginal community.

**Jurisdictions of Colleges**

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

**Definitions**

(3) In this section,

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

Confidentiality

36. (1) Every person employed, retained or appointed for the purposes of the administration of this Act, a health profession Act or the Drug and Pharmacies Regulation Act and every member of a Council or committee of a College shall keep confidential all information that comes to his or her knowledge in the course of his or her duties and shall not communicate any information to any other person except,

(a) to the extent that the information is available to the public under this Act, a health profession Act or the Drug and Pharmacies Regulation Act;

(b) in connection with the administration of this Act, a health profession Act or the Drug and Pharmacies Regulation Act, including, without limiting the generality of this, in connection with anything relating to the registration of members, complaints about members, allegations of members’ incapacity, incompetence or acts of professional misconduct or the governing of the profession;

(c) to a body that governs a profession inside or outside of Ontario;

(d) as may be required for the administration of the Drug Interchangeability and Dispensing Fee Act, the Healing Arts Radiation Protection Act, the Health Insurance Act, the Independent Health Facilities Act, the Laboratory and Specimen Collection Centre Licensing Act, the Ontario Drug Benefit Act, the Coroners Act, the Controlled Drugs and Substances Act (Canada) and the Food and Drugs Act (Canada);

(e) to a police officer to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

(f) to the counsel of the person who is required to keep the information confidential under this section;

(g) to confirm whether the College is investigating a member, if there is a compelling public interest in the disclosure of that information;

(h) where disclosure of the information is required by an Act of the Legislature or an Act of Parliament;

(i) if there are reasonable grounds to believe that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons; or

(j) with the written consent of the person to whom the information relates. 2007, c. 10, Sched. M, s. 7 (1).

Reports required under Code

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

Definition

(1.2) In clause (1) (e), “law enforcement proceeding” means a proceeding in a court or tribunal that could result in a penalty or sanction being imposed. 1998, c. 18, Sched. G, s. 7 (2); 2007, c. 10, Sched. M, s. 7 (2).

Limitation

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

No requirement

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

Confirmation of investigation

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

Not compellable

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

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

Collection of personal information by College

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

Unique identifiers

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

Form and manner

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

Members to provide information

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

Disclosure to Minister

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

Use by Minister

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

Reports

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

Notice required by s. 39 (2) of FIPPA

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

(a) a public notice posted on the Ministry’s website; or

(b) any other public method that may be prescribed. 2007, c. 10, Sched. M, s. 8.

Same

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

Definitions

(9) In this section,

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

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

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

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

Onus of proof to show certificate of authorization

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

Injunctions

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

Immunity

38. No action or other proceeding for damages shall be instituted against the Crown, the Minister, a College supervisor appointed under section 5.0.1 or his or her staff, an employee of the Crown, the Advisory Council, a College, a Council, or a member, officer, employee, agent or appointee of the Advisory Council, a College, a Council, a committee of a Council or a panel of a committee of a Council for an act done in good faith in the performance or intended performance of a duty or in the exercise or the intended exercise of a power under this Act, a health profession Act, the Drug and Pharmacies Regulation Act or a regulation or a by-law under those Acts or for any neglect or default in the performance or exercise in good faith of the duty or power. 1991, c. 18, s. 38; 1998, c. 18, Sched. G, s. 8; 2007, c. 10, Sched. M, s. 10; 2009, c. 26, s. 24 (8).

Service

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

When notice or decision given by mail received

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

When notice or decision given by fax received

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

(a) on the day it was faxed, if faxed after midnight and before 4 p.m.; or

(b) on the following day, if faxed at any other time. 2007, c. 10, Sched. M, s. 11.

Offences

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

(a) for a first offence, to a fine of not more than $25,000, or to imprisonment for a term of not more than one year, or both; and

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

Same

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

Same

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

Responsibility of employment agencies

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

Responsibility of employers
42. (1) The employer of a person who contravenes subsection 27 (1) while acting within the scope of his or her employment is guilty of an offence and on conviction is liable to a fine of not more than $25,000 for a first offence, and not more than $50,000 for a second or subsequent offence. 1991, c. 18, s. 42 (1); 2007, c. 10, Sched. M, s. 14 (1).

Responsibility of directors of corporate employers

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

Exception

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

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.

No limitation

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

Regulations

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

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

(h.1) for the purposes of clause 36.1 (7) (b), prescribing alternative methods of giving the notice required by subsection 39 (2) of the Freedom of Information and Protection of Privacy Act;

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

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

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

(i) governing reports and certificates to be provided to the Fairness Commissioner, appointed under the Fair Access to Regulated Professions Act, 2006, including their form, their manner of preparation, making them available to the public and requiring a College to provide such reports and certificates;

(j) governing other information to be provided to the Fairness Commissioner and requiring persons to provide that information;

(k) governing audits, including specifying audit standards and the scope of audits;

(l) prescribing a longer period in respect of a College for the purpose of section 22.23 of the Code;

(m) defining, for the purposes of sections 22.3 and 22.15 to 22.23 of the Code, any word or expression that is used in those sections but not defined in this Act. 1991, c. 18, s. 43 (1); 2000, c. 42, Sched., s. 33; 2006, c. 31, s. 35 (2); 2007, c. 10, Sched. M, s. 16; 2009, c. 24, s. 33 (2).

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

Scope of regulations

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

Definition

(3) In clause (1) (d),
“abbreviation” includes an abbreviation of a variation. 1991, c. 18, s. 43 (3).

Regulations

43.1 Subject to the approval of the Lieutenant Governor in Council, the Minister may make regulations governing funding under programs required under section 85.7 of the Code, including regulations,
(a) prescribing the maximum amount or a means of establishing the maximum amount of funding that may be provided for a person in respect of a case of sexual abuse;
(b) prescribing the period of time during which funding may be provided for a person in respect of a case of sexual abuse. 1993, c. 37, s. 3.

Expert committees

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

References to health professionals

44. A reference in an Act or regulation to a person described in Column 1 of the Table shall be deemed to be a reference to a person described opposite in Column 2. 1991, c. 18, s. 44.

45. OMITTED (AMENDS OR REPEALS OTHER ACTS). 1991, c. 18, s. 45.

46. OMITTED (REVOKES REGULATIONS). 1991, c. 18, s. 46.


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>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. person registered as a chiropodist under the Chiroprody Act</td>
<td>member of the College of Chiropodists of Ontario</td>
</tr>
<tr>
<td>2. person registered as a dental technician under the Dental Technicians Act</td>
<td>member of the College of Dental Technologists of Ontario</td>
</tr>
<tr>
<td>3. person licensed as a denture therapist under the Denture Therapists Act</td>
<td>member of the College of Denturists of Ontario</td>
</tr>
<tr>
<td>4. person registered as a chiropractor under the Drugless Practitioners Act</td>
<td>member of the College of Chiropractors of Ontario</td>
</tr>
<tr>
<td>5. person registered as a masseur under the</td>
<td>member of the College of Massage Therapists of</td>
</tr>
</tbody>
</table>
6. **Drugless Practitioners Act** | Ontario


7. person registered as a physiotherapist under the *Drugless Practitioners Act* | member of the College of Physiotherapists of Ontario

**Note:** On a day to be named by proclamation of the Lieutenant Governor, the Table is amended by the Statutes of Ontario, 2007, chapter 10, Schedule P, subsection 20 (2) by adding the following item:

7.1 person registered under the *Drugless Practitioners Act* | member of the College of Naturopaths of Ontario


8. person registered as a dental hygienist under Part II of the *Health Disciplines Act* | member of the College of Dental Hygienists of Ontario

9. person licensed under Part II of the *Health Disciplines Act* | member of the Royal College of Dental Surgeons of Ontario

10. person licensed under Part III of the *Health Disciplines Act* | 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 *Health Disciplines Act* | member of the College of Nurses of Ontario

12. person licensed under Part V of the *Health Disciplines Act* | member of the College of Optometrists of Ontario

13. person licensed under Part VI of the *Health Disciplines Act* | member of the Ontario College of Pharmacists

14. Person registered under the *Ophthalmic Dispensers Act* | member of the College of Opticians of Ontario

15. person registered under the *Psychologists Registration Act* | member of the College of Psychologists of Ontario

16. person registered under the *Radiological Technicians Act* | member of the College of Medical Radiation Technologists of Ontario


**SCHEDULE 1**

**SELF GOVERNING HEALTH PROFESSIONS**

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<tr>
<th>Health Profession Acts</th>
<th>Health Profession</th>
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<tbody>
<tr>
<td>Audiology and Speech-Language Pathology Act, 1991</td>
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<td>Dental Technology Act, 1991</td>
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Note: On a day to be named by proclamation of the Lieutenant Governor, Schedule 1 is amended by the Statutes of Ontario, 2007, chapter 10, Schedule Q, section 14 by adding the following:

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<th>Amendment</th>
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<tr>
<td>Homeopathy Act, 2007</td>
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<tr>
<td>Kinesiology Act, 2007</td>
<td>Kinesiology</td>
</tr>
<tr>
<td>Massage Therapy Act, 1991</td>
<td>Massage Therapy</td>
</tr>
<tr>
<td>Medical Laboratory Technology Act, 1991</td>
<td>Medical Laboratory Technology</td>
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<tr>
<td>Medical Radiation Technology Act, 1991</td>
<td>Medical Radiation Technology</td>
</tr>
<tr>
<td>Medicine Act, 1991</td>
<td>Medicine</td>
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<tr>
<td>Midwifery Act, 1991</td>
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Note: On a day to be named by proclamation of the Lieutenant Governor, Schedule 1 is amended by the Statutes of Ontario, 2007, chapter 10, Schedule P, subsection 20 (3) by adding the following:

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<th>Amendment</th>
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<tr>
<td>Naturopathy Act, 2007</td>
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<tr>
<td>Nursing Act, 1991</td>
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</tr>
<tr>
<td>Occupational Therapy Act, 1991</td>
<td>Occupational Therapy</td>
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<tr>
<td>Opticianry Act, 1991</td>
<td>Opticianry</td>
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<td>Optometry Act, 1991</td>
<td>Optometry</td>
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<tr>
<td>Pharmacy Act, 1991</td>
<td>Pharmacy</td>
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<tr>
<td>Physiotherapy Act, 1991</td>
<td>Physiotherapy</td>
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<tr>
<td>Psychology Act, 1991</td>
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Note: On a day to be named by proclamation of the Lieutenant Governor, Schedule 1 is amended by the Statutes of Ontario, 2007, chapter 10, Schedule R, subsection 19 (3) by adding the following:

<table>
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<th>Act</th>
<th>Amendment</th>
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</thead>
<tbody>
<tr>
<td>Psychotherapy Act, 2007</td>
<td>Psychotherapy</td>
</tr>
</tbody>
</table>

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.

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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   1.1 Statement of purpose, sexual abuse provisions

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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”)

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

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

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

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

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

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

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

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

Hearing not required unless referred to

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

Sexual abuse of a patient

(3) In this Code,

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

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

Exception

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

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

Statement of purpose, sexual abuse provisions

1.1 The purpose of the provisions of this Code with respect to sexual abuse of patients by members is to encourage the reporting of such abuse, to provide funding for therapy and counselling for patients who have been sexually abused by members and, ultimately, to eradicate the sexual abuse of patients by members. 1993, c. 37, s. 5.

COLLEGE

College is body corporate

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

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

Objects of College
3. (1) The College has the following objects:
1. To regulate the practice of the profession and to govern the members in accordance with the health profession Act, this Code and the Regulated Health Professions Act, 1991 and the regulations and by-laws.
2. To develop, establish and maintain standards of qualification for persons to be issued certificates of registration.
3. To develop, establish and maintain programs and standards of practice to assure the quality of the practice of the profession.
4. To develop, establish and maintain standards of knowledge and skill and programs to promote continuing evaluation, competence and improvement among the members.
4.1 To develop, in collaboration and consultation with other Colleges, standards of knowledge, skill and judgment relating to the performance of controlled acts common among health professions to enhance interprofessional collaboration, while respecting the unique character of individual health professions and their members.
5. To develop, establish and maintain standards of professional ethics for the members.
6. To develop, establish and maintain programs to assist individuals to exercise their rights under this Code and the Regulated Health Professions Act, 1991.
7. To administer the health profession Act, this Code and the Regulated Health Professions Act, 1991 as it relates to the profession and to perform the other duties and exercise the other powers that are imposed or conferred on the College.
8. To promote and enhance relations between the College and its members, other health profession colleges, key stakeholders, and the public.
9. To promote inter-professional collaboration with other health profession colleges.
10. To develop, establish, and maintain standards and programs to promote the ability of members to respond to changes in practice environments, advances in technology and other emerging issues.
11. Any other objects relating to human health care that the Council considers desirable. 1991, c. 18, Sched. 2, s. 3 (1); 2007, c. 10, Sched. M, s. 18; 2009, c. 26, s. 24 (11).

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

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

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

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

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

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

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

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

Exclusion of public

(2) Despite subsection (1), the Council may exclude the public from any meeting or part of a meeting if it is satisfied that,
   (a) matters involving public security may be disclosed;
   (b) financial or personal or other matters may be disclosed of such a nature that the harm created by the disclosure would outweigh the desirability of adhering to the principle that meetings be open to the public;
   (c) a person involved in a criminal proceeding or civil suit or proceeding may be prejudiced;
   (d) personnel matters or property acquisitions will be discussed;
   (e) instructions will be given to or opinions received from the solicitors for the College; or
   (f) the Council will deliberate whether to exclude the public from a meeting or whether to make an order under subsection (3). 1991, c. 18, Sched. 2, s. 7 (2); 2007, c. 10, Sched. M, s. 20 (2).

Orders preventing public disclosure

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

Grounds noted in minutes

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

Remuneration and expenses

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

Employees

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

Registrar

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

Committees

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

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

Transitional

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

Same

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

Appointment

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

Composition

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

Annual reports

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

Exclusions from reports

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

(a) a referral by the Inquiries, Complaints and Reports Committee to the Discipline or Fitness to Practise Committee until a panel of the Discipline or Fitness to Practise Committee disposes of the matter;

(b) an approval for the Registrar to appoint an investigator until the investigation is completed and reported by the Registrar and the Inquiries, Complaints and Reports Committee decides not to make a referral with respect to the matter to the Discipline Committee or, if the Inquiries, Complaints and Reports Committee makes a referral with respect to the matter to the Discipline Committee, until a panel of the Discipline Committee disposes of the matter; or

(c) an interim order made by the Inquiries, Complaints and Reports Committee in respect of a member until a panel of the Discipline Committee disposes of the matter. 2007, c. 10, Sched. M, s. 22.

Executive Committee’s exercise of Council’s powers

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

Report to Council

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

Members

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

Suspended members

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

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

Professional liability insurance

13.1 (1) No member of a College in Ontario shall engage in the practice of the health profession unless he or she is personally insured against professional liability under a professional liability insurance policy or belongs to a specified association that provides the member with personal protection against professional liability. 2009, c. 26, s. 24 (13).

Insurance requirements

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

Professional misconduct

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

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

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

Idem

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

REGISTRATION

Registration

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

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

Referrals to Registration Committee

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

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

Notice to applicant

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

Terms, etc., attached on consent

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

Panels for consent

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

Disclosure of application file

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

Exception

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

Panels

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

Composition of panels

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

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

Consideration by panel

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

Orders by panel

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

1. Directing the Registrar to issue a certificate of registration.
2. Directing the Registrar to issue a certificate of registration if the applicant successfully completes examinations set or approved by the panel.
3. Directing the Registrar to issue a certificate of registration if the applicant successfully completes additional training specified by the panel.
4. Directing the Registrar to impose specified terms, conditions and limitations on a certificate of registration of the applicant and specifying a limitation on the applicant’s right to apply under subsection 19 (1).
5. Directing the Registrar to refuse to issue a certificate of registration.

Idem

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

Order on consent

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

Application for variation

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

Limitations

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

Panels

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

Idem

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

Submissions

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

Orders

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

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

(7) When an application has been disposed of under this section, the applicant may not make a new application under subsection (1) within six months of the disposition without leave of the Registrar. 2007, c. 10, Sched. M, s. 25 (3).

Registrar’s leave

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

Notice of orders

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

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

Contents of notice

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

Appeal to Board

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

Requirements of notice

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

Order, etc., to Board

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

When order may be carried out

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

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

Registration hearings or reviews

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

Procedural provisions

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

1. Subsection 38 (4) (exclusion from panel).
2. Section 42 (disclosure of evidence).
3. Section 43 (no communication by panel members).
4. Section 50 (members of panel who participate).
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).

Findings of fact

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

Idem

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

Disposal by Board

(6) The Board shall, after the hearing or review, make an order doing any one or more of the following:
1. Confirming the order made by the panel.
2. Requiring the Registration Committee to make an order directing the Registrar to issue a certificate of registration to the applicant if the applicant successfully completes any examinations or training the Registration Committee may specify.
3. Requiring the Registration Committee to make an order directing the Registrar to issue a certificate of registration to the applicant and to impose any terms, conditions and limitations the Board considers appropriate.
4. Referring the matter back to the Registration Committee for further consideration by a panel, together with any reasons and recommendations the Board considers appropriate. 1991, c. 18, Sched. 2, s. 22 (6); 2007, c. 10, Sched. M, s. 27 (3).

Idem

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

Limitation on order

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

Parties

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

Definitions

22.1 In this section and sections 22.2 to 22.14,
“audit” means an audit required under section 22.8; (“vérification”)
“auditor” means an auditor appointed under section 22.8; (“vérificateur”)
“Fairness Commissioner” means the Fairness Commissioner appointed under the Fair Access to Regulated Professions Act, 2006; (“commissaire à l’équité”)
“fair registration practices report” means a report required under section 22.7; (“rapport sur les pratiques d’inscription équitables”)

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

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

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

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

Fair registration practices: general duty

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

Information

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

Qualifications

22.4 (1) The College shall make information publicly available on what documentation of qualifications must accompany an application and what alternatives may be acceptable to the College if an applicant cannot obtain the required documentation for reasons beyond his or her control. 2006, c. 31, s. 35 (3).

Same

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

Same

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

(a) training on how to assess such qualifications and make such decisions;

(b) training in any special considerations that may apply in the assessment of applications and the process for applying those considerations. 2006, c. 31, s. 35 (3).

Functions

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

(a) assess the registration practices of a College based on its obligations under this Code and the regulations;

(b) specify audit standards, the scope of audits, times when fair registration practices reports and auditors’ reports shall be filed, the form of all required reports and certificates and the information that they must contain;

(c) establish eligibility requirements that a person must meet to be qualified to conduct audits;

(d) establish a roster of persons who in the opinion of the Fairness Commissioner have satisfied the eligibility requirements established under clause (c);

(e) consult with Colleges on the cost, scope and timing of audits;

(f) monitor third parties relied on by a College to assess the qualifications of individuals applying for registration by the College to help ensure that assessments are based on the obligations of the College under this Code and the regulations;

(g) advise a College or third parties relied on by a College to assess qualifications with respect to matters related to registration practices under this Code and the regulations;
(h) provide advice and recommendations to the Minister, including advice and recommendations that a College do or refrain from doing any action respecting a contravention by a College if the Fairness Commissioner determines that the College has failed to comply with any requirement imposed on it by sections 22.2 to 22.11; and

(i) perform such other functions as may be assigned by the Lieutenant Governor in Council. 2006, c. 31, s. 35 (3).

Scope

(2) A matter specified under clause (1) (b) or established under clause (1) (c) or (d) may be general or specific in its application and may be limited as to time and place. 2006, c. 31, s. 35 (3).

Same

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

Review of practices

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

Same

(2) The review shall include an analysis of,

(a) the extent to which the requirements for registration are necessary for or relevant to the practice of the profession;

(b) the efficiency and timeliness of decision-making; and

(c) the reasonableness of the fees charged by the College in respect of applications. 2006, c. 31, s. 35 (3).

Reports

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

Fair registration practices reports

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

Same

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

Other reports

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

Same

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

Audits

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

Notice of audit

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

(a) that the College must choose and appoint an auditor from the roster established by the Fairness Commissioner by the date specified in the notice;
(b) that if the College fails to choose and appoint an auditor by the date specified in the notice that the Fairness Commissioner will choose the auditor;

(c) the scope of the audit and the standards that will apply;

(d) the date by which the audit must be completed; and

(e) that the College is responsible for the payment of the auditor’s fees and expenses. 2006, c. 31, s. 35 (3).

Choice of auditor

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

Failure to choose

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

Auditor’s duties

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

Collection of personal information

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

Duty to furnish information

(7) A College shall co-operate with the auditor and shall,

(a) produce such records for, and provide such other information to, the auditor regarding its registration practices and any other matters related to compliance by the College with its obligations under sections 15 to 22.11 and the regulations as are reasonably necessary for the auditor to perform his or her duties under this Code, including any reports required from the College under section 22.6, 22.7 or 22.9 or the regulations; and

(b) provide the auditor with any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce a record in readable form. 2006, c. 31, s. 35 (3).

Limitation

(8) Despite subsection (7), a College may refuse access to a record if,

(a) the record or any information in the record is subject to a legal privilege that restricts disclosure of the record or the information; or

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

Draft report

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

Same

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

Auditor’s reports

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

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

When audit is complete

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

Filing with Minister

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

Auditor’s fees and expenses

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

Filing of reports by College

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

Report available to public

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

Form of reports

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

Restriction on personal information

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

Certification of report

22.11 (1) A fair practices registration report shall include a statement certifying that all the information required to be provided in the report has been provided and that the information is accurate. 2006, c. 31, s. 35 (3).

Signature

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

Offences

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

(a) furnishes false or misleading information in a fair registration practices report or other report or record filed with the Fairness Commissioner under this Code or otherwise provides false or misleading information to the Fairness Commissioner or to a person employed by the Fairness Commissioner or providing services under an agreement referred to in subsection 16 (3) of the Fair Access to Regulated Professions Act, 2006;

(b) obstructs the Fairness Commissioner or a person employed by the Fairness Commissioner or providing services under an agreement referred to in subsection 16 (3) of the Fair Access to Regulated Professions Act, 2006 in exercising powers or performing duties under this Code;

(c) furnishes false or misleading information to an auditor;

(d) obstructs, fails to co-operate with or assist an auditor; or

(e) contravenes subsection (2). 2006, c. 31, s. 35 (3).

Same, intimidation

(2) No person shall intimidate, coerce, penalize or discriminate against another person because that person,
(a) has co-operated or may co-operate with the Fairness Commissioner, an auditor or a person employed by the Fairness Commissioner or providing services under an agreement referred to in subsection 16 (3) of the *Fair Access to Regulated Professions Act, 2006* in exercising powers or performing duties under this Code; or

(b) has provided, or may provide, records or other information in the course of an audit or other activity or proceeding under this Code in respect of fair registration practices. 2006, c. 31, s. 35 (3).

**Penalties**

(3) Every person who is guilty of an offence under subsection (1) is liable on conviction,

(a) to a fine of not more than $50,000; or

(b) if the person is a corporation, to a fine of not more than $100,000. 2006, c. 31, s. 35 (3); 2009, c. 33, Sched. 18, s. 29 (1).

**Consent to prosecution**

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

**Immunity**

22.13 (1) No proceeding shall be commenced against the Fairness Commissioner or anyone employed by the Fairness Commissioner or providing services under an agreement referred to in subsection 16 (3) of the *Fair Access to Regulated Professions Act, 2006* for any act done or omitted in good faith in the execution or intended execution of his or her duties under this Code. 2006, c. 31, s. 35 (3).

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

**Testimony**

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

(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 tribun al in relation to any matter arising from an application for registration; or

(c) has the power to act as legal counsel or agent for any person in a proceeding described in clause (b) or in preparing for the proceeding. 2006, c. 31, s. 35 (3).

**Definitions**

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

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

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

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

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

Federal Act

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

Purposes

22.16 The purposes of sections 22.15 to 22.23 are,

(a) to eliminate or reduce measures established or implemented by the College that restrict or impair the ability of an individual to obtain a certificate of registration when the individual holds an equivalent out-of-province certificate; and

(b) to support the Government of Ontario in fulfilling its obligations under Chapter Seven of the Agreement on Internal Trade. 2009, c. 24, s. 33 (5).

Ontario residency cannot be required

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

When applicant holds out-of-province certificate

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

Material additional training, etc., cannot be required

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

Exception, registration requirements listed on website

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

(a) is listed on the publicly accessible website referred to in clause 9 (3) (a) of the Ontario Labour Mobility Act, 2009; and

(b) is stated on the website to be a permissible registration requirement for the certificate of registration being applied for, adopted by the Government of Ontario under Article 708 of the Agreement on Internal Trade. 2009, c. 24, s. 33 (5).

Other exceptions

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

1. Requiring the applicant to demonstrate proficiency in English or in French if equivalent proficiency in the language was not a requirement for the granting of the out-of-province certificate.

2. Requiring the applicant to undertake, obtain or undergo material additional training, experience, examinations or assessments if the applicant has not, within a period of time fixed by the College, before submitting the application for registration, practised the profession to the extent that would be permitted by the certificate of registration for which the applicant is applying. 2009, c. 24, s. 33 (5).

Other permitted registration requirements

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

1. If the conditions set out in subsection (6) are met:
   i. Pay a fee upon application for registration and upon registration.
   ii. Obtain professional liability insurance or any other insurance or similar protection.
   iii. Post a bond.
   iv. Undergo a criminal background check.
   v. Provide evidence of good character.
2. If the condition set out in paragraph 2 of subsection (6) is met, provide a certificate, letter or other evidence from every body or individual from whom the applicant currently holds an out-of-province certificate, confirming that the out-of-province certificate is in good standing.

3. If the conditions set out in subsection (6) are met, demonstrate knowledge of matters applicable to the practice of the profession in Ontario, as long as this does not involve material additional training, experience, examinations or assessments.

4. If the conditions set out in subsection (6) are met, meet any other requirement specified by the College that does not involve material additional training, experience, examinations or assessments. 2009, c. 24, s. 33 (5).

Conditions for subs. (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).

Expedious 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 expedient registration of the applicant. 2009, c. 24, s. 33 (5).

Transition

22.19 Sections 22.17 and 22.18 apply to,

(a) an application for registration made to the College on or after the day this section comes into force; and

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

Occupational standards

22.20 (1) The College shall, to the extent possible and where practical,
(a) ensure that the process it follows in establishing or amending occupational standards for certificates of registration is conducive to labour mobility within Canada;
(b) take steps to reconcile differences between the occupational standards it has established for certificates of registration and occupational standards in effect with respect to the profession in the other provinces and territories of Canada that are parties to the Agreement on Internal Trade; and
(c) ensure that the occupational standards it establishes for certificates of registration are consistent with such common interprovincial or international occupational standards as may have been developed for the profession. 2009, c. 24, s. 33 (5).

No limitation

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

Notice of proposed occupational standards

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

Conflict

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

Same

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

Regulations and by-laws to conform

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

Register

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

Contents of register

(2) The register shall contain the following:
1. Each member’s name, business address and business telephone number, and, if applicable, the name of every health profession corporation of which the member is a shareholder.
2. The name, business address and business telephone number of every health profession corporation.
3. The names of the shareholders of each health profession corporation who are members of the College.
4. Each member’s class of registration and specialist status.
5. The terms, conditions and limitations that are in effect on each certificate of registration.
6. A notation of every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 and has not been finally resolved, until the matter has been resolved.
7. The result, including a synopsis of the decision, of every disciplinary and incapacity proceeding, unless a panel of the
relevant committee makes no finding with regard to the proceeding.
8. A notation of every finding of professional negligence or malpractice, which may or may not relate to the member’s
suitability to practise, made against the member, unless the finding is reversed on appeal.
9. A notation of every revocation or suspension of a certificate of registration.
10. A notation of every revocation or suspension of a certificate of authorization.
11. Information that a panel of the Registration, Discipline or Fitness to Practise Committee specifies shall be included.
12. Where findings of the Discipline Committee are appealed, a notation that they are under appeal, until the appeal is
finally disposed of.
13. Where, during or as a result of a proceeding under section 25, a member has resigned and agreed never to practise
again in Ontario, a notation of the resignation and agreement.
14. Information that is required to be kept in the register in accordance with the by-laws. 2007, c. 10, Sched. M, s. 28.

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

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

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

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

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

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

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

Personal health information
(10) In subsections (8) and (9),
“personal health information” means information that identifies an individual and that is referred to in clauses (a) through (g)
of the definition of “personal health information” in subsection 4 (1) of the Personal Health Information Protection Act,

Other cases when information may be withheld
(11) The Registrar shall refuse to disclose to an individual or to post on the College’s website information required by
paragraph 7 of subsection (2) if,
(a) a finding of professional misconduct was made against the member and the order made was only a reprimand or only a fine, or a finding of incapacity was made against the member;

(b) more than six years have passed since the information was prepared or last updated;

(c) the member has made an application to the relevant committee for the removal of the information from public access because the information is no longer relevant to the member’s suitability to practise, and if,

(i) the relevant committee believes that a refusal to disclose the information outweighs the desirability of public access to the information in the interest of any person affected or the public interest, and

(ii) the relevant committee has directed the Registrar to remove the information from public access; and

(d) the information does not relate to disciplinary proceedings concerning sexual abuse as defined in clause (a) or (b) of the definition of “sexual abuse” in subsection 1 (3).

2007, c. 10, Sched. M, s. 28.

Information from register

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

Positive obligation

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

2007, c. 10, Sched. M, s. 28.

Meaning of results of proceeding

(14) For the purpose of this section and section 56, “result”, when used in reference to a disciplinary or incapacity proceeding, means the panel’s finding, particulars of the grounds for the finding, and the order made, including any reprimand.

2007, c. 10, Sched. M, s. 28.

Suspension for non-payment of fees

24. If a member fails to pay a fee that he or she is required to pay in accordance with the by-laws, the Registrar shall give the member notice of intention to suspend the member and may suspend the member’s certificate of registration for failure to pay the fee 30 days after notice is given.


COMPLAINTS AND REPORTS

Panel for investigation or consideration

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

2007, c. 10, Sched. M, s. 30.

Composition

(2) A panel shall be composed of at least three persons, at least one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council.

2007, c. 10, Sched. M, s. 30.

Quorum

(3) Three members of a panel constitute a quorum.

2007, c. 10, Sched. M, s. 30.

Complaint must be recorded

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

2007, c. 10, Sched. M, s. 30.

Complainant to be informed

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

2007, c. 10, Sched. M, s. 30.

Notice to member

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

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

Alternative dispute resolution with respect to a complaint
25.1 (1) The Registrar may, with the consent of both the complainant and the member, refer the complainant and the member to an alternative dispute resolution process,
(a) if the matter has not yet been referred to the Discipline Committee under section 26; and
(b) if the matter does not involve an allegation of sexual abuse. 2007, c. 10, Sched. M, s. 30.

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

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

Ratification of resolution
(4) If the complainant and the member reach a resolution of the complaint through alternative dispute resolution, they shall advise the panel of the resolution, and the panel may,
(a) cease its investigation of the complaint and adopt the proposed resolution; or
(b) continue with its investigation of the complaint. 2007, c. 10, Sched. M, s. 30.

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

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

What a panel may do
26. (1) A panel, after investigating a complaint or considering a report, considering the submissions of the member and making reasonable efforts to consider all records and documents it considers relevant to the complaint or the report, may do any one or more of the following:
1. Refer a specified allegation of the member’s professional misconduct or incompetence to the Discipline Committee if the allegation is related to the complaint or the report.
2. Refer the member to a panel of the Inquiries, Complaints and Reports Committee under section 58 for incapacity proceedings.
3. Require the member to appear before a panel of the Inquiries, Complaints and Reports Committee to be cautioned.
4. Take action it considers appropriate that is not inconsistent with the health profession Act, this Code, the regulations or by-laws. 2007, c. 10, Sched. M, s. 30.

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

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

Complaint in bad faith, etc.

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

Same

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

Notice of decision

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

Same, report

(2) A panel shall give the member, in the case of a report,
(a) a copy of its decision; and
(b) a copy of its reasons, if the panel acted under paragraph 3 or 4 of subsection 26 (1). 2007, c. 10, Sched. M, s. 30.

Timely disposal

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

Not affected by ADR

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

If complaint not disposed of

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

If further delay

(4) If a panel has not disposed of the complaint by the expected date of disposition described in subsection (3), the Registrar shall,
(a) provide the member and complainant with written notice and reasons for the delay and the new expected date of disposition which shall be no more than 30 days from the date of the revised notice or from the expected date of disposition described in subsection (3), whichever is sooner; and
(b) provide the Board with written notice of and reasons for the delay as were provided to the member and complainant. 2007, c. 10, Sched. M, s. 30.

Powers of the Board

(5) The Board, on application of the member or the complainant, shall consider the written reasons for the delay and shall do any one of the following:
1. Direct the Inquiries, Complaints and Reports Committee to continue the investigation.
2. Make recommendations the Board considers appropriate to the Inquiries, Complaints and Reports Committee.
3. Investigate the complaint and make an order under subsection (9) within 120 days of the decision to investigate the complaint. 2007, c. 10, Sched. M, s. 30.

Board’s investigatory powers

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

Continuing power of Inquiries, Complaints and Reports Committee

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

Same

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

Powers of Board re an investigation

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

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

Powers of Board re time limits

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

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

Review by Board

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

Request for review

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

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

Time limit

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

Limitation

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

Parties

(5) The complainant and the member who is the subject of the complaint are parties to a review. 2007, c. 10, Sched. M, s. 30.
30. (1) The Board shall not review a decision if the party who requested the review withdraws the request and the other party consents. 1991, c. 18, Sched. 2, s. 30 (1).

Request in bad faith, etc.

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

Idem

(3) If the Board is satisfied, after considering the written submissions of the parties, that a request was frivolous, vexatious, made in bad faith, moot or otherwise an abuse of process, the Board shall not review the decision. 1991, c. 18, Sched. 2, s. 30 (3); 2007, c. 10, Sched. M, s. 31 (2).

Personal representative as complainant

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

Record of decision to be reviewed

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

Disclosure

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

Exceptions

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

(a) disclose matters involving public security;

(b) undermine the integrity of the complaint investigation and review process;

(c) disclose financial or personal or other matters of such a nature that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that disclosure be made;

(d) prejudice a person involved in a criminal proceeding or in a civil suit or proceeding; or

(e) jeopardize the safety of any person. 1991, c. 18, Sched. 2, s. 32.

Conduct of review

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

(a) the adequacy of the investigation conducted; or

(b) the reasonableness of the decision.

Procedure

(2) In conducting a review, the Board,

(a) shall give the party requesting the review an opportunity to comment on the matters set out in clauses (1) (a) and (b) and the other party an opportunity to respond to those comments;

(b) may require the College to send a representative;

(c) may question the parties and the representative of the College;

(d) may permit the parties to make representations with respect to issues raised by any questions asked under clause (c); and

(e) shall not allow the parties or the representative of the College to question each other. 1991, c. 18, Sched. 2, s. 33.

Procedural provisions

34. (1) The following provisions apply with necessary modifications to a review by the Board:
1. Section 43 (no communication by panel members).
2. Section 45 (hearings open).
3. Section 47 (sexual misconduct witnesses).
4. Section 50 (members of panel who participate).
5. Section 55 (release of evidence). 1991, c. 18, Sched. 2, s. 34.

Same

(2) The following provisions of the Statutory Powers Procedure Act also apply with necessary modifications to a review by the Board:
1. Section 4 (waiver of procedural requirement).
2. Section 4.1 (disposition of proceeding without hearing).
3. Section 5.1 (written hearings).
4. Section 5.2 (electronic hearings).
5. Section 5.3 (pre-hearing conferences).
6. Section 21 (adjournments).
7. Section 21.1 (correction of errors).

Powers of Board

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

Decision in writing

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

DISCIPLINE

Inquiries, Complaints and Reports Committee referral

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

Allegations of sexual abuse

(2) In deciding whether or not to refer an allegation of the sexual abuse of a patient to the Discipline Committee, the Inquiries, Complaints and Reports Committee shall take into account any opinion, required under subsection 85.3 (5), as to whether or not the member who is the subject of the report is likely to sexually abuse patients in the future. 1993, c. 37, s. 9; 2007, c. 10, Sched. M, s. 33 (2).

Interim suspension

37. (1) The Inquiries, Complaints and Reports Committee may, subject to subsection (5), make an interim order directing the Registrar to suspend or impose terms, conditions or limitations on a member’s certificate of registration if,
   (a) an allegation is referred to the Discipline Committee; and
   (b) it is of the opinion that the conduct of the member exposes or is likely to expose his or her patients to harm or injury. 1991, c. 18, Sched. 2, s. 37 (1); 2007, c. 10, Sched. M, s. 34 (1).

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

(a) the College shall prosecute the matter expeditiously; and

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

Duration of order

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

Panel’s order

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

Restrictions on orders

(5) No order shall be made under subsection (1) unless the member has been given,

(a) notice of the Committee’s intention to make the order; and

(b) at least 14 days to make written submissions to the Committee. 2007, c. 10, Sched. M, s. 34 (3).

Extraordinary action to protect public

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

Panel for discipline hearing

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

Composition

(2) A panel shall be composed of at least three and no more than five persons, at least two of whom shall be persons appointed to the Council by the Lieutenant Governor in Council. 1991, c. 18, Sched. 2, s. 38 (2).

Idem

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

Exclusion from panel

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

Quorum

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

Panel members deemed to continue

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

Amendment of notice of hearing

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

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

Non-party participation in hearings

41.1 (1) A panel, on application by a person who is not a party, may allow the person to participate in a hearing if,
(a) the good character, propriety of conduct or competence of the person is an issue at the hearing; or
(b) the participation of the person, would, in the opinion of the panel, be of assistance to the panel. 1993, c. 37, s. 10; 2007, c. 10, Sched. M, s. 36.

Extent of participation

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

Disclosure of evidence

42. (1) Evidence against a member is not admissible at a hearing of allegations against the member unless the member is given, at least ten days before the hearing,
(a) in the case of written or documentary evidence, an opportunity to examine the evidence;
(b) in the case of evidence of an expert, the identity of the expert and a copy of the expert’s written report or, if there is no written report, a written summary of the evidence; or
(c) in the case of evidence of a witness, the identity of the witness. 1991, c. 18, Sched. 2, s. 42 (1); 1993, c. 37, s. 11.

Exception

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

Disclosure of evidence

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

Exception

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

No communication by panel members

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

Legal advice

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

Hearings public

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

Exclusion of public

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

Orders preventing public disclosure
(3) In situations in which the panel may make an order that the public be excluded from a hearing, it may make orders it considers necessary to prevent the public disclosure of matters disclosed at the hearing, including orders banning the publication or broadcasting of those matters. 1991, c. 18, Sched. 2, s. 45 (3).

Public information may be disclosed

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

Exclusion of public

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

Orders with respect to matters in submissions

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

Reasons for order, etc.

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

Reconsidering of order

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

Exception to closed hearings

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

Sexual misconduct witnesses

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

Interpretation

(2) In subsection (1),

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

Transcript of hearings

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

(a) the oral evidence is recorded;

(b) copies of the transcript of the hearing are available to a party on the party’s request at the party’s expense; and

(c) copies of the transcript of any part of the hearing that is not the subject of an order prohibiting publication are available to any person at that person’s expense.

Transcripts filed with court

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

Admissibility of evidence

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

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

Professional misconduct

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

Orders

(2) If a panel finds a member has committed an act of professional misconduct, it may make an order doing any one or more of the following:
   1. Directing the Registrar to revoke the member’s certificate of registration.
   2. Directing the Registrar to suspend the member’s certificate of registration for a specified period of time.
   3. Directing the Registrar to impose specified terms, conditions and limitations on the member’s certificate of registration for a specified or indefinite period of time.
   4. Requiring the member to appear before the panel to be reprimanded.
   5. Requiring the member to pay a fine of not more than $35,000 to the Minister of Finance.
   5.1 If the act of professional misconduct was the sexual abuse of a patient, requiring the member to reimburse the College for funding provided for that patient under the program required under section 85.7.
   5.2 If the panel makes an order under paragraph 5.1, requiring the member to post security acceptable to the College to guarantee the payment of any amounts the member may be required to reimburse under the order under paragraph 5.1. 1991, c. 18, Sched. 2, s. 51 (2); 1993, c. 37, s. 14 (2).

Idem

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

Suspension of order

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

Orders relating to sexual abuse

(5) If a panel finds a member has committed an act of professional misconduct by sexually abusing a patient, the panel shall do the following in addition to anything else the panel may do under subsection (2):
   1. Reprimand the member.
   2. Revoke the member’s certificate of registration if the sexual abuse consisted of, or included, any of the following,
      i. sexual intercourse,
      ii. genital to genital, genital to anal, oral to genital, or oral to anal contact,
      iii. masturbation of the member by, or in the presence of, the patient,
      iv. masturbation of the patient by the member,
      v. encouragement of the patient by the member to masturbate in the presence of the member. 1993, c. 37, s. 14 (3).
Statement re impact of sexual abuse

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

Same

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

Same

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

Notice to member

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

Incompetence

52. (1) A panel shall find a member to be incompetent if the member’s professional care of a patient displayed a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates that the member is unfit to continue to practise or that the member’s practice should be restricted. 1991, c. 18, Sched. 2, s. 52 (1); 2007, c. 10, Sched. M, s. 40 (1).

Order

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

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

Idem

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

Costs if proceedings unwarranted

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

College’s costs

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

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

Decision to complainant

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

Release of evidence

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

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

Publication of member’s name

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

(a) the results of the proceeding may be obtained by a person from the register; or

(b) the member requests the publication of his or her name.

Withholding of member’s name

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

INCAPACITY

Registrar’s inquiry

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

Panel shall inquire

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

(a) the Inquiries, Complaints and Reports Committee receives a report from the Registrar under section 57; or

(b) a referral is made from a panel of the Inquiries, Complaints and Reports Committee under paragraph 2 of subsection 26 (1). 2007, c. 10, Sched. M, s. 43.

Notice to member

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

Transitional

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

Inquiries by panel

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

Physical or mental examinations

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

Panel’s report

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

Referral to Fitness to Practise Committee

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

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

(a) it has referred a matter involving the member to the Fitness to Practise Committee; and

(b) it is of the opinion that the physical or mental state of the member exposes or is likely to expose his or her patients to harm or injury. 1991, c. 18, Sched. 2, s. 62 (1); 2007, c. 10, Sched. M, s. 45 (1).

Procedure following interim suspension

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

(a) the College shall prosecute the matter expeditiously; and

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

Duration of order

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

Restrictions on orders

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

(a) notice of the intention to make the order;

(b) at least 14 days to make written submissions to the panel; and

(c) in the case of an order under subsection 62 (1), a copy of the provisions of section 62. 2007, c. 10, Sched. M, s. 46.

Extraordinary action to protect the public

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

Panels for Fitness to Practise hearings

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

Composition

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

Quorum

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

Parties

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

Reports of health professionals

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

Testimony of health professionals

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

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

Exception

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

Procedural provisions

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

1. Subsection 22 (4) (findings of fact).
2. Subsection 38 (4) (exclusion from panel).
3. Section 39 (panel members deemed to continue).
4. Section 42 (disclosure of evidence).
4.1 Section 42.1 (disclosure of evidence by member).
5. Section 43 (no communication by panel members).
6. Section 44 (legal advice).
7. Section 47 (sexual misconduct witnesses).
8. Section 50 (members of panel who participate).

Hearings closed

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

Open on request of member in some cases

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

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

Orders

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

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

Idem

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

Varying

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

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

Limitations on applications

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

Appeals to Court

Appeals from decisions

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

Basis of appeal

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

Court’s powers

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

No stay of certain orders pending appeal

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

No stay of certain orders pending appeal

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

Order where public at risk

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

Reinstatement

Applications for reinstatement

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

Time of application

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

(a) one year after the date on which the certificate of registration was revoked or suspended; or

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

Time of application, sexual abuse cases

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

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

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

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

Reasons for reinstatement

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

Referral to Committee

73. (1) The Registrar shall refer the application, if the revocation or suspension was on the grounds of,
(a) professional misconduct or incompetence, to the Discipline Committee; or
(b) incapacity, to the Fitness to Practise Committee.

Hearings

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

Procedural provisions

(3) The following provisions apply with necessary modifications to a hearing of an application by a panel of the Discipline Committee:
1. Subsection 22 (4) (findings of fact).
2. Subsection 38 (2) (composition).
5. Section 43 (no communication by panel members).
6. Section 44 (legal advice).
7. Section 45 (hearings open).
8. Section 47 (sexual misconduct witnesses).
9. Section 48 (transcript of hearings).
10. Section 50 (members of panel who participate).
11. Section 55 (release of evidence).

Idem

(4) The following provisions apply with necessary modifications to a hearing of an application by a panel of the Fitness to Practise Committee:
1. Subsection 22 (4) (findings of fact).
2. Section 43 (no communication by panel members).
3. Section 44 (legal advice).
4. Section 47 (sexual misconduct witnesses).
5. Section 48 (transcript of hearings).
6. Section 50 (members of panel who participate).
7. Section 55 (release of evidence).
8. Subsection 64 (2) (composition).
9. Subsection 64 (3) (quorum).
10. Section 68 (hearings closed).

Order

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

Limitation for sexual abuse cases

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

Decision

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

Orders without hearing

74. (1) The Council or Executive Committee may, without a hearing, with respect to a person whose certificate of registration has been revoked or suspended as a result of disciplinary or incapacity proceedings, make an order doing any one or more of the following:
   1. Directing the Registrar to issue a new certificate of registration to the applicant.
   2. Directing the Registrar to remove the suspension of the applicant’s certificate of registration.
   3. Directing the Registrar to impose specified terms, conditions and limitations on the applicant’s certificate of registration if an order is made under paragraph 1 or 2. 1991, c. 18, Sched. 2, s. 74.

Limitation

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

REGISTRAR’S POWERS OF INVESTIGATION

Investigators

75. (1) The Registrar may appoint one or more investigators to determine whether a member has committed an act of professional misconduct or is incompetent if,
   a) the Registrar believes on reasonable and probable grounds that the member has committed an act of professional misconduct or is incompetent and the Inquiries, Complaints and Reports Committee approves of the appointment;
   b) the Inquiries, Complaints and Reports Committee has received information about a member from the Quality Assurance Committee under paragraph 4 of subsection 80.2 (1) and has requested the Registrar to conduct an investigation; or
   c) the Inquiries, Complaints and Reports Committee has received a written complaint about the member and has requested the Registrar to conduct an investigation. 2007, c. 10, Sched. M, s. 53.

Emergencies

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

Report

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

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
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

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

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

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

Conflicts

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

Entries and searches

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

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

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

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

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

Copying of documents and objects

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

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

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

(a) if it was removed under clause (2) (a), return the document or object within a reasonable time; or

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

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

Definition

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

Report of investigation

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

(a) the Inquiries, Complaints and Reports Committee if the investigator was appointed under clause 75 (1) (a) or (b) or subsection 75 (2);

(b) the Inquiries, Complaints and Reports Committee if the investigator was appointed under clause 75 (1) (c), at the request of the Inquiries, Complaints and Reports Committee; or

(c) the Board if the investigator was appointed under clause 75 (1) (c) by the Board exercising the Registrar’s powers under subsection 28 (6). 2007, c. 10, Sched. M, s. 56.

QUALITY ASSURANCE COMMITTEE

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

Quality assurance program required

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

Minimum requirements for quality assurance program

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

(a) continuing education or professional development designed to,

(i) promote continuing competence and continuing quality improvement among the members,

(ii) address changes in practice environments, and

(iii) incorporate standards of practice, advances in technology, changes made to entry to practice competencies and other relevant issues in the discretion of the Council;

(b) self, peer and practice assessments; and

(c) a mechanism for the College to monitor members’ participation in, and compliance with, the quality assurance program. 2007, c. 10, Sched. M, s. 58.

Powers of the Committee

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

1. Require individual members whose knowledge, skill and judgment have been assessed under section 82 and found to be unsatisfactory to participate in specified continuing education or remediation programs.

2. Direct the Registrar to impose terms, conditions or limitations for a specified period to be determined by the Committee on the certificate of registration of a member,

   i. whose knowledge, skill and judgment have been assessed or reassessed under section 82 and have been found to be unsatisfactory, or

   ii. who has been directed to participate in specified continuing education or remediation programs as required by the Committee under paragraph 1 and has not completed those programs successfully.

3. Direct the Registrar to remove terms, conditions or limitations before the end of the specified period, if the Committee is satisfied that the member’s knowledge, skill and judgment are now satisfactory.
4. Disclose the name of the member and allegations against the member to the Inquiries, Complaints and Reports Committee if the Quality Assurance Committee is of the opinion that the member may have committed an act of professional misconduct, or may be incompetent or incapacitated. 2007, c. 10, Sched. M, s. 58.

Notice

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

Assessors

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

Co-operation with Committee and assessors

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

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

Inspection of premises

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

Inspection of records

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

Exception

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

Conflict

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

Confidentiality of information

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

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

Exception if member gave false information

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

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

Use in other Committees

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

**PATIENT RELATIONS PROGRAM**

**Patient relations program**

84. (1) The College shall have a patient relations program. 1991, c. 18, Sched. 2, s. 84 (1).

**Measures for sexual abuse of patients**

(2) The patient relations program must include measures for preventing and dealing with sexual abuse of patients. 1993, c. 37, s. 22 (1); 2007, c. 10, Sched. M, s. 60 (1).

**Same**

(3) The measures for preventing and dealing with sexual abuse of patients must include,

(a) educational requirements for members;
(b) guidelines for the conduct of members with their patients;
(c) training for the College’s staff; and
(d) the provision of information to the public. 1991, c. 18, Sched. 2, s. 84 (3); 1993, c. 37, s. 22 (2); 2007, c. 10, Sched. M, s. 60 (2).

**Report on program**

(4) The Council shall give the Health Professions Regulatory Advisory Council a written report describing the patient relation program and, when changes are made to the program, a written report describing the changes. 1991, c. 18, Sched. 2, s. 84 (4).

**Advice to Council**

85. The Patient Relations Committee shall advise the Council with respect to the patient relations program. 1991, c. 18, Sched. 2, s. 85.

**REPORTING OF HEALTH PROFESSIONALS**

**Reporting by members**

85.1 (1) A member shall file a report in accordance with section 85.3 if the member has reasonable grounds, obtained in the course of practising the profession, to believe that another member of the same or a different College has sexually abused a patient.

**If name not known**

(2) A member is not required to file a report if the member does not know the name of the member who would be the subject of the report.

**If information from a patient**
(3) If a member is required to file a report because of reasonable grounds obtained from one of the member’s patients, the member shall use his or her best efforts to advise the patient of the requirement to file the report before doing so. 1993, c. 37, s. 23.

**Reporting by facilities**

85.2 (1) A person who operates a facility where one or more members practise shall file a report in accordance with section 85.3 if the person has reasonable grounds to believe that a member who practises at the facility is incompetent, incapacitated, or has sexually abused a patient. 1993, c. 37, s. 23; 2007, c. 10, Sched. M, s. 61.

**When non-individuals have reasonable grounds**

(2) For the purposes of subsection (1), a person who operates a facility but who is not an individual shall be deemed to have reasonable grounds if the individual who is responsible for the operation of the facility has reasonable grounds. 1993, c. 37, s. 23.

**If name not known**

(3) A person who operates a facility is not required to file a report if the person does not know the name of the member who would be the subject of the report. 1993, c. 37, s. 23.

**Requirements of required reports**

85.3 (1) A report required under section 85.1 or 85.2 must be filed in writing with the Registrar of the College of the member who is the subject of the report. 1993, c. 37, s. 23.

**Timing of report**

(2) The report must be filed within 30 days after the obligation to report arises unless the person who is required to file the report has reasonable grounds to believe that the member will continue to sexually abuse the patient or will sexually abuse other patients, or that the incompetence or the incapacity of the member is likely to expose a patient to harm or injury and there is urgent need for intervention, in which case the report must be filed forthwith. 2007, c. 10, Sched. M, s. 62 (1).

**Contents of report**

(3) The report must contain,

(a) the name of the person filing the report;

(b) the name of the member who is the subject of the report;

(c) an explanation of the alleged sexual abuse, incompetence or incapacity;

(d) if the grounds of the person filing the report are related to a particular patient of the member who is the subject of the report, the name of that patient, subject to subsection (4). 1993, c. 37, s. 23; 2007, c. 10, Sched. M, s. 62 (2).

**Patients not named without consent**

(4) The name of a patient who may have been sexually abused must not be included in a report unless the patient, or if the patient is incapable, the patient’s representative, consents in writing to the inclusion of the patient’s name. 1993, c. 37, s. 23.

**If reporter providing psychotherapy**

(5) If a member who is required to file a report under section 85.1 is providing psychotherapy to the member who would be the subject of the report, the report must also contain the opinion of the member filing the report, if he or she is able to form one, as to whether or not the member who is the subject of the report is likely to sexually abuse patients in the future. 1993, c. 37, s. 23.

**Additional reports, psychotherapy**

85.4 (1) A member who files a report in respect of which subsection 85.3 (5) applies, shall file an additional report to the same College if the member ceases to provide psychotherapy to the member who was the subject of the first report.

**Timing of additional report**

(2) The additional report must be filed forthwith. 1993, c. 37, s. 23.

**Reporting by employers, etc.**

85.5 (1) A person who terminates the employment or revokes, suspends or imposes restrictions on the privileges of a member or who dissolves a partnership, a health profession corporation or association with a member for reasons of professional misconduct, incompetence or incapacity shall file with the Registrar within thirty days after the termination,
revocation, suspension, imposition or dissolution a written report setting out the reasons. 1993, c. 37, s. 23; 2000, c. 42, Sched., s. 36.

Same

(2) If a person intended to terminate the employment of a member or to revoke the member’s privileges for reasons of professional misconduct, incompetence or incapacity but the person did not do so because the member resigned or voluntarily relinquished his or her privileges, the person shall file with the Registrar within thirty days after the resignation or relinquishment a written report setting out the reasons upon which the person had intended to act. 1993, c. 37, s. 23.

Application

(3) This section applies to every person, other than a patient, who employs or offers privileges to a member or associates in partnership or otherwise with a member for the purpose of offering health services. 1993, c. 37, s. 23.

Immunity for reports

85.6 No action or other proceeding shall be instituted against a person for filing a report in good faith under section 85.1, 85.2, 85.4 or 85.5. 1993, c. 37, s. 23.

Reporting by members re: offences

85.6.1 (1) A member shall file a report in writing with the Registrar if the member has been found guilty of an offence. 2007, c. 10, Sched. M, s. 63; 2009, c. 26, s. 24 (15).

Timing of report

(2) The report must be filed as soon as reasonably practicable after the member receives notice of the finding of guilt. 2007, c. 10, Sched. M, s. 63.

Contents of report

(3) The report must contain,
(a) the name of the member filing the report;
(b) the nature of, and a description of the offence;
(c) the date the member was found guilty of the offence;
(d) the name and location of the court that found the member guilty of the offence; and
(e) the status of any appeal initiated respecting the finding of guilt. 2007, c. 10, Sched. M, s. 63.

Publication ban

(4) The report shall not contain any information that violates a publication ban. 2007, c. 10, Sched. M, s. 63.

Same

(5) No action shall be taken under this section which violates a publication ban and nothing in this section requires or authorizes the violation of a publication ban. 2007, c. 10, Sched. M, s. 63.

Additional reports

(6) A member who files a report under subsection (1) shall file an additional report if there is a change in status of the finding of guilt as the result of an appeal. 2007, c. 10, Sched. M, s. 63.

Reporting by members re: professional negligence and malpractice

85.6.2 (1) A member shall file a report in writing with the Registrar if there has been a finding of professional negligence or malpractice made against the member. 2007, c. 10, Sched. M, s. 63; 2009, c. 26, s. 24 (16).

Timing of report

(2) The report must be filed as soon as reasonably practicable after the member receives notice of the finding made against the member. 2007, c. 10, Sched. M, s. 63.

Contents of report

(3) The report must contain,
(a) the name of the member filing the report;
(b) the nature of, and a description of the finding;
(c) the date that the finding was made against the member;
(d) the name and location of the court that made the finding against the member; and
(e) the status of any appeal initiated respecting the finding made against the member. 2007, c. 10, Sched. M, s. 63.

Publication ban

(4) The report shall not contain any information that violates a publication ban. 2007, c. 10, Sched. M, s. 63.

Same

(5) No action shall be taken under this section which violates a publication ban and nothing in this section requires or authorizes the violation of a publication ban. 2007, c. 10, Sched. M, s. 63.

Additional reports

(6) A member who files a report under subsection (1) shall file an additional report if there is a change in status of the finding made against the member as the result of an appeal. 2007, c. 10, Sched. M, s. 63.

FUNDING FOR THERAPY AND COUNSELLING

Funding provided by College

85.7 (1) There shall be a program, established by the College, to provide funding for therapy and counselling for persons who, while patients, were sexually abused by members. 1993, c. 37, s. 23.

Funding governed by regulations

(2) The funding shall be provided in accordance with the regulations made under the Regulated Health Professions Act, 1991. 1993, c. 37, s. 23.

Administration

(3) The Patient Relations Committee shall administer the program. 1993, c. 37, s. 23.

Eligibility

(4) A person is eligible for funding only if,
(a) there is a finding by a panel of the Discipline Committee that the person, while a patient, was sexually abused by a member; or
(b) the alternative requirements prescribed in the regulations made by the Council are satisfied. 1993, c. 37, s. 23.

Effect of appeal

(5) A person’s eligibility for funding under clause (4) (a) is not affected by an appeal from the panel’s finding. 1993, c. 37, s. 23.

No assessment

(6) A person is not required to undergo a psychological or other assessment before receiving funding. 1993, c. 37, s. 23.

Choice of therapist or counsellor

(7) A person who is eligible for funding is entitled to choose any therapist or counsellor, subject to the following restrictions:

1. The therapist or counsellor must not be a person to whom the eligible person has any family relationship.
2. The therapist or counsellor must not be a person who, to the College’s knowledge, has at any time or in any jurisdiction been found guilty of professional misconduct of a sexual nature or been found civilly or criminally liable for an act of a similar nature.
3. If the therapist or counsellor is not a member of a regulated health profession, the College may require the person to sign a document indicating that he or she understands that the therapist or counsellor is not subject to professional discipline. 1993, c. 37, s. 23.

Payment

(8) Funding shall be paid only to the therapist or counsellor chosen by the person. 1993, c. 37, s. 23.

Use of funding
(9) Funding shall be used only to pay for therapy or counselling and shall not be applied directly or indirectly for any other purpose. 1993, c. 37, s. 23.

Same

(10) Funding may be used to pay for therapy or counselling that was provided at any time after the sexual abuse took place. 2007, c. 10, Sched. M, s. 64.

Other coverage

(11) The funding that is provided to a person shall be reduced by the amount that the Ontario Health Insurance Plan or a private insurer is required to pay for therapy or counselling for the person during the period of time during which funding may be provided for him or her under the program. 1993, c. 37, s. 23.

Right of recovery

(12) The College is entitled to recover from the member, in a proceeding brought in a court of competent jurisdiction, money paid in accordance with this section for therapy or counselling for an eligible person referred to in clause (4) (a). 1993, c. 37, s. 23.

Person not required to testify

(13) The eligible person shall not be required to appear or testify in the proceeding. 1993, c. 37, s. 23.

HEALTH PROFESSION CORPORATIONS

Professional corporations

85.8 (1) Subject to the regulations made under subsection 43 (1) of the Regulated Health Professions Act, 1991 and the by-laws, one or more members of the same health profession may establish a health profession corporation for the purposes of practising their health profession. 2005, c. 28, Sched. B, s. 2 (1).

Same

(2) The provisions of the Business Corporations Act, including the regulations made under that Act, that apply with respect to professional corporations apply with respect to a health profession corporation established under subsection (1). 2005, c. 28, Sched. B, s. 2 (1).

Notice of change of shareholder

85.9 A health profession corporation shall notify the Registrar within the time and in the form and manner determined under the by-laws of a change in the shareholders of the corporation who are members of the College. 2000, c. 42, Sched., s. 37; 2007, c. 10, Sched. M, s. 69.

Application of Act, etc.

85.10 The following things apply to a member who practises a health profession through a health profession corporation:

1. The Regulated Health Professions Act, 1991 and the regulations made under that Act.

2. The health profession Act governing the member’s health profession and the regulations and by-laws made under that Act. 2001, c. 8, s. 220; 2007, c. 10, Sched. M, s. 65.

Professional, fiduciary and ethical obligations to patients

85.11 (1) The professional, fiduciary and ethical obligations of a member to a person on whose behalf the member is practising a health profession,

(a) are not diminished by the fact that the member is practising through a health profession corporation; and

(b) apply equally to the corporation and to its directors, officers, shareholders, agents and employees. 2000, c. 42, Sched., s. 37; 2001, c. 8, s. 221 (1).

Investigation

(2) Subsections (3) and (4) apply if an action or the conduct of a member practising on behalf of a health profession corporation is the subject of one of the following:

1. A complaint.

2. A mandatory report.

3. A specified allegation of professional misconduct or incompetence.
4. An investigation, review or hearing by the Board.
5. An investigation, inspection or assessment by an investigator or assessor appointed under the Code.
6. An inquiry by a panel of the Inquiries, Complaints and Reports Committee.
7. A referral to the Discipline Committee or the Fitness to Practise Committee.
8. A hearing by a committee of the college. 2001, c. 8, s. 221 (2); 2007, c. 10, Sched. M, s. 66.

Same

(3) In the circumstances described in subsection (2), any power that the College may exercise in respect of the member may be exercised in respect of the health profession corporation. 2001, c. 8, s. 221 (2).

Liability

(4) In the circumstances described in subsection (2), the health profession corporation is jointly and severally liable with the member for all fines, costs and expenses that the member is ordered to pay. 2001, c. 8, s. 221 (2).

Conflict in duties

85.12 If there is a conflict between a member’s duty to a patient, the college or the public and the member’s duty to a health profession corporation as a director or officer of the corporation, the duty to the patient, the college or the public prevails. 2001, c. 8, s. 222.

Restrictions apply to corporation’s certificate

85.13 A term, condition or limitation imposed on the certificate of registration of a member practising a health profession through a health profession corporation applies to the certificate of authorization of the corporation in relation to the practice of the health profession through the member. 2000, c. 42, Sched., s. 37.

Prohibition, professional misconduct

85.14 (1) In the course of practising a health profession, a health profession corporation shall not do, or fail to do, something that would constitute professional misconduct if a member of the health profession did, or failed to do, it. 2001, c. 8, s. 223.

Prohibition, contraventions

(2) A health profession corporation shall not contravene any provision of,

(a) the Regulated Health Professions Act, 1991 and the regulations made under that Act; or

(b) the health profession Act governing the member’s health profession and the regulations and by-laws made under that Act. 2001, c. 8, s. 223; 2007, c. 10, Sched. M, s. 67.

Prohibition, corporate matters

(3) A health profession corporation shall not practise a health profession when it does not satisfy the requirements for a professional corporation under subsection 3.2 (2) of the Business Corporations Act or a requirement established under subsection 3.2 (6) of that Act. 2005, c. 28, Sched. B, s. 2 (2).

MISCELLANEOUS

Right to use French

86. (1) A person has the right to use French in all dealings with the College. 1991, c. 18, Sched. 2, s. 86 (1).

Language preferences

(1.1) The College shall identify and record the language preference of each College member and identify the language preference of each member of the public who has dealings with the College. 2007, c. 10, Sched. M, s. 68.

Council to ensure right

(2) The Council shall take all reasonable measures and make all reasonable plans to ensure that persons may use French in all dealings with the College. 1991, c. 18, Sched. 2, s. 86 (2).

Definition

(3) In this section,
“dealings” means any service or procedure available to the public or to members and includes giving or receiving communications, information or notices, making applications, taking examinations or tests and participating in programs or in hearings or reviews. 1991, c. 18, Sched. 2, s. 86 (3).

Limitation

(4) A person’s right under subsection (1) is subject to the limits that are reasonable in the circumstances. 1991, c. 18, Sched. 2, s. 86 (4).

Court orders

87. The College may apply to the Superior Court of Justice for an order directing a person to comply with a provision of the health profession Act, this Code, the Regulated Health Professions Act, 1991, the regulations under those Acts or the bylaws made under clause 94 (1) (I.2), (I.3) (s), (t), (t.1), (1.2), (y), (w) or (y). 1991, c. 18, Sched. 2, s. 87; 1998, c. 18, Sched. G, s. 20; 2000, c. 42, Sched., s. 38; 2001, c. 8, s. 224; 2006, c. 19, Sched. C, s. 1 (1).

Evidence of Registrar

88. A statement purporting to be certified by the Registrar under the seal of the College as a statement of information from the records kept by the Registrar in the course of his or her duties is admissible in court as proof, in the absence of evidence to the contrary, of the information in it without proof of the Registrar’s appointment or signature or of the seal of the College. 1991, c. 18, Sched. 2, s. 88.

89. REPEALED: 2002, c. 24, Sched. B, s. 25.

90. REPEALED: 1993, c. 37, s. 24.

91. REPEALED: 2007, c. 10, Sched. M, s. 70.

Making false representations to obtain certificates

92. (1) Every person who makes a representation, knowing it to be false,

(a) for the purpose of having a certificate of registration issued is guilty of an offence and on conviction is liable to a fine of not more than $25,000 for a first offence and not more than $50,000 for a second or subsequent offence; or

(b) for the purpose of having a certificate of authorization issued is guilty of an offence and on conviction is liable to a fine of not more than $50,000 for a first offence and not more than $200,000 for a second or subsequent offence. 2007, c. 10, Sched. M, s. 71.

Assisting the making of false representation

(2) Every person who knowingly assists a person in committing an offence under subsection (1) is guilty of an offence and on conviction is liable,

(a) in the case of an individual, to a fine of not more than $25,000 for a first offence and not more than $50,000 for a second or subsequent offence; or

(b) in the case of a corporation, to a fine of not more than $50,000 for a first offence and not more than $200,000 for a second or subsequent offence. 2007, c. 10, Sched. M, s. 71.

Protection for reporters from reprisals

92.1 No person shall do anything, or refrain from doing anything, relating to another person’s employment or to a contract providing for the provision of services by that other person, in retaliation for that other person filing a report or making a complaint as long as the report was filed, or the complaint was made, in good faith. 1993, c. 37, s. 25.

Offences

93. (1) Every person who contravenes an order made under subsection 7 (3) or section 45 or 47, or who contravenes subsection 76 (3), 82 (2) or (3), 85.2 (1), 85.5 (1) or (2) or 85.14 (2) or section 92.1 is guilty of an offence and on conviction is liable,

(a) in the case of an individual to a fine of not more than $25,000 for a first offence and not more than $50,000 for a second or subsequent offence; or

(b) in the case of a corporation to a fine of not more than $50,000 for a first offence and not more than $200,000 for a second or subsequent offence. 2007, c. 10, Sched. M, s. 72; 2009, c. 26, s. 24 (17).
(2) Every person who contravenes subsection 85.1 (1) or 85.4 (1) is guilty of an offence and on conviction is liable to a fine of not more than $25,000 for a first offence and not more than $50,000 for a second or subsequent offence. 2007, c. 10, Sched. M, s. 72.

Forms

93.1 The College may require that forms approved by the College be used for any purpose under the Act. 1998, c. 18, Sched. G, s. 21.

By-laws

94. (1) The Council may make by-laws relating to the administrative and internal affairs of the College and, without limiting the generality of the foregoing, the Council may make by-laws,

(a) adopting a seal for the College;

(b) providing for the execution of documents by the College;

(c) respecting banking and finance;

(d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;

(d.1) respecting the election of Council members, including the requirements for members to be able to vote, electoral districts and election recounts;

(d.2) respecting the qualification and terms of office of Council members who are elected;

(d.3) prescribing conditions disqualifying elected members from sitting on the Council and governing the removal of disqualified Council members;

(e) providing procedures for the election of the President and Vice-President of the College, the selection of the chairs of the committees, the filling of a vacancy in those offices, and setting out the duties and powers of the President, Vice-President and the chairs;

(f) respecting the calling, holding and conducting of the Council meetings and respecting the duties of the Council’s members;

(g) respecting the calling, holding and conducting of meetings of the members;

(g.1) providing that a meeting of the Council or of members or a meeting of a committee or of a panel that is held for any purpose other than for the conducting of a hearing may be held in any manner that allows all the persons participating to communicate with each other simultaneously and instantaneously;

(g.2) prescribing what constitutes a conflict of interest for members of the Council or a committee and regulating or prohibiting the carrying out of the duties of those members in cases in which there is a conflict of interest;

(h) providing for the remuneration of the members of the Council and committees other than persons appointed by the Lieutenant Governor in Council and for the payment of the expenses of the Council and committees in the conduct of their business;

(h.1) respecting the filling of vacancies on the Council or on committees;

(h.2) providing for the composition of committees;

(h.3) respecting the qualification, selection, appointment and terms of office of members of committees required by subsection 10 (1) who are not members of the Council;

(h.4) prescribing conditions disqualifying committee members from sitting on committees required under subsection 10 (1) and governing the removal of disqualified committee members;

(i) providing for the appointment, powers and duties of committees other than the committees required by subsection 10 (1);

(j) delegating to the Executive Committee powers and duties of the Council, other than the power to make, amend or revoke regulations and by-laws;

(k) providing for a code of ethics for the members;

(l) providing for the appointment of inspectors for the purposes of regulations made under clause 95 (1) (h);

(l.1) respecting the maintenance of the register kept by the Registrar and providing for the issuing of certificates when information contained in the register is made available to the public under section 23;
(l.2) prescribing information as information to be kept in the register for the purposes of paragraph 14 of subsection 23 (2), designating information kept in the register as public for the purposes of subsection 23 (5), and designating information kept in the register as public for the purposes of subsection 23 (5) that may be withheld from the public for the purposes of subsection 23 (6);

(l.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;

(l.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 honourary members of the College and prescribing their rights and privileges;
exempting any member or class of member from a by-law made under this section;

specifying or setting out anything that is required to be specified or set out under this subsection. 1991, c. 18, Sched. 2, s. 94 (1); 1998, c. 18, Sched. G, s. 22 (1-4); 2000, c. 42, Sched., s. 40; 2007, c. 10, Sched. M, s. 73 (1, 2).

Circulation of certain by-laws
(2) A by-law shall not be made under clause (1) (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).

Regulations
95. (1) Subject to the approval of the Lieutenant Governor in Council and with prior review of the Minister, the Council may make regulations,

(a) prescribing classes of certificates of registration and imposing terms, conditions and limitations on the certificates of registration of a class;

(b) respecting applications for certificates of registration or classes of them and the issuing, suspension, revocation and expiration of the certificates or classes of them;

(c) prescribing standards and qualifications for the issue of certificates of registration;

(d) prescribing certain registration requirements as non-exemptible requirements for the purposes of subsection 18 (3) and 22 (8);

(e) defining specialties in the profession, providing for certificates relating to those specialties, the qualifications for and suspension and revocation of those certificates and governing the use of prescribed terms, titles or designations by members indicating a specialization in the profession;

(f) requiring, for purposes associated with the registration of members, the successful completion of examinations as set and approved, from time to time, by the College, other persons or associations of persons and providing for an appeal of the results of the examinations;

(g) governing or prohibiting the delegation by or to members of controlled acts set out in subsection 27 (2) of the Regulated Health Professions Act, 1991;

(h) requiring and providing for the inspection and examination of premises used in connection with the practice of the profession and of equipment, books, accounts, reports and records of members relating to their practices;

(h.1) providing for the direct observation of a member in his or her practice, including the direct observation by inspectors of procedures, during the course of an inspection or examination provided for under clause (h);

(i) prescribing what constitutes a conflict of interest in the practice of the profession and regulating or prohibiting the practice of the profession in cases in which there is a conflict of interest;
(j) defining professional misconduct for the purposes of clause 51 (1) (c);
(k) designating acts of professional misconduct that must be reported;
(l) respecting the promotion or advertising of the practice of the profession;
(m) respecting the reporting and publication of decisions of panels;
(n) prescribing the standards of practice of the profession and prohibiting members from acting beyond the scope of practice of the profession in the course of practising the profession;
(o) requiring members to keep prescribed records in respect of their practice;
(p) regulating or prohibiting the use of terms, titles and designations by members in respect of their practices;
(q) prescribing alternative requirements for eligibility for funding under clause 85.7 (4) (b);
(r) prescribing a quality assurance program;
(r.1) specifying information for the purposes of clause (g) of the definition of “quality assurance information” in subsection 83.1 (1);
(s) respecting the giving of notice of meetings and hearings that are to be open to the public;
(t) providing for the exemption of any member from the regulations made by the Council;
(u) prescribing anything that is referred to in the health profession Act or this Code as being prescribed. 1998, c. 18, Sched. G, s. 23 (1); 2004, c. 3, Sched. B, s. 11 (3); 2009, c. 6, s. 2; 2007, c. 10, Sched. M, s. 74 (1).

Note: The following apply with respect to regulations made under paragraphs 1 to 7, 14, 22, 23 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.


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).

Français

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ONTARIO REGULATION 39/02
CERTIFICATES OF AUTHORIZATION
ONTARIO REGULATION 39/02
CERTIFICATES OF AUTHORIZATION

Consolidation Period: From January 1, 2006 to the e-Laws currency date.

Last amendment: O.Reg. 666/05.

This Regulation is made in English only.

Definitions

0.1 In this Regulation,

“family member” means, in relation to a shareholder, the shareholder’s spouse, child or parent;

“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.

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).
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).

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 certificate of status of the corporation issued by the Ministry of Consumer and Business Services not more than 30 days before the application is submitted to the Registrar, which indicates that the corporation is active.
4. A certified copy of the certificate of incorporation of the corporation.
5. A certified 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 statutory declaration of a director of the corporation, executed not more than 15 days before the application is submitted to the Registrar, certifying:
   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 statutory declaration is executed,
   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 certificate of status referred to in paragraph 3, and
   iv. that the information contained in the application is complete and accurate as of the day the statutory declaration is executed.
7. The name of each person who is a shareholder of the corporation as of the day the application is submitted and, if the shareholder is a member of the College, 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 the officers of the corporation as of the day the application is submitted.
9. The address of the premises at which the corporation carries on activities as of the day the application is submitted.

O. Reg. 39/02, s. 2 (1); O. Reg. 666/05, s. 3.

(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).

Duty to give Registrar declaration upon shareholder change

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 statutory declaration of a director of the corporation, executed after the change of shareholders, certifying 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 statutory declaration is executed. O. Reg. 666/05, s. 4.

Annual renewal of certificate
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 certificate of status of the corporation issued by the Ministry of Consumer and Business Services not more than 30 days before the day it is submitted to the Registrar, which indicates that the corporation is active.
4. A certified 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 statutory declaration of a director of the corporation, executed not more than 15 days before the application for renewal is submitted to the Registrar, certifying,
   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 statutory declaration is executed,
   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 certificate of status 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 statutory declaration is executed.
6. The name of each person who is a shareholder of the corporation as of the day the application for renewal is submitted and, if the shareholder is a member of the College, his or her business address, business telephone number and registration number with the College as of that day.
7. The names of the directors and the officers of the corporation as of the day the application for renewal is submitted.
8. The address of the premises at which the corporation carries on activities as of the day the application for renewal is submitted. O. Reg. 39/02, s. 5; O. Reg. 666/05, s. 5.

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 statutory declaration in accordance with section 4.1. O. Reg. 39/02, s. 6 (1); O. Reg. 666/05, s. 6.

(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.
ONTOARIO REGULATION 107/96
CONTROLLED ACTS

Consolidation Period: From April 1, 2013 to the e-Laws currency date.
Last amendment: O. Reg. 97/10.

This Regulation is made in English only.

INTERPRETATION

0.1 In this Regulation,
“diagnostic ultrasound” means ultrasound that produces an image or other data. O. Reg. 296/04, s. 1.

FORMS OF ENERGY

1. The following forms of energy are prescribed for the purpose of paragraph 7 of subsection 27 (2) of the Act:
   1. Electricity for,
      i. aversive conditioning,
      ii. cardiac pacemaker therapy,
      iii. cardioversion,
      iv. defibrillation,
      v. electrocoagulation,
      vi. electroconvulsive shock therapy,
      vii. electromyography,
      viii. fulguration,
      ix. nerve conduction studies, or
      x. transcutaneous cardiac pacing.

2. Electromagnetism for magnetic resonance imaging.

3. Soundwaves for,
   i. diagnostic ultrasound, or
   ii. lithotripsy. O. Reg. 107/96, s. 1.

EXEMPTIONS

2. A member of the College of Chiropodists of Ontario is exempt from subsection 27 (1) of the Act for the purpose of applying electricity for electrocoagulation or fulguration. O. Reg. 107/96, s. 2.

3. (1) A member of the Royal College of Dental Surgeons of Ontario is exempt from subsection 27 (1) of the Act for the purpose of applying electricity for defibrillation or electrocoagulation. O. Reg. 107/96, s. 3 (1).

3.1 A member of the College of Medical Radiation Technologists is exempt from subsection 27 (1) of the Act for the purpose of applying electromagnetism if the application is ordered by a member of the College of Physicians and Surgeons of Ontario and,
   (a) the electromagnetism is applied for magnetic resonance imaging using equipment that is,
      (i) installed in a site of a public hospital where the public hospital is approved as a public hospital under the Public Hospitals Act and the site of the public hospital is graded under that Act as a Group N site of a hospital, and
      (ii) operated by the public hospital mentioned in subclause (i);
   (b) the electromagnetism is applied for magnetic resonance imaging and all of the following conditions are met:
(i) the electromagnetism is used to support, assist and be a necessary adjunct, or any of them, to an insured service within the meaning of Health Insurance Act;

(ii) the magnetic resonance imaging is provided to persons who are insured persons within the meaning of the Health Insurance Act,

(iii) the electromagnetism is applied in an independent health facility licensed under the Independent Health Facilities Act in respect of magnetic resonance imaging; or

(c) the electromagnetism is applied for magnetic resonance imaging and all of the following conditions are met:

(i) the electromagnetism is not used to support, assist and be a necessary adjunct, or any of them, to an insured service within the meaning of Health Insurance Act, or the magnetic resonance imaging is not provided to persons who are insured persons within the meaning of that Act, or both,

(ii) the electromagnetism is applied in a facility that is operated by an operator that holds a licence under the Independent Health Facilities Act in respect of magnetic resonance imaging,

(iii) the electromagnetism is applied in a facility that is operated on the same premises as the independent health facility licensed under the Independent Health Facilities Act in respect of magnetic resonance imaging that is operated by the operator mentioned in subclause (ii),

(iv) the electromagnetism is applied using the same equipment that is used to provide magnetic resonance imaging in the independent health facility licensed under the Independent Health Facilities Act in respect of magnetic resonance imaging that is operated by the operator mentioned in subclause (ii),

(v) the operator of the facility in which the electromagnetism is applied is a party to a valid and subsisting agreement with the Minister concerning the provision of magnetic resonance imaging. O. Reg. 228/03, s. 1.

(2) A member of the Royal College of Dental Surgeons of Ontario is exempt from subsection 27 (1) of the Act for the purpose of applying electricity for electromyography or nerve conduction studies, in the course of conducting research. O. Reg. 107/96, s. 3 (2).

4. A member of the College of Midwives of Ontario is exempt from subsection 27 (1) of the Act for the purpose of ordering the application of soundwaves for pregnancy diagnostic ultrasound or pelvic diagnostic ultrasound. O. Reg. 107/96, s. 4.

5. (1) A member of the College of Physicians and Surgeons of Ontario is exempt from subsection 27 (1) of the Act for the purpose of applying, or ordering the application of, electricity for a procedure listed in paragraph 1 of section 1 or soundwaves for a procedure listed in paragraph 3 of section 1. O. Reg. 107/96, s. 5 (1).

(2) A member of the College of Physicians and Surgeons of Ontario is exempt from subsection 27 (1) of the Act for the purpose of applying or ordering the application of electromagnetism if,

(a) the electromagnetism is applied for magnetic resonance imaging using equipment that is,

   (i) installed in a site of a public hospital where the public hospital is approved as a public hospital under the Public Hospitals Act and the site of the public hospital is graded under that Act as a Group N site of a hospital, and

   (ii) operated by the public hospital mentioned in subclause (i);

(b) the electromagnetism is applied for magnetic resonance imaging and all of the following conditions are met:

   (i) the electromagnetism is used to support, assist and be a necessary adjunct, or any of them, to an insured service within the meaning of Health Insurance Act;

   (ii) the magnetic resonance imaging is provided to persons who are insured persons within the meaning of the Health Insurance Act,

   (iii) the electromagnetism is applied in an independent health facility licensed under the Independent Health Facilities Act in respect of magnetic resonance imaging; or

(c) the electromagnetism is applied for magnetic resonance imaging and all of the following conditions are met:

   (i) the electromagnetism is not used to support, assist and be a necessary adjunct, or any of them, to an insured service within the meaning of Health Insurance Act, or the magnetic resonance imaging is not provided to persons who are insured persons within the meaning of that Act, or both,

   (ii) the electromagnetism is applied in a facility that is operated by an operator that holds a licence under the Independent Health Facilities Act in respect of magnetic resonance imaging,

   (iii) the electromagnetism is applied in a facility that is operated on the same premises as the independent health facility licensed under the Independent Health Facilities Act in respect of magnetic resonance imaging that is operated by the operator mentioned in subclause (ii),

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(iv) the electromagnetism is applied using the same equipment that is used to provide magnetic resonance imaging in the independent health facility licensed under the Independent Health Facilities Act in respect of magnetic resonance imaging that is operated by the operator mentioned in subclause (ii),

(v) the operator of the facility in which the electromagnetism is applied is a party to a valid and subsisting agreement with the Minister concerning the provision of magnetic resonance imaging. O. Reg. 228/03, s. 2.

6. A member of the College of Psychologists of Ontario is exempt from subsection 27 (1) of the Act for the purpose of applying, or ordering the application of, electricity for aversive conditioning. O. Reg. 107/96, s. 6.

7. A person is exempt from subsection 27 (1) of the Act for the purpose of applying electricity for aversive conditioning if the application is ordered and directed by a member of the College of Physicians and Surgeons of Ontario or by a member of the College of Psychologists of Ontario. O. Reg. 296/04, s. 2.

7.1 (1) A person is exempt from subsection 27 (1) of the Act for the purpose of applying soundwaves for diagnostic ultrasound if the application is ordered by a member with ordering authority, and the soundwaves for diagnostic ultrasound are applied,

(a) in a site of a public hospital where the public hospital is approved as a public hospital under the Public Hospitals Act, and the equipment is operated by the public hospital;

(b) in a private hospital operated under the authority of a licence issued under the Private Hospitals Act and the equipment is operated by the private hospital;

(c) in an independent health facility licensed under the Independent Health Facilities Act in respect of diagnostic ultrasound on a site for which that independent health facility is licensed in respect of diagnostic ultrasound; or

(d) in a fixed site where health services are customarily performed, and the application is ordered by a member with ordering authority who treats his or her own patients in the course of his or her health care practice, but only if,

(i) there exists an ongoing professional health care relationship between the patient and the member with ordering authority, or between the patient and a regulated health professional who ordinarily practises with that member at one or more sites in Ontario,

(ii) there exists an ongoing professional health care relationship between the patient and a regulated health professional who has given an opinion on the health of the patient, or between the patient and a regulated health professional who ordinarily practises at one or more sites in Ontario with the regulated health professional who has given the opinion, and the patient has requested that the member with ordering authority confirm, refute or vary that opinion and,

(A) the member orders the application of soundwaves for diagnostic ultrasound in the course of an assessment of the patient resulting from that request, and

(B) the diagnostic ultrasound is directly related to that assessment, or

(iii) there exists an ongoing professional health care relationship between the patient and a regulated health professional who has referred the patient to the member with ordering authority for the purpose of a consultation, or between the patient and a regulated health professional who ordinarily practises at one or more sites in Ontario with the regulated health professional who has made the referral and,

(A) the member conducts an assessment of the patient, and

(B) the diagnostic ultrasound is directly related to that assessment or services arising out of that assessment.

O. Reg. 296/04, s. 2.

(2) In this section, “member with ordering authority” means,

(a) a member of the College of Midwives of Ontario, with respect to ordering the application of soundwaves for pregnancy diagnostic ultrasound or pelvic diagnostic ultrasound,

(b) a member of the College of Nurses of Ontario who is a registered nurse in the extended class, with respect to ordering the application of soundwaves for diagnostic ultrasound of the abdomen, pelvis and breast, or

(c) a member of the College of Physicians and Surgeons of Ontario, with respect to ordering the application of soundwaves for diagnostic ultrasound. O. Reg. 296/04, s. 2.

8. (1) The following activities are exempt from subsection 27 (1) of the Act:

1. REVOKED: S.O. 2006, c. 27, s. 19 (1).

2. Ear or body piercing for the purpose of accommodating a piece of jewellery.

3. Electrolysis.

4. Tattooing for cosmetic purposes. O. Reg. 107/96, s. 8; S.O. 2006, c. 27, s. 19 (1).
Subject to subsection (4), a person who is a member of a College listed in Column 1 of the Table is exempt from subsection 27 (1) of the Act for the purpose of performing acupuncture, a procedure performed on tissue below the dermis, in accordance with the standard of practice and within the scope of practice of the health profession listed in Column 2.

TABLE

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<th>Column 1</th>
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<tr>
<td>1. College of Chiropodists of Ontario</td>
<td>Chiropody</td>
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<td>2. College of Chiropractors of Ontario</td>
<td>Chiropractic</td>
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<tr>
<td>3. College of Massage Therapists of Ontario</td>
<td>Massage Therapy</td>
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<tr>
<td>4. College of Nurses of Ontario</td>
<td>Nursing</td>
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<tr>
<td>5. College of Occupational Therapists of Ontario</td>
<td>Occupational Therapy</td>
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<tr>
<td>6. College of Physiotherapists of Ontario</td>
<td>Physiotherapy</td>
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<tr>
<td>7. Royal College of Dental Surgeons of Ontario</td>
<td>Dentistry</td>
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</tbody>
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S.O. 2006, c. 27, s. 19 (2).

Subject to subsection (4), a person who is registered to practise under the Drugless Practitioners Act by The Board of Directors of Drugless Therapy is exempt from subsection 27 (1) of the Regulated Health Professions Act, 1991 for the purpose of performing acupuncture, a procedure performed on tissue below the dermis, in accordance with the practice of the profession. S.O. 2006, c. 27, s. 19 (2).

A person mentioned in subsection (2) or (3) is exempt from subsection 27 (1) of the Act for the purpose of performing acupuncture only if he or she has met the standards and qualifications set by the College or The Board of Directors of Drugless Therapy, as the case may be. S.O. 2006, c. 27, s. 19 (2).

A person is exempt from subsection 27 (1) of the Act for the purpose of performing acupuncture, a procedure performed on tissue below the dermis, if the acupuncture is performed as part of an addiction treatment program and the person performs the acupuncture within a health facility. S.O. 2006, c. 27, s. 19 (2).

In subsection (5), “health facility” means a facility governed by or funded under an Act set out in the Schedule. S.O. 2006, c. 27, s. 19 (2).

Male circumcision is an activity that is exempt from subsection 27 (1) of the Act if the circumcision is performed as part of a religious tradition or ceremony. O. Reg. 107/96, s. 9.

A naturopath is exempt from subsection 27 (1) of the Act for the purpose of carrying on, in accordance with the Drugless Practitioners Act and the regulations under that Act, activities that are within the scope of the practice of naturopathy. O. Reg. 107/96, s. 10.

The taking of a blood sample from a vein or by skin pricking is an activity that is exempt from subsection 27 (1) of the Act if the person taking the blood sample is employed by a laboratory or specimen collection centre licensed under the Laboratory and Specimen Collection Centre Licensing Act. O. Reg. 107/96, s. 11.

A medical geneticist who holds a doctorate is exempt from subsection 27 (1) of the Act for the purpose of communicating to an individual or his or her personal representative a diagnosis identifying a genetic disease or genetic disorder as the cause of the 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, if,

(a) the disease or disorder identified is within the geneticist’s area of expertise; and

(b) the geneticist is employed by a university or a health care facility and the communication of the diagnosis is performed in accordance with the university’s or facility’s guidelines or protocols. O. Reg. 107/96, s. 12 (1).

(2) In this section, “health care facility” means a facility governed by or funded under an Act set out in the Schedule. O. Reg. 107/96, s. 12 (2).

A member of the College of Nurses of Ontario who holds a general certificate of registration as a registered nurse is exempt from subsection 27 (1) of the Act for the purpose of prescribing a solution of normal saline (0.9 per cent) for venipuncture performed to establish peripheral intravenous access and maintain patency. O. Reg. 107/96, s. 13.

SCHEDULE

3. REVOKED: O. Reg. 97/10, s. 1 (1).
5. *Community Psychiatric Hospitals Act.*
9. *Homes for Special Care Act.*
10. REVOKED: O. Reg. 97/10, s. 1 (1).
11. *Independent Health Facilities Act.*
11.1 *Long-Term Care Homes Act, 2007.*
12. *Mental Health Act.*
17. REVOKED: O. Reg. 97/10, s. 1 (3).
18. *Ontario Mental Health Foundation Act.*

O. Reg. 107/96, Sched.; O. Reg. 97/10, s. 1.
ONTARIO REGULATION 59/94
FUNDING FOR THERAPY OR
COUNSELLING FOR PATIENTS
SEXUALLY ABUSED BY MEMBERS
ONTARIO REGULATION 59/94
FUNDING FOR THERAPY OR COUNSELLING FOR PATIENTS SEXUALLY ABUSED BY MEMBERS

Consolidation Period: From February 17, 1994 to the e-Laws currency date.

No amendments.

This Regulation is made in English only.

1. For the purposes of a program established under section 85.7 of the Code,

   (a) the maximum amount of funding that may be provided for a person in respect of a case of sexual abuse is the amount that the Ontario Health Insurance Plan would pay for 200 half-hour sessions of individual out-patient psychotherapy with a psychiatrist on the day the person becomes eligible under subsection 85.7 (4) of the Code; and

   (b) the period of time within which funding may be provided for a person in respect of a case of sexual abuse is five years from,

   (i) the day on which the person first received therapy or counselling for which funding is provided under subsection 85.7 (10) of the Code, or

   (ii) if funding is not provided under subsection 85.7 (10) of the Code, the day on which the person becomes eligible for funding under subsection 85.7 (4) of the Code. O. Reg. 59/94, s. 1.
DENTURISM ACT, 1991
Denturism Act, 1991

S.O. 1991, CHAPTER 25

Consolidation Period: From June 4, 2007 to the e-Laws currency date.

Last amendment: 2007, c. 10, Sched. B, s. 7.

Definitions

1. In this Act,
   “College” means the College of Denturists of Ontario; (“Ordre”)
   “member” means a member of the College; (“membre”)
   “profession” means the profession of denturism; (“profession”)
   “this Act” includes the Health Professions Procedural Code. (“la présente loi”) 1991, c. 25, s. 1.

Health Professions Procedural Code

2. (1) The Health Professions Procedural Code shall be deemed to be part of this Act. 1991, c. 25, s. 2 (1).

Terms in Code

(2) In the Health Professions Procedural Code as it applies in respect of this Act,
   “College” means the College of Denturists of Ontario; (“Ordre”)
   “health profession Act” means this Act; (“loi sur une profession de la santé”)
   “profession” means the profession of denturism; (“profession”)
   “regulations” means the regulations under this Act. (“règlements”) 1991, c. 25, s. 2 (2).

Definitions in Code

(3) Definitions in the Health Professions Procedural Code apply with necessary modifications to terms in this Act. 1991, c. 25, s. 2 (3).

Scope of practice

3. The practice of denturism is the assessment of arches missing some or all teeth and the design, construction, repair, alteration, ordering and fitting of removable dentures. 1991, c. 25, s. 3.

Authorized act

4. In the course of engaging in the practice of denturism, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to fit and dispense removable dentures. 1991, c. 25, s. 4.

Governing Board continued as College

5. The Governing Board of Denture Therapists is continued under the name College of Denturists of Ontario in English and Ordre des denturologistes de l’Ontario in French. 1991, c. 25, s. 5.

Council

6. (1) The Council shall be composed of,

(a) at least seven and no more than eight persons who are members elected in accordance with the by-laws;
(b) at least five and no more than seven 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. 1991, c. 25, s. 6 (1); 1998, c. 18, Sched. G, s. 30 (1).

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. 25, s. 6 (2); 1998, c. 18, Sched. G, s. 30 (2).

President and Vice-President

7. The Council shall have a President and Vice-President who shall be elected bi-annually by the Council from among the Council’s members. 1991, c. 25, s. 7.

Restricted titles

8. (1) No person other than a member shall use the title “denturist”, a variation or abbreviation or an equivalent in another language. 1991, c. 25, s. 8 (1).

Idem

(2) No person shall use the title “denture therapist” or a variation or abbreviation of it. 1991, c. 25, s. 8 (2).

Representations of qualification, etc.

(3) No person other than a member shall hold himself or herself out as a person who is qualified to practise in Ontario as a denturist or in a specialty of denturism. 1991, c. 25, s. 8 (3).

Exception

(4) Despite subsection (2), a member may use the title “denture therapist” or a variation or abbreviation of it for three years after this Act comes into force. 1991, c. 25, s. 8 (4).

Definition

(5) In this section, “abbreviation” includes an abbreviation of a variation. 1991, c. 25, s. 8 (5).

Notice if suggestions referred to Advisory Council

9. (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. 1991, c. 25, s. 9 (1).

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. 25, s. 9 (2).

Offence

10. Every person who contravenes subsection 8 (1), (2) or (3) 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. 7 (1).

Transition

11. A person who, on the day before this Act comes into force, was licensed as a denture therapist under the Denture Therapists 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. 25, s. 11.


15. OMITTED (ENACTS SHORT TITLE OF THIS ACT). 1991, c. 25, s. 15.
REGISTRATION REGULATION
Denturism Act, 1991  
Loi de 1991 sur les denturologistes

ONTARIO REGULATION 833/93  
REGISTRATION

Consolidation Period: From February 17, 2012 to the e-Laws currency date.

Last amendment: O. Reg. 23/12.

This Regulation is made in English only.

1. (1) The following are non-exemptible registration requirements for a certificate of registration:

1. The applicant must have a diploma in denture therapy or denturism from,
   i. George Brown College of Applied Arts and Technology,
   ii. any other institution that, in the opinion of the Registration Committee, issues an equivalent diploma or degree.

2. The applicant must have successfully completed the qualifying examination in denturism set by the Council within 12 months of the application.

3. The applicant must be a Canadian citizen or a permanent resident of Canada or have an authorization under the Immigration and Refugee Protection Act (Canada) consistent with his or her proposed certificate of registration.

O. Reg. 833/93, s. 1 (1); O. Reg. 404/94, s. 1 (1); O. Reg. 225/03, s. 1 (1); O. Reg. 23/12, s. 1 (1).

(2) For the purposes of subparagraph ii of paragraph 1 of subsection (1), a diploma or degree is equivalent if it offers courses in the areas listed in the Schedule. O. Reg. 833/93, s. 1 (2).

(3) REVOKED: O. Reg. 23/12, s. 1 (2).

2. The following are the standards and qualifications for a certificate of registration:

1. The applicant submits a completed application to the Registrar in the form provided by the Registrar, together with the application fee.

2. The applicant’s past and present conduct affords reasonable grounds for belief that the applicant,
   i. is mentally competent to practise denturism, and
   ii. will practise denturism with decency, integrity and honesty and in accordance with the law.

3. The applicant has not made, by commission or omission, any false or misleading representation or declaration on or in connection with an application.

4. The applicant must deliver his or her original diploma in denture therapy or denturism and documentation identifying the applicant personally to the Registrar if the applicant did not receive a diploma in denture therapy or denturism from George Brown College of Applied Arts and Technology.

5. The applicant must have reasonable fluency in either English or French. O. Reg. 833/93, s. 1 (2).

3. The following are the terms, conditions and limitations of a certificate of registration:

1. The member shall, within 15 days from the day the member becomes aware of any of the following, provide the College with written and, if necessary, oral details of any of the following that relate to the member and that occur or arise after the registration of the member,
   i. a finding of guilt in relation to any offence,
   ii. a finding of professional misconduct, incompetency, incapacity or other similar finding in Ontario in relation to another profession or in another jurisdiction in relation to the profession or another profession,
   iii. the commencement of a proceeding for professional misconduct, incompetency or incapacity, or similar conduct, in Ontario in relation to another profession or in another jurisdiction in relation to the profession or another profession.

2. The member’s certificate of registration expires if the member ceases to be a Canadian citizen or a permanent resident of Canada or have an authorization under the Immigration and Refugee Protection Act (Canada) consistent with his or her certificate of registration.
3. After the second anniversary date of its issue, the certificate of registration expires on the date the annual fee is due unless the member,
   i. has engaged in the practice of denturism for at least 1,500 hours in the preceding three years,
   ii. has successfully completed the most recent qualifying examinations in denturism set by the Council.
   iii. has successfully completed, in the preceding six months, the courses set by the Council, or
   iv. has taught denturism at an institution referred to in paragraph 1 of section 1 for a period of at least twelve months in the preceding three years.

4. The member shall give the College information as required by the by-laws and in the form and manner required by the by-laws.

5. The member shall pay the annual fee as required by the by-laws. O. Reg. 833/93, s. 3; O. Reg. 404/94, s. 2; O. Reg. 318/02, s. 1; O. Reg. 23/12, s. 2.

4. Despite section 1, the Registration Committee may issue a certificate of registration that will expire after a period of no more than thirty days to an applicant who,
   (a) is qualified to practise denturism in a jurisdiction outside of Ontario;
   (b) has an appointment to teach a brief continuing education program in denturism primarily for denturists; and
   (c) provides a written undertaking given by a member to supervise the applicant and be responsible for providing continuing care for patients attended to by the applicant in Ontario. O. Reg. 833/93, s. 4.

4.1 (1) Where section 22.18 of the Health Professions Procedural Code applies to an applicant, the requirements of paragraphs 1 and 2 of subsection 1 (1) of this Regulation are deemed to have been met by the applicant. O. Reg. 23/12, s. 3.

   (2) Despite subsection (1), it is a non-exemptible registration requirement that an applicant referred to in subsection (1) provide one or more certificates or letters or other evidence satisfactory to the Registrar or a panel of the Registration Committee confirming that the applicant is in good standing as a denturist in every jurisdiction where the applicant holds an out-of-province certificate. O. Reg. 23/12, s. 3.

   (3) Without in any way limiting the generality of subsection (2), being in “good standing” with respect to a jurisdiction 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 all continuing competency and quality assurance requirements of the regulatory authority of the jurisdiction. O. Reg. 23/12, s. 3.

   (4) Where an applicant to whom subsection (1) applies is unable to satisfy the Registrar or a panel of the Registration Committee that the applicant practised the profession of denturism to the extent that would be permitted by a certificate of registration at any time in the preceding 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. 23/12, s. 3.

   (5) An applicant referred to in subsection (1) is deemed to have met the requirements of paragraph 5 of section 2 if the requirements for the issuance of the applicant’s out-of-province certificate of registration included language proficiency requirements equivalent to those required by that paragraph. O. Reg. 23/12, s. 3.

   (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. 23/12, s. 3.

5. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 833/93, s. 5.

SCHEDULE

Basic Sciences
General Anatomy and Physiology
Orofacial Anatomy
General Histology
Microbiology and Infection Control
Dental Sciences
Dental Histology and Embryology
Periodontology
Oral Pathology and Medicine
Dental Kinesiology (Biomechanics)
Dental Psychology
Dental Psychology and the Aging Process
Pharmacology and Emergency Care
Health Promotion
Public Health, Legislation and Research Nutrition
Management
Ethics and Professional Responsibilities
Small Business Management
Practice Management
Denturist Practice
Dental Materials
Preclinical Prosthetics
Clinical Prosthetics
Radiographic Pattern Recognition
Removable Partial Dentures (R.P.D.)
Dentures Over Implants

O. Reg. 833/93, Sched.

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PROFESSIONAL MISCONDUCT
REGULATION
Denturism Act, 1991  
Loi de 1991 sur les denturologistes

ONTARIO REGULATION 854/93  
PROFESSIONAL MISCONDUCT

Consolidation Period:  From July 5, 2007 to the e-Laws currency date.
Last amendment:  O. Reg. 325/07

This Regulation is made in English only.

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. Failing to abide by any term, condition or limitation imposed on the member’s certificate of registration.
2. Failing to maintain the standards of practice of the profession.
3. Delegating a controlled act, except to a person who is acting under the supervision of a member and who is,
   i. a student attending a course of study leading to a diploma or degree in denturism at an institution recognized by the Registration Committee, or
   ii. a candidate who is eligible to participate in entry-to-practice examinations, and whose application for a certificate of registration has not been finally refused by the Registration Committee.
4. Abusing a patient verbally or physically.
5. Practising the profession while the member’s ability to do so is impaired by alcohol, drugs or any other substance.
6. Discontinuing denturist services to a patient without adequate reason unless,
   i. the member has entered into an agreement to provide denturist services and the period specified in the agreement has expired, or the member has given the patient five working days’ notice of the member’s intention to discontinue the services agreed upon,
   ii. the services are no longer required,
   iii. the patient requests the discontinuation,
   iv. the patient has had a reasonable opportunity to arrange for the services of another member, or
   v. alternative services are arranged.
7. Failing to fulfil the terms of an agreement with a patient, except in accordance with paragraph 6.
8. Practising the profession while the member is in a conflict of interest.
9. Giving confidential information about 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.
10. Making a misrepresentation to a patient including a misrepresentation respecting a remedy, treatment, device or procedure.
11. Performing a controlled act that has been delegated to the member unless the delegation is authorized by the regulations.
12. Using or having in the member’s office premises dental instruments or equipment, other than instruments or equipment appropriate to the practice of denturism, unless,
   i. a dental surgeon practises dentistry in the same office premises, or
   ii. the member has obtained the consent of the Executive Committee.
13. Using or having in the member’s office a drug as defined in subsection 117 (1) of the Drug and Pharmacies Regulation Act other than,
   i. drugs or anaesthetics prescribed for the personal use of the member, or
   ii. drugs in the exclusive custody of a dental surgeon practising dentistry in the same office premises.
14. Failing to refer to a dental surgeon or a physician a patient who has an apparent intra oral condition that the member recognizes or ought to recognize is outside the scope of practice of denturism.

15. Permitting, assisting or counselling any person to perform a controlled act except in accordance with the *Regulated Health Professions Act, 1991*, an act listed in Schedule 1 to that Act and the regulations under those Acts.

16. Practising denturism in a public place or in a vehicle or other movable contrivance without the approval of the Executive Committee.

17. Recommending or providing unnecessary denturist services.

**REPRESENTATIONS ABOUT MEMBERS AND THEIR QUALIFICATIONS**

18. Using a term, title or designation other than one authorized by the Act or the regulations, or as provided in section 2.

**RECORD KEEPING AND REPORTS**

19. Failing to maintain records as required by the regulations.

20. Falsifying a record of the examination or treatment of a patient or otherwise relating to the member’s practice.

21. Failing, without reasonable cause, to provide a report or certificate relating to an examination or treatment performed by the member, within thirty days of a request from the patient or his or her authorized representative.

22. Signing or issuing, in the member’s professional capacity, a document that the member knows or ought to know is false or misleading.

23. Failing to make arrangements with a patient for the transfer of the patient’s records when,
   i. the member ceases practice, or
   ii. the patient requests the transfer.

**BUSINESS PRACTICES**

24. Submitting an account or charge for services that the member knows or ought to know is false or misleading.

25. Failing to disclose all relevant fees before providing services when requested to do so by the patient.

26. Charging a fee that is excessive or unreasonable in relation to the services performed.

27. Failing to itemize an account for professional services, using terminology understandable to a patient,
   i. if requested to do so by the patient or the person or agency who is to pay, in whole or in part, for the services, or
   ii. if the account includes a commercial laboratory fee.

28. Failing to issue a receipt when requested to do so.

29. Selling or assigning any debt owed to the member for professional services, but a member may retain an agent to collect unpaid accounts and may accept payment for professional services by a credit card.

30. Failing, while providing denturist services, to carry professional liability insurance in the minimum amount of $1,000,000 for each occurrence or failing, when requested by the College, to provide proof of carrying such insurance.

31. Accepting an amount in full payment of a fee or account that is less than the amount submitted by or on behalf of the member to a third party payer unless the member has made reasonable efforts to collect the balance or has obtained the written consent of the third party payer.

32. Contacting or communicating, directly or indirectly, with a person, either in person or by telephone, in an attempt to solicit patients.

**MISCELLANEOUS**

33. Contravening by act or omission the Act, the *Regulated Health Professions Act, 1991*, or the regulations under either of those Acts.

34. Contravening a federal, provincial or territorial law or a municipal by-law relevant to the member’s suitability to practise.

35. Influencing a patient to change his or her will or other testamentary instrument.

36. Directly or indirectly benefitting from the practice of denturism while the member’s certificate of registration is suspended unless full disclosure is made by the member to the College of the nature of the benefit to be obtained and prior approval is obtained from the Executive Committee.

37. Participating in an arrangement that would result in a member or former member committing the act of misconduct described in paragraph 36.
38. Failing to abide by a written undertaking given by the member to the College or failing to carry out an agreement entered into with the College.

39. Failing to attend an oral caution of the Complaints Committee or an oral reprimand of the Discipline Committee.

40. Failing to co-operate with a representative of the College upon production of an appointment in accordance with section 76 of the Health Professions Procedural Code and to provide access to and copies of all records, documents and things that are relevant to the investigation.

41. Failing to co-operate with a representative of another College upon production of an appointment in accordance with section 76 of the Health Professions Procedural Code and to provide access to and copies of all records, documents and things that are relevant to the investigation.

42. Failing to permit entry at a reasonable time and to co-operate with an authorized representative of the College conducting an inspection and examination of the member’s office, records, equipment or practice.

43. Failing to take all reasonable steps to ensure that any information provided by or on behalf of the member to the College is accurate.

44. Failing to reply appropriately in writing within thirty days to any written communication from the College that requests a response.

45. Failing to pay a fee or amount owed to the College, including an amount under section 53.1 of the Health Professions Procedural Code, after reasonable notice of the payment due has been given to the member.

46. Where a member engages in the practice of denturism with another member, failing to prevent another member from committing an act of professional misconduct or incompetence unless the member did not know and, in the exercise of reasonable diligence, would not have known of the other member’s misconduct or incompetence.

47. Engaging in conduct or performing an act, relevant to the practice of denturism, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful dishonourable, unethical or unprofessional.

O. Reg. 854/93, s. 1; O. Reg. 405/94, s. 1; O. Reg. 602/98, s. 1; O. Reg. 325/07, s. 1.

2. (1) A member shall not use a name or title other than his or her name as set out in the register in the course of providing or offering to provide denturist services, unless the name or title,

(a) reasonably refers to and describes the location of the practice;

(b) has been approved by the Executive Committee; and

(c) is accompanied by the name of the member, as set out in the register. O. Reg. 854/93, s. 2 (1).

(2) When a member practises denturism in association or in partnership with one or more other members and uses a name or title approved under subsection (1), the member shall notify the College within thirty days of a change in the association or partnership. O. Reg. 854/93, s. 2 (2).

3. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 854/93, s. 3.
QUALITY ASSURANCE REGULATION
Denturism Act, 1991
Loi de 1991 sur les denturologistes

ONTARIO REGULATION 206/94
GENERAL

Consolidation Period: From November 22, 2002 to the e-Laws currency date.
Last amendment: O.Reg. 317/02.

This Regulation is made in English only.

1. REVOKED: O. Reg. 317/02, s. 1.
2. REVOKED: O. Reg. 317/02, s. 1.
3. REVOKED: O. Reg. 317/02, s. 1.

PART II
FEES

4. REVOKED: O. Reg. 317/02, s. 1.
5. REVOKED: O. Reg. 317/02, s. 1.
6. REVOKED: O. Reg. 317/02, s. 1.
7. If the Registrar suspends a member’s certificate of registration under section 24 of the Health Professions Procedural Code, the Registrar shall lift the suspension on payment of,(a) the fee the member failed to pay; and(b) the fees that would have been payable had the member’s certificate not been suspended.(c) REVOKED: O. Reg. 317/02, s. 2.

8. REVOKED: O. Reg. 317/02, s. 3.

PART III
QUALITY ASSURANCE
GENERAL

9. In this Part,“assessor” means an assessor appointed under section 81 of the Health Professions Procedural Code;“Committee” means the Quality Assurance Committee;“enhancement program” means an education program, whether delivered by lecture, mentoring, self-study with examination or other similar means, designed to improve a member’s knowledge, skills or judgment as exhibited by clinical performance. O. Reg. 555/98, s. 1.

10. (1) The Committee shall administer the quality assurance program, which shall include the following components:1. Self-evaluation.2. Standards and guidelines.3. Practice assessment and enhancement.4. Remediation of behaviour and remarks of a sexual nature. O. Reg. 555/98, s. 1.(2) Every member shall comply with the requirements of the quality assurance program. O. Reg. 555/98, s. 1.(3) A decision under this Part made by two members of the Committee, one of whom is a person appointed to the Council by the Lieutenant Governor in Council, binds the Committee. O. Reg. 555/98, s. 1.
SELF-EVALUATION

11. (1) Every member shall complete annually a self-evaluation document issued by the Committee, including a description of the member’s training, educational and other quality improvement activities, and submit it to the Committee or an assessor on request. O. Reg. 555/98, s. 1.

(2) Every member shall keep his or her completed self-evaluation documents and included descriptions of training, educational and other quality improvement activities for a period of five years. O. Reg. 555/98, s. 1.

(3) The Committee may appoint an assessor or assessors to assess whether the member’s self-evaluation document has been properly completed and to verify that the member has carried out training, educational and other quality improvement activities to a level sufficient to ensure that the member’s knowledge, skills and judgment are satisfactory. O. Reg. 555/98, s. 1.

(4) The assessor may recommend to the Committee that the member undergo a practice assessment if he or she concludes that the member has failed to comply with any of the requirements of this section. O. Reg. 555/98, s. 1.

STANDARDS AND GUIDELINES

12. (1) The Committee shall systematically collect and analyze information about the nature and quality of the practice of denturism to identify issues on which the development of written standards of practice or clinical practice guidelines would enhance the quality of practice. O. Reg. 555/98, s. 1.

(2) The Committee shall propose written standards of practice or clinical practice guidelines to the Council if it is satisfied on the basis of information collected and analysed under subsection (1) that it is appropriate to do so. O. Reg. 555/98, s. 1.

(3) The College shall disseminate any such standards and guidelines that are approved by the Council to the members. O. Reg. 555/98, s. 1.

PRACTICE ASSESSMENT AND ENHANCEMENT

13. (1) Each year the College shall select at random the names of members required to undergo a practice assessment. O. Reg. 555/98, s. 1.

(2) A member is required to undergo a practice assessment to assess the member’s knowledge, skills and judgment as exhibited through clinical performance if his or her name is selected at random or the member is referred to the Committee by the Registrar, the Complaints Committee, Discipline Committee or Executive Committee or by the Board; a member may be required to undergo a practice assessment if an assessor recommends such a course of action under subsection 11 (4). O. Reg. 555/98, s. 1.

(3) The assessment may include,
(a) inspecting and reviewing the member’s premises and records, including self-evaluations;
(b) interviewing the member and his or her staff;
(c) requiring the member to answer, orally or in writing, questions that relate to the member’s type of practice; and
(d) requiring the member to examine simulations that relate to the member’s type of practice. O. Reg. 555/98, s. 1.

(4) The Committee shall appoint an assessor to carry out the assessment but the assessor may obtain the assistance he or she considers appropriate in carrying out the assessment. O. Reg. 555/98, s. 1.

(5) The assessor shall prepare a written report on the assessment and submit it to the Committee, with a copy to the member. O. Reg. 555/98, s. 1.

(6) After considering the report, the Committee may decide not to take further action or,
(a) to give the member an opportunity to enhance his or her knowledge, skills or judgment as exhibited by clinical performance, as specified by the Committee;
(b) subject to section 15, to require the member to participate in an enhancement program specified by the Committee if the Committee finds the member’s knowledge, skills or judgment to be unsatisfactory; or
(c) subject to section 15, to direct the Registrar to impose terms, conditions or limitations on the member’s certificate of registration for a period not exceeding six months if the Committee finds the member’s knowledge, skills or judgment to be unsatisfactory and that requiring the member to participate in an enhancement program under clause (b) will not adequately address the concerns raised by the report. O. Reg. 555/98, s. 1.

(7) Where the Committee decides to take action under clause (6) (a), (b) or (c), it may appoint, at that time or at a later time, an assessor to conduct a follow-up assessment within a reasonable time to determine whether the member’s knowledge, skills or judgment are now satisfactory, and subsections (3) to (6) apply to a follow-up assessment. O. Reg. 555/98, s. 1.

14. (1) If the Committee requires a member to participate in an enhancement program and the member either fails to do so or fails to successfully complete the program, as demonstrated by a follow-up assessment, the Committee may, subject to
section 15, 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. 555/98, s. 1.

(2) The Committee may direct the Registrar to impose terms, conditions or limitations on a member’s certificate of registration no more than twice with respect to any one assessment. O. Reg. 555/98, s. 1.

(3) If the Registrar imposes terms, conditions or limitations on a member’s certificate of registration under clause 13 (6) (c) or subsection (1), the Committee may direct the Registrar to remove them before the end of the specified period if the Committee is satisfied that the member’s knowledge, skills and judgment are now satisfactory. O. Reg. 555/98, s. 1.

15. (1) If the Committee intends to take action under clause 13 (6) (b) or (c) or subsection 14 (1), the member shall be given written notice of the Committee’s intention and at least 15 days to make written submissions to the Committee. O. Reg. 555/98, s. 1.

(2) The Committee shall take the submissions, if any, into account. O. Reg. 555/98, s. 1.

REMEDIATION OF BEHAVIOUR AND REMARKS OF A SEXUAL NATURE

16. (1) This section applies to matters referred to the Committee by,

(a) a panel of the Complaints Committee under subsection 26 (3) of the Health Professions Procedural Code; and 

(b) by the Executive Committee, Complaints Committee or Board under section 79.1 of the Health Professions Procedural Code. O. Reg. 555/98, s. 1.

(2) The Committee may require a member to undergo a psychological assessment or another assessment specified by the Committee if a matter respecting the member is referred as provided in subsection (1). O. Reg. 555/98, s. 1.

(3) After receiving the report of an assessment under subsection (2), the Committee may require the member to undertake specified measures, such as education, therapy or counselling, if,

(a) the Committee is of the opinion that the measures will help the member to refrain from such behaviour or remarks; and

(b) the member has been given written notice of the Committee’s intention to require the member to undertake measures, 
a written summary of the concerns of the Committee and at least 15 days to make written submissions. O. Reg. 555/98, s. 1.

(4) If the member refuses to undergo an assessment under subsection (2) or to undertake measures specified by the Committee under subsection (3), or fails to complete those measures, 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. O. Reg. 555/98, s. 1.

(5) The Committee shall not give a direction under subsection (4) unless the member has been given written notice of the Committee’s intention to do so and at least 15 days to make written submissions to the Committee. O. Reg. 555/98, s. 1.

(6) If the Registrar imposes terms, conditions or limitations on a member’s certificate of registration under subsection (4), the Committee may direct the Registrar to remove them before the end of the specified period if the Committee is satisfied that they are no longer needed. O. Reg. 555/98, s. 1.

PART IV
INSPECTION

17. (1) A member shall permit an inspector properly appointed under the by-laws to enter the premises used by the member in connection with his or her practice for the purpose of inspecting and examining the premises and the equipment, reports and records relating to the member’s practice, and shall cooperate with the inspector. O. Reg. 555/98, s. 1.

(2) A member is entitled to reasonable notice of the approximate time of an inspection and examination and, if reasonable notice has not been given, the member may refuse entry to an inspector without being in contravention of subsection (1). O. Reg. 555/98, s. 1.

PART V
NOTICE OF MEETINGS AND HEARINGS

18. (1) The Registrar shall ensure that notice of every Council meeting that is required to be open to the public under the Act is given in accordance with this Part. O. Reg. 188/99, s. 1.

(2) The notice shall be published in a daily newspaper of general circulation throughout Ontario at least 14 days before the date of the meeting. O. Reg. 188/99, s. 1.

(3) The notice shall be in English and French. O. Reg. 188/99, s. 1.

(4) The notice shall include the intended date, time and place of the meeting and indicate its purpose. O. Reg. 188/99, s. 1.

(5) The Registrar shall give notice of Council meetings to every person who requests it. O. Reg. 188/99, s. 1.

19. (1) The Registrar shall ensure that information concerning every hearing into allegations of professional misconduct or incompetence held by a panel of the Discipline Committee is given to every person who requests it. O. Reg. 188/99, s. 1.
(2) The information to be provided shall include the name of the member against whom the allegations have been made, his or her principal place of practice, the intended date, time and place of the hearing and a statement of the purpose of the hearing. O. Reg. 188/99, s. 1.

(3) For requests received more than 30 days before the date of the hearing, the Registrar shall, where possible, provide the information at least 30 days before that date. O. Reg. 188/99, s. 1.

(4) For requests received less than 30 days before the date of the hearing, the Registrar shall provide the information as soon as reasonably possible before that date. O. Reg. 188/99, s. 1.

(5) The information provided must be in English or upon request, in French. O. Reg. 188/99, s. 1.

PART VI

PUBLICATION OF DECISIONS AFTER HEARINGS

20. (1) The College shall publish the decisions of panels of the Fitness to Practice Committee and the reasons for decision, or a summary of such reasons, in its annual report and may publish the decisions and reasons or summary in any other publication of the College. O. Reg. 188/99, s. 1.

(2) A publication under subsection (1) shall not identify the member who was the subject of the decision. O. Reg. 188/99, s. 1.

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COLLEGE OF DENTURISTS OF ONTARIO
BY-LAWS
By-laws of the College of Denturists of Ontario

Under the *Denturism Act, 1991*
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1. INTERPRETATION

1.01 Definitions
In these by-laws, unless otherwise defined or required by the context,

“Act” means the Denturism Act, 1991 and includes the regulations made under it;

“Auditor” means the chartered accountant or firm of chartered accountants appointed by Council under article 4.12;

“Code” means the Health Professions Procedural Code, being Schedule 2 to the Regulated Health Professions Act, 1991;

“College” means the College of Denturists of Ontario;

“Committee” means a committee of the College and includes statutory, standing and ad hoc committees and any committee established by Council under these by-laws;

“Council” means the Council established under subsection 6(1) of the Act;

“Member” means a person registered with the College;

“Professional Association” means an organized group of Members who promote and advocate for the interests of the profession, but does not include a school whose sole purpose is to educate;

“Public Member” means a person described in clause 6(1)(b) of the Act;

“Registrar” means the person appointed by Council as Registrar for the College. The “Registrar” includes any person appointed as an Interim, Deputy, Assistant or Acting Registrar; and

“RHPA” means the Regulated Health Professions Act, 1991 and includes the regulations made under it.

1.02 Singular and Plural / Masculine and Feminine
In these and all by-laws of the College, the singular shall include the plural, the plural shall include the singular, the masculine shall include the feminine and the feminine shall include the masculine.

1.03 Legislative References
Any reference in these and all by-laws of the College to a statute, a regulation or a section of a statute or regulation shall be deemed to apply to any re-enactment or amendment of that statute, regulation or section, as the case may be.
1.04 Consistency with RHPA and Act
All provisions of these and all by-laws of the College shall be interpreted in a manner consistent with the RHPA and the Act and where any inconsistency is found to exist, the inconsistent provision shall, where practical, be severed from the by-law.

1.05 Calculating Time
A reference to the number of days between two events means calendar days and excludes the day on which the first event happens and includes the day on which the second event happens.

1.06 Holidays
A time limit that would otherwise expire on a holiday or a weekend is extended to include the next day that is not a holiday or a weekend.

2. GENERAL

2.01 Head Office
The head office of the College shall be in the Province of Ontario, at such place as Council may determine from time to time.

2.02 Forms
Certificates of registration and other documentation issued by the College shall be in such form as the Registrar shall provide, from time to time.

3. EXECUTION OF CONTRACTS AND OTHER DOCUMENTS

3.01 General Signing Authority
Documents requiring execution by the College, such as a contract, may be signed by the Registrar together with one of the President, Vice-President or other such person as Council may designate, and all documents so signed are binding upon the College without further authorization or formality.

3.02 Other Signing Authority
Instead of, or in addition to, the persons specified in article 3.01, Council may appoint from time to time, any one or more officers or other persons to sign contracts, documents and instruments in writing on behalf of the College, whether generally or in relation to specific contracts, documents or instruments in writing.

3.03 Seal
The seal, an impression of which is depicted below, shall be the seal of the College.

3.04 Use of Seal
The seal of the College shall be affixed to any document that requires the College seal by a person authorized to sign the document on behalf of the College.

4. BANKING AND FINANCE

4.01 Fiscal Year
The fiscal year of the College shall commence on the first day of April and conclude on the last day of March the following year.
4.02 Appointed Bank
Council shall appoint, from time to time, one or more Canadian banks chartered under the Bank Act (Canada) for the use of the College.

4.03 Authorized Signatories for Amounts Less than $5,000
Subject to article 3.02, all cheques, drafts, notes, or orders for payment of money and all notes and acceptances and bills of exchange in an amount less than $5,000 may be signed by the Registrar.

4.04 Authorized Signatories for Amounts of $5,000 or More
Subject to article 3.02, all cheques, drafts, notes, or orders for payment of money and all notes and acceptances and bills of exchange in an amount of $5,000 or more shall be signed by the Registrar or a staff person designated by the Registrar and one of the President, Vice-President or such other person as Council may designate.

4.05 Borrowing
Subject to any limitation set out in these or any other by-laws of the College, Council may, by resolution,

(i) borrow money on the credit of the College;
(ii) limit or increase the amount or amounts that may be borrowed;
(iii) issue, sell or pledge debt obligations of the College, including, but not limited to, bonds, debentures, notes or other liabilities, whether secured or unsecured; and
(iv) charge, mortgage, hypothecate or pledge all or any of the real or personal property of the College, including book debts, rights, powers, franchises and undertakings, to secure any such securities or any money borrowed, or other debt, or any other obligation or liability of the College.

4.06 Budget
Council shall approve annually,

(i) an operating expense and revenue budget for the College for each fiscal year; and
(ii) a capital budget for the College for each fiscal year.

4.07 Expenses
The President, Vice-President and the Registrar may approve purchases or leasing of goods and acquisition of services in accordance with the following,

(i) the Registrar may authorize expenses not exceeding $25,000 if the expenditure has previously been approved as an item in the College budget;
(ii) the Registrar and one of the President, or Vice-President may authorize expenses in excess of $25,000 if the expenditure has previously been approved as an item in the College budget;
(iii) the Registrar may authorize expenses not exceeding $10,000 if the expenditure has not previously been approved as an item in the College budget if the Registrar believes that the expenditure is necessary for the operations of the College; and
(iv) the Executive Committee shall review any proposed expense exceeding $10,000 if the item is not an expenditure in the College budget and make recommendations to Council for approval. If immediate action is required, the Executive Committee may approve the expenditure.
4.08 Grants
The Executive Committee may negotiate the obtaining of a grant on behalf of the College but such agreements shall be approved by Council before they are finalized.

4.09 Investments
Funds not immediately required by the College may be invested by the College in accordance with policies established by Council.

4.10 Safekeeping
Securities and other financial documents will be held for safekeeping in the name of the College at its bank.

4.11 Indemnification
Every Council member, Committee member and officer or employee or appointee of the College, including assessors, investigators and inspectors, and each of his or her heirs, executors and administrators and estate, respectively, shall from time to time and at all times be indemnified and saved harmless out of the funds of the College from and against,

(i) all costs, charges, expenses, awards and damages whatsoever that he or she sustains or incurs in any action, suit or proceeding that is brought, commenced or prosecuted against him or her in respect of any act, deed, matter or thing whatsoever made, done or permitted by him or her in or about the execution of the duties of his or her office; and

(ii) all other reasonable costs, charges, expenses, awards and damages that he or she sustains or incurs in or about or in relation to the affairs of the College; except such costs, charges, expenses, awards or damages as are occasioned by his or her own willful neglect or default. Where the person is a commercial service provider (e.g., a private investigator hired to conduct an investigation), the College has discretion as to whether or not to provide indemnity.

4.12 Appointment of Auditor
Council shall appoint a chartered accountant or a firm of chartered accountants to audit the accounts of the College and to prepare financial statements for each fiscal year.

4.13 Term of Office
The Auditor shall remain in office until removed by Council.

4.14 Audited Financial Statements and Report
The audited financial statements of the College, together with a signed and certified copy of the Auditor’s report, shall be presented annually to Council.

4.17 Deadline for Report
The report of the Auditor shall be prepared within one hundred and twenty (120) days of the close of the fiscal year for presentation to Council.

5. OFFICERS – GENERAL

5.01 Officers of the College
The officers of the College shall be the President, Vice-President and such other officers as Council may determine from time-to-time.

5.02 Term of Office
The term of office for each officer of the College shall commence immediately following their
election as an officer and shall continue for approximately one (1) year until the next election for officers.

5.03 Maximum Term
The maximum term in one office is two (2) consecutive, full-year terms.

6. ELECTION OF OFFICERS

6.01 Eligibility for Nomination
Only a member of Council is eligible for nomination or election as an officer of the College, and only a member of Council who has been appointed by the Lieutenant Governor in Council is eligible for nomination or election as President.

6.02 Election Procedure
At the first regular Council meeting after the elections for Council members, Council shall elect by secret ballot from among those members of Council eligible for election the President, Vice-President and any other officer positions, in accordance with this by-law and the “Process for Election of Officers” set out in Schedule 1.

6.03 Filling Vacancies (President)
In the event that the President is removed from office, resigns or dies or the position of President becomes vacant for any reason, the Vice-President shall become the President for the remaining term of the office and the office of the Vice-President shall become vacant.

6.04 Filling Vacancies (Vice-President)
In the event that the Vice-President is removed from office, resigns or dies or the position of Vice-President becomes vacant for any reason, Council may elect a new Vice-President to hold office for the remainder of the term.

6.05 Removal of President or Vice-President
In addition to the provisions of article 21.01 and 26.02, Council may remove the President or the Vice-President from office by a two-thirds vote of those present and voting where the President or Vice-President has lost the confidence of the Council.

7. DUTIES OF OFFICERS

7.01 Duties of the President
The President shall,

(i) if present, preside as Chair at all meetings of the Council unless the Council designates an alternate Chair, including persons not on Council who would act as a non-voting Chair, for all or any portion of the meeting;
(ii) serve as Chair of the Executive Committee;
(iii) perform those duties assigned to the President in the by-laws;
(iv) perform other duties and responsibilities as may be decided by Council; and
(v) report to Council at each Council meeting on all material actions taken since the President’s last report.
7.02 Duties of the Vice-President
The Vice-President shall,
   (i) perform the duties of the President in the event that the President is unable to
       perform those duties;
   (ii) perform those duties assigned to the Vice-President in the by-laws;
   (iii) serve on the Executive Committee; and
   (iv) perform all duties and responsibilities as may be decided by Council.

8. THE REGISTRAR

8.01 Appointment of the Registrar
The Registrar shall be appointed by Council and, despite subsection 12(1) of the Code, the
Executive Committee shall not exercise the authority of Council under this article. Where a
supervisor is appointed under section 5.0.1, the supervisor is the Registrar unless the
appointment of the supervisor or a direction of the supervisor provides otherwise.

8.02 Duties of the Registrar
The Registrar shall be the Chief Executive Officer of the College and shall have such duties and
responsibilities as are conferred by the Act, the RHPA, the by-laws and the policies of the
College as well as such duties and responsibilities assigned to the position by Council.

8.03 Acting Registrar
If a vacancy occurs in the office of the Registrar, the Executive Committee or Council shall
appoint an Acting Registrar until a Registrar is appointed, and during extended absences, the
Registrar may appoint, in writing, a senior staff member to serve as the Acting Registrar during
the Registrar’s absence.

8.04 Annual Performance Appraisal of Registrar
Council shall develop a process for evaluating the performance of the Registrar annually. The
process may include, among other things, soliciting feedback from Council members, staff
members and stakeholders.

9. COUNCIL - GENERAL

9.01 Authority of Council
Council shall perform the functions assigned to it under the Act and the Code.

9.02 Composition of Council
Council shall be composed of eight (8) Members and as many Public Members as are
appointed by Lieutenant Governor in Council in accordance with subsection 6(1) of the Act.
Despite this provision, Council remains properly constituted despite any vacancy that leaves
only seven (7) Members on the Council.

9.03 Term of Office
The term of office of an elected member of Council shall commence at the first Council meeting
immediately after the election and shall continue for approximately three (3) years until his or
her successor takes office in accordance with these by-laws, or until he or she resigns his or her
office or is removed from Council, or until such other time designated by Council, whichever
occurs first.
10. ELECTION OF COUNCIL MEMBERS

10.01 Definitions
In this article, "election" means an election of a Member to the Council for an electoral district and includes a regular election and a by-election, and "elected" has a corresponding meaning.

For the purposes of this article, a Member becomes "the subject of proceedings" when a Committee makes a referral for a hearing in respect of the Member.

10.02 Electoral Districts
The following electoral districts are established for the purpose of the election of Members to the Council. The Registrar may assign any new or missing postal codes to the district he or she believes is most appropriate.


10.03 Number of Members per Electoral District
One Member shall be elected to the Council for each electoral district.

10.04 When Elections are Held
There shall be a regular election:
(i) for electoral districts 1 and 2, in 2013 and every third year after;
(ii) for electoral districts 3, 4 and 5, in 2011 and every third year after; and
(iii) for electoral districts 6, 7 and 8, in 2012 and every third year after.

10.05 Election Dates
Except as otherwise provided in this By-Law, a regular election shall be held on the first Wednesday in June but, if the first Wednesday in June is a holiday, the election shall be held on the first day afterwards that is not a holiday.

10.06 Interruptions of Mail Service
If there is an interruption in mail service during the nomination or election process, the Registrar may extend the holding of nominations and the election for such period of time as the Registrar considers necessary to compensate for the interruption.

11. TERM OF OFFICE

11.01 Term of Office
The term of office of a Member elected at a regular election is approximately three (3) years, commencing with the first regular meeting of the Council after the election and expiring, subject to article 11.02, at the first regular meeting of the Council after the regular election three (3) years later.

11.02 Expiry of Term of Office
The term of office of a Member elected at a regular election held after the date required by article 10.05 expires as if he or she had been elected on the required date.

11.03 Expiry of Term of Office due to Disqualification
The term of office of a Member whose office becomes vacant by reason of the Member’s disqualification expires upon the declaration of the vacancy and the term of office of a Member elected in a by-election or appointed to replace a Member whose office is vacant expires when his or her predecessor's office would have expired under article 11.01.
12. ELIGIBILITY TO VOTE

12.01 Eligibility to Vote
A Member is entitled to vote in an election if,
(i) on election day, the Member is a registered Member of the College;
(ii) on the one hundred and twentieth day immediately preceding the election,
  (a) the Member practices or resides in Ontario, and
  (b) the Member’s registered address is in the electoral district for which the election
      is being held; and
(iii) no fees are owing by the Member to the College on the day that the ballots (or
     equivalent if voting is done electronically) are distributed.

12.02 Disputes
Disputes as to whether a Member is entitled to vote in an election shall be determined by the Registrar.

13. NOMINATIONS

13.01 Eligibility to Run for Election
A Member is eligible to run for election to the Council for an electoral district if,
(i) the Member is entitled to vote in the election;
(ii) at all times between the one hundred and twentieth day immediately preceding the
    election and the election,
    (a) the Member's registered address continues to be in the electoral district, for
        which the election is being held,
    (b) the Member is not in default of any obligation to the College under a regulation or
        the by-Laws,
    (c) the Member is not the subject of proceedings for incompetence, professional
        misconduct or incapacity,
    (d) the Member’s certificate of registration is not subject to a term, condition or
        limitation other than one prescribed by regulation,
    (e) the Member is not bankrupt or a subject of a consumer proposal, and has not
        declared bankruptcy or made a consumer proposal over the past five (5) years,
    (f) the Member is not, and has not for a period of at least one (1) year been, a
        director, officer or employee of any Professional Association relating to
        denturism,
    (g) where the Member has not been disqualified from sitting on the council under
        article 21.01 during the previous six (6) years;
(iii) the Member's certificate of registration has not been revoked or suspended at any time
     in the six (6) years immediately preceding the election; and
(iv) if the Member has previously served as an elected Council member for nine (9)
    consecutive years, at least three (3) years have passed.

13.02 Disputes
Disputes as to whether a Member is eligible to run for election shall be determined by the Elections Committee. If an Elections Committee has not been appointed, the Registrar shall determine disputes.

13.03 Notice of Election and Nominations
At least ninety (90) days before the date of an election, the Registrar shall notify every Member
of the date of the election and of the nomination procedure, including the deadline for submitting
nominations to the College.
13.04 Nomination Deadline
The nomination of a candidate for election as a member of Council shall be in writing and shall be received by the Registrar at least forty-five (45) days before the date of the election.

13.05 Signed Nominations
The nomination shall be signed by at least three (3) Members who are entitled to vote in the election and who support the nomination, and shall also be signed by the nominee as a signal of his or her consent to the nomination.

13.06 Candidate Must Advise if Becomes Ineligible to Run for Election
A candidate for election to the Council shall advise the Registrar immediately in the event that he or she becomes ineligible to run for election.

13.07 Completing Declaration
The Registrar shall request every nominee to complete and return a declaration form which, among other things, sets out that the nominee:

(a) understands the public protection mandate of the College,
(b) is not aware of any potential conflict of interest, and
(c) agrees to campaign only in accordance with the public interest objects of the College as set out in the Code.

Any nominee who fails to complete and return the declaration by the deadline set by the Registrar and in a form acceptable to the Elections Committee shall not be eligible for election.

13.08 Personal Statement
The Registrar shall invite every nominee to provide a biography and personal statement by the deadline established by the Registrar, and any biography and personal statement that is not submitted by the deadline set by the Registrar and in the form acceptable to the Elections Committee, shall not be included with the materials sent to Members under article 16.01.

13.09 Withdrawal of Candidacy
A candidate in an election may withdraw his or her candidacy by notifying the Registrar of the withdrawal in writing. If the notice in writing is received at least thirty-five (35) days before the date of the election, the candidate’s name shall not be placed on the ballot (or equivalent if voting is done electronically). In all other cases, the Registrar shall make reasonable efforts to notify Members eligible to vote that the candidate has withdrawn from the election.

13.10 Conduct
Each candidate shall conduct themselves during the election with honour and dignity. No candidate shall engage in conduct during the electoral process that would tend to bring the profession into disrepute or would tend to taint the electoral process. No candidate shall make verbal or written election statements that are inappropriate or unprofessional.

13.11 Consequences for Inappropriate Conduct
If it appears to the Elections Committee, after appropriate investigation, that a candidate is not conducting himself or herself appropriately during the election, the Elections Committee may take action that it deems appropriate to ensure that the election is as fair as possible, including warning the candidate about his or her conduct and notifying Members entitled to vote about apparently incorrect or inappropriate statements that may have been made. However, the Elections Committee is not required to take corrective measures.
14. ACCLAMATION

14.01 Declaration of Acclamation
If there is only one candidate for an electoral district who is eligible for election, the Registrar shall inform the President in writing and the Registrar shall declare the candidate elected to the Council by acclamation for that electoral district.

14.02 Where There Are No Candidates
If there are no candidates for an electoral district who are eligible for election, the Registrar shall, as soon as possible call a by-election for that electoral district.

15. ADMINISTRATION

15.01 Chief Returning Officer
The Registrar shall be the chief returning officer for the election.

15.02 Duties of Registrar
The Registrar shall supervise and administer the election of candidates and, without limiting the generality of the above, the Registrar may, subject to these by-laws,

(i) appoint returning officers and scrutineers;
(ii) establish procedures and any necessary deadlines including procedures and deadlines relating to the receipt of nominations, biographies and personal statements and ballots (or equivalent if voting is done electronically);
(iii) retain third party service providers to assist with administering the election;
(iv) ensure electronic communications and voting processes are reliable and secure;
(v) establish procedures for the opening and counting of ballots (or equivalent if voting is done electronically);
(vi) provide for the notification of the results of the election to all candidates and Registrants;
(vii) provide for the destruction of ballots (or equivalent if voting is done electronically) following an election; and
(viii) do anything else that the Registrar deems necessary and appropriate to ensure that the election is fair and effective.

16. VOTING

16.01 Ballots
No later than thirty (30) days before the date of an election, the Registrar shall send every Member eligible to vote in the election a list of the eligible candidates, the biography and/or personal statement of every eligible candidate who has submitted one by the deadline established by the Registrar, a ballot (or equivalent if voting is done electronically) and an explanation of the voting process.

16.02 Contents of Ballots
Each ballot (or equivalent if voting is done electronically) shall contain, in alphabetical order of
surname, the name of each candidate, and any other information entered in the register that the Registrar directs be included to identify the candidates.

16.03 Voting Secret
Voting shall be secret and conducted so that no person knows for whom any Member voted.

16.04 Proxy Voting
A Member cannot vote in an election by means of a proxy.

16.05 Number of Votes Cast
A Member may cast as many votes on a ballot (or equivalent if voting is done electronically) in an election of Members to Council as there are Members to be elected from that electoral district, but shall not cast more than one (1) vote for any candidate.

16.06 Ballot Verification
Ballots (or equivalent if voting is done electronically) must be received in the manner specified at or before the date and time specified for the election in order to be counted in the vote.

17. COUNTING VOTES

17.01 Ties
If two (2) or more candidates receive the same number of votes in an election, the Registrar shall select one of the candidates by lot who shall be deemed to have received the greatest number of votes in the election.

17.02 Decisions by Registrar
All questions arising in the counting of ballots (or equivalent if voting is done electronically), the recording of results or the determination of the result shall be decided by the Registrar who shall record the reason for any decision made with respect to those questions.

17.03 Candidate Entitled to be Present
A candidate is entitled, in person or by an agent appointed for the purpose by the candidate in writing, to be present and see the Registrar discharge his or her duties on election day.

18. DOCUMENTATION

18.01 Election Results
As soon as practicable after the ballots (or equivalent if voting is done electronically) have been counted, the Registrar shall advise Council and the membership of the results of the election, and shall advise each eligible candidate of the results of the election, the number of votes he or she received and the candidate’s right to request a recount in accordance with article 19.

18.02 Registrar’s Declarations
The Registrar shall make all declarations in respect of an election in writing, keep them in the records of the College and include a copy of each declaration in the next package of materials sent to the Council after making it.

18.03 Destruction of Ballots
Unless a candidate has requested a recount or otherwise challenged an election or its results, the Registrar shall, thirty-one (31) days after the return of an election destroy all ballots (or equivalent if voting is done electronically) and other material from the election.
19. RECOUNTS

19.01 Requesting Recount within Thirty (30) Days
Upon written direction to the Registrar received within thirty (30) days after the date of the return and payment to the College as prescribed by these by-laws, a candidate may require a recount.

19.02 Recount Process
The Registrar shall hold a recount no more than fifteen (15) days after receiving a written request and the recount shall be conducted in as transparent a manner as the voting system reasonably permits.

19.03 Results of Recount
If the result of the recount is that the candidate who required the recount is declared elected to the Council for the electoral district, the candidate is entitled to repayment without interest of the required recount fee described in article 19.01.

19.04 Registrar’s Report to Council
The Registrar shall report to the Council at its first meeting following any recount the procedures and results of the recount.

20. INQUIRY

20.01 Referral of Disputes to Elections Committee
If the Council is of the opinion that there is a reasonable ground for doubt or dispute as to the validity of the election of any member of the Council, it shall direct the Elections Committee to initiate an inquiry.

20.02 Report and Recommendations of Elections Committee
Where the Elections Committee initiates an inquiry under article 20.01, it shall hold an inquiry into the validity of the election of the member of Council in question and, following the inquiry, shall make a report and recommendation to Council.

20.03 Options Available to Council
Council may, after reviewing the report and recommendation of the Elections Committee and subject to article 19.02, do one of the following:

(i) declare the election result in question to be valid; or

(ii) declare the election result in question to be invalid; and either

(a) declare another candidate to have been elected; or

(b) direct that another election be held.

20.04 Minor Irregularities Not Fatal
Council shall not declare an election result to be invalid solely on the basis of a minor irregularity regarding the requirements of these by-laws or a procedure established by the Registrar or the Elections Committee.
21. VACANCIES

21.01 Disqualification of Elected Members
Council shall disqualified an elected member of Council, if the member,
(i) resigns from Council or otherwise ceases to hold a certificate of registration;
(ii) ceases to have a registered address in the electoral district for which the
member was elected and there is more than one (1) year left in the person’s
term;
(iii) is in default of payment of any fee prescribed by College by-law for a period of
more than sixty (60) days;
(iv) is found to have committed professional misconduct or to be incompetent by a
panel of the Discipline Committee;
(v) is found to be incapacitated by a panel of the Fitness to Practice Committee;
(vi) retains or obtains a responsible position such as director, owner, board member
or officer or holds employment or becomes an employee of any Professional
Association relating to denturism;
(vii) becomes a member of a council of any other college regulated under the
RHPA;
(viii) fails, without reasonable cause, to attend three (3) meetings of Council in a
calendar year, three (3) meetings of any Committee on which he or she serves
in a calendar year or one (1) hearing or a review by a panel to which he or she
has been appointed;
(ix) is convicted of a criminal offence which, in the opinion of Council, is of a nature
that warrants disqualification;
(x) acts in a manner inconsistent with a provision of this by-law applicable to
Council or Committee members;
(xi) advocates or makes a public statement (other than at a Council meeting)
against a position taken by the Council;
(xii) initiates or joins a legal proceeding against the College or any Committee or
representative of the College; or
(xiii) fails, in the opinion of Council, to discharge properly or honestly any office to
which he or she has been elected or appointed.

21.02 Registrar’s Receipt of Information
If the Registrar receives information which suggests that an elected member of Council meets
one or more of the criteria for disqualification set out in article 21.01, the Registrar shall follow
the procedure set out in article 26.02. Where the Registrar has reasonable and probable
grounds to believe that a member of Council meets the criteria for disqualification and no one
else has made a complaint, the Registrar shall make a complaint in writing.

21.03 Effect of Disqualification
An elected Council member who is disqualified by Council ceases to be a member of Council
in accordance with article 11.03 and ceases to be a member of any Committee or working
group of which he or she is a member.

21.04 Eligibility following Disqualification
Where an elected Member of the Council has been disqualified from sitting on the Council under
article 21.01, the Member shall not be eligible to run for election for six (6) years.

21.05 Filling Vacancies
If the seat of an elected Council member becomes vacant less than twelve (12) months before...
the expiry of the member’s term of office, Council may,

(i) leave the seat vacant;
(ii) appoint as an elected Council member a Member who meets the criteria for eligibility for election set out in article 13.01; or
(iii) direct the Registrar to hold a by-election in accordance with this by-law.

21.06 By-Election
If the seat of an elected Council member becomes vacant more than twelve (12) months before the expiry of the member’s term of office, Council shall direct the Registrar to hold a by-election in accordance with this by-law.

21.07 Manner of Holding By-Elections
A by-election ordered by Council shall be held in the same manner and shall be subject to the same criteria and processes as a regular election, subject to any necessary modifications.

22. COUNCIL MEETINGS

22.01 Location and Frequency of Meetings
A Council meeting shall, wherever possible, be held at a place and on a date set in advance and shall occur at regular intervals and at such frequency as necessary for Council to conduct its business but shall, in any event, occur at least three (3) times per year.

22.02 Notice of Meetings
The Registrar shall notify Council members of the meeting, setting out the date, time and place of the meeting and the general nature of the business to be transacted at least ten (10) days before the date of the meeting.

22.03 Waiver of Notice
A Council member may, at any time, waive the requirement for notice of a meeting to that Council member.

22.04 Business at Meetings
Council may only consider or transact at a regular meeting,

(i) matters on the agenda;
(ii) matters brought by the Executive Committee or the Registrar;
(iii) reports from the Registrar and the President;
(iv) recommendations and reports by Committees;
(v) matters for which notice was given by a member of Council at the preceding meeting or where written notice has been given at least thirty (30) days in advance of the meeting; and
(vi) such other matters, not included on the agenda, as the majority of members in attendance agree to be of an urgent nature that cannot wait a reasonable time for background information to be prepared.

22.05 Secretary
The Registrar serves as the Secretary of Council or appoints someone to act as the Secretary of Council.

22.06 Chair
The President acts as Chair of Council unless the Council has designated an alternate Chair, including a person not on Council who would act as a non-voting Chair, for all or any portion of the meeting. In the event that the President is absent and has not designated an alternate
Chair, the Vice-President acts as the Chair of Council, failing which Council shall elect, from amongst their number, a Council member to serve as Chair at that meeting.

22.07 Manner of Meeting
Any meeting of Council, other than a hearing that must be held in person, may be conducted by means of teleconference or any other means that permits all persons participating in the meeting to communicate with each other simultaneously and instantaneously (including audio or video conferencing), and persons participating in the meeting by such means are deemed to be present at the meeting.

22.08 Quorum
Unless specifically provided for otherwise under the Act, the RHPA or the by-laws, a simple majority of Council members shall constitute a quorum for the purpose of a meeting.

22.09 Simple Majority
Unless specifically provided for otherwise under the Act, the RHPA or the by-laws, every motion which properly comes before Council shall be decided by a simple majority of the votes cast at the meeting by the Council members present.

22.10 Chair Votes
If the Chair is a member of Council, he or she may participate in the discussion of a matter before Council but shall not vote unless there is a tie vote and the Chair’s vote would break the tie, unless the Chair wishes to vote against a motion and the Chair’s vote would create a tie that would defeat the motion, or unless there is a roll call vote (e.g., to enact a regulation).

22.11 Tie Votes
In the event of a tie vote, the motion is defeated.

22.12 Unanimous By-laws
A resolution approving a new or amended by-law, signed by all members of Council, including a resolution where all or some of the members have signed by facsimile or email, is valid and effective as if passed at a meeting of Council held for the purpose.

22.13 Rules
Except where inconsistent with the RHPA, the Act or the by-laws, the rules of order for meetings of Council are set out in Schedule 2.

22.14 Minutes
The Registrar shall ensure that accurate minutes of all Council meetings are recorded, approved and maintained at the College office.

22.15 Adjournments
Whether or not a quorum is present, the presiding Chair may, from time to time, with the consent of the majority of Council members present and voting, adjourn any properly called meeting to a fixed time and place, and any matter brought before the original meeting may be considered and transacted at a reconvened meeting provided that a quorum is present.

22.16 Calling Special Meetings
The President may call and convene a special meeting of Council,
(i) where the President and the Registrar agree there is a need to consider a matter that cannot await the next scheduled Council meeting;
(ii) upon receipt of the written request of any six (6) members of Council; or
(iii) if a request is received from the Executive Committee under article 26.02.
22.17 Notice of Special Meetings
Subject to article 22.18, the Registrar shall notify Council members of the special meeting, setting out the date, time and place of the meeting and the general nature of the business to be transacted, at least five (5) days prior to the date of the meeting. Council may only consider or transact at a special meeting those items of business contained in the notice.

22.18 Special Meetings Without Notice
A special meeting may also be held without notice at any date, time and place provided that all members of Council are present in person or in a manner that allows them to participate in discussion simultaneously and instantaneously, including audio or video conferencing, or if all the absent Council members have consented, in writing or electronically, to the holding of such a special meeting.

23. COMMITTEES – GENERAL

23.01 Duties and Responsibilities
The duties and responsibilities of each Committee shall be those set out in the RHPA, the Act, the by-laws and the terms of reference for that Committee, as approved by Council, where applicable.

23.02 Non-Statutory Committees
In addition to the statutory Committees required by the Code, the Council may establish and maintain any additional Committee or working groups deemed necessary for the efficient functioning of the College including an Elections Committee and a Nominating Committee. Unless Council directs otherwise, the Nominating Committee will consist of the Past President, the Vice-President and a Public Member.

23.03 Composition of Committees
Unless stated otherwise in the Code or the by-laws, every Committee of the College shall be composed of at least three (3) persons and shall include at least one (1) member of Council who is also a Member and at least one (1) Public Member.

23.04 Vacancies
Despite anything in these by-laws, a Committee is properly constituted despite any vacancy so long as there are sufficient Members to form a quorum of the Committee or a panel of the Committee.

23.05 Quorum
The quorum of any Committee is three (3) members unless otherwise provided in the Act or unless the Committee is composed of only three (3) members, in which case, the quorum for such a Committee shall be two (2) members.

23.06 Panels
A committee may meet in panels selected by the Chair of the Committee.

24. SPECIFIC COMPOSITION AND SELECTION OF COMMITTEES

24.01 Executive Committee
The Executive Committee shall be composed of the Past President if the Past President is still a member of Council, the President, the Vice-President and at least two (2) other members of
Council. At least three (3) members of the Executive Committee shall be Members and at least two (2) members of the Executive Committee shall be Public Members. However, where a supervisor is appointed under section 5.0.1 of the RHPA, the supervisor shall perform the functions of the Executive Committee unless the appointment of the supervisor or a direction of the supervisor provides otherwise.

24.02 Registration Committee
The Registration Committee shall be composed of,
(i) at least two (2) Members who are members of Council;
(ii) at least one (1) Public Member who is a member of Council; and
(iii) one (1) or more Members who are not members of Council where Council so wishes.

24.03 Inquiries, Complaints and Reports Committee
The Inquiries, Complaints and Reports Committee shall be composed of,
(i) at least two (2) Members who are members of Council;
(ii) at least two (2) Public Members who are members of Council; and
(iii) one (1) or more Members who are not members of Council where Council so wishes.

24.04 Discipline Committee
The Discipline Committee shall be composed of every member of Council and one (1) or more Members who are not members of Council where Council so wishes.

24.05 Fitness to Practise Committee
The Fitness to Practise Committee shall be comprised of every member of Council and one (1) or more Members who are not members of Council where Council so wishes.

24.06 Quality Assurance Committee
The Quality Assurance Committee shall be composed of,
(i) at least two (2) Members who are members of Council;
(ii) at least one (1) Public Member who is a member of Council; and
(iii) at least two (2) or more Members who are not members of Council.

24.07 Patient Relations Committee
The Patient Relations Committee shall be composed of,
(i) at least two (2) Members who are members of Council;
(ii) at least two (2) Public Members who are members of Council; and
(iii) one (1) or more Members who are not members of Council where Council so wishes.

24.08 Appointment of Committee Members and Members of Working Groups
Unless otherwise stated in the by-laws, the Nominating Committee shall put forward to Council for approval a proposed slate of every Committee member and every member of a working group, including Members who are not members of Council with the exception of the Executive Committee, whose members shall be elected to office.

24.09 Appointment of Non-Council Members
Subject to any specific composition requirements in these by-laws, the Executive Committee may, where vacancies arise during the Council year, appoint Members, including members of Council, to any Committee or working group and report such appointment(s) to Council.
24.10 Terms of Office of Committee Members
The term of office of a Committee member shall commence immediately after the appointment and shall continue for approximately one (1) year.

24.11 Chairs
Unless stated otherwise in these by-laws, the Chair or Chairs of each Statutory Committee shall be appointed by the Council and the Chair or Chairs of each non-Statutory Committee shall be appointed by the members of that Committee.

24.12 Decisions Regarding Appointments
In making an appointment under article 24.08 or 24.09, Council and the Executive Committee shall take into consideration the location of practise, if applicable, as well as the experience, expertise, availability and other qualifications and characteristics of the Member or other person, in order to complement the attributes of the other Committee members or members of the working group.

24.13 Eligibility for Appointment
A Member is eligible for appointment to a Committee or a working group if, on the date of the appointment,

(i) the Member holds a certificate of registration;
(ii) the Member is not in default of payment of any fees prescribed by College by-law;
(iii) the Member is not the subject of any disciplinary or incapacity proceeding;
(iv) the Member has not been the subject of any professional misconduct, incompetence or incapacity finding in the preceding three (3) years;
(v) the Member’s certificate of registration has not been revoked or suspended in the preceding six (6) years for any reason other than non-payment of fees;
(vi) the Member’s certificate of registration is not subject to a term, condition, or limitation imposed by either the Discipline Committee or the Fitness to Practise Committee;
(vii) the Member is not holding, and has not for a period of at least one (1) year held, a responsible position, such as director, owner, board member, officer or employee, with any Professional Association relating to denturism;
(viii) the Member has not been disqualified from Council or a Committee within the preceding six (6) years;
(ix) the Member is not a member of a council of any other college regulated under the RHPA;
(x) the Member is not an employee of the College; and
(xi) the Member is not in any default of returning any required form or information to the College.

25. COMMITTEE MEETINGS

25.01 Location and Frequency of Meetings
Committee meetings shall, wherever possible, be held at a place and on a date set in advance and shall occur at regular intervals and at such frequency as necessary for the Committee to conduct its business.

25.02 Manner of Meeting
Any meeting of a Committee, other than a hearing that must be held in person, may be conducted by means of teleconference or any other means that permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously (including
audio or video conferencing), and persons participating in the meeting by such means are deemed to be present at the meeting.

25.03 Chair
In the event that the Chair of the Committee is unable or unwilling to preside at the meeting, the Committee members shall select, from amongst their number, a Committee member to serve as Chair for the purposes of that meeting, which event shall be recorded in the minutes.

25.04 Minutes
The Chair of each Committee shall ensure that accurate minutes of all Committee meetings and proceedings are recorded, approved and maintained at the College office.

25.05 Simple Majority
Unless specifically provided for otherwise under the Code or the by-laws, every motion which properly comes before a Committee shall be decided by a simple majority of the votes cast at the meeting by the Committee members present.

25.06 Chair Votes
The Chair of the Committee may participate in discussion of a matter before the Committee but shall not vote unless there is a tie vote and the Chair’s vote would break the tie, the Chair wishes to vote against a motion and the Chair’s vote would create a tie that would defeat the motion, the Committee is conducting a hearing, or there is a roll call vote.

25.07 Tie Votes
In the event of a tie vote, the motion is defeated.

26. DUTIES OF COUNCIL AND COMMITTEE MEMBERS

26.01 Expectations and Duties
Every member of Council and every Committee member shall, in the performance of his or her duties:

(i) familiarize himself or herself with the Act, the RHPA, the by-laws and any policies of the College;
(ii) familiarize himself or herself with any other records, documents and guidelines that may be necessary for the performance of his or her duties;
(iii) comply with the provisions of the Act, the RHPA, the by-laws, any policies of the College and rules that are adopted by Council, from time to time;
(iv) regularly attend meetings on time and participate constructively in discussions;
(v) ensure that confidential matters coming to his or her attention as a member of Council or as a member of a Committee or working group are not disclosed by him or her, except as required for the performance of his or her duties or as permitted by the RHPA;
(vi) conduct himself or herself in an appropriate manner with College staff, other members of Council or members of the Committees, Members and members of the public;
(vii) comply with the College’s Code of Conduct, as set out in the College’s governance policies established by Council;
(viii) avoid, or where that is not possible, declare all conflicts of interest in the manner set out in the by-law;
(ix) step down from his or her position as Council and / or Committee member and / or working group member in the event that allegations regarding his or her conduct, competence or capacity are referred to the Discipline Committee or
Fitness to Practise Committee until such time as the matter has been finally disposed of; and
(x) perform the duties associated with his or her position conscientiously and with integrity and diligence in a manner that serves and protects the public interest.

26.02 Removal of Council or Committee Member
The following procedure shall be followed in the event that a Council or Committee member is alleged to have contravened the duties of a Council or Committee member or meets the criteria for disqualification set out in article 21.01:
(i) a written complaint shall be filed with the Registrar. A complaint can be made by a member of the public, a Member of the College, a Council or Committee member or the Registrar. If a member of Council or a Committee receives such a complaint, he or she shall immediately file it with the Registrar;
(ii) the Registrar shall report the complaint to the Executive Committee if he or she believes that the complaint may warrant formal action;
(iii) if the Executive Committee, after any investigation it deems appropriate, believes that the complaint warrants formal action, it shall request a meeting of the Council. Council shall determine whether there has been a breach of duties or whether the criteria for disqualification have been met and, if so, impose the appropriate sanction. The appropriate sanction can include one or more of the following:
(a) censure of the member verbally or in writing,
(b) removal of the member from any Committee and / or working group on which he or she serves, or
(c) disqualification of an elected member of Council from the Council, or a report requesting removal of the member concerned from the Council to the Public Appointments Secretariat;
(iv) a decision finding that there has been a breach of duties or that a Council or Committee member meets the criteria for disqualification set out in article 21.01, and a decision to impose a particular sanction must be approved by a majority affirmative vote of the Council members present and voting; and
(v) the Council or Committee member whose conduct is the subject of concern shall not take part in the deliberation or vote, however, he or she will be given a reasonable opportunity to respond to the allegation prior to deliberation or vote.

27. CONFLICTS OF INTEREST

27.01 Duty to Avoid Conflicts of Interest
All Council and Committee members have a duty to carry out their responsibilities in a manner that serves and protects the interest of the public. As such, they must not engage in any activities or in decision-making concerning any matters where they have a direct or indirect personal or financial interest. All Council and Committee members have a duty to uphold and further the intent of the Act to regulate the practice and profession of denturism in Ontario, and not to represent the views of advocacy or special interest groups.

27.02 Recognition of Conflict
Council and Committee members recognize that a conflict of interest or an appearance of a conflict of interest by a member of Council or its Committees,
(i) could bring discredit to the College;
(ii) could amount to a breach of the fiduciary obligation of the person to the College; and
(iii) could create liability for either the College and / or the person involved.
27.03 Conflicts Relating to Involvement with a Professional Association
A member of Council or a Committee member shall be perceived to have conflict of interest in a matter and should not serve on Council or its Committees at all if he or she holds a responsible position such as director, owner, board member or officer in or is an employee of any Professional Association relating to denturism.

27.04 Conflicts Relating to Position in Other Organizations
A member of Council or a Committee member would be perceived to have a conflict of interest in a matter and should refrain from participating in any discussion or voting if he or she holds a responsible position such as director, owner, board member or officer in, or is an employee of, another organization where his or her duties may be seen by a reasonable person as influencing his or her judgment in the matter under consideration by the Council or its Committees. For example, an educator in a school should not participate in any decisions relating to the status of that school, its program(s) or the acceptability for registration of graduates from that school.

27.05 Declaration Forms
Upon appointment or election, and annually thereafter if requested, every Council and Committee member and every member of a working group shall fully complete and deliver to the Registrar a form, available from the Registrar, declaring his or her current and recent affiliations with Professional Associations and other organizations to facilitate compliance with the above provisions.

27.06 Litigation Against College
A Council or Committee member shall resign from all positions with the College before initiating or joining a legal proceeding against the College or any Committee or representative of the College.

27.07 Interests of Related Persons
For the purposes of this by-law, the direct or indirect personal or financial interests of a parent, spouse, child or sibling of a Council or Committee member are interpreted to be the interests of the Council or Committee member. Here, the term “spouse” includes a common-law spouse and a same-sex partner of the person.

27.08 Where a Conflict May Exist
Where a Council or Committee member believes that he or she may have a conflict of interest in any matter which is the subject of deliberation or action by the Council or its Committees, he or she shall,

(i) consult, as needed, with the President, the Chair of the Committee, the Registrar and / or legal counsel;

(ii) if there is any doubt about whether he or she may have or be perceived to have a conflict, prior to any consideration of the matter, declare the potential conflict to the Council or the Committee and accept the President’s or Chair of the Committee’s ruling as to whether there is an appearance of a conflict, subject to any appeal or reconsideration by the Council or the Committee itself;

(iii) where there appears to be a conflict of interest, not take part in the discussion of, or vote on, any question in respect of the matter;

(iv) where there appears to be a conflict of interest, leave the room for the portion of any meeting relating to the matter;

(v) where there appears to be a conflict of interest, not attempt in any way to influence the voting or do anything that might be perceived as attempting to influence the decision of other members on the matter; and
(vi) upon returning to the room, be informed of the outcome of the vote but no further
details of the discussion or the details of the vote.

27.09 Conflicts Recorded in Minutes
Every declaration of a conflict of interest shall be recorded in the minutes of the meeting
together with a description of the nature of the conflict.

27.10 Use of College Information or Property
A member of Council or a Committee member shall not use College property or information of
any kind to advance his or her own interests, direct or indirect.

27.11 Staff or Other Positions
A member of Council or a Committee member may not hold any other employment or
appointment with the College while serving as a member of Council or its Committees. This
includes, but is not limited to, positions as peer assessor, investigator, inspector, examiner or
staff. Where a member of Council or a Committee wishes to be considered for any such
position or appointment, he or she must first resign their position and agree to an undertaking
not to seek election to Council or appointment to a Committee for a period of one (1) year after
they cease to be employed or appointed by the College or one (1) year from the date they are
informed in the event that they are unsuccessful in their application for employment or
appointment by the College. Despite this provision, a member of a Committee who is not on the
Council or who is not the Chair of a Committee may serve as an examiner so long as the person
does not serve on a Committee that is involved in the examination or registration process.

28. CONFIDENTIALITY

28.01 Duty of Confidentiality
Members of the Council and Committees, staff and persons retained or appointed by the
College are required to maintain confidentiality of information that comes before them in the
course of discharging their duties unless disclosure is authorized by the Council or is otherwise
permitted under subsection 36(1) of the RHPA.

28.02 Subsection 36(1) of the RHPA
Subsection 36(1) of the RHPA states, in part, as follows,
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 ….

28.03 Disclosure Under the RHPA
Subsection 36(1) of the RHPA permits disclosure in a number of specific circumstances.
Members of the Council and Committees, staff and persons retained or appointed by the
College are expected to understand when those exceptions apply and seek advice if they are in
doubt.

28.04 Confidentiality Agreement
Council and Committee members, staff and persons retained or appointed by the College are
required to sign, annually, the confidentiality or fiduciary agreement approved by Council.
29. COMMUNICATIONS

29.01 – Media Contacts
All media contact shall be channelled and coordinated through the Registrar’s office. Any Council or Committee member or any member of a working group being asked by media representatives to provide interviews, respond to inquiries or to comment on issues concerning the regulation of the profession or the operation of the College shall not provide any such communication and shall instead refer them to the Registrar’s office.

29.02 – College Communications
The Registrar, the President or, in the absence of the President, the Vice-President,

(i) are the authorized spokespersons of the College but either of them may request a member of Council or staff to perform this function, as appropriate, under the circumstances; and

(ii) may communicate with the media to provide interviews, respond to inquiries or comment on issues concerning regulation of the profession or the operation of the College. A member of Council or a Committee member shall not perform such Communications unless authorized by the Registrar, the President or, in the absence of the President, the Vice-President.

29.03 – Consistent Messaging
All messages to the media and to the public must be consistent with the approved policies and positions of the College. Any member of Council or Committee member shall resign all positions with the Council and its Committees prior to expressing public disagreement with a decision, policy or position of the College or its Committees and even then, shall only do so in a manner consistent with his or her ongoing fiduciary duties towards the College.

29.04 – Invitations for Speaking Engagements
All requests inviting the President, the Registrar or members of Council, Committees or working groups to speak in his or her capacity as a representative of the College must be submitted, in writing, to the Registrar’s office with details of the date, time and place of the speaking engagement as well as the topic and anticipated length of the presentation.

29.05 – Acceptance of Invitations for Speaking Engagements
The Registrar, in consultation with the President, where possible, will review all requests inviting Council, Committee or working group members to speak and shall determine whether to accept the invitation and the appropriate representative to address the topic. Other than as described above, no member of Council, a Committee or working group shall accept any request to make representations or speak on behalf of the College or in his or her capacity as a representative of the College.

29.06 – Presentation Content
The content of every presentation must be consistent with the approved policies and positions of the College and shall be submitted at least five (5) days before the date of the presentation to the Registrar or a person designated by the Registrar for approval.
29.07 – No Compensation
No person speaking in his or her capacity as a representative of the College shall receive any payment or benefit related to the presentation or, if the payment or gift cannot in the circumstances be gracefully declined, it shall immediately be turned over to the Registrar. However, mementoes of nominal value ($50.00 or less) may be accepted and retained.

30. HONORARIA

30.01 Application
This section applies to members of the College who are Councillors or Committee members. It does not apply to Councillors or Committee members appointed by the Lieutenant Governor in Council.

30.02 Purpose of Honoraria
The honoraria set out in this article are not intended as re-imbursement of the professional income that could be earned. Members of Council, Committees and working groups are essentially volunteers.

30.03 Honoraria Amounts
The honorarium and payable expenses for attending a Council or Committee meeting are set out in Schedule 5 and Schedule 6 to these by-Laws.

30.04 Payment of Honoraria
The following principles apply to the payment of honoraria:
(i) except as set out below, only actual attendance time may be claimed for an honorarium for attendance at a meeting;
(ii) a maximum of one (1) Full Day honorarium may be claimed for a calendar day despite the number or length of meetings held that day;
(iii) honoraria may be claimed for an in-person meeting where the meeting is cancelled with less than two (2) business days notice;
(iv) where a meeting does not take the scheduled time, the member may claim the honoraria for the scheduled length of the meeting so long as the member arrived on time and did not leave early;
(v) all claims must be recorded on the forms established by the College and must be submitted within sixty (60) days of the meeting date or the claim will be forfeited; and
(vi) any disputes about a claim for an honorarium and any request for special consideration shall be determined by the Registrar in consultation with the President.

31. FEES

31.01 – Registration Year
The registration year for Members shall be from April 15th to April 14th of the following year.

31.02 – Renewal Process
The annual registration is due on or before April 15th of each year. At least forty-five (45) days before the annual fees are due, the Registrar shall send to each Member a notice stating that the annual fees are due, setting out the amount of the annual fee for each category of registration and a request for information required under the regulations and the by-laws of the College. The obligation to pay the annual fee continues even if the Registrar fails to provide the notice or the Member fails to receive such notice.
31.03 – Fee Amounts
Fees are as follows:

(i) The application for registration fee is $175.00 plus applicable taxes;

(ii) Every person who holds a certificate of registration as a Denturist shall pay an annual fee of $1900.00 plus applicable taxes except that, in the year in which the person is first registered as a Denturist. If the certificate of registration is issued on or after October 15th, the annual fee for that year shall be $950.00 plus applicable taxes, and if the certificate of registration is issued between July 1st and October 14th, the annual fee for that year shall be $1425.00 plus applicable taxes;

(iii) The registration fee and the annual renewal fee for a person registered under section 4 of the registration regulation or who will not practise denturism for the entire year is $475.00 plus applicable taxes;

(iv) The penalty fee for the late renewal of a certificate of registration or a certificate of authorization is $150.00 plus applicable taxes and becomes payable at 12:01 a.m. on the day after the renewal fee is due to be paid to the College;

(v) The fee for re-instatement of members whose certificate of registration has been suspended for non-payment of their fees is the amount of the fees and the penalties outstanding plus an additional penalty fee of $500.00 plus applicable taxes;

(vi) The fee for re-instatement of members whose certificate of registration has been suspended or revoked for a reason other than non-payment of fees is the amount of the annual fee for the year in which the certificate of registration is reinstated if not already paid and a penalty fee of 150.00 plus applicable taxes;

(vii) The election recount fee payable by a candidate for election to the Council who requests a recount of the vote shall be $500.00 plus applicable taxes;

(viii) The special levy fee payable by all members registered with the College on the date in 2012 that the notice of the special levy fee is mailed is $250.00 plus applicable taxes;

(ix) The fee for the issuance of a certificate of authorization is $1000.00 plus applicable taxes; and

(x) The fee for the renewal of a certificate of authorization is $350.00 plus applicable taxes.

31.04 – Payment of Fees set by Registrar
A person shall pay the fees set by the Registrar for anything the Registrar is required or authorized to do.

31.05 – Fee Increases
Each year each fee described in these by-laws shall be increased by the percentage increase in the Consumer Price Index for goods and services in Canada as published by Statistics Canada or any successor organization unless Council decides to waive a fee increase for that year.
32. PROFESSIONAL LIABILITY INSURANCE

32.01 Mandatory Insurance Coverage
Subject to article 32.02, all Members, other than those who have notified the Registrar in writing that they are not practising the profession in Ontario and are not practising the profession in Ontario, shall carry professional liability insurance that has the following characteristics:

(i) a minimum coverage amount of $1 million per claim;
(ii) a deductible of no more than $1,000 per occurrence; and
(iii) from an insurance provider who is licensed as an insurer with the Financial Services Commission whose coverage complies with the insurance requirements specified by these by-Laws.

32.02 Enduring (Tail) Insurance
Members required to carry professional liability insurance shall have, as a part of their policy, enduring (tail) insurance coverage for at least three (3) years after their policy ends.

33. THE REGISTER

33.01 Name in Register
Subject to article 33.02 a Member’s name in the register shall be the full name indicated on the document used to support the Member’s initial registration with the College.

33.02 Change of Name
The Registrar may enter a name other than the name referred to in article 33.01 in the register if the Registrar,

(i) has received a written request from the Member;
(ii) is satisfied that the Member has legally changed his or her name; and
(iii) is satisfied that the name change is not for any improper purpose.

33.03 Business Address
A Member’s primary business address in the register shall be,

(i) the address of the location in Ontario where the Member is employed or self-employed as a Denturist;
(ii) in the event that the Member is employed or self-employed as a Denturist in more than one location in Ontario, the location where the Member generally works, or anticipates to work, the most hours; and
(iii) in the event that the Member is not employed or self-employed in Ontario as a Denturist, the location designated by the Member or any other address approved by the Registrar.

33.04 Business Telephone Number
A Member’s business telephone number shall be,

(i) the telephone number of the location in Ontario where the Member is employed or self-employed as a Denturist;
(ii) in the event that the Member is employed or self-employed as a Denturist in more than one location in Ontario, the telephone number of the Member’s primary business address; and
(iii) in the event that the Member is not employed or self-employed in Ontario as a Denturist, the telephone number designated by the Member or any other telephone number approved by the Registrar.
33.05 Duty of Registrar
The Registrar shall maintain a register in accordance with section 23 of the Code.

33.06 Additional Information
In addition to the information set out in subsection 23(2) of the Code, the register shall contain the following information, which is designated as public information, with respect to each Member:

(i) names other than the proper legal name of the Member including any nicknames or abbreviations that the Member uses in any place of practice;

(ii) the name, address and telephone number of every employer for whom the Member is employed as a Denturist and, if the Member is self-employed as a Denturist the address and telephone number of the locations where the Member practises other than addresses of individual clients;

(iii) if there have been any changes to the Member’s name since the date of the member’s initial application for registration, the former names of the Member;

(iv) the Member’s registration number;

(v) if the Member ceased to be a Member, a notation specifying the reason for the termination of membership and the date upon which the Member ceased to be a Member;

(vi) where the College is aware that a finding of professional misconduct or incompetence or similar finding has been made against the Member by a body that governs a profession, inside or outside of Ontario, and that finding has not been reversed on appeal:
   (a) a notation of the finding;
   (b) the name of the governing body that made the finding;
   (c) the date the finding was made;
   (d) a summary of any order made; and
   (e) information regarding any appeals of the finding;

(vii) where a decision of the Discipline Committee has been published by the College with the Member’s name or former name included:
   (a) a notation of that fact; and
   (b) identification of the specific publication of the College which contains the information;

(viii) any of the information in respect of a former Member that was on the register just before the Membership terminated, for a period of at least two (2) years after the termination of Membership, except for any information related to discipline proceedings in Ontario, in which case it shall be entered on the register for a period of fifty (50) years after the termination of Membership;

(ix) where the Member’s certificate of registration is subject to an interim order:
   (a) a notation of that fact;
   (b) the nature of the order; and
   (c) the date that the order took effect;

(x) where the Member’s certificate of registration is subject to a suspension for failure to pay a fee, the reason for the suspension and the date of the suspension in addition to the fact of that suspension;

(xi) for every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 of the Code and has not been finally resolved, until the matter has been
resolved:
(a) a notation of that fact, including the date of the referral;
(b) a summary of each specified allegation; and
(c) any hearing dates, including dates for the continuation of the hearing;
(xii) a notation, including the date of the referral, for every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Fitness to Practise Committee under section 61 of the Code and has not been finally resolved, until the matter has been resolved;
(xiii) any information jointly agreed to be placed on the register by the College and the Member;
(xiv) in addition to the name of every health profession corporation of which the Member is a shareholder, the business address, business telephone number, business e-mail address, if there is one, and any operating names of the health profession corporation(s);
(xv) information pertaining to the Certifications the Member holds or does not hold from the College;
(xvi) the date of the Member’s initial registration with the College; and
(xvii) for every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 of the Code and has not been finally resolved, until the matter has been resolved,
(a) a notation of that fact, including the date of the referral;
(b) a summary of each specified allegation; and
(c) any hearing dates, including dates for the continuation of the hearing.

33.07 Information Requests from College
If requested, a Member shall immediately provide the College with the following information, in the form requested by the College:

(i) information required to be maintained in the register in accordance with subsection 23(2) of the Code and article 33.06 of these by-laws;
(ii) information for the purpose of compiling statistical data;
(iii) information establishing the Member’s electoral district, for the purposes of elections to the Council;
(iv) the Member’s areas of practice, including but not necessarily limited to the categories of clients seen;
(v) the Member’s previous employers and previous practice locations;
(vi) the Member’s email address;
(vii) information pertaining to the Member’s professional liability insurance coverage;
(viii) the Member’s date of birth and languages in which they provide services; and
(ix) information pertaining to the Member’s compliance with the College’s Quality Assurance program.

33.08 Automatic Notification of the College
The Member shall notify the College, in writing, of any changes to the following information within thirty (30) days of the effective date of the change,

(i) the Member’s name;
(ii) any nicknames or abbreviations that the Member uses in any place of practice;
(iii) the address and telephone number of the Member’s primary residence in Ontario and, if the Member does not reside in Ontario, the address and telephone number of the Member’s primary residence;
(iv) the Member’s email addresses;
(v) the Member’s electoral district, for the purposes of elections to the Council;
(vi) information regarding the Member’s employment, including:
   (a) the Member’s title and position;
   (b) a description of the Member’s role, duties and responsibilities; and
   (c) the Member’s employment category and status;
(vii) information about the Member’s registration with any other body that governs a profession, whether inside or outside of Ontario, including the name of the governing body, the Member’s registration or licence number and the date the Member first became registered;
(viii) information about any finding of professional misconduct or incompetence or similar finding that has been made against the Member by a body that governs a profession, inside or outside of Ontario, where that finding has not been reversed on appeal, including:
   (a) the finding;
   (b) the name of the governing body that made the finding;
   (c) a brief summary of the facts on which the finding was based;
   (d) the penalty and any other orders made relative to the finding;
   (e) the date the finding was made; and
   (f) information regarding any appeals of the finding;
(ix) information about any finding of incapacity or similar finding that has been made against the Member by a body that governs a profession, inside or outside of Ontario, where that finding has not been reversed on appeal, including:
   (a) the finding;
   (b) the name of the governing body that made the finding;
   (c) the date the finding was made;
   (d) a summary of any order made; and
   (e) information regarding any appeals of the finding;
(x) the Member’s business address or business telephone number;
(xi) the name, address or telephone number of any employer for whom the Member is employed as a Denturist and, if the Member is self-employed as a Denturist, any changes to the address or telephone number of the location where the Member practises other than addresses of individual clients;
(xii) the name of the educational institution where the Member obtained any certificates, diplomas or degrees in denturism, the type of certificates, diplomas or degrees obtained and the date each was issued; and
(xiii) the names of any graduates of denturist training that the Member supervises as part of his or her practice.

33.09 Safety Concerns
All of the information in the register is information designated to be withheld from the public pursuant to subsection 23(6) of the Code such that the Registrar may refuse to disclose to an individual or post on the College’s website any or all of that information if the Registrar has reasonable grounds to believe that disclosure of that information may jeopardize the safety of an individual.

34. PROFESSIONAL CORPORATIONS

34.01 Duty to Provide Information
Every Member shall, for every professional corporation of which the Member is a shareholder, provide in writing the following information on the application and annual renewal forms for a Certificate of Authorization, upon the written request of the Registrar, within thirty (30) days and upon any change in the information within thirty (30) days of the change:
(i) the name of the professional corporation as registered with the Ministry of Government Services;
(ii) any business names used by the professional corporation;
(iii) the name, as set out in the register, and registration number of each shareholder of the professional corporation;
(iv) the name, as set out in the register, of each officer and director of the professional corporation, and the title or office held by each officer and director;
(v) the principal practice address, telephone number, facsimile number and email address of the professional corporation;
(vi) the address and telephone number of all other locations, other than residences of clients, at which the professional services offered by the professional corporation are provided; and
(vii) a brief description of the professional activities carried out by the professional corporation.

35. FUNDING FOR THERAPY AND COUNSELLING FOR SEXUAL ABUSE

35.01 Therapist/Counsellor Confirmation
The College shall require a therapist or counsellor who is providing therapy or counselling that is funded through the Patient Relations Program under section 85.7 of the Code to provide a written statement signed by him/her containing details of his/her training and experience and confirming that the therapy or counselling is being provided and that the funds received are being devoted only to that purpose.

35.02 Patient Acknowledgment
The College shall require a person who is receiving therapy or counselling that is funded through the Patient Relations Program under section 85.7 of the Code to provide a written statement signed by him/her acknowledging that he/she is aware of the details of the training and experience of the therapist or counsellor and confirming that the therapy or counselling is being provided and that the funds received are being devoted only to that purpose.

36. CODE OF ETHICS

36.01 Code of Ethics
[To be developed]

37. BY-LAWS AND AMENDMENTS

37.01 Effective Date
These by-laws shall become effective as soon as they have been approved by Council.

37.02 Amendments
The by-laws of the College or any section thereof may be enacted, amended, or revoked by a two-thirds majority of the Council members present and voting at a meeting of Council called for that purpose.
SCHEDULE 1 TO THE BY-LAWS
Process for Election of Officers

The elections will be supervised by the Registrar. The Registrar may be assisted by scrutineers.

Before the first regular meeting of the newly elected Council each year or any other Council meeting designated for the purpose by Council resolution, the Registrar shall send an invitation to all Council members requesting any person wishing to stand for election to the offices of the President, Vice-President and Executive Committee members at large to indicate so, in writing, to the Registrar.

A Member’s written intent must be returned to the Registrar no later than 4:00 p.m. on the day before the meeting of Council when the election of officers shall take place. However, nominations can still be made from the floor even if the written intent has not been returned to the Registrar.

At the meeting of Council when the election of officers shall take place, the Registrar shall present the names of eligible candidates who have indicated their interest for the position of President.

Where there is only one nominee for a position, that person shall be elected by acclamation. In the event that there is more than one candidate for the office, the voting will be conducted by ballot, with the result being tabulated and then recorded and reported by the Registrar. Before the vote, candidates shall be given the opportunity to speak briefly (order to be determined alphabetically by last name). The election of a candidate shall be confirmed by a majority vote of those present and voting. Where no candidate receives a majority vote, the candidate receiving the fewest votes shall be disqualified and Council shall, by ballot, vote on the remaining candidates until one candidate receives a majority vote.

Where no candidate is nominated for a position or, in the case of Executive Committee members at large, where there are insufficient nominations for the number of positions available, nominations from the floor will be permitted.

In the event of a tie, a second ballot will take place. Candidates will have an opportunity to speak briefly before the vote. If the second ballot also results in a tie, the winning candidate will be determined by lot.

The results of each election will be tabulated by the scrutineers and reported by the Registrar, with the number of votes accorded to each candidate to remain confidential.

Once the President is elected, the Vice-President shall be nominated and elected in a similar manner. Once the Vice-President has been elected, the remaining Executive Committee positions shall be filled in a similar manner ensuring that there are an appropriate number of Members and Public Members.

Once the election is completed, the Registrar shall call for a motion to destroy the ballots.

The elected members of the Executive Committee may then speak briefly.
1. In this Schedule, "Member" means a Member of the Council.

2. The presiding officer will ask for each agenda topic to be introduced briefly by the person or Committee Chair or other representative raising it. Members may ask questions of clarification, then the person introducing the matter shall make a motion and another Member must second the motion before it can be debated.

3. When any Member wishes to speak, he or she shall so indicate by raising his or her hand and, after being invited to do so by the presiding officer, shall address the presiding officer and confine himself or herself to the matter under discussion.

4. Staff persons and consultants with expertise in a matter may be permitted by the presiding officer to answer specific questions about the matter.

5. Observers at a Council meeting are not allowed to speak to address Council unless such address has previously been approved.

6. A Member may not speak again on the debate of a matter until every other Member who wishes to speak to it has been given an opportunity to do so. The only exception is that the person introducing the matter or a staff person may answer questions about the matter. Members will not speak to a matter more than twice without the permission of the presiding officer.

7. No Member may speak longer than five (5) minutes upon any motion except with the permission of Council.

8. When a motion is under debate, no other motion can be made except to amend it, to postpone it, to put the motion to a vote, to adjourn the debate or the Council meeting or to refer the motion to a Committee.

9. A motion to amend the motion then under debate shall be disposed of first. Only one motion to amend the motion under debate can be made at a time.

10. When it appears to the presiding officer that the debate on a matter has concluded, when Council has passed a motion to vote on the motion or when the time allocated to the debate on the matter has concluded, the presiding officer shall put the motion to a vote.

11. When a matter is being voted on, no Member shall enter or leave the Council room, and no further debate is permitted.

12. No Member is entitled to vote upon any motion in which he or she has a conflict of interest, and the vote of any Member so interested will be disallowed.
13. Any motion decided by the Council shall not be re-introduced during the same meeting except by a two-thirds vote of the Members then present.

14. Whenever the presiding officer is of the opinion that a motion offered to the Council is contrary to these rules or the by-laws, he or she shall rule the motion out of order and give his or her reasons for doing so.

15. The presiding officer shall preserve order and decorum, and shall decide questions of order, subject to an appeal to the Council without debate.

16. The above rules may be relaxed by the presiding officer if it appears that greater informality is beneficial in the particular circumstances, unless the Council requires strict adherence.

17. Members are not permitted to discuss a matter with observers while it is being debated.

18. Members shall turn off electronic devices during Council meetings and, except during a break in the meeting, shall not use any electronic device, including a laptop except to review materials related to the matter under debate (e.g., electronic copies of background documents) and to make personal notes of the debate.

19. Members are to be silent while others are speaking.

20. In all cases not provided for in these rules or by other rules of Council, the current edition of Robert’s Rules of Order shall be followed so far as it may be applicable.

21. These Rules shall apply, with necessary modifications, to meetings conducted by teleconference or any other electronic means permitted by the by-laws, including audio or video conferencing.
SCHEDULE 3 TO THE BY-LAWS
Code of Ethics

[under review and revision]
SCHEDULE 4 TO THE BY-LAWS
Code of Conduct for the College and College Representatives

[under review and revision]
### SCHEDULE 5 TO THE BY-LAWS
Honoraria Paid by the College to Professional Members of Council and Committees

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meeting attendance: president</td>
<td>$200.00</td>
</tr>
<tr>
<td>Meeting attendance: committee chair &amp; executive meeting</td>
<td>$150.00</td>
</tr>
<tr>
<td>Meeting attendance: councillor or committee member</td>
<td>$150.00</td>
</tr>
</tbody>
</table>

Teleconference meetings 50 cents per minute to a maximum of a full day honorarium
## SCHEDULE 6 TO THE BY-LAWS
Common Valid Expenses

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>AMOUNT / CRITERIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air travel (requires prior college approval)</td>
<td>Best economy class fare for the most direct route</td>
</tr>
<tr>
<td>Train or bus travel</td>
<td>Coach class by the most direct route</td>
</tr>
<tr>
<td>Automobile travel</td>
<td>45 cents per km by the most direct route plus $30.00 parking expense per day maximum.</td>
</tr>
<tr>
<td>Accommodation</td>
<td>The amount available through the FHRCO negotiated rate at the time or an amount up to a maximum total cost, including taxes of $195.00 per night.</td>
</tr>
<tr>
<td>Breakfast expense</td>
<td>$10.00 maximum</td>
</tr>
<tr>
<td>Lunch expense</td>
<td>$15.00 maximum</td>
</tr>
<tr>
<td>Dinner expense</td>
<td>$25.00 maximum</td>
</tr>
<tr>
<td>Telephone calls</td>
<td>Actual cost of call related to College business (e.g., not proportional cost of monthly flat fee)</td>
</tr>
<tr>
<td>Other expenses</td>
<td>Actual cost if related directly to College business</td>
</tr>
</tbody>
</table>

All expenses must be supported by original receipts and must be reasonable in the circumstances. Alcohol cannot be claimed. Meal expenses cannot be claimed where the College provides the meal for those participating in the meeting.

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1 Alternatively, the Registrar may approve reimbursement of expenses for a rental car and gas in situations where (1) the person claiming reimbursement requests it and (2) the overall cost to the College would be less than if the person claiming reimbursement had sought reimbursement on the basis of mileage.
PERSONAL HEALTH INFORMATION

Act, 2004
## Personal Health Information Protection Act, 2004

**S.O. 2004, CHAPTER 3**  
Schedule A

### CONSOLIDATION PERIOD:
From January 1, 2013 to the e-Laws currency date.

Last amendment: 2010, c. 11, s. 128.

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### CONTENTS

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The purposes of this Act are,
(a) to establish rules for the collection, use and disclosure of personal health information about individuals that protect the confidentiality of that information and the privacy of individuals with respect to that information, while facilitating the effective provision of health care;

(b) to provide individuals with a right of access to personal health information about themselves, subject to limited and specific exceptions set out in this Act;

(c) to provide individuals with a right to require the correction or amendment of personal health information about themselves, subject to limited and specific exceptions set out in this Act;

(d) to provide for independent review and resolution of complaints with respect to personal health information; and

(e) to provide effective remedies for contraventions of this Act. 2004, c. 3, Sched. A, s. 1.

Definitions

2. In this Act,

“agent”, in relation to a health information custodian, means a person that, with the authorization of the custodian, acts for or on behalf of the custodian in respect of personal health information for the purposes of the custodian, and not the agent’s own purposes, whether or not the agent has the authority to bind the custodian, whether or not the agent is employed by the custodian and whether or not the agent is being remunerated; (“mandataire”)

“Assistant Commissioner” means the Assistant Commissioner for Personal Health Information appointed under the Freedom of Information and Protection of Privacy Act; (“commissaire adjoint”)

“attorney for personal care” means an attorney under a power of attorney for personal care made in accordance with the Substitute Decisions Act, 1992; (“procureur au soin de la personne”)

“attorney for property” means an attorney under a continuing power of attorney for property made in accordance with the Substitute Decisions Act, 1992; (“procureur aux biens”)

“Board” means the Consent and Capacity Board constituted under the Health Care Consent Act, 1996; (“Commission”)

“capable” means mentally capable, and “capacity” has a corresponding meaning; (“capable”, “capacité”)

“collect”, in relation to personal health information, means to gather, acquire, receive or obtain the information by any means from any source, and “collection” has a corresponding meaning; (“recueillir”, “collecte”)

“Commissioner” means the Information and Privacy Commissioner appointed under the Freedom of Information and Protection of Privacy Act; (“commissaire”)

“disclose”, in relation to personal health information in the custody or under the control of a health information custodian or a person, means to make the information available or to release it to another health information custodian or to another person, but does not include to use the information, and “disclosure” has a corresponding meaning; (“divulguer”, “divulgation”)

“guardian of property” means a guardian of property or a statutory guardian of property under the Substitute Decisions Act, 1992; (“tuteur aux biens”)

“guardian of the person” means a guardian of the person appointed under the Substitute Decisions Act, 1992; (“tuteur à la personne”)

“health care” means any observation, examination, assessment, care, service or procedure that is done for a health-related purpose and that,

(a) is carried out or provided to diagnose, treat or maintain an individual’s physical or mental condition,

(b) is carried out or provided to prevent disease or injury or to promote health, or

(c) is carried out or provided as part of palliative care, and includes,

(d) the compounding, dispensing or selling of a drug, a device, equipment or any other item to an individual, or for the use of an individual, pursuant to a prescription, and

(e) a community service that is described in subsection 2 (3) of the Home Care and Community Services Act, 1994 and provided by a service provider within the meaning of that Act; (“soins de santé”)

“health care practitioner” means,

(a) a person who is a member within the meaning of the Regulated Health Professions Act, 1991 and who provides health care,
(b) a person who is registered as a drugless practitioner under the Drugless Practitioners Act and who provides health care,

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (b) is repealed by the Statutes of Ontario, 2007, chapter 10, Schedule P, section 19. See: 2007, c. 10, Sched. P, ss. 19, 21 (2).

(c) a person who is a member of the Ontario College of Social Workers and Social Service Workers and who provides health care, or

(d) any other person whose primary function is to provide health care for payment; ("praticien de la santé")

“health information custodian” has the meaning set out in section 3; ("dépositaire de renseignements sur la santé")

“health number” means the number, the version code or both of them assigned to an insured person within the meaning of the Health Insurance Act by the General Manager within the meaning of that Act; ("numéro de la carte Santé")

“incapable” means mentally incapable, and “incapacity” has a corresponding meaning; ("incapable", “incapacité”)

“individual”, in relation to personal health information, means the individual, whether living or deceased, with respect to whom the information was or is being collected or created; ("particulier")

“information practices”, in relation to a health information custodian, means the policy of the custodian for actions in relation to personal health information, including,

(a) when, how and the purposes for which the custodian routinely collects, uses, modifies, discloses, retains or disposes of personal health information, and

(b) the administrative, technical and physical safeguards and practices that the custodian maintains with respect to the information; ("pratiques relatives aux renseignements")

“local health integration network” means a local health integration network as defined in section 2 of the Local Health System Integration Act, 2006; ("réseau local d’intégration des services de santé")

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

“partner” means either of two persons who have lived together for at least one year and have a close personal relationship that is of primary importance in both persons’ lives; ("partenaire")

“person” includes a partnership, association or other entity; ("personne")

“personal health information” has the meaning set out in section 4; ("renseignements personnels sur la santé")

“prescribed” means prescribed by the regulations made under this Act; ("prescrit")

“proceeding” includes a proceeding 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 within the meaning of the Regulated Health Professions Act, 1991, a committee of the Board of Regents continued under the Drugless Practitioners Act, a committee of the Ontario College of Social Workers and Social Service Workers under the Social Work and Social Service Work Act, 1998, an arbitrator or a mediator; ("instance")

“quality of care information” has the same meaning as in the Quality of Care Information Protection Act, 2004; ("renseignements sur la qualité des soins")

“record” means a record of information in any form or in any medium, whether in written, printed, photographic or electronic form or otherwise, but does not include a computer program or other mechanism that can produce a record; ("dossier")

“relative” means either of two persons who are related to each other by blood, marriage or adoption; ("parent")

“research” means a systematic investigation designed to develop or establish principles, facts or generalizable knowledge, or any combination of them, and includes the development, testing and evaluation of research; ("recherche")

“researcher” means a person who conducts research; ("chercheur")

“research ethics board” means a board of persons that is established for the purpose of approving research plans under section 44 and that meets the prescribed requirements; ("commission d’éthique de la recherche")

“spouse” means either of two persons who,

(a) are married to each other, or

(b) live together in a conjugal relationship outside marriage and,

(i) have cohabited for at least one year,

(ii) are together the parents of a child, or

(iii) have together entered into a cohabitation agreement under section 53 of the Family Law Act,
unless they are living separate and apart as a result of a breakdown of their relationship; (“conjoint”)

“substitute decision-maker” has the meaning set out in section 5; (“mandataire spécial”)

“use”, in relation to personal health information in the custody or under the control of a health information custodian or a person, means to handle or deal with the information, subject to subsection 6 (1), but does not include to disclose the information, and “use”, as a noun, has a corresponding meaning. (“utiliser”, “utilisation”) 2004, c. 3, Sched. A, s. 2; 2006, c. 4, s. 51 (1); 2007, c. 8, s. 224 (1).

Health information custodian

3. (1) In this Act,

“health information custodian”, subject to subsections (3) to (11), means a person or organization described in one of the following paragraphs who has custody or control of personal health information as a result of or in connection with performing the person’s or organization’s powers or duties or the work described in the paragraph, if any:

1. A health care practitioner or a person who operates a group practice of health care practitioners.
2. A service provider within the meaning of the Home Care and Community Services Act, 1994 who provides a community service to which that Act applies.
4. A person who operates one of the following facilities, programs or services:
   i. A hospital within the meaning of the Public Hospitals Act, a private hospital within the meaning of the Private Hospitals Act, a psychiatric facility within the meaning of the Mental Health Act or an independent health facility within the meaning of the Independent Health Facilities Act.
   ii. A long-term care home within the meaning of the Long-Term Care Homes Act, 2007, a placement co-ordinator described in subsection 40 (1) of that Act, or a care home within the meaning of the Residential Tenancies Act, 2006.
   ii.1 a retirement home within the meaning of the Retirement Homes Act, 2010.
   iii. A pharmacy within the meaning of Part VI of the Drug and Pharmacies Regulation Act.
   iv. A laboratory or a specimen collection centre as defined in section 5 of the Laboratory and Specimen Collection Centre Licensing Act.
   v. An ambulance service within the meaning of the Ambulance Act.
   vi. A home for special care within the meaning of the Homes for Special Care Act.
   vii. A centre, program or service for community health or mental health whose primary purpose is the provision of health care.
6. A medical officer of health of a board of health within the meaning of the Health Protection and Promotion Act.
7. The Minister, together with the Ministry of the Minister if the context so requires.
8. Any other person prescribed as a health information custodian if the person has custody or control of personal health information as a result of or in connection with performing prescribed powers, duties or work or any prescribed class of such persons. 2004, c. 3, Sched. A, s. 3 (1); 2006, c. 17, s. 253; 2007, c. 8, s. 224 (2-4); 2007, c. 10, Sched. H, s. 1; 2009, c. 33, Sched. 18, s. 25 (1); 2010, c. 11, s. 128.

(2) REPEALED: 2009, c. 33, Sched. 18, s. 25 (2).

Exceptions

(3) Except as is prescribed, a person described in any of the following paragraphs is not a health information custodian in respect of personal health information that the person collects, uses or discloses while performing the person’s powers or duties or the work described in the paragraph, if any:

1. A person described in paragraph 1, 2 or 5 of the definition of “health information custodian” in subsection (1) who is an agent of a health information custodian.
2. A person who is authorized to act for or on behalf of a person that is not a health information custodian, if the scope of duties of the authorized person does not include the provision of health care.
3. The Minister when acting on behalf of an institution within the meaning of the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act* that is not a health information custodian. 2004, c. 3, Sched. A, s. 3 (3).

**Other exceptions**

(4) A health information custodian does not include a person described in one of the following paragraphs who has custody or control of personal health information as a result of or in connection with performing the work described in the paragraph:

1. An aboriginal healer who provides traditional healing services to aboriginal persons or members of an aboriginal community.
2. An aboriginal midwife who provides traditional midwifery services to aboriginal persons or members of an aboriginal community.
3. A person who treats another person solely by prayer or spiritual means in accordance with the tenets of the religion of the person giving the treatment. 2004, c. 3, Sched. A, s. 3 (4).

**Multiple facilities**

(5) Subject to subsection (6) or an order of the Minister under subsection (8), a health information custodian that operates more than one facility described in one of the subparagraphs of paragraph 4 of the definition of “health information custodian” in subsection (1) shall be deemed to be a separate custodian with respect to personal health information of which it has custody or control as a result of or in connection with operating each of the facilities that it operates. 2004, c. 3, Sched. A, s. 3 (5).

**Single custodian**

(6) Despite subsection (5), the following persons shall be deemed to be a single health information custodian with respect to all the functions described in the applicable paragraph, if any:

1. A person who operates a hospital within the meaning of the *Public Hospitals Act* and any of the facilities, programs or services described in paragraph 4 of the definition of “health information custodian” in subsection (1).
2. A community care access corporation that provides a community service within the meaning of subsection 2 (3) of the *Home Care and Community Services Act, 1994* and acts as a placement co-ordinator as described in subsection 40 (1) of the *Long-Term Care Homes Act, 2007*.
3. Health information custodians or facilities that are prescribed. 2004, c. 3, Sched. A, s. 3 (6); 2007, c. 8, s. 224 (5).

**Application to act as one custodian**

(7) A health information custodian that operates more than one facility described in one of the subparagraphs of paragraph 4 of the definition of “health information custodian” in subsection (1) or two or more health information custodians may apply to the Minister, in a form approved by the Minister, for an order described in subsection (8). 2004, c. 3, Sched. A, s. 3 (7).

**Minister’s order**

(8) Upon receiving an application described in subsection (7), the Minister may make an order permitting all or some of the applicants to act as a single health information custodian on behalf of those facilities, powers, duties or work that the Minister specifies, subject to the terms that the Minister considers appropriate and specifies in the order, if the Minister is of the opinion that it is appropriate to make the order in the circumstances, having regard to,

(a) the public interest;
(b) the ability of the applicants to provide individuals with reasonable access to their personal health information;
(c) the ability of the applicants to comply with the requirements of this Act; and
(d) whether permitting the applicants to act as a single health information custodian is necessary to enable them to effectively provide integrated health care. 2004, c. 3, Sched. A, s. 3 (8).

**Scope of order**

(9) In an order made under subsection (8), the Minister may order that any class of health information custodians that the Minister considers to be situated similarly to the applicants is permitted to act as a single health information custodian, subject to the terms that the Minister considers appropriate and specifies in the order, if the Minister is of the opinion that it is appropriate to so order, having regard to,

(a) the public interest;
(b) the ability of the custodians that are subject to the order made under this subsection to provide individuals with reasonable access to their personal health information;
(c) the ability of the custodians that are subject to the order made under this subsection to comply with the requirements of this Act; and

(d) whether permitting the custodians that are subject to the order made under this subsection to act as a single health information custodian is necessary to enable them to effectively provide integrated health care. 2004, c. 3, Sched. A, s. 3 (9).

No hearing required

(10) The Minister is not required to hold a hearing or to afford to any person an opportunity for a hearing before making an order under subsection (8). 2004, c. 3, Sched. A, s. 3 (10).

Duration

(11) Subject to subsection (12), a health information custodian does not cease to be a health information custodian with respect to a record of personal health information until complete custody and control of the record, where applicable, passes to another person who is legally authorized to hold the record. 2004, c. 3, Sched. A, s. 3 (11).

Death of custodian

(12) If a health information custodian dies, the following person shall be deemed to be the health information custodian with respect to records of personal health information held by the deceased custodian until custody and control of the records, where applicable, passes to another person who is legally authorized to hold the records:

1. The estate trustee of the deceased custodian.

2. The person who has assumed responsibility for the administration of the deceased custodian’s estate, if the estate does not have an estate trustee. 2004, c. 3, Sched. A, s. 3 (12).

Personal health information

4. (1) In this Act,

“personal health information”, subject to subsections (3) and (4), means identifying information about an individual in oral or recorded form, if the information,

(a) relates to the physical or mental health of the individual, including information that consists of the health history of the individual’s family,

(b) relates to the providing of health care to the individual, including the identification of a person as a provider of health care to the individual,

(c) is a plan of service within the meaning of the Home Care and Community Services Act, 1994 for the individual,

(d) relates to payments or eligibility for health care, or eligibility for coverage for health care, in respect of the individual,

(e) relates to the donation by the individual of any body part or bodily substance of the individual or is derived from the testing or examination of any such body part or bodily substance,

(f) is the individual’s health number, or

(g) identifies an individual’s substitute decision-maker. 2004, c. 3, Sched. A, s. 4 (1); 2007, c. 8, s. 224 (6); 2007, c. 10, Sched. H, s. 2.

Identifying information

(2) In this section,

“identifying information” means information that identifies an individual or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify an individual. 2004, c. 3, Sched. A, s. 4 (2).

Mixed records

(3) Personal health information includes identifying information that is not personal health information described in subsection (1) but that is contained in a record that contains personal health information described in that subsection. 2009, c. 33, Sched. 18, s. 25 (3).

Exception

(4) Personal health information does not include identifying information contained in a record that is in the custody or under the control of a health information custodian if,

(a) the identifying information contained in the record relates primarily to one or more employees or other agents of the custodian; and
(b) the record is maintained primarily for a purpose other than the provision of health care or assistance in providing health care to the employees or other agents. 2004, c. 3, Sched. A, s. 4 (4).

Substitute decision-maker

5. (1) In this Act,
“substitute decision-maker”, in relation to an individual, means, unless the context requires otherwise, a person who is authorized under this Act to consent on behalf of the individual to the collection, use or disclosure of personal health information about the individual. 2004, c. 3, Sched. A, s. 5 (1).

Decision about treatment

(2) A substitute decision-maker of an individual within the meaning of section 9 of the Health Care Consent Act, 1996 shall be deemed to be a substitute decision-maker of the individual in respect of the collection, use or disclosure of personal health information about the individual if the purpose of the collection, use or disclosure is necessary for, or ancillary to, a decision about a treatment under Part II of that Act. 2004, c. 3, Sched. A, s. 5 (2).

Admission to a care facility

(3) A substitute decision-maker of an individual within the meaning of section 39 of the Health Care Consent Act, 1996 shall be deemed to be a substitute decision-maker of the individual in respect of the collection, use or disclosure of personal health information about the individual if the purpose of the collection, use or disclosure is necessary for, or ancillary to, a decision about admission to a care facility under Part III of that Act. 2004, c. 3, Sched. A, s. 5 (3).

Personal assistance services

(4) A substitute decision-maker of an individual within the meaning of section 56 of the Health Care Consent Act, 1996 shall be deemed to be a substitute decision-maker of the individual in respect of the collection, use or disclosure of personal health information about the individual if the purpose of the collection, use or disclosure is necessary for, or ancillary to, a decision about a personal assistance service under Part IV of that Act. 2004, c. 3, Sched. A, s. 5 (4).

Interpretation

6. (1) For the purposes of this Act, the providing of personal health information between a health information custodian and an agent of the custodian is a use by the custodian, and not a disclosure by the person providing the information or a collection by the person to whom the information is provided. 2004, c. 3, Sched. A, s. 6 (1).

Provisions based on consent

(2) A provision of this Act that applies to the collection, use or disclosure of personal health information about an individual by a health information custodian with the consent of the individual, whatever the nature of the consent, does not affect the collection, use or disclosure that this Act permits or requires the health information custodian to make of the information without the consent of the individual. 2004, c. 3, Sched. A, s. 6 (2).

Permissive disclosure

(3) A provision of this Act that permits a health information custodian to disclose personal health information about an individual without the consent of the individual,
(a) does not require the custodian to disclose it unless required to do so by law;
(b) does not relieve the custodian from a legal requirement to disclose the information; and
(c) does not prevent the custodian from obtaining the individual’s consent for the disclosure. 2004, c. 3, Sched. A, s. 6 (3).

Application of Act

7. (1) Except if this Act or its regulations specifically provide otherwise, this Act applies to,
(a) the collection of personal health information by a health information custodian on or after the day this section comes into force;
(b) the use or disclosure of personal health information, on or after the day this section comes into force, by,
(i) a health information custodian, even if the custodian collected the information before that day, or
(ii) a person who is not a health information custodian and to whom a health information custodian disclosed the information, even if the person received the information before that day; and
(c) the collection, use or disclosure of a health number by any person on or after the day this section comes into force. 2004, c. 3, Sched. A, s. 7 (1).

Conflict
(2) In the event of a conflict between a provision of this Act or its regulations and a provision of any other Act or its regulations, this Act and its regulations prevail unless this Act, its regulations or the other Act specifically provide otherwise. 2004, c. 3, Sched. A, s. 7 (2).

Interpretation

(3) For the purpose of this section, there is no conflict unless it is not possible to comply with both this Act and its regulations and any other Act or its regulations. 2004, c. 3, Sched. A, s. 7 (3).

Exception

(4) This Act and its regulations do not prevail in the event of a conflict between a provision of this Act or its regulations and a provision of the Quality of Care Information Protection Act, 2004 or its regulations. 2004, c. 3, Sched. A, s. 7 (4).

Crown bound

(5) For greater certainty, this Act binds the Crown, including all ministries, agencies and employees of the Crown. 2007, c. 10, Sched. H, s. 3.

Freedom of information legislation

8. (1) Subject to subsection (2), the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act do not apply to personal health information in the custody or under the control of a health information custodian unless this Act specifies otherwise. 2007, c. 10, Sched. H, s. 4.

Exceptions

(2) Sections 11, 12, 15, 16, 17, 33 and 34, subsection 35 (2) and sections 36 and 44 of the Freedom of Information and Protection of Privacy Act and sections 5, 9, 10, 25, 26 and 34 of the Municipal Freedom of Information and Protection of Privacy Act apply in respect of records of personal health information in the custody or under the control of a health information custodian that is an institution within the meaning of either of those Acts, as the case may be, or that is acting as part of such an institution. 2007, c. 10, Sched. H, s. 4.

Same

(3) A record of personal health information prepared by or in the custody or control of an institution within the meaning of the Freedom of Information and Protection of Privacy Act or the Municipal Freedom of Information and Protection of Privacy Act shall be deemed to be a record to which clause 32 (b) of the Freedom of Information and Protection of Privacy Act or clause 25 (1) (b) of the Municipal Freedom of Information and Protection of Privacy Act applies, as the case may be. 2004, c. 3, Sched. A, s. 8 (3).

Access

(4) This Act does not limit a person’s right of access under section 10 of the Freedom of Information and Protection of Privacy Act or section 4 of the Municipal Freedom of Information and Protection of Privacy Act to a record of personal health information if all the types of information referred to in subsection 4 (1) are reasonably severed from the record. 2004, c. 3, Sched. A, s. 8 (4).

Transition

(5) This Act does not apply to a collection, use or disclosure of personal health information, a request for access or an appeal made under the Freedom of Information and Protection of Privacy Act or the Municipal Freedom of Information and Protection of Privacy Act before the day this section comes into force, and the applicable Act continues to apply to the collection, use, disclosure, request or appeal. 2004, c. 3, Sched. A, s. 8 (5).

Non-application of Act

9. (1) This Act does not apply to personal health information about an individual after the earlier of 120 years after a record containing the information was created and 50 years after the death of the individual. 2004, c. 3, Sched. A, s. 9 (1).

Other rights and Acts

(2) Nothing in this Act shall be construed to interfere with,

(a) anything in connection with a subrogated claim or a potential subrogated claim;

(b) any legal privilege, including solicitor-client privilege;

(c) the law of evidence or information otherwise available by law to a party or a witness in a proceeding;

(d) the power of a court or a tribunal to compel a witness to testify or to compel the production of a document;

(e) the regulatory activities of a College under the Regulated Health Professions Act, 1991, the College under the Social Work and Social Service Work Act, 1998 or the Board under the Drugless Practitioners Act; or

(f) any provision of any Act of Ontario or Canada or any court order, if the provision or order, as the case may be, prohibits a person from making information public or from publishing information. 2004, c. 3, Sched. A, s. 9 (2).
PART II
PRACTICES TO PROTECT PERSONAL HEALTH INFORMATION

GENERAL

Information practices

10. (1) A health information custodian that has custody or control of personal health information shall have in place information practices that comply with the requirements of this Act and its regulations. 2004, c. 3, Sched. A, s. 10 (1).

Duty to follow practices

(2) A health information custodian shall comply with its information practices. 2004, c. 3, Sched. A, s. 10 (2).

Use of electronic means

(3) A health information custodian that uses electronic means to collect, use, modify, disclose, retain or dispose of personal health information shall comply with the prescribed requirements, if any. 2004, c. 3, Sched. A, s. 10 (3).

Providers to custodians

(4) A person who provides goods or services for the purpose of enabling a health information custodian to use electronic means to collect, use, modify, disclose, retain or dispose of personal health information shall comply with the prescribed requirements, if any. 2004, c. 3, Sched. A, s. 10 (4).

Accuracy

11. (1) A health information custodian that uses personal health information about an individual shall take reasonable steps to ensure that the information is as accurate, complete and up-to-date as is necessary for the purposes for which it uses the information. 2004, c. 3, Sched. A, s. 11 (1).

Same, disclosure

(2) A health information custodian that discloses personal health information about an individual shall,

(a) take reasonable steps to ensure that the information is as accurate, complete and up-to-date as is necessary for the purposes of the disclosure that are known to the custodian at the time of the disclosure; or

(b) clearly set out for the recipient of the disclosure the limitations, if any, on the accuracy, completeness or up-to-date character of the information. 2004, c. 3, Sched. A, s. 11 (2).

Security

12. (1) A health information custodian shall take steps that are reasonable in the circumstances to ensure that personal health information in the custodian’s custody or control is protected against theft, loss and unauthorized use or disclosure and to ensure that the records containing the information are protected against unauthorized copying, modification or disposal. 2004, c. 3, Sched. A, s. 12 (1).

Notice of loss, etc.

(2) Subject to subsection (3) and subject to the exceptions and additional requirements, if any, that are prescribed, a health information custodian that has custody or control of personal health information about an individual shall notify the individual at the first reasonable opportunity if the information is stolen, lost, or accessed by unauthorized persons. 2004, c. 3, Sched. A, s. 12 (2).

Exception

(3) If the health information custodian is a researcher who has received the personal health information from another health information custodian under subsection 44 (1), the researcher shall not notify the individual that the information is stolen, lost or accessed by unauthorized persons unless the health information custodian under that subsection first obtains the individual’s consent to having the researcher contact the individual and informs the researcher that the individual has given the consent. 2004, c. 3, Sched. A, s. 12 (3).

RECORDS

Handling of records

13. (1) A health information custodian shall ensure that the records of personal health information that it has in its custody or under its control are retained, transferred and disposed of in a secure manner and in accordance with the prescribed requirements, if any. 2004, c. 3, Sched. A, s. 13 (1).

Retention of records subject to a request

(2) Despite subsection (1), a health information custodian that has custody or control of personal health information that is the subject of a request for access under section 53 shall retain the information for as long as necessary to allow the individual to exhaust any recourse under this Act that he or she may have with respect to the request. 2004, c. 3, Sched. A, s. 13 (2).
Place where records kept

14. (1) A health information custodian may keep a record of personal health information about an individual in the individual’s home in any reasonable manner to which the individual consents, subject to any restrictions set out in a regulation, by-law or published guideline under the Regulated Health Professions Act, 1991, an Act referred to in Schedule 1 of that Act, the Drugless Practitioners Act or the Social Work and Social Service Work Act, 1998. 2004, c. 3, Sched. A, s. 14 (1).

Records kept in other places

(2) A health care practitioner may keep a record of personal health information about an individual in a place other than the individual’s home and other than a place in the control of the practitioner if,

(a) the record is kept in a reasonable manner;
(b) the individual consents;
(c) the health care practitioner is permitted to keep the record in the place in accordance with a regulation, by-law or published guideline under the Regulated Health Professions Act, 1991, an Act referred to in Schedule 1 to that Act, the Drugless Practitioners Act or the Social Work and Social Service Work Act, 1998, if the health care practitioner is described in any of clauses (a) to (c) of the definition of “health care practitioner” in section 2; and
(d) the prescribed conditions, if any, are satisfied. 2004, c. 3, Sched. A, s. 14 (2).

ACCOUNTABILITY AND OPENNESS

Contact person

15. (1) A health information custodian that is a natural person may designate a contact person described in subsection (3). 2004, c. 3, Sched. A, s. 15 (1).

Same

(2) A health information custodian that is not a natural person shall designate a contact person described in subsection (3). 2004, c. 3, Sched. A, s. 15 (2).

Functions of contact person

(3) A contact person is an agent of the health information custodian and is authorized on behalf of the custodian to,

(a) facilitate the custodian’s compliance with this Act;
(b) ensure that all agents of the custodian are appropriately informed of their duties under this Act;
(c) respond to inquiries from the public about the custodian’s information practices;
(d) respond to requests of an individual for access to or correction of a record of personal health information about the individual that is in the custody or under the control of the custodian; and
(e) receive complaints from the public about the custodian’s alleged contravention of this Act or its regulations. 2004, c. 3, Sched. A, s. 15 (3).

If no contact person

(4) A health information custodian that is a natural person and that does not designate a contact person under subsection (1) shall perform on his or her own the functions described in clauses (3) (b), (c), (d) and (e). 2004, c. 3, Sched. A, s. 15 (4).

Written public statement

16. (1) A health information custodian shall, in a manner that is practical in the circumstances, make available to the public a written statement that,

(a) provides a general description of the custodian’s information practices;
(b) describes how to contact,
   (i) the contact person described in subsection 15 (3), if the custodian has one, or
   (ii) the custodian, if the custodian does not have that contact person;
(c) describes how an individual may obtain access to or request correction of a record of personal health information about the individual that is in the custody or control of the custodian; and
(d) describes how to make a complaint to the custodian and to the Commissioner under this Act. 2004, c. 3, Sched. A, s. 16 (1).
If a health information custodian uses or discloses personal health information about an individual, without the individual’s consent, in a manner that is outside the scope of the custodian’s description of its information practices under clause (1) (a), the custodian shall,

(a) inform the individual of the uses and disclosures at the first reasonable opportunity unless, under section 52, the individual does not have a right of access to a record of the information;
(b) make a note of the uses and disclosures; and
(c) keep the note as part of the records of personal health information about the individual that it has in its custody or under its control or in a form that is linked to those records. 2004, c. 3, Sched. A, s. 16 (2).

Agents and information

17. (1) A health information custodian is responsible for personal health information in the custody or control of the health information custodian and may permit the custodian’s agents to collect, use, disclose, retain or dispose of personal health information on the custodian’s behalf only if,

(a) the custodian is permitted or required to collect, use, disclose, retain or dispose of the information, as the case may be;
(b) the collection, use, disclosure, retention or disposition of the information, as the case may be, is in the course of the agent’s duties and not contrary to the limits imposed by the custodian, this Act or another law; and
(c) the prescribed requirements, if any, are met. 2004, c. 3, Sched. A, s. 17 (1).

Restriction on agents

(2) Except as permitted or required by law and subject to the exceptions and additional requirements, if any, that are prescribed, an agent of a health information custodian shall not collect, use, disclose, retain or dispose of personal health information on the custodian’s behalf unless the custodian permits the agent to do so in accordance with subsection (1). 2004, c. 3, Sched. A, s. 17 (2).

Responsibility of agent

(3) An agent of a health information custodian shall notify the custodian at the first reasonable opportunity if personal health information handled by the agent on behalf of the custodian is stolen, lost or accessed by unauthorized persons. 2004, c. 3, Sched. A, s. 17 (3).

PART III
CONSENT CONCERNING PERSONAL HEALTH INFORMATION

GENERAL

Elements of consent

18. (1) If this Act or any other Act requires the consent of an individual for the collection, use or disclosure of personal health information by a health information custodian, the consent,

(a) must be a consent of the individual;
(b) must be knowledgeable;
(c) must relate to the information; and
(d) must not be obtained through deception or coercion. 2004, c. 3, Sched. A, s. 18 (1).

Implied consent

(2) Subject to subsection (3), a consent to the collection, use or disclosure of personal health information about an individual may be express or implied. 2004, c. 3, Sched. A, s. 18 (2).

Exception

(3) A consent to the disclosure of personal health information about an individual must be express, and not implied, if,

(a) a health information custodian makes the disclosure to a person that is not a health information custodian; or
(b) a health information custodian makes the disclosure to another health information custodian and the disclosure is not for the purposes of providing health care or assisting in providing health care. 2004, c. 3, Sched. A, s. 18 (3).

Same

(4) Subsection (3) does not apply to,

(a) a disclosure pursuant to an implied consent described in subsection 20 (4); and
(b) a disclosure pursuant to clause 32 (1) (b); or
(c) a prescribed type of disclosure that does not include information about an individual’s state of health. 2004, c. 3, Sched. A, s. 18 (4).

Knowledgeable consent

(5) A consent to the collection, use or disclosure of personal health information about an individual is knowledgeable if it is reasonable in the circumstances to believe that the individual knows,

(a) the purposes of the collection, use or disclosure, as the case may be; and

(b) that the individual may give or withhold consent. 2004, c. 3, Sched. A, s. 18 (5).

Notice of purposes

(6) Unless it is not reasonable in the circumstances, it is reasonable to believe that an individual knows the purposes of the collection, use or disclosure of personal health information about the individual by a health information custodian if the custodian posts or makes readily available a notice describing the purposes where it is likely to come to the individual’s attention or provides the individual with such a notice. 2004, c. 3, Sched. A, s. 18 (6).

Transition

(7) A consent that an individual gives, before the day that subsection (1) comes into force, to a collection, use or disclosure of information that is personal health information is a valid consent if it meets the requirements of this Act for consent. 2004, c. 3, Sched. A, s. 18 (7).

Withdrawal of consent

19. (1) If an individual consents to have a health information custodian collect, use or disclose personal health information about the individual, the individual may withdraw the consent, whether the consent is express or implied, by providing notice to the health information custodian, but the withdrawal of the consent shall not have retroactive effect. 2004, c. 3, Sched. A, s. 19 (1).

Conditional consent

(2) If an individual places a condition on his or her consent to have a health information custodian collect, use or disclose personal health information about the individual, the condition is not effective to the extent that it purports to prohibit or restrict any recording of personal health information by a health information custodian that is required by law or by established standards of professional practice or institutional practice. 2004, c. 3, Sched. A, s. 19 (2).

Assumption of validity

20. (1) A health information custodian who has obtained an individual’s consent to a collection, use or disclosure of personal health information about the individual or who has received a copy of a document purporting to record the individual’s consent to the collection, use or disclosure is entitled to assume that the consent fulfils the requirements of this Act and the individual has not withdrawn it, unless it is not reasonable to assume so. 2004, c. 3, Sched. A, s. 20 (1).

Implied consent

(2) A health information custodian described in paragraph 1, 2, 3 or 4 of the definition of “health information custodian” in subsection 3 (1), that receives personal health information about an individual from the individual, the individual’s substitute decision-maker or another health information custodian for the purpose of providing health care or assisting in the provision of health care to the individual, is entitled to assume that it has the individual’s implied consent to collect, use or disclose the information for the purposes of providing health care or assisting in providing health care to the individual, unless the custodian that receives the information is aware that the individual has expressly withheld or withdrawn the consent. 2004, c. 3, Sched. A, s. 20 (2).

Limited consent

(3) If a health information custodian discloses, with the consent of an individual, personal health information about the individual to a health information custodian described in paragraph 1, 2, 3 or 4 of the definition of “health information custodian” in subsection 3 (1) for the purpose of the provision of health care to the individual and if the disclosing custodian does not have the consent of the individual to disclose all the personal health information about the individual that it considers reasonably necessary for that purpose, the disclosing custodian shall notify the custodian to whom it disclosed the information of that fact. 2004, c. 3, Sched. A, s. 20 (3).

Implied consent, affiliation

(4) If an individual who is a resident or patient in a facility that is a health information custodian provides to the custodian information about his or her religious or other organizational affiliation, the facility may assume that it has the individual’s implied consent to provide his or her name and location in the facility to a representative of the religious or other organization, where the custodian has offered the individual the opportunity to withhold or withdraw the consent and the individual has not done so. 2004, c. 3, Sched. A, s. 20 (4).
Capacity to consent

21. (1) An individual is capable of consenting to the collection, use or disclosure of personal health information if the individual is able,

(a) to understand the information that is relevant to deciding whether to consent to the collection, use or disclosure, as the case may be; and

(b) to appreciate the reasonably foreseeable consequences of giving, not giving, withholding or withdrawing the consent. 2004, c. 3, Sched. A, s. 21 (1).

Different information

(2) An individual may be capable of consenting to the collection, use or disclosure of some parts of personal health information, but incapable of consenting with respect to other parts. 2004, c. 3, Sched. A, s. 21 (2).

Different times

(3) An individual may be capable of consenting to the collection, use or disclosure of personal health information at one time, but incapable of consenting at another time. 2004, c. 3, Sched. A, s. 21 (3).

Presumption of capacity

(4) An individual is presumed to be capable of consenting to the collection, use or disclosure of personal health information. 2004, c. 3, Sched. A, s. 21 (4).

Non-application

(5) A health information custodian may rely on the presumption described in subsection (4) unless the custodian has reasonable grounds to believe that the individual is incapable of consenting to the collection, use or disclosure of personal health information. 2004, c. 3, Sched. A, s. 21 (5).

Determination of incapacity

22. (1) A health information custodian that determines the incapacity of an individual to consent to the collection, use or disclosure of personal health information under this Act shall do so in accordance with the requirements and restrictions, if any, that are prescribed. 2004, c. 3, Sched. A, s. 22 (1).

Information about determination

(2) If it is reasonable in the circumstances, a health information custodian shall provide, to an individual determined incapable of consenting to the collection, use or disclosure of personal health information by the custodian, information about the consequences of the determination of incapacity, including the information, if any, that is prescribed. 2004, c. 3, Sched. A, s. 22 (2).

Review of determination

(3) An individual whom a health information custodian determines is incapable of consenting to the collection, use or disclosure of his or her personal health information by a health information custodian may apply to the Board for a review of the determination unless there is a person who is entitled to act as the substitute decision-maker of the individual under subsection 5 (2), (3) or (4). 2004, c. 3, Sched. A, s. 22 (3).

Parties

(4) The parties to the application are:

1. The individual applying for the review of the determination.

2. The health information custodian that has custody or control of the personal health information.

3. All other persons whom the Board specifies. 2004, c. 3, Sched. A, s. 22 (4).

Powers of Board

(5) The Board may confirm the determination of incapacity or may determine that the individual is capable of consenting to the collection, use or disclosure of personal health information. 2004, c. 3, Sched. A, s. 22 (5).

Restriction on repeated applications

(6) If a determination that an individual is incapable with respect to consenting to the collection, use or disclosure of personal health information is confirmed on the final disposition of an application under this section, the individual shall not make a new application under this section for a determination with respect to the same or a similar issue within six months after the final disposition of the earlier application, unless the Board gives leave in advance. 2004, c. 3, Sched. A, s. 22 (6).

Grounds for leave
The Board may give leave for the new application to be made if it is satisfied that there has been a material change in circumstances that justifies reconsideration of the individual’s capacity. 2004, c. 3, Sched. A, s. 22 (7).

Procedure

Sections 73 to 81 of the Health Care Consent Act, 1996 apply with necessary modifications to an application under this section. 2004, c. 3, Sched. A, s. 22 (8).

Persons who may consent

23. (1) If this Act or any other Act refers to a consent required of an individual to a collection, use or disclosure by a health information custodian of personal health information about the individual, a person described in one of the following paragraphs may give, withhold or withdraw the consent:

1. If the individual is capable of consenting to the collection, use or disclosure of the information,
   i. the individual, or
   ii. if the individual is at least 16 years of age, any person who is capable of consenting, whom the individual has authorized in writing to act on his or her behalf and who, if a natural person, is at least 16 years of age.

2. If the individual is a child who is less than 16 years of age, a parent of the child or a children’s aid society or other person who is lawfully entitled to give or refuse consent in the place of the parent unless the information relates to,
   i. treatment within the meaning of the Health Care Consent Act, 1996, about which the child has made a decision on his or her own in accordance with that Act, or
   ii. counselling in which the child has participated on his or her own under the Child and Family Services Act.

3. If the individual is incapable of consenting to the collection, use or disclosure of the information, a person who is authorized under subsection 5 (2), (3) or (4) or section 26 to consent on behalf of the individual.

4. If the individual is deceased, the deceased’s estate trustee or the person who has assumed responsibility for the administration of the deceased’s estate, if the estate does not have an estate trustee.

5. A person whom an Act of Ontario or Canada authorizes or requires to act on behalf of the individual. 2004, c. 3, Sched. A, s. 23 (1); 2007, c. 10, Sched. H, s. 5.

Definition

(2) In subsection (1),
“parent” does not include a parent who has only a right of access to the child. 2004, c. 3, Sched. A, s. 23 (2).

Conflict if child capable

(3) If the individual is a child who is less than 16 years of age and who is capable of consenting to the collection, use or disclosure of the information and if there is a person who is entitled to act as the substitute decision-maker of the child under paragraph 2 of subsection (1), a decision of the child to give, withhold or withdraw the consent or to provide the information prevails over a conflicting decision of that person. 2004, c. 3, Sched. A, s. 23 (3).

Factors to consider for consent

24. (1) A person who consents under this Act or any other Act on behalf of or in the place of an individual to a collection, use or disclosure of personal health information by a health information custodian, who withholds or withdraws such a consent or who provides an express instruction under clause 37 (1) (a), 38 (1) (a) or 50 (1) (e) shall take into consideration,

(a) the wishes, values and beliefs that,
   (i) if the individual is capable, the person knows the individual holds and believes the individual would want reflected in decisions made concerning the individual’s personal health information, or
   (ii) if the individual is incapable or deceased, the person knows the individual held when capable or alive and believes the individual would have wanted reflected in decisions made concerning the individual’s personal health information;

(b) whether the benefits that the person expects from the collection, use or disclosure of the information outweigh the risk of negative consequences occurring as a result of the collection, use or disclosure;

(c) whether the purpose for which the collection, use or disclosure is sought can be accomplished without the collection, use or disclosure; and

(d) whether the collection, use or disclosure is necessary to satisfy any legal obligation. 2004, c. 3, Sched. A, s. 24 (1).

Determination of compliance
(2) If a substitute decision-maker, on behalf of an incapable individual, gives, withholds or withdraws a consent to a collection, use or disclosure of personal health information about the individual by a health information custodian or provides an express instruction under clause 37 (1) (a), 38 (1) (a) or 50 (1) (e) and if the custodian is of the opinion that the substitute decision-maker has not complied with subsection (1), the custodian may apply to the Board for a determination as to whether the substitute decision-maker complied with that subsection. 2004, c. 3, Sched. A, s. 24 (2).

Deemed application concerning capacity

(2.1) An application to the Board under subsection (2) shall be deemed to include an application to the Board under subsection 22 (3) with respect to the individual’s capacity to consent to the collection, use or disclosure of his or her personal health information, unless the individual’s capacity has been determined by the Board within the previous six months. 2007, c. 10, Sched. H, s. 6.

Parties

(3) The parties to the application are:
1. The health information custodian.
2. The incapable individual.
3. The substitute decision-maker.
4. Any other person whom the Board specifies. 2004, c. 3, Sched. A, s. 24 (3).

Power of Board

(4) In determining whether the substitute decision-maker complied with subsection (1), the Board may substitute its opinion for that of the substitute decision-maker. 2004, c. 3, Sched. A, s. 24 (4).

Directions

(5) If the Board determines that the substitute decision-maker did not comply with subsection (1), it may give him or her directions and, in doing so, shall take into consideration the matters set out in clauses (1) (a) to (d). 2004, c. 3, Sched. A, s. 24 (5).

Time for compliance

(6) The Board shall specify the time within which the substitute decision-maker must comply with its directions. 2004, c. 3, Sched. A, s. 24 (6).

Deemed not authorized

(7) If the substitute decision-maker does not comply with the Board’s directions within the time specified by the Board, he or she shall be deemed not to meet the requirements of subsection 26 (2). 2004, c. 3, Sched. A, s. 24 (7).

Public Guardian and Trustee

(8) If the substitute decision-maker who is given directions is the Public Guardian and Trustee, he or she is required to comply with the directions and subsection (6) does not apply to him or her. 2004, c. 3, Sched. A, s. 24 (8).

Procedure

(9) Sections 73 to 81 of the Health Care Consent Act, 1996 apply with necessary modifications to an application under this section. 2004, c. 3, Sched. A, s. 24 (9).

Authority of substitute decision-maker

25. (1) If this Act permits or requires an individual to make a request, give an instruction or take a step and a substitute decision-maker is authorized to consent on behalf of the individual to the collection, use or disclosure of personal health information about the individual, the substitute decision-maker may make the request, give the instruction or take the step on behalf of the individual. 2004, c. 3, Sched. A, s. 25 (1).

Same

(2) If a substitute decision-maker makes a request, gives an instruction or takes a step under subsection (1) on behalf of an individual, references in this Act to the individual with respect to the request made, the instruction given or the step taken by the substitute decision-maker shall be read as references to the substitute decision-maker, and not to the individual. 2004, c. 3, Sched. A, s. 25 (2).

Incapable individual: persons who may consent

26. (1) If an individual is determined to be incapable of consenting to the collection, use or disclosure of personal health information by a health information custodian, a person described in one of the following paragraphs may, on the individual’s behalf and in the place of the individual, give, withhold or withdraw the consent:
1. The individual’s guardian of the person or guardian of property, if the consent relates to the guardian’s authority to make a decision on behalf of the individual.

2. The individual’s attorney for personal care or attorney for property, if the consent relates to the attorney’s authority to make a decision on behalf of the individual.

3. The individual’s representative appointed by the Board under section 27, if the representative has authority to give the consent.

4. The individual’s spouse or partner.

5. A child or parent of the individual, or a children’s aid society or other person who is lawfully entitled to give or refuse consent in the place of the parent. This paragraph does not include a parent who has only a right of access to the individual. If a children’s aid society or other person is lawfully entitled to consent in the place of the parent, this paragraph does not include the parent.

6. A parent of the individual with only a right of access to the individual.

7. A brother or sister of the individual.

8. Any other relative of the individual. 2004, c. 3, Sched. A, s. 26 (1).

Requirements

(2) A person described in subsection (1) may consent only if the person,

(a) is capable of consenting to the collection, use or disclosure of personal health information by a health information custodian;

(b) in the case of an individual, is at least 16 years old or is the parent of the individual to whom the personal health information relates;

(c) is not prohibited by court order or separation agreement from having access to the individual to whom the personal health information relates or from giving or refusing consent on the individual’s behalf;

(d) is available; and

(e) is willing to assume the responsibility of making a decision on whether or not to consent. 2004, c. 3, Sched. A, s. 26 (2).

Meaning of “available”

(3) For the purpose of clause (2) (d), a person is available if it is possible, within a time that is reasonable in the circumstances, to communicate with the person and obtain a consent. 2004, c. 3, Sched. A, s. 26 (3).

Ranking

(4) A person described in a paragraph of subsection (1) may consent only if no person described in an earlier paragraph meets the requirements of subsection (2). 2004, c. 3, Sched. A, s. 26 (4).

Same

(5) Despite subsection (4), a person described in a paragraph of subsection (1) who is present or has otherwise been contacted may consent if the person believes that,

(a) no other person described in an earlier paragraph or the same paragraph exists; or

(b) although such other person exists, the other person is not a person described in paragraph 1, 2 or 3 of subsection (1) and would not object to the person who is present or has otherwise been contacted making the decision. 2004, c. 3, Sched. A, s. 26 (5); 2007, c. 10, Sched. H, s. 7.

Public Guardian and Trustee

(6) If no person described in subsection (1) meets the requirements of subsection (2), the Public Guardian and Trustee may make the decision to consent. 2004, c. 3, Sched. A, s. 26 (6).

Conflict between persons in same paragraph

(7) If two or more persons who are described in the same paragraph of subsection (1) and who meet the requirements of subsection (2) disagree about whether to consent, and if their claims rank ahead of all others, the Public Guardian and Trustee may make the decision in their stead. 2004, c. 3, Sched. A, s. 26 (7).

Transition, representative appointed by individual

(8) Where an individual, to whom personal health information relates, appointed a representative under section 36.1 of the Mental Health Act before the day this section comes into force, the representative shall be deemed to have the same authority as a person mentioned in paragraph 2 of subsection (1). 2004, c. 3, Sched. A, s. 26 (8).
Limited authority

(9) The authority conferred on the representative by subsection (8) is limited to the purposes for which the representative was appointed. 2004, c. 3, Sched. A, s. 26 (9).

Revocation

(10) An individual who is capable of consenting with respect to personal health information may revoke the appointment mentioned in subsection (8) in writing. 2004, c. 3, Sched. A, s. 26 (10).

Ranking

(11) A person who is entitled to be the substitute decision-maker of the individual under this section may act as the substitute decision-maker only in circumstances where there is no person who may act as the substitute decision-maker of the individual under subsection 5 (2), (3) or (4). 2004, c. 3, Sched. A, s. 26 (11).

Appointment of representative

27. (1) An individual who is 16 years old or older and who is determined to be incapable of consenting to the collection, use or disclosure of personal health information may apply to the Board for appointment of a representative to consent on the individual’s behalf to a collection, use or disclosure of the information by a health information custodian. 2004, c. 3, Sched. A, s. 27 (1).

Application by proposed representative

(2) If an individual is incapable of consenting to the collection, use or disclosure of personal health information, another individual who is 16 years old or older may apply to the Board to be appointed as a representative to consent on behalf of the incapable individual to a collection, use or disclosure of the information. 2004, c. 3, Sched. A, s. 27 (2).

Deemed application concerning capacity

(2.1) An application to the Board under subsection (1) or (2) shall be deemed to include an application to the Board under subsection 22 (3) with respect to the individual’s capacity to consent to the collection, use or disclosure of his or her personal health information, unless the individual’s capacity has been determined by the Board within the previous six months. 2007, c. 10, Sched. H, s. 8.

Exception

(3) Subsections (1) and (2) do not apply if the individual to whom the personal health information relates has a guardian of the person, a guardian of property, an attorney for personal care, or an attorney for property, who has authority to give or refuse consent to the collection, use or disclosure. 2004, c. 3, Sched. A, s. 27 (3).

Parties

(4) The parties to the application are:

1. The individual to whom the personal health information relates.
2. The proposed representative named in the application.
3. Every person who is described in paragraph 4, 5, 6 or 7 of subsection 26 (1).
4. All other persons whom the Board specifies. 2004, c. 3, Sched. A, s. 27 (4).

Appointment

(5) In an appointment under this section, the Board may authorize the representative to consent, on behalf of the individual to whom the personal health information relates, to,

(a) a particular collection, use or disclosure at a particular time;
(b) a collection, use or disclosure of the type specified by the Board in circumstances specified by the Board, if the individual is determined to be incapable of consenting to the collection, use or disclosure of personal health information at the time the consent is sought; or
(c) any collection, use or disclosure at any time, if the individual is determined to be incapable of consenting to the collection, use or disclosure of personal health information at the time the consent is sought. 2004, c. 3, Sched. A, s. 27 (5).

Criteria for appointment

(6) The Board may make an appointment under this section if it is satisfied that the following requirements are met:

1. The individual to whom the personal health information relates does not object to the appointment.
2. The representative consents to the appointment, is at least 16 years old and is capable of consenting to the collection, use or disclosure of personal health information.
3. The appointment is in the best interests of the individual to whom the personal health information relates. 2004, c. 3, Sched. A, s. 27 (6).

Powers of Board

(7) Unless the individual to whom the personal health information relates objects, the Board may,
(a) appoint as representative a different individual than the one named in the application;
(b) limit the duration of the appointment;
(c) impose any other condition on the appointment; or
(d) on any person’s application, remove, vary or suspend a condition imposed on the appointment or impose an additional condition on the appointment. 2004, c. 3, Sched. A, s. 27 (7).

Termination

(8) The Board may, on any person’s application, terminate an appointment made under this section if,
(a) the individual to whom the personal health information relates or the representative requests the termination;
(b) the representative is no longer capable of consenting to the collection, use or disclosure of personal health information;
(c) the appointment is no longer in the best interests of the individual to whom the personal health information relates; or
(d) the individual to whom the personal health information relates has a guardian of the person, a guardian of property, an attorney for personal care, or an attorney for property, who has authority to give or refuse consent to the types of collections, uses and disclosures for which the appointment was made and in the circumstances to which the appointment applies. 2004, c. 3, Sched. A, s. 27 (8).

Procedure

(9) Sections 73 to 81 of the Health Care Consent Act, 1996 apply with necessary modifications to an application under this section. 2004, c. 3, Sched. A, s. 27 (9).

Transition, representative appointed by Board

28. (1) This Act applies to a representative whom the Board appointed under section 36.2 of the Mental Health Act or who was deemed to be appointed under that section before the day this section comes into force for an individual with respect to the individual’s personal health information, as if the representative were the individual’s representative appointed by the Board under section 27. 2004, c. 3, Sched. A, s. 28 (1).

Limited authority

(2) The authority conferred on the representative by subsection (1) is limited to the purposes for which the representative was appointed. 2004, c. 3, Sched. A, s. 28 (2).

PART IV
COLLECTION, USE AND DISCLOSURE OF PERSONAL HEALTH INFORMATION

GENERAL LIMITATIONS AND REQUIREMENTS

Requirement for consent

29. A health information custodian shall not collect, use or disclose personal health information about an individual unless,
(a) it has the individual’s consent under this Act and the collection, use or disclosure, as the case may be, to the best of the custodian’s knowledge, is necessary for a lawful purpose; or
(b) the collection, use or disclosure, as the case may be, is permitted or required by this Act. 2004, c. 3, Sched. A, s. 29.

Other information

30. (1) A health information custodian shall not collect, use or disclose personal health information if other information will serve the purpose of the collection, use or disclosure. 2004, c. 3, Sched. A, s. 30 (1).

Extent of information

(2) A health information custodian shall not collect, use or disclose more personal health information than is reasonably necessary to meet the purpose of the collection, use or disclosure, as the case may be. 2004, c. 3, Sched. A, s. 30 (2).

Exception

(3) This section does not apply to personal health information that a health information custodian is required by law to collect, use or disclose. 2004, c. 3, Sched. A, s. 30 (3).

Use and disclosure of personal health information
31. (1) A health information custodian that collects personal health information in contravention of this Act shall not use it or disclose it unless required by law to do so. 2004, c. 3, Sched. A, s. 31 (1).

(2) REPEALED: 2004, c. 3, Sched. A, s. 31 (4).

(3) REPEALED: 2004, c. 3, Sched. A, s. 31 (4).

(4) SPENT: 2004, c. 3, Sched. A, s. 31 (4).

Fundraising

32. (1) Subject to subsection (2), a health information custodian may collect, use or disclose personal health information about an individual for the purpose of fundraising activities only where,

(a) the individual expressly consents; or

(b) the individual consents by way of an implied consent and the information consists only of the individual’s name and the prescribed types of contact information. 2004, c. 3, Sched. A, s. 32 (1); 2007, c. 10, Sched. H, s. 9.

Requirements and restrictions

(2) The manner in which consent is obtained under subsection (1) and the resulting collection, use or disclosure of personal health information for the purpose of fundraising activities shall comply with the requirements and restrictions that are prescribed, if any. 2004, c. 3, Sched. A, s. 32 (2).

Marketing

33. A health information custodian shall not collect, use or disclose personal health information about an individual for the purpose of marketing anything or for the purpose of market research unless the individual expressly consents and the custodian collects, uses or discloses the information, as the case may be, subject to the prescribed requirements and restrictions, if any. 2004, c. 3, Sched. A, s. 33.

Health cards and health numbers

34. (1) In this section,

“health card” means a card provided to an insured person within the meaning of the Health Insurance Act by the General Manager of the Ontario Health Insurance Plan; (“carte Santé”)

“provincially funded health resource” means a service, thing, subsidy or other benefit funded, in whole or in part, directly or indirectly by the Government of Ontario, if it is health related or prescribed. (“ressource en matière de santé subventionnée par la province”) 2004, c. 3, Sched. A, s. 34 (1).

Collection or use

(2) Despite subsection 49 (1), a person who is neither a health information custodian nor acting as an agent of a health information custodian shall not collect or use another person’s health number except,

(a) for purposes related to the provision of provincially funded health resources to that other person;

(b) for the purposes for which a health information custodian has disclosed the number to the person;

(c) if the person is the governing body of health care practitioners who provide provincially funded health resources and is collecting or using health numbers for purposes related to its duties or powers; or

(d) if the person is prescribed and is collecting or using the health number, as the case may be, for purposes related to health administration, health planning, health research or epidemiological studies. 2007, c. 10, Sched. H, s. 10.

Disclosure

(3) Despite subsection 49 (1) and subject to the exceptions and additional requirements, if any, that are prescribed, a person who is neither a health information custodian nor acting as an agent of a health information custodian shall not disclose a health number except as required by law. 2007, c. 10, Sched. H, s. 10.

Confidentiality of health cards

(4) No person shall require the production of another person’s health card, but a person who provides a provincially funded health resource to a person who has a health card may require the production of the health card. 2004, c. 3, Sched. A, s. 34 (4).

Exceptions

(5) Subsections (2) and (3) do not apply to,

(a) a person who collects, uses or discloses a health number for the purposes of a proceeding;

(b) a prescribed entity mentioned in subsection 45 (1) that collects, uses or discloses the health number in the course of carrying out its functions under section 45; or
(c) a health data institute that the Minister approves under subsection 47 (9) and that collects, uses or discloses the health number in the course of carrying out its functions under sections 47 and 48. 2004, c. 3, Sched. A, s. 34 (5).

Fees for personal health information

35. (1) A health information custodian shall not charge a person a fee for collecting or using personal health information except as authorized by the regulations made under this Act. 2004, c. 3, Sched. A, s. 35 (1).

Same, for disclosure

(2) When disclosing personal health information, a health information custodian shall not charge fees to a person that exceed the prescribed amount or the amount of reasonable cost recovery, if no amount is prescribed. 2004, c. 3, Sched. A, s. 35 (2).

Collection

Indirect collection

36. (1) A health information custodian may collect personal health information about an individual indirectly if,

(a) the individual consents to the collection being made indirectly;

(b) the information to be collected is reasonably necessary for providing health care or assisting in providing health care to the individual and it is not reasonably possible to collect, directly from the individual,

(i) personal health information that can reasonably be relied on as accurate and complete, or

(ii) personal health information in a timely manner;

(c) the custodian is an institution within the meaning of the Freedom of Information and Protection of Privacy Act or the Municipal Freedom of Information and Protection of Privacy Act, or is acting as part of such an institution, and the custodian is collecting the information for a purpose related to,

(i) investigating a breach of an agreement or a contravention or an alleged contravention of the laws of Ontario or Canada,

(ii) the conduct of a proceeding or a possible proceeding, or

(iii) the statutory function of the custodian;

(d) the custodian collects the information from a person who is not a health information custodian for the purpose of carrying out research conducted in accordance with subsection 37 (3) or research that a research ethics board has approved under section 44 or that meets the criteria set out in clauses 44 (10) (a) to (c), except if the person is prohibited by law from disclosing the information to the custodian;

(e) the custodian is a prescribed entity mentioned in subsection 45 (1) and the custodian is collecting personal health information from a person who is not a health information custodian for the purpose of that subsection;

(f) the Commissioner authorizes that the collection be made in a manner other than directly from the individual;

(g) the custodian collects the information from a person who is permitted or required by law or by a treaty, agreement or arrangement made under an Act or an Act of Canada to disclose it to the custodian; or

(h) subject to the requirements and restrictions, if any, that are prescribed, the health information custodian is permitted or required by law or by a treaty, agreement or arrangement made under an Act or an Act of Canada to collect the information indirectly. 2004, c. 3, Sched. A, s. 36 (1); 2007, c. 10, Sched. H, s. 11.

Direct collection without consent

(2) A health information custodian may collect personal health information about an individual directly from the individual, even if the individual is incapable of consenting, if the collection is reasonably necessary for the provision of health care and it is not reasonably possible to obtain consent in a timely manner. 2004, c. 3, Sched. A, s. 36 (2).

Use

Permitted use

37. (1) A health information custodian may use personal health information about an individual,

(a) for the purpose for which the information was collected or created and for all the functions reasonably necessary for carrying out that purpose, but not if the information was collected with the consent of the individual or under clause 36 (1) (b) and the individual expressly instructs otherwise;

(b) for a purpose for which this Act, another Act or an Act of Canada permits or requires a person to disclose it to the custodian;
(c) for planning or delivering programs or services that the custodian provides or that the custodian funds in whole or in part, allocating resources to any of them, evaluating or monitoring any of them or detecting, monitoring or preventing fraud or any unauthorized receipt of services or benefits related to any of them;

(d) for the purpose of risk management, error management or for the purpose of activities to improve or maintain the quality of care or to improve or maintain the quality of any related programs or services of the custodian;

(e) for educating agents to provide health care;

(f) in a manner consistent with Part II, for the purpose of disposing of the information or modifying the information in order to conceal the identity of the individual;

(g) for the purpose of seeking the individual’s consent, or the consent of the individual’s substitute decision-maker, when the personal health information used by the custodian for this purpose is limited to the name and contact information of the individual and the name and contact information of the substitute decision-maker, where applicable;

(h) for the purpose of a proceeding or contemplated proceeding in which the custodian or the agent or former agent of the custodian is, or is expected to be, a party or witness, if the information relates to or is a matter in issue in the proceeding or contemplated proceeding;

(i) for the purpose of obtaining payment or processing, monitoring, verifying or reimbursing claims for payment for the provision of health care or related goods and services;

(j) for research conducted by the custodian, subject to subsection (3), unless another clause of this subsection applies; or

(k) subject to the requirements and restrictions, if any, that are prescribed, if permitted or required by law or by a treaty, agreement or arrangement made under an Act or an Act of Canada. 2004, c. 3, Sched. A, s. 37 (1); 2007, c. 10, Sched. H, s. 12.

Agents

(2) If subsection (1) authorizes a health information custodian to use personal health information for a purpose, the custodian may provide the information to an agent of the custodian who may use it for that purpose on behalf of the custodian. 2004, c. 3, Sched. A, s. 37 (2).

Research

(3) Under clause (1) (j), a health information custodian may use personal health information about an individual only if the custodian prepares a research plan and has a research ethics board approve it and for that purpose subsections 44 (2) to (4) and clauses 44 (6) (a) to (f) apply to the use as if it were a disclosure. 2004, c. 3, Sched. A, s. 37 (3).

Mixed uses

(4) If a research plan mentioned in subsection (3) proposes that a health information custodian that is an institution within the meaning of the Freedom of Information and Protection of Privacy Act or the Municipal Freedom of Information and Protection of Privacy Act or that is acting as part of such an institution use personal health information, together with personal information within the meaning of those two Acts that is not personal health information, those two Acts do not apply to the use and this section applies to the use. 2004, c. 3, Sched. A, s. 37 (4).

DISCLOSURE

Disclosures related to providing health care

38. (1) A health information custodian may disclose personal health information about an individual,

(a) to a health information custodian described in paragraph 1, 2, 3 or 4 of the definition of “health information custodian” in subsection 3 (1), if the disclosure is reasonably necessary for the provision of health care and it is not reasonably possible to obtain the individual’s consent in a timely manner, but not if the individual has expressly instructed the custodian not to make the disclosure;

(b) in order for the Minister, another health information custodian or a local health integration network to determine or provide funding or payment to the custodian for the provision of health care; or

(c) for the purpose of contacting a relative, friend or potential substitute decision-maker of the individual, if the individual is injured, incapacitated or ill and unable to give consent personally. 2004, c. 3, Sched. A, s. 38 (1); 2006, c. 4, s. 51 (2); 2007, c. 10, Sched. H, s. 13.

Notice of instruction

(2) If a health information custodian discloses personal health information about an individual under clause (1) (a) and if an instruction of the individual made under that clause prevents the custodian from disclosing all the personal health information that the custodian considers reasonably necessary to disclose for the provision of health care or assisting in the provision of health care to the individual, the custodian shall notify the person to whom it makes the disclosure of that fact. 2004, c. 3, Sched. A, s. 38 (2).
Facility that provides health care

(3) A health information custodian that is a facility that provides health care may disclose to a person the following personal health information relating to an individual who is a patient or a resident in the facility if the custodian offers the individual the option, at the first reasonable opportunity after admission to the facility, to object to such disclosures and if the individual does not do so:

1. The fact that the individual is a patient or resident in the facility.
2. The individual’s general health status described as critical, poor, fair, stable or satisfactory, or in similar terms.
3. The location of the individual in the facility. 2004, c. 3, Sched. A, s. 38 (3).

Deceased individual

(4) A health information custodian may disclose personal health information about an individual who is deceased, or is reasonably suspected to be deceased,

(a) for the purpose of identifying the individual;
(b) for the purpose of informing any person whom it is reasonable to inform in the circumstances of,
   (i) the fact that the individual is deceased or reasonably suspected to be deceased, and
   (ii) the circumstances of death, where appropriate; or
(c) to the spouse, partner, sibling or child of the individual if the recipients of the information reasonably require the information to make decisions about their own health care or their children’s health care. 2004, c. 3, Sched. A, s. 38 (4).

Disclosures for health or other programs

39. (1) Subject to the requirements and restrictions, if any, that are prescribed, a health information custodian may disclose personal health information about an individual,

(a) for the purpose of determining or verifying the eligibility of the individual to receive health care or related goods, services or benefits provided under an Act of Ontario or Canada and funded in whole or in part by the Government of Ontario or Canada, by a local health integration network or by a municipality, or to receive coverage with respect to such health care, goods, services or benefits;
(b) to a person conducting an audit or reviewing an application for accreditation or reviewing an accreditation, if the audit or review relates to services provided by the custodian and the person does not remove any records of personal health information from the custodian’s premises;
(c) to a prescribed person who compiles or maintains a registry of personal health information for purposes of facilitating or improving the provision of health care or that relates to the storage or donation of body parts or bodily substances; or
(d) where,
   (i) the disclosure is to another custodian described in paragraph 1, 2, 3 or 4 of the definition of “health information custodian” in subsection 3 (1),
   (ii) the individual to whom the information relates is one to whom both the disclosing custodian and recipient custodian provide health care or assist in the provision of health care or have previously provided health care or assisted in the provision of health care, and
   (iii) the disclosure is for the purpose of activities to improve or maintain the quality of care provided by the receiving custodian to the individual to whom the information relates or individuals provided with similar health care.
2004, c. 3, Sched. A, s. 39 (1); 2006, c. 4, s. 51 (3); 2007, c. 10, Sched. H, s. 14; 2009, c. 33, Sched. 18, s. 25 (4).

Same

(2) A health information custodian may disclose personal health information about an individual,

(a) to the Chief Medical Officer of Health or a medical officer of health within the meaning of the Health Protection and Promotion Act if the disclosure is made for a purpose of that Act;
(a.1) to the Ontario Agency for Health Protection and Promotion if the disclosure is made for a purpose of the Ontario Agency for Health Protection and Promotion Act, 2007; or
(b) to a public health authority that is similar to the persons described in clause (a) and that is established under the laws of Canada, another province or a territory of Canada or other jurisdiction, if the disclosure is made for a purpose that is substantially similar to a purpose of the Health Protection and Promotion Act. 2004, c. 3, Sched. A, s. 39 (2); 2007, c. 10, Sched. K, s. 32.
Removal allowed

(3) Despite clause (1) (b), the person described in that clause may remove records of personal health information from the custodian’s premises if,

(a) the removal is authorized by or under an Act of Ontario or Canada; or

(b) an agreement between the custodian and the person authorizes the removal and provides that the records will be held in a secure and confidential manner and will be returned when the audit or review is completed. 2004, c. 3, Sched. A, s. 39 (3).

Authorization to collect

(4) A person who is not a health information custodian is authorized to collect the personal health information that a health information custodian may disclose to the person under clause (1) (c). 2004, c. 3, Sched. A, s. 39 (4).

Disclosures related to risks

40. (1) A health information custodian may disclose personal health information about an individual if the custodian believes on reasonable grounds 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. 2004, c. 3, Sched. A, s. 40 (1).

Disclosures related to care or custody

(2) A health information custodian may disclose personal health information about an individual to the head of a penal or other custodial institution in which the individual is being lawfully detained or to the officer in charge of a psychiatric facility within the meaning of the Mental Health Act in which the individual is being lawfully detained for the purposes described in subsection (3). 2004, c. 3, Sched. A, s. 40 (2).

Same

(3) A health information custodian may disclose personal health information about an individual under subsection (2) to assist an institution or a facility in making a decision concerning,

(a) arrangements for the provision of health care to the individual; or

(b) the placement of the individual into custody, detention, release, conditional release, discharge or conditional discharge under Part IV of the Child and Family Services Act, the Mental Health Act, the Ministry of Correctional Services Act, the Corrections and Conditional Release Act (Canada), Part XX.1 of the Criminal Code (Canada), the Prisons and Reformatories Act (Canada) or the Youth Criminal Justice Act (Canada). 2004, c. 3, Sched. A, s. 40 (3).

Disclosures for proceedings

41. (1) A health information custodian may disclose personal health information about an individual,

(a) subject to the requirements and restrictions, if any, that are prescribed, for the purpose of a proceeding or contemplated proceeding in which the custodian or the agent or former agent of the custodian is, or is expected to be, a party or witness, if the information relates to or is a matter in issue in the proceeding or contemplated proceeding;

(b) to a proposed litigation guardian or legal representative of the individual for the purpose of having the person appointed as such;

(c) to a litigation guardian or legal representative who is authorized under the Rules of Civil Procedure, or by a court order, to commence, defend or continue a proceeding on behalf of the individual or to represent the individual in a proceeding; or

(d) for the purpose of complying with,

(i) a summons, order or similar requirement issued in a proceeding by a person having jurisdiction to compel the production of information, or

(ii) a procedural rule that relates to the production of information in a proceeding. 2004, c. 3, Sched. A, s. 41 (1).

Disclosure by agent or former agent

(2) An agent or former agent who receives personal health information under subsection (1) or under subsection 37 (2) for purposes of a proceeding or contemplated proceeding may disclose the information to the agent’s or former agent’s professional advisor for the purpose of providing advice or representation to the agent or former agent, if the advisor is under a professional duty of confidentiality. 2004, c. 3, Sched. A, s. 41 (2).

Disclosure to successor

42. (1) A health information custodian may disclose personal health information about an individual to a potential successor of the custodian, for the purpose of allowing the potential successor to assess and evaluate the operations of the custodian, if the potential successor first enters into an agreement with the custodian to keep the information confidential and
secure and not to retain any of the information longer than is necessary for the purpose of the assessment or evaluation.  
2004, c. 3, Sched. A, s. 42 (1).

Transfer to successor

(2) A health information custodian may transfer records of personal health information about an individual to the custodian’s successor if the custodian makes reasonable efforts to give notice to the individual before transferring the records or, if that is not reasonably possible, as soon as possible after transferring the records. 2004, c. 3, Sched. A, s. 42 (2).

Transfer to archives

(3) Subject to the agreement of the person who is to receive the transfer, a health information custodian may transfer records of personal health information about an individual to,

(a) the Archives of Ontario; or

(b) in the prescribed circumstances, a prescribed person whose functions include the collection and preservation of records of historical or archival importance, if the disclosure is made for the purpose of that function. 2004, c. 3, Sched. A, s. 42 (3).

Disclosures related to this or other Acts

43. (1) A health information custodian may disclose personal health information about an individual,

(a) for the purpose of determining, assessing or confirming capacity under the Health Care Consent Act, 1996, the Substitute Decisions Act, 1992 or this Act;

(b) to a College within the meaning of the Regulated Health Professions Act, 1991 for the purpose of the administration or enforcement of the Drug and Pharmacies Regulation Act, the Regulated Health Professions Act, 1991 or an Act named in Schedule 1 to that Act;

(c) to the Board of Regents continued under the Drugless Practitioners Act for the purpose of the administration or enforcement of that Act;

(d) to the Ontario College of Social Workers and Social Service Workers for the purpose of the administration or enforcement of the Social Work and Social Service Work Act, 1998;

(e) to the Public Guardian and Trustee, the Children’s Lawyer, a children’s aid society, a Residential Placement Advisory Committee established under subsection 34 (2) of the Child and Family Services Act or a designated custodian under section 162.1 of that Act so that they can carry out their statutory functions;

(f) in the circumstances described in clause 42 (1) (c), (g) or (n) of the Freedom of Information and Protection of Privacy Act or clause 32 (c), (g) or (l) of the Municipal Freedom of Information and Protection of Privacy Act, if the custodian is an institution within the meaning of whichever of those Acts applies, or is acting as part of such an institution;

(g) subject to the requirements and restrictions, if any, that are prescribed, to a person carrying out an inspection, investigation or similar procedure that is authorized by a warrant or by or under this Act or any other Act of Ontario or an Act of Canada for the purpose of complying with the warrant or for the purpose of facilitating the inspection, investigation or similar procedure;

(h) subject to the requirements and restrictions, if any, that are prescribed, if permitted or required by law or by a treaty, agreement or arrangement made under an Act or an Act of Canada. 2004, c. 3, Sched. A, s. 43 (1); 2005, c. 25, s. 35; 2006, c. 34, Sched. C, s. 26; 2007, c. 10, Sched. H, s. 15.

Interpretation

(2) For the purposes of clause (1) (h) and subject to the regulations made under this Act, if an Act, an Act of Canada or a regulation made under any of those Acts specifically provides that information is exempt, under stated circumstances, from a confidentiality or secrecy requirement, that provision shall be deemed to permit the disclosure of the information in the stated circumstances. 2004, c. 3, Sched. A, s. 43 (2).

Disclosure for research

44. (1) A health information custodian may disclose personal health information about an individual to a researcher if the researcher,

(a) submits to the custodian,

(i) an application in writing,

(ii) a research plan that meets the requirements of subsection (2), and

(iii) a copy of the decision of a research ethics board that approves the research plan; and

(b) enters into the agreement required by subsection (5). 2004, c. 3, Sched. A, s. 44 (1).
Research plan

(2) A research plan must be in writing and must set out,

(a) the affiliation of each person involved in the research;

(b) the nature and objectives of the research and the public or scientific benefit of the research that the researcher anticipates; and

(c) all other prescribed matters related to the research. 2004, c. 3, Sched. A, s. 44 (2).

Consideration by board

(3) When deciding whether to approve a research plan that a researcher submits to it, a research ethics board shall consider the matters that it considers relevant, including,

(a) whether the objectives of the research can reasonably be accomplished without using the personal health information that is to be disclosed;

(b) whether, at the time the research is conducted, adequate safeguards will be in place to protect the privacy of the individuals whose personal health information is being disclosed and to preserve the confidentiality of the information;

(c) the public interest in conducting the research and the public interest in protecting the privacy of the individuals whose personal health information is being disclosed; and

(d) whether obtaining the consent of the individuals whose personal health information is being disclosed would be impractical. 2004, c. 3, Sched. A, s. 44 (3).

Decision of board

(4) After reviewing a research plan that a researcher has submitted to it, the research ethics board shall provide to the researcher a decision in writing, with reasons, setting out whether the board approves the plan, and whether the approval is subject to any conditions, which must be specified in the decision. 2004, c. 3, Sched. A, s. 44 (4).

Agreement respecting disclosure

(5) Before a health information custodian discloses personal health information to a researcher under subsection (1), the researcher shall enter into an agreement with the custodian in which the researcher agrees to comply with the conditions and restrictions, if any, that the custodian imposes relating to the use, security, disclosure, return or disposal of the information. 2004, c. 3, Sched. A, s. 44 (5).

Compliance by researcher

(6) A researcher who receives personal health information about an individual from a health information custodian under subsection (1) shall,

(a) comply with the conditions, if any, specified by the research ethics board in respect of the research plan;

(b) use the information only for the purposes set out in the research plan as approved by the research ethics board;

(c) not publish the information in a form that could reasonably enable a person to ascertain the identity of the individual;

(d) despite subsection 49 (1), not disclose the information except as required by law and subject to the exceptions and additional requirements, if any, that are prescribed;

(e) not make contact or attempt to make contact with the individual, directly or indirectly, unless the custodian first obtains the individual’s consent to being contacted;

(f) notify the custodian immediately in writing if the researcher becomes aware of any breach of this subsection or the agreement described in subsection (5); and

(g) comply with the agreement described in subsection (5). 2004, c. 3, Sched. A, s. 44 (6).

Mixed disclosures

(7) If a researcher submits a research plan under subsection (1) that proposes that a health information custodian that is an institution within the meaning of the Freedom of Information and Protection of Privacy Act or the Municipal Freedom of Information and Protection of Privacy Act or that is acting as part of such an institution disclose to the researcher personal health information, together with personal information within the meaning of those two Acts that is not personal health information, those two Acts do not apply to the disclosure and this section applies to the disclosure. 2004, c. 3, Sched. A, s. 44 (7).

Transition

(8) Despite subsection (7), nothing in this section prevents a health information custodian that is an institution within the meaning of the Freedom of Information and Protection of Privacy Act or the Municipal Freedom of Information and Protection of Privacy Act or that is acting as part of such an institution from disclosing to a researcher personal health
information, that is personal information within the meaning of those two Acts, if, before November 1, 2004, the researcher
entered into an agreement with the custodian under subclause 21 (1) (e) (iii) of the Freedom of Information and Protection of
Privacy Act or subclause 14 (1) (e) (iii) of the Municipal Freedom of Information and Protection of Privacy Act and the
disclosure is within the scope of the agreement. 2007, c. 10, Sched. H, s. 16.

Disclosure under other Acts

(9) Despite any other Act that permits a health information custodian to disclose personal health information to a
researcher for the purpose of conducting research, this section applies to the disclosure as if it were a disclosure for research
under this section unless the regulations made under this Act provide otherwise. 2004, c. 3, Sched. A, s. 44 (9).

Research approved outside Ontario

(10) Subject to subsection (11), a health information custodian may disclose personal health information to a
researcher or may use the information to conduct research if,

(a) the research involves the use of personal health information originating wholly or in part outside Ontario;

(b) the research has received the prescribed approval from a body outside Ontario that has the function of approving
research; and

(c) the prescribed requirements are met. 2004, c. 3, Sched. A, s. 44 (10).

Same

(11) Subsections (1) to (4) and clauses (6) (a) and (b) do not apply to a disclosure or use made under subsection (10) and
references in the rest of this section to subsection (1) shall be read as references to this subsection with respect to that
disclosure or use. 2004, c. 3, Sched. A, s. 44 (11).

(12), (13) REPEALED: 2004, c. 3, Sched. A, s. 44 (14).

(14) SPENT: 2004, c. 3, Sched. A, s. 44 (14).

Disclosure for planning and management of health system

45. (1) A health information custodian may disclose to a prescribed entity personal health information for the purpose of
analysis or compiling statistical information with respect to the management of, evaluation or monitoring of, the allocation of
resources to or planning for all or part of the health system, including the delivery of services, if the entity meets the
requirements under subsection (3). 2004, c. 3, Sched. A, s. 45 (1).

Exception

(2) Subsection (1) does not apply to,

(a) notes of personal health information about an individual that are recorded by a health information custodian and that
document the contents of conversations during a private counselling session or a group, joint or family counselling
session; or

(b) prescribed information in circumstances that are prescribed. 2004, c. 3, Sched. A, s. 45 (2).

Approval

(3) A health information custodian may disclose personal health information to a prescribed entity under subsection (1) if,

(a) the entity has in place practices and procedures to protect the privacy of the individuals whose personal health
information it receives and to maintain the confidentiality of the information; and

(b) the Commissioner has approved the practices and procedures, if the custodian makes the disclosure on or after the first
anniversary of the day this section comes into force. 2004, c. 3, Sched. A, s. 45 (3).

Review by Commissioner

(4) The Commissioner shall review the practices and procedures of each prescribed entity every three years from the date
of its approval and advise the health information custodian whether the entity continues to meet the requirements of

Authorization to collect

(5) An entity that is not a health information custodian is authorized to collect the personal health information that a health
information custodian may disclose to the entity under subsection (1). 2004, c. 3, Sched. A, s. 45 (5).

Use and disclosure

(6) Subject to the exceptions and additional requirements, if any, that are prescribed and despite subsection 49 (1), an
entity that receives personal health information under subsection (1) shall not use the information except for the purposes for
which it received the information and shall not disclose the information except as required by law. 2004, c. 3, Sched. A,
s. 45 (6).
Monitoring health care payments

46. (1) A health information custodian shall, upon the request of the Minister, disclose to the Minister personal health information about an individual for the purpose of monitoring or verifying claims for payment for health care funded wholly or in part by the Ministry of Health and Long-Term Care or a local health integration network or for goods used for health care funded wholly or in part by the Ministry of Health and Long-Term Care or a local health integration network. 2006, c. 4, s. 51 (4).

Disclosure by Minister

(2) The Minister may disclose information collected under subsection (1) to any person for a purpose set out in that subsection if the disclosure is reasonably necessary for that purpose. 2004, c. 3, Sched. A, s. 46 (2).

Disclosure for analysis of health system

47. (1) In this section, “de-identify”, in relation to the personal health information of an individual, means to remove any information that identifies the individual or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify the individual, and “de-identification” has a corresponding meaning. 2004, c. 3, Sched. A, s. 47 (1).

Same

(2) Subject to the restrictions, if any, that are prescribed, a health information custodian shall, upon the request of the Minister, disclose personal health information to a health data institute that the Minister approves under subsection (9) for analysis with respect to the management of, evaluation or monitoring of, the allocation of resources to or planning for all or part of the health system, including the delivery of services, if the requirements of this section are met. 2004, c. 3, Sched. A, s. 47 (2).

Form, manner and time of disclosure

(3) The Minister may specify the form and manner in which and the time at which the health information custodian is required to disclose the personal health information under subsection (2). 2004, c. 3, Sched. A, s. 47 (3).

Requirements for Minister

(4) Before requesting the disclosure of personal health information under subsection (2), the Minister shall submit a proposal to the Commissioner and, in accordance with this section, allow the Commissioner to review and comment on the proposal. 2004, c. 3, Sched. A, s. 47 (4).

Contents of proposal

(5) The proposal must identify a health data institute to which the personal health information would be disclosed under this section and must set out the prescribed matters. 2004, c. 3, Sched. A, s. 47 (5).

Review by Commissioner

(6) Within 30 days after the Commissioner receives the proposal, the Commissioner shall review the proposal and may comment in writing on the proposal. 2004, c. 3, Sched. A, s. 47 (6).

Consideration by Commissioner

(7) In reviewing the proposal, the Commissioner shall consider the public interest in conducting the analysis and the privacy interest of the individuals to whom the personal health information relates in the circumstances. 2004, c. 3, Sched. A, s. 47 (7).

Consideration by Minister

(8) The Minister shall consider the comments, if any, made by the Commissioner within the time specified in subsection (6), and may amend the proposal if the Minister considers it appropriate. 2004, c. 3, Sched. A, s. 47 (8).

Approval of health data institute

(9) The Minister may approve a health data institute for the purposes of a disclosure made under this section if,

(a) the corporate objects of the institute include performing data analysis of personal health information, linking the information with other information and de-identifying the information for the Minister; and

(b) the institute has in place practices and procedures to protect the privacy of the individuals whose personal health information it receives and to maintain the confidentiality of the information and the Commissioner has approved those practices and procedures. 2004, c. 3, Sched. A, s. 47 (9).
(10) The Commissioner shall review the practices and procedures of each health data institute every three years from the date of its approval and advise the Minister whether the institute continues to meet the requirements of clauses (9) (a) and (b). 2004, c. 3, Sched. A, s. 47 (10).

Withdrawal of approval

(11) The Minister shall withdraw the approval of a health data institute that ceases to meet the requirements of clauses (9) (a) and (b) or to carry out its objects mentioned in clause (9) (a), unless the Minister requires the institute to take immediate steps to satisfy the Minister that it will meet the requirements or that it will carry out the objects. 2004, c. 3, Sched. A, s. 47 (11).

Effect of withdrawal of approval

(12) If the Minister withdraws the approval of a health data institute, the institute shall,
(a) make no further use or disclosure of any personal health information that a health information custodian has disclosed to it under subsection (2) or any information derived from that personal health information; and
(b) comply with the written directions of the Minister that the Commissioner has approved in writing with respect to information described in clause (a). 2004, c. 3, Sched. A, s. 47 (12).

If institute ceases to exist

(13) If a health data institute ceases to exist, the persons holding the personal health information that the institute received under subsection (2) and held when it ceased to exist shall comply with the written directions of the Minister that the Commissioner has approved in writing with respect to the information. 2004, c. 3, Sched. A, s. 47 (13).

Disclosure by Minister

(14) The Minister may disclose to the health data institute that receives personal health information under subsection (2) other personal health information for the purposes of the analysis and linking that the Minister requires if the disclosure is included in the Minister’s proposal, as amended under subsection (8), if applicable. 2004, c. 3, Sched. A, s. 47 (14).

Duties of health data institute

(15) A health data institute that receives personal health information under subsection (2) or (14) shall,
(a) follow the practices and procedures described in clause (9) (b) that the Commissioner has approved;
(b) perform the analysis and linking with other data that the Minister requires;
(c) de-identify the information;
(d) provide the results of the analysis and linking, using only de-identified information, to the Minister or to the persons that the Minister approves;
(e) not disclose the information to the Minister or to the persons that the Minister approves except in a de-identified form; and
(f) subject to clauses (d) and (e), not disclose to any persons the information, even in a de-identified form, or any information derived from the information. 2004, c. 3, Sched. A, s. 47 (15).

Transition

(16) If the Minister has lawfully required the disclosure of personal health information for a purpose described in subsection (2) in the 18 months before this section comes into force, this section does not apply with respect to a disclosure the Minister requires for a substantially similar purpose after this section comes into force until the first anniversary of the coming into force of this section. 2004, c. 3, Sched. A, s. 47 (16).

Notification

(17) If the Minister requires a disclosure for a substantially similar purpose under subsection (16) after this section comes into force, the Minister shall notify the Commissioner within the later of the time of requiring the disclosure and 90 days after this section comes into force. 2004, c. 3, Sched. A, s. 47 (17).

No hearing required

(18) The Minister is not required to hold a hearing or to afford to any person an opportunity for a hearing before making a decision under this section. 2004, c. 3, Sched. A, s. 47 (18).

Disclosure with Commissioner’s approval

48. (1) A health data institute to which a health information custodian has disclosed personal health information under section 47, shall, upon the request of the Minister and in accordance with the Commissioner’s approval given under this section, disclose the information to the Minister or another person approved by the Minister if the Minister is of the opinion that it is in the public interest to request the disclosure and the requirements of this section have been met. 2004, c. 3, Sched. A, s. 48 (1).
Non-application of section

(2) The personal health information mentioned in subsection (1) is not,

(a) notes of personal health information about an individual that are recorded by a health information custodian and that
document the contents of conversations during a private counselling session or a group, joint or family counselling
session; or

(b) information that is prescribed. 2004, c. 3, Sched. A, s. 48 (2).

Commissioner's approval required

(3) The Minister shall not request the disclosure of personal health information under subsection (1) unless the Minister
has submitted to the Commissioner a proposal for the disclosure and the Commissioner has approved the proposal. 2004,
c. 3, Sched. A, s. 48 (3).

Contents of proposal

(4) The proposal must include,

(a) a statement as to why the disclosure is reasonably required in the public interest and why the disclosure under section
47 was insufficient to meet the public interest;

(b) the extent of the identifiers that the Minister proposes be part of the information disclosed and a statement as to why
the use of those identifiers is reasonably required for the purpose of the disclosure;

(c) a copy of all proposals and comments previously made or received under section 47 in respect of the information, if
any; and

(d) all other information that the Commissioner requires. 2004, c. 3, Sched. A, s. 48 (4).

Terms of approval

(5) If the Commissioner approves the proposal, the Commissioner may specify terms, conditions or limitations for the
disclosure. 2004, c. 3, Sched. A, s. 48 (5).

Restrictions on recipients

49. (1) Except as permitted or required by law and subject to the exceptions and additional requirements, if any, that are
prescribed, a person who is not a health information custodian and to whom a health information custodian discloses personal
health information, shall not use or disclose the information for any purpose other than,

(a) the purpose for which the custodian was authorized to disclose the information under this Act; or

(b) the purpose of carrying out a statutory or legal duty. 2004, c. 3, Sched. A, s. 49 (1).

Extent of use or disclosure

(2) Subject to the exceptions and additional requirements, if any, that are prescribed, a person who is not a health
information custodian, and to whom a health information custodian discloses personal health information, shall not use or
disclose more of the information than is reasonably necessary to meet the purpose of the use or disclosure, as the case may
be, unless the use or disclosure is required by law. 2004, c. 3, Sched. A, s. 49 (2).

Employee or agent information

(3) Except as permitted or required by law and subject to the exceptions and additional requirements, if any, that are
prescribed, if a health information custodian discloses information to another health information custodian and the
information is identifying information of the type described in subsection 4 (4) in the custody or under the control of the
receiving custodian, the receiving custodian shall not,

(a) use or disclose the information for any purpose other than,

(i) the purpose for which the disclosing custodian was authorized to disclose the information under this Act, or

(ii) the purpose of carrying out a statutory or legal duty; or

(b) use or disclose more of the information than is reasonably necessary to meet the purpose of the use or disclosure, as
the case may be. 2004, c. 3, Sched. A, s. 49 (3).

Same

(4) The restrictions set out in clauses (3) (a) and (b) apply to a health information custodian that receives the identifying
information described in subsection (3) even if the custodian receives the information before the day that subsection comes
into force. 2004, c. 3, Sched. A, s. 49 (4).

Freedom of information legislation
(5) Except as prescribed, subsections (1) to (4) do not apply to an institution within the meaning of the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act* that is not a health information custodian or to a person employed by or acting for such an institution when the person is acting in that capacity. 2007, c. 10, Sched. H, s. 17.

Same

(6) Where this Act permits or requires a health information custodian to disclose personal health information to an institution within the meaning of the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act* that is not a health information custodian, the institution may collect the information from the custodian. 2007, c. 10, Sched. H, s. 17.

**Disclosure outside Ontario**

**50.** (1) A health information custodian may disclose personal health information about an individual collected in Ontario to a person outside Ontario only if,

(a) the individual consents to the disclosure;

(b) this Act permits the disclosure;

(c) the person receiving the information performs functions comparable to the functions performed by a person to whom this Act would permit the custodian to disclose the information in Ontario under subsection 40 (2) or clause 43 (1) (b), (c), (d) or (e);

(d) the following conditions are met:

(i) the custodian is a prescribed entity mentioned in subsection 45 (1) and is prescribed for the purpose of this clause,

(ii) the disclosure is for the purpose of health planning or health administration,

(iii) the information relates to health care provided in Ontario to a person who is resident of another province or territory of Canada, and

(iv) the disclosure is made to the government of that province or territory;

(e) the disclosure is reasonably necessary for the provision of health care to the individual, but not if the individual has expressly instructed the custodian not to make the disclosure; or

(f) the disclosure is reasonably necessary for the administration of payments in connection with the provision of health care to the individual or for contractual or legal requirements in that connection. 2004, c. 3, Sched. A, s. 50 (1).

**Notice of instruction**

(2) If a health information custodian discloses personal health information about an individual under clause (1) (e) and if an instruction of the individual made under that clause prevents the custodian from disclosing all the personal health information that the custodian considers reasonably necessary to disclose for the provision of health care to the individual, the custodian shall notify the person to whom it makes the disclosure of that fact. 2004, c. 3, Sched. A, s. 50 (2).

**PART V**

**ACCESS TO RECORDS OF PERSONAL HEALTH INFORMATION AND CORRECTION**

**ACCESS**

**Application of Part**

**51.** (1) This Part does not apply to a record that contains,

(a) quality of care information;

(b) personal health information collected or created for the purpose of complying with the requirements of a quality assurance program within the meaning of the Health Professions Procedural Code that is Schedule 2 to the *Regulated Health Professions Act, 1991*;

(c) raw data from standardized psychological tests or assessments; or

(d) personal health information of the prescribed type in the custody or under the control of a prescribed class or classes of health information custodians. 2004, c. 3, Sched. A, s. 51 (1).

**Severable record**

(2) Despite subsection (1), this Part applies to that part of a record of personal health information that can reasonably be severed from the part of the record that contains the information described in clauses (1) (a) to (d). 2004, c. 3, Sched. A, s. 51 (2).

**Health care practitioner acting for an institution**
(3) This Part does not apply to a record in the custody or under the control of a health care practitioner who is employed by or acting for an institution within the meaning of the Freedom of Information and Protection of Privacy Act or the Municipal Freedom of Information and Protection of Privacy Act that is not a health information custodian if the individual has the right to request access to the record under one of those Acts. 2007, c. 10, Sched. H, s. 18.

Permission to disclose

(4) When subsection (3) applies to a record, the health care practitioner may disclose the record to the institution to enable the institution to process the individual’s request under the Freedom of Information and Protection of Privacy Act or the Municipal Freedom of Information and Protection of Privacy Act, as the case may be, for access to the record. 2007, c. 10, Sched. H, s. 18.

Individual’s right of access

52. (1) Subject to this Part, an individual has a right of access to a record of personal health information about the individual that is in the custody or under the control of a health information custodian unless,

(a) the record or the information in the record is subject to a legal privilege that restricts disclosure of the record or the information, as the case may be, to the individual;

(b) another Act, an Act of Canada or a court order prohibits disclosure to the individual of the record or the information in the record in the circumstances;

(c) the information in the record was collected or created primarily in anticipation of or for use in a proceeding, and the proceeding, together with all appeals or processes resulting from it, have not been concluded;

(d) the following conditions are met:
   (i) the information was collected or created in the course of an inspection, investigation or similar procedure authorized by law, or undertaken for the purpose of the detection, monitoring or prevention of a person’s receiving or attempting to receive a service or benefit, to which the person is not entitled under an Act or a program operated by the Minister, or a payment for such a service or benefit, and
   (ii) the inspection, investigation, or similar procedure, together with all proceedings, appeals or processes resulting from them, have not been concluded;

(e) granting the access could reasonably be expected to,
   (i) result in a risk of serious harm to the treatment or recovery of the individual or a risk of serious bodily harm to the individual or another person,
   (ii) lead to the identification of a person who was required by law to provide information in the record to the custodian, or
   (iii) lead to the identification of a person who provided information in the record to the custodian explicitly or implicitly in confidence if the custodian considers it appropriate in the circumstances that the identity of the person be kept confidential;

(f) the following conditions are met:
   (i) the custodian is an institution within the meaning of the Freedom of Information and Protection of Privacy Act or the Municipal Freedom of Information and Protection of Privacy Act or is acting as part of such an institution, and
   (ii) the custodian would refuse to grant access to the part of the record,
      (A) under clause 49 (a), (c) or (e) of the Freedom of Information and Protection of Privacy Act, if the request were made under that Act and that Act applied to the record, or
      (B) under clause 38 (a) or (c) of the Municipal Freedom of Information and Protection of Privacy Act, if the request were made under that Act and that Act applied to the record. 2004, c. 3, Sched. A, s. 52 (1); 2007, c. 10, Sched. H, s. 19; 2009, c. 33, Sched. 18, s. 25 (5).

Severable record

(2) Despite subsection (1), an individual has a right of access to that part of a record of personal health information about the individual that can reasonably be severed from the part of the record to which the individual does not have a right of access as a result of clauses (1) (a) to (f). 2004, c. 3, Sched. A, s. 52 (2).

Same

(3) Despite subsection (1), if a record is not a record dedicated primarily to personal health information about the individual requesting access, the individual has a right of access only to the portion of personal health information about the
individual in the record that can reasonably be severed from the record for the purpose of providing access. 2004, c. 3, Sched. A, s. 52 (3).

Individual's plan of service

(4) Despite subsection (1), a health information custodian shall not refuse to grant the individual access to his or her plan of service within the meaning of the Home Care and Community Services Act, 1994. 2004, c. 3, Sched. A, s. 52 (4); 2007, c. 8, s. 224 (7).

Consultation regarding harm

(5) Before deciding to refuse to grant an individual access to a record of personal health information under subclause (1) (e) (i), a health information custodian may consult with a member of the College of Physicians and Surgeons of Ontario or a member of the College of Psychologists of Ontario. 2004, c. 3, Sched. A, s. 52 (5).

Informal access

(6) Nothing in this Act prevents a health information custodian from,

(a) granting an individual access to a record of personal health information, to which the individual has a right of access, if the individual makes an oral request for access or does not make any request for access under section 53; or

(b) with respect to a record of personal health information to which an individual has a right of access, communicating with the individual or his or her substitute decision-maker who is authorized to consent on behalf of the individual to the collection, use or disclosure of personal health information about the individual. 2004, c. 3, Sched. A, s. 52 (6).

Duty of health information custodian

(7) Nothing in this Part relieves a health information custodian from a legal duty to provide, in a manner that is not inconsistent with this Act, personal health information as expeditiously as is necessary for the provision of health care to the individual. 2004, c. 3, Sched. A, s. 52 (7).

Request for access

53. (1) An individual may exercise a right of access to a record of personal health information by making a written request for access to the health information custodian that has custody or control of the information. 2004, c. 3, Sched. A, s. 53 (1).

Detail in request

(2) The request must contain sufficient detail to enable the health information custodian to identify and locate the record with reasonable efforts. 2004, c. 3, Sched. A, s. 53 (2).

Assistance

(3) If the request does not contain sufficient detail to enable the health information custodian to identify and locate the record with reasonable efforts, the custodian shall offer assistance to the person requesting access in reformulating the request to comply with subsection (2). 2004, c. 3, Sched. A, s. 53 (3).

Response of health information custodian

54. (1) A health information custodian that receives a request from an individual for access to a record of personal health information shall,

(a) make the record available to the individual for examination and, at the request of the individual, provide a copy of the record to the individual and if reasonably practical, an explanation of any term, code or abbreviation used in the record;

(b) give a written notice to the individual stating that, after a reasonable search, the custodian has concluded that the record does not exist, cannot be found, or is not a record to which this Part applies, if that is the case;

(c) if the custodian is entitled to refuse the request, in whole or in part, under any provision of this Part other than clause 52 (1) (c), (d) or (e), give a written notice to the individual stating that the custodian is refusing the request, in whole or in part, providing a reason for the refusal and stating that the individual is entitled to make a complaint about the refusal to the Commissioner under Part VI; or

(d) subject to subsection (1.1), if the custodian is entitled to refuse the request, in whole or in part, under clause 52 (1) (c), (d) or (e), give a written notice to the individual stating that the individual is entitled to make a complaint about the refusal to the Commissioner under Part VI, and that the custodian is refusing,

(i) the request, in whole or in part, while citing which of clauses 52 (1) (c), (d) and (e) apply;

(ii) the request, in whole or in part, under one or more of clauses 52 (1) (c), (d) and (e), while not citing which of those provisions apply, or
(iii) to confirm or deny the existence of any record subject to clauses 52 (1) (c), (d) and (e). 2004, c. 3, Sched. A, s. 54 (1); 2007, c. 10, Sched. H, s. 20 (1, 2).

Providing reasons

(1.1) A custodian acting under clause (1) (d) shall not act under subclause (1) (d) (i) where doing so would reasonably be expected in the circumstances known to the person making the decision on behalf of the custodian to reveal to the individual, directly or indirectly, information to which the individual does not have a right of access. 2007, c. 10, Sched. H, s. 20 (3).

Time for response

(2) Subject to subsection (3), the health information custodian shall give the response required by clause (1) (a), (b), (c) or (d) as soon as possible in the circumstances but no later than 30 days after receiving the request. 2004, c. 3, Sched. A, s. 54 (2).

Extension of time for response

(3) Within 30 days after receiving the request for access, the health information custodian may extend the time limit set out in subsection (2) for a further period of time of not more than 30 days if,

(a) meeting the time limit would unreasonably interfere with the operations of the custodian because the information consists of numerous pieces of information or locating the information would necessitate a lengthy search; or

(b) the time required to undertake the consultations necessary to reply to the request within 30 days after receiving it would make it not reasonably practical to reply within that time. 2004, c. 3, Sched. A, s. 54 (3).

Notice of extension

(4) Upon extending the time limit under subsection (3), the health information custodian shall give the individual written notice of the extension setting out the length of the extension and the reason for the extension. 2004, c. 3, Sched. A, s. 54 (4).

 Expedited access

(5) Despite subsection (2), the health information custodian shall give the response required by clause (1) (a), (b), (c) or (d) within the time period that the individual specifies if,

(a) the individual provides the custodian with evidence satisfactory to the custodian, acting on a reasonable basis, that the individual requires access to the requested record of personal health information on an urgent basis within that time period; and

(b) the custodian is reasonably able to give the required response within that time period. 2004, c. 3, Sched. A, s. 54 (5).

Frivolous or vexatious requests

(6) A health information custodian that believes on reasonable grounds that a request for access to a record of personal health information is frivolous or vexatious or is made in bad faith may refuse to grant the individual access to the requested record. 2004, c. 3, Sched. A, s. 54 (6).

Effect of non-compliance

(7) If the health information custodian does not respond to the request within the time limit or before the extension, if any, expires, the custodian shall be deemed to have refused the individual’s request for access. 2004, c. 3, Sched. A, s. 54 (7).

Right to complain

(8) If the health information custodian refuses or is deemed to have refused the request, in whole or in part,

(a) the individual is entitled to make a complaint about the refusal to the Commissioner under Part VI; and

(b) in the complaint, the burden of proof in respect of the refusal lies on the health information custodian. 2004, c. 3, Sched. A, s. 54 (8).

Identity of individual

(9) A health information custodian shall not make a record of personal health information or a part of it available to an individual under this Part or provide a copy of it to an individual under clause (1) (a) without first taking reasonable steps to be satisfied as to the individual’s identity. 2004, c. 3, Sched. A, s. 54 (9).

Fee for access

(10) A health information custodian that makes a record of personal health information or a part of it available to an individual under this Part or provides a copy of it to an individual under clause (1) (a) may charge the individual a fee for that purpose if the custodian first gives the individual an estimate of the fee. 2004, c. 3, Sched. A, s. 54 (10).

Amount of fee

(11) The amount of the fee shall not exceed the prescribed amount or the amount of reasonable cost recovery, if no amount is prescribed. 2004, c. 3, Sched. A, s. 54 (11).
Waiver of fee

(12) A health information custodian mentioned in subsection (10) may waive the payment of all or any part of the fee that an individual is required to pay under that subsection if, in the custodian’s opinion, it is fair and equitable to do so. 2004, c. 3, Sched. A, s. 54 (12).

Correction

55. (1) If a health information custodian has granted an individual access to a record of his or her personal health information and if the individual believes that the record is inaccurate or incomplete for the purposes for which the custodian has collected, uses or has used the information, the individual may request in writing that the custodian correct the record. 2004, c. 3, Sched. A, s. 55 (1); 2007, c. 10, Sched. H, s. 21.

Informal request

(2) If the individual makes an oral request that the health information custodian correct the record, nothing in this Part prevents the custodian from making the requested correction. 2004, c. 3, Sched. A, s. 55 (2).

Reply

(3) As soon as possible in the circumstances but no later than 30 days after receiving a request for a correction under subsection (1), the health information custodian shall, by written notice to the individual, grant or refuse the individual’s request or extend the deadline for replying for a period of not more than 30 days if,

(a) replying to the request within 30 days would unreasonably interfere with the activities of the custodian; or

(b) the time required to undertake the consultations necessary to reply to the request within 30 days would make it not reasonably practical to reply within that time. 2004, c. 3, Sched. A, s. 55 (3).

Extension of time for reply

(4) A health information custodian that extends the time limit under subsection (3) shall,

(a) give the individual written notice of the extension setting out the length of the extension and the reason for the extension; and

(b) grant or refuse the individual’s request as soon as possible in the circumstances but no later than the expiry of the time limit as extended. 2004, c. 3, Sched. A, s. 55 (4).

Deemed refusal

(5) A health information custodian that does not grant a request for a correction under subsection (1) within the time required shall be deemed to have refused the request. 2004, c. 3, Sched. A, s. 55 (5).

Frivolous or vexatious requests

(6) A health information custodian that believes on reasonable grounds that a request for a correction under subsection (1) is frivolous or vexatious or is made in bad faith may refuse to grant the request and, in that case, shall provide the individual with a notice that sets out the reasons for the refusal and that states that the individual is entitled to make a complaint about the refusal to the Commissioner under Part VI. 2004, c. 3, Sched. A, s. 55 (6).

Right to complain

(7) The individual is entitled to make a complaint to the Commissioner under Part VI about a refusal made under subsection (6). 2004, c. 3, Sched. A, s. 55 (7).

Duty to correct

(8) The health information custodian shall grant a request for a correction under subsection (1) if the individual demonstrates, to the satisfaction of the custodian, that the record is incomplete or inaccurate for the purposes for which the custodian uses the information and gives the custodian the information necessary to enable the custodian to correct the record. 2004, c. 3, Sched. A, s. 55 (8).

Exceptions

(9) Despite subsection (8), a health information custodian is not required to correct a record of personal health information if,

(a) it consists of a record that was not originally created by the custodian and the custodian does not have sufficient knowledge, expertise and authority to correct the record; or

(b) it consists of a professional opinion or observation that a custodian has made in good faith about the individual. 2004, c. 3, Sched. A, s. 55 (9).

Duties upon correction
Upon granting a request for a correction under subsection (1), the health information custodian shall,

(a) make the requested correction by,

(i) recording the correct information in the record and,

(A) striking out the incorrect information in a manner that does not obliterate the record, or

(B) if that is not possible, labelling the information as incorrect, severing the incorrect information from the record, storing it separately from the record and maintaining a link in the record that enables a person to trace the incorrect information, or

(ii) if it is not possible to record the correct information in the record, ensuring that there is a practical system in place to inform a person who accesses the record that the information in the record is incorrect and to direct the person to the correct information;

(b) give notice to the individual of what it has done under clause (a);

(c) at the request of the individual, give written notice of the requested correction, to the extent reasonably possible, to the persons to whom the custodian has disclosed the information with respect to which the individual requested the correction of the record, except if the correction cannot reasonably be expected to have an effect on the ongoing provision of health care or other benefits to the individual. 2004, c. 3, Sched. A, s. 55 (10).

Notice of refusal

(11) A notice of refusal under subsection (3) or (4) must give the reasons for the refusal and inform the individual that the individual is entitled to,

(a) prepare a concise statement of disagreement that sets out the correction that the health information custodian has refused to make;

(b) require that the health information custodian attach the statement of disagreement as part of the records that it holds of the individual’s personal health information and disclose the statement of disagreement whenever the custodian discloses information to which the statement relates;

(c) require that the health information custodian make all reasonable efforts to disclose the statement of disagreement to any person who would have been notified under clause (10) (c) if the custodian had granted the requested correction; and

(d) make a complaint about the refusal to the Commissioner under Part VI. 2004, c. 3, Sched. A, s. 55 (11).

Rights of individual

(12) If a health information custodian, under subsection (3) or (4), refuses a request for a correction under subsection (1), in whole or in part, or is deemed to have refused the request, the individual is entitled to take the actions described in any of clauses (11) (a), (b), (c) and (d). 2004, c. 3, Sched. A, s. 55 (12).

Custodian’s duty

(13) If the individual takes an action described in clause (11) (b) or (c), the health information custodian shall comply with the requirements described in the applicable clause. 2004, c. 3, Sched. A, s. 55 (13).

PART VI
ADMINISTRATION AND ENFORCEMENT
COMPLAINTS, REVIEWS AND INSPECTIONS

Complaint to Commissioner

56. (1) A person who has reasonable grounds to believe that another person has contravened or is about to contravene a provision of this Act or its regulations may make a complaint to the Commissioner. 2004, c. 3, Sched. A, s. 56 (1).

Time for complaint

(2) A complaint that a person makes under subsection (1) must be in writing and must be filed within,

(a) one year after the subject-matter of the complaint first came to the attention of the complainant or should reasonably have come to the attention of the complainant, whichever is the shorter; or

(b) whatever longer period of time that the Commissioner permits if the Commissioner is satisfied that it does not result in any prejudice to any person. 2004, c. 3, Sched. A, s. 56 (2); 2009, c. 33, Sched. 18, s. 25 (6).

Same, refusal of request
(3) A complaint that an individual makes under subsection 54 (8) or 55 (7) or (12) shall be in writing and shall be filed within six months from the time at which the health information custodian refuses or is deemed to have refused the individual’s request mentioned in the applicable subsection. 2004, c. 3, Sched. A, s. 56 (3).

Non-application

(4) The Ombudsman Act does not apply to any matter in respect of which a complaint may be made to the Commissioner under this Act or to the Commissioner or his or her employees or delegates acting under this Act. 2004, c. 3, Sched. A, s. 56 (4).

Response of Commissioner

57. (1) Upon receiving a complaint made under this Act, the Commissioner may inform the person about whom the complaint is made of the nature of the complaint and,

(a) inquire as to what means, other than the complaint, that the complainant is using or has used to resolve the subject-matter of the complaint;

(b) require the complainant to try to effect a settlement, within the time period that the Commissioner specifies, with the person about which the complaint is made; or

(c) authorize a mediator to review the complaint and to try to effect a settlement, within the time period that the Commissioner specifies, between the complainant and the person about which the complaint is made. 2004, c. 3, Sched. A, s. 57 (1).

Dealings without prejudice

(2) If the Commissioner takes an action described in clause (1) (b) or (c) but no settlement is effected within the time period specified,

(a) none of the dealings between the parties to the attempted settlement shall prejudice the rights and duties of the parties under this Act;

(b) none of the information disclosed in the course of trying to effect a settlement shall prejudice the rights and duties of the parties under this Act; and

(c) none of the information disclosed in the course of trying to effect a settlement and that is subject to mediation privilege shall be used or disclosed outside the attempted settlement, including in a review of a complaint under this section or in an inspection under section 60, unless all parties expressly consent. 2004, c. 3, Sched. A, s. 57 (2).

Commissioner’s review

(3) If the Commissioner does not take an action described in clause (1) (b) or (c) or if the Commissioner takes an action described in one of those clauses but no settlement is effected within the time period specified, the Commissioner may review the subject-matter of a complaint made under this Act if satisfied that there are reasonable grounds to do so. 2004, c. 3, Sched. A, s. 57 (3).

No review

(4) The Commissioner may decide not to review the subject-matter of the complaint for whatever reason the Commissioner considers proper, including if satisfied that,

(a) the person about which the complaint is made has responded adequately to the complaint;

(b) the complaint has been or could be more appropriately dealt with, initially or completely, by means of a procedure, other than a complaint under this Act;

(c) the length of time that has elapsed between the date when the subject-matter of the complaint arose and the date the complaint was made is such that a review under this section would likely result in undue prejudice to any person;

(d) the complainant does not have a sufficient personal interest in the subject-matter of the complaint; or

(e) the complaint is frivolous or vexatious or is made in bad faith. 2004, c. 3, Sched. A, s. 57 (4).

Notice

(5) Upon deciding not to review the subject-matter of a complaint, the Commissioner shall give notice of the decision to the complainant and shall specify in the notice the reason for the decision. 2004, c. 3, Sched. A, s. 57 (5).

Same

(6) Upon deciding to review the subject-matter of a complaint, the Commissioner shall give notice of the decision to the person about whom the complaint is made. 2004, c. 3, Sched. A, s. 57 (6).

Commissioner’s self-initiated review
58. (1) The Commissioner may, on his or her own initiative, conduct a review of any matter if the Commissioner has reasonable grounds to believe that a person has contravened or is about to contravene a provision of this Act or its regulations and that the subject-matter of the review relates to the contravention. 2004, c. 3, Sched. A, s. 58 (1).

Notice

(2) Upon deciding to conduct a review under this section, the Commissioner shall give notice of the decision to every person whose activities are being reviewed. 2004, c. 3, Sched. A, s. 58 (2).

Conduct of Commissioner’s review

59. (1) In conducting a review under section 57 or 58, the Commissioner may make the rules of procedure that the Commissioner considers necessary and the Statutory Powers Procedure Act does not apply to the review. 2004, c. 3, Sched. A, s. 59 (1).

Evidence

(2) In conducting a review under section 57 or 58, the Commissioner may receive and accept any evidence and other information that the Commissioner sees fit, whether on oath or by affidavit or otherwise and whether or not it is or would be admissible in a court of law. 2004, c. 3, Sched. A, s. 59 (2).

Inspection powers

60. (1) In conducting a review under section 57 or 58, the Commissioner may, without a warrant or court order, enter and inspect any premises in accordance with this section if,

(a) the Commissioner has reasonable grounds to believe that,
   (i) the person about whom the complaint was made or the person whose activities are being reviewed is using the premises for a purpose related to the subject-matter of the complaint or the review, as the case may be, and
   (ii) the premises contains books, records or other documents relevant to the subject-matter of the complaint or the review, as the case may be;
   (b) the Commissioner is conducting the inspection for the purpose of determining whether the person has contravened or is about to contravene a provision of this Act or its regulations; and
   (c) the Commissioner does not have reasonable grounds to believe that a person has committed an offence. 2004, c. 3, Sched. A, s. 60 (1).

Review powers

(2) In conducting a review under section 57 or 58, the Commissioner may,

(a) demand the production of any books, records or other documents relevant to the subject-matter of the review or copies of extracts from the books, records or other documents;
(b) inquire into all information, records, information practices of a health information custodian and other matters that are relevant to the subject-matter of the review;
(c) demand the production for inspection of anything described in clause (b);
(d) use any data storage, processing or retrieval device or system belonging to the person being investigated in order to produce a record in readable form of any books, records or other documents relevant to the subject-matter of the review; or
(e) on the premises that the Commissioner has entered, review or copy any books, records or documents that a person produces to the Commissioner, if the Commissioner pays the reasonable cost recovery fee that the health information custodian or person being reviewed may charge. 2004, c. 3, Sched. A, s. 60 (2).

Entry to dwellings

(3) The Commissioner shall not, without the consent of the occupier, exercise a power to enter a place that is being used as a dwelling, except under the authority of a search warrant issued under subsection (4). 2004, c. 3, Sched. A, s. 60 (3).

Search warrants

(4) Where a justice of the peace is satisfied by evidence upon oath or affirmation that there is reasonable ground to believe it is necessary to enter a place that is being used as a dwelling to investigate a complaint that is the subject of a review under section 57, he or she may issue a warrant authorizing the entry by a person named in the warrant. 2004, c. 3, Sched. A, s. 60 (4).
(5) The Commissioner shall exercise the power to enter premises under this section only during reasonable hours for the premises and only in such a manner so as not to interfere with health care that is being provided to any person on the premises at the time of entry. 2004, c. 3, Sched. A, s. 60 (5).

No obstruction

(6) No person shall obstruct the Commissioner who is exercising powers under this section or provide the Commissioner with false or misleading information. 2004, c. 3, Sched. A, s. 60 (6).

Written demand

(7) A demand for books, records or documents or copies of extracts from them under subsection (2) must be in writing and must include a statement of the nature of the things that are required to be produced. 2004, c. 3, Sched. A, s. 60 (7).

Obligation to assist

(8) If the Commissioner makes a demand for any thing under subsection (2), the person having custody of the thing shall produce it to the Commissioner and, at the request of the Commissioner, shall provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce a record in readable form, if the demand is for a document. 2004, c. 3, Sched. A, s. 60 (8).

Removal of documents

(9) If a person produces books, records and other documents to the Commissioner, other than those needed for the current health care of any person, the Commissioner may, on issuing a written receipt, remove them and may review or copy any of them if the Commissioner is not able to review and copy them on the premises that the Commissioner has entered. 2004, c. 3, Sched. A, s. 60 (9).

Return of documents

(10) The Commissioner shall carry out any reviewing or copying of documents with reasonable dispatch, and shall forthwith after the reviewing or copying return the documents to the person who produced them. 2004, c. 3, Sched. A, s. 60 (10).

Admissibility of copies

(11) A copy certified by the Commissioner as a copy is admissible in evidence to the same extent, and has the same evidentiary value, as the thing copied. 2004, c. 3, Sched. A, s. 60 (11).

Answers under oath

(12) In conducting a review under section 57 or 58, the Commissioner may, by summons, in the same manner and to the same extent as a superior court of record, require the appearance of any person before the Commissioner and compel them to give oral or written evidence on oath or affirmation. 2004, c. 3, Sched. A, s. 60 (12).

Inspection of record without consent

(13) Despite subsections (2) and (12), the Commissioner shall not inspect a record of, require evidence of, or inquire into, personal health information without the consent of the individual to whom it relates, unless,

(a) the Commissioner first determines that it is reasonably necessary to do so, subject to any conditions or restrictions that the Commissioner specifies, which shall include a time limitation, in order to carry out the review and that the public interest in carrying out the review justifies dispensing with obtaining the individual's consent in the circumstances; and

(b) the Commissioner provides a statement to the person who has custody or control of the record to be inspected, or the evidence or information to be inquired into, setting out the Commissioner’s determination under clause (a) together with brief written reasons and any restrictions and conditions that the Commissioner has specified. 2004, c. 3, Sched. A, s. 60 (13).

Limitation on delegation

(14) Despite subsection 67 (1), the power to make a determination under clause (13) (a) and to approve the brief written reasons under clause (13) (b) may not be delegated except to the Assistant Commissioner. 2004, c. 3, Sched. A, s. 60 (14).

Document privileged

(15) A document or thing produced by a person in the course of a review is privileged in the same manner as if the review were a proceeding in a court. 2007, c. 10, Sched. H, s. 22.

Protection

(16) Except on the trial of a person for perjury in respect of his or her sworn testimony, no statement made or answer given by that or any other person in the course of a review by the Commissioner is admissible in evidence in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person. 2004, c. 3, Sched. A, s. 60 (16).

Protection under federal Act
(17) The Commissioner shall inform a person giving a statement or answer in the course of a review by the Commissioner of the person’s right to object to answer any question under section 5 of the *Canada Evidence Act*. 2004, c. 3, Sched. A, s. 60 (17).

Representations

(18) The Commissioner shall give the person who made the complaint, the person about whom the complaint is made and any other affected person an opportunity to make representations to the Commissioner. 2004, c. 3, Sched. A, s. 60 (18).

Representative

(19) A person who is given an opportunity to make representations to the Commissioner may be represented by counsel or another person. 2004, c. 3, Sched. A, s. 60 (19).

Access to representations

(20) The Commissioner may permit a person to be present during the representations that another person makes to the Commissioner or to have access to them unless doing so would reveal,

(a) the substance of a record of personal health information, for which a health information custodian claims to be entitled to refuse a request for access made under section 53; or

(b) personal health information to which an individual is not entitled to request access under section 53. 2004, c. 3, Sched. A, s. 60 (20).

Proof of appointment

(21) If the Commissioner or Assistant Commissioner has delegated his or her powers under this section to an officer or employee of the Commissioner, the officer or employee who exercises the powers shall, upon request, produce the certificate of delegation signed by the Commissioner or Assistant Commissioner, as the case may be. 2004, c. 3, Sched. A, s. 60 (21).

Powers of Commissioner

61.  (1) After conducting a review under section 57 or 58, the Commissioner may,

(a) if the review relates to a complaint into a request by an individual under subsection 53 (1) for access to a record of personal health information, make an order directing the health information custodian about whom the complaint was made to grant the individual access to the requested record;

(b) if the review relates to a complaint into a request by an individual under subsection 55 (1) for correction of a record of personal health information, make an order directing the health information custodian about whom a complaint was made to make the requested correction;

(c) make an order directing any person whose activities the Commissioner reviewed to perform a duty imposed by this Act or its regulations;

(d) make an order directing any person whose activities the Commissioner reviewed to cease collecting, using or disclosing personal health information if the Commissioner determines that the person is collecting, using or disclosing the information, as the case may be, or is about to do so in contravention of this Act, its regulations or an agreement entered into under this Act;

(e) make an order directing any person whose activities the Commissioner reviewed to dispose of records of personal health information that the Commissioner determines the person collected, used or disclosed in contravention of this Act, its regulations or an agreement entered into under this Act but only if the disposal of the records is not reasonably expected to adversely affect the provision of health care to an individual;

(f) make an order directing any health information custodian whose activities the Commissioner reviewed to change, cease or not commence an information practice specified by the Commissioner, if the Commissioner determines that the information practice contravenes this Act or its regulations;

(g) make an order directing any health information custodian whose activities the Commissioner reviewed to implement an information practice specified by the Commissioner, if the Commissioner determines that the information practice is reasonably necessary in order to achieve compliance with this Act and its regulations;

(h) make an order directing any person who is an agent of a health information custodian, whose activities the Commissioner reviewed and that an order made under any of clauses (a) to (g) directs to take any action or to refrain from taking any action, to take the action or to refrain from taking the action if the Commissioner considers that it is necessary to make the order against the agent to ensure that the custodian will comply with the order made against the custodian; or

(i) make comments and recommendations on the privacy implications of any matter that is the subject of the review. 2004, c. 3, Sched. A, s. 61 (1).

Terms of order
(2) An order that the Commissioner makes under subsection (1) may contain the terms that the Commissioner considers appropriate. 2004, c. 3, Sched. A, s. 61 (2).

Copy of order, etc.

(3) Upon making comments, recommendations or an order under subsection (1), the Commissioner shall provide a copy of them, including reasons for any order made, to,

(a) the complainant and the person about whom the complaint was made, if the Commissioner made the comments, recommendations or order after conducting a review under section 57 of a complaint;

(b) the person whose activities the Commissioner reviewed, if the Commissioner made the comments, recommendations or order after conducting a review under section 58;

(c) all other persons to whom the order is directed;

(d) the body or bodies that are legally entitled to regulate or review the activities of a health information custodian directed in the order or to whom the comments or recommendations relate; and

(e) any other person whom the Commissioner considers appropriate. 2004, c. 3, Sched. A, s. 61 (3).

No order

(4) If, after conducting a review under section 57 or 58, the Commissioner does not make an order under subsection (1), the Commissioner shall give the complainant, if any, and the person whose activities the Commissioner reviewed a notice that sets out the Commissioner’s reasons for not making an order. 2004, c. 3, Sched. A, s. 61 (4).

Appeal of order

62. (1) A person affected by an order of the Commissioner made under any of clauses 61 (1) (c) to (h) may appeal the order to the Divisional Court on a question of law in accordance with the rules of court by filing a notice of appeal within 30 days after receiving the copy of the order. 2004, c. 3, Sched. A, s. 62 (1).

Certificate of Commissioner

(2) In an appeal under this section, the Commissioner shall certify to the Divisional Court,

(a) the order and a statement of the Commissioner’s reasons for making the order;

(b) the record of all hearings that the Commissioner has held in conducting the review on which the order is based;

(c) all written representations that the Commissioner received before making the order; and

(d) all other material that the Commissioner considers is relevant to the appeal. 2004, c. 3, Sched. A, s. 62 (2).

Confidentiality of information

(3) In an appeal under this section, the court may take precautions to avoid the disclosure by the court or any person of any personal health information about an individual, including, where appropriate, receiving representations without notice, conducting hearings in private or sealing the court files. 2004, c. 3, Sched. A, s. 62 (3).

Court order

(4) On hearing an appeal under this section, the court may, by order,

(a) direct the Commissioner to make the decisions and to do the acts that the Commissioner is authorized to do under this Act and that the court considers proper; and

(b) if necessary, vary or set aside the Commissioner’s order. 2004, c. 3, Sched. A, s. 62 (4).

Compliance by Commissioner

(5) The Commissioner shall comply with the court’s order. 2004, c. 3, Sched. A, s. 62 (5).

Enforcement of order

63. An order made by the Commissioner under this Act that has become final as a result of there being no further right of appeal may be filed with the Superior Court of Justice and on filing becomes and is enforceable as a judgment or order of the Superior Court of Justice to the same effect. 2004, c. 3, Sched. A, s. 63.

Further order of Commissioner

64. (1) After conducting a review under section 57 or 58 and making an order under subsection 61 (1), the Commissioner may rescind or vary the order or may make a further order under that subsection if new facts relating to the subject-matter of the review come to the Commissioner’s attention or if there is a material change in the circumstances relating to the subject-matter of the review. 2004, c. 3, Sched. A, s. 64 (1).

Circumstances
(2) The Commissioner may exercise the powers described in subsection (1) even if the order that the Commissioner rescinds or varies has been filed with the Superior Court of Justice under section 63. 2004, c. 3, Sched. A, s. 64 (2).

Copy of order, etc.

(3) Upon making a further order under subsection (1), the Commissioner shall provide a copy of it to the persons described in clauses 61 (3) (a) to (e) and shall include with the copy a notice setting out,

(a) the Commissioner’s reasons for making the order; and

(b) if the order was made under any of clauses 61 (1) (c) to (h), a statement that the persons affected by the order have the right to appeal described in subsection (4). 2004, c. 3, Sched. A, s. 64 (3).

Appeal

(4) A person affected by an order that the Commissioner rescinds, varies or makes under any of clauses 61 (1) (c) to (h) may appeal the order to the Divisional Court on a question of law in accordance with the rules of court by filing a notice of appeal within 30 days after receiving the copy of the order and subsections 62 (2) to (5) apply to the appeal. 2004, c. 3, Sched. A, s. 64 (4).

Damages for breach of privacy

65. (1) If the Commissioner has made an order under this Act that has become final as the result of there being no further right of appeal, a person affected by the order may commence a proceeding in the Superior Court of Justice for damages for actual harm that the person has suffered as a result of a contravention of this Act or its regulations. 2004, c. 3, Sched. A, s. 65 (1).

Same

(2) If a person has been convicted of an offence under this Act and the conviction has become final as a result of there being no further right of appeal, a person affected by the conduct that gave rise to the offence may commence a proceeding in the Superior Court of Justice for damages for actual harm that the person has suffered as a result of the conduct. 2004, c. 3, Sched. A, s. 65 (2).

Damages for mental anguish

(3) If, in a proceeding described in subsection (1) or (2), the Superior Court of Justice determines that the harm suffered by the plaintiff was caused by a contravention or offence, as the case may be, that the defendants engaged in wilfully or recklessly, the court may include in its award of damages an award, not exceeding $10,000, for mental anguish. 2004, c. 3, Sched. A, s. 65 (3).

COMMISSIONER

General powers

66. The Commissioner may,

(a) engage in or commission research into matters affecting the carrying out of the purposes of this Act;

(b) conduct public education programs and provide information concerning this Act and the Commissioner’s role and activities;

(c) receive representations from the public concerning the operation of this Act;

(d) on the request of a health information custodian, offer comments on the custodian’s actual or proposed information practices;

(e) assist in investigations and similar procedures conducted by a person who performs similar functions to the Commissioner under the laws of Canada, except that in providing assistance, the Commissioner shall not use or disclose information collected by or for the Commissioner under this Act;

(f) in appropriate circumstances, authorize the collection of personal health information about an individual in a manner other than directly from the individual. 2004, c. 3, Sched. A, s. 66.

Delegation

67. (1) The Commissioner may in writing delegate any of the Commissioner’s powers, duties or functions under this Act, including the power to make orders, to the Assistant Commissioner or to an officer or employee of the Commissioner. 2004, c. 3, Sched. A, s. 67 (1).

Subdelegation by Assistant Commissioner

(2) The Assistant Commissioner may in writing delegate any of the powers, duties or functions delegated to him or her under subsection (1) to any other officers or employees of the Commissioner, subject to the conditions and restrictions that the Assistant Commissioner specifies in the delegation. 2004, c. 3, Sched. A, s. 67 (2).
Limitations re personal health information

68. (1) The Commissioner and any person acting under his or her authority may collect, use or retain personal health information in the course of carrying out any functions under this Part solely if no other information will serve the purpose of the collection, use or retention of the personal health information and in no other circumstances. 2004, c. 3, Sched. A, s. 68 (1).

Extent of information

(2) The Commissioner and any person acting under his or her authority shall not in the course of carrying out any functions under this Part collect, use or retain more personal health information than is reasonably necessary to enable the Commissioner to perform his or her functions relating to the administration of this Act or for a proceeding under it. 2004, c. 3, Sched. A, s. 68 (2).

Confidentiality

(3) The Commissioner, the Assistant Commissioner and persons acting on behalf of or under the direction of either of them shall not disclose any information that comes to their knowledge in the course of exercising their functions under this Act unless,

(a) the disclosure is required for the purpose of exercising those functions;

(b) the information relates to a health information custodian, the disclosure is made to a body that is legally entitled to regulate or review the activities of the custodian and the Commissioner or the Assistant Commissioner is of the opinion that the disclosure is justified;

(c) the Commissioner obtained the information under subsection 60 (12) and the disclosure is required in a prosecution for an offence under section 131 of the Criminal Code (Canada) in respect of sworn testimony; or

(d) the disclosure is made to the Attorney General, the information relates to the commission of an offence against an Act or an Act of Canada and the Commissioner is of the view that there is evidence of such an offence. 2004, c. 3, Sched. A, s. 68 (3).

Same

(4) Despite anything in subsection (3), the Commissioner, the Assistant Commissioner and persons acting on behalf of or under the direction of either of them shall not disclose,

(a) any quality of care information that comes to their knowledge in the course of exercising their functions under this Act; or

(b) the identity of a person, other than a complainant under subsection 56 (1), who has provided information to the Commissioner and who has requested the Commissioner to keep the person’s identity confidential. 2004, c. 3, Sched. A, s. 68 (4).

Information in review or proceeding

(5) The Commissioner in a review under section 57 or 58 and a court, tribunal or other person, including the Commissioner, in a proceeding mentioned in section 65 or this section shall take every reasonable precaution, including, when appropriate, receiving representations without notice and conducting hearings that are closed to the public, to avoid the disclosure of any information for which a health information custodian is entitled to refuse a request for access made under section 53. 2004, c. 3, Sched. A, s. 68 (5).

Not compellable witness

(6) The Commissioner, the Assistant Commissioner and persons acting on behalf of or under the direction of either of them shall not be required to give evidence in a court or in a proceeding of a judicial nature concerning anything coming to their knowledge in the exercise of their functions under this Act that they are prohibited from disclosing under subsection (3) or (4). 2004, c. 3, Sched. A, s. 68 (6).

Immunity

69. No action or other proceeding for damages may be instituted against the Commissioner, the Assistant Commissioner or any person acting on behalf of or under the direction of either of them for,

(a) anything done, reported or said in good faith and in the exercise or intended exercise of any of their powers or duties under this Act; or

(b) any alleged neglect or default in the exercise in good faith of any of their powers or duties under this Act. 2004, c. 3, Sched. A, s. 69.

PART VII
GENERAL

Non-retaliation
70. No one shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage a person by reason that,
(a) the person, acting in good faith and on the basis of reasonable belief, has disclosed to the Commissioner that any other person has contravened or is about to contravene a provision of this Act or its regulations;
(b) the person, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order to avoid having any person contravene a provision of this Act or its regulations;
(c) the person, acting in good faith and on the basis of reasonable belief, has refused to do or stated an intention of refusing to do anything that is in contravention of a provision of this Act or its regulations; or
(d) any person believes that the person will do anything described in clause (a), (b) or (c). 2004, c. 3, Sched. A, s. 70.

Immunity
71. (1) No action or other proceeding for damages may be instituted against a health information custodian or any other person for,
(a) anything done, reported or said, both in good faith and reasonably in the circumstances, in the exercise or intended exercise of any of their powers or duties under this Act; or
(b) any alleged neglect or default that was reasonable in the circumstances in the exercise in good faith of any of their powers or duties under this Act. 2004, c. 3, Sched. A, s. 71 (1).

Crown liability
(2) Despite subsections 5 (2) and (4) of the Proceedings Against the Crown Act, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject. 2004, c. 3, Sched. A, s. 71 (2).

Substitute decision-maker
(3) A person who, on behalf of or in the place of an individual, gives or refuses consent to a collection, use or disclosure of personal health information about the individual, makes a request, gives an instruction or takes a step is not liable for damages for doing so if the person acts reasonably in the circumstances, in good faith and in accordance with this Act and its regulations. 2004, c. 3, Sched. A, s. 71 (3).

Reliance on assertion
(4) Unless it is not reasonable to do so in the circumstances, a person is entitled to rely on the accuracy of an assertion made by another person, in connection with a collection, use or disclosure of, or access to, the information under this Act, to the effect that the other person,
(a) is a person who is authorized to request access to a record of personal health information under section 53;
(b) is a person who is entitled under section 5 or 23 or subsection 26 (1) to consent to the collection, use or disclosure of personal health information about another individual;
(c) meets the requirement of clauses 26 (2) (b) and (c); or
(d) holds the beliefs described in subsection 26 (5). 2004, c. 3, Sched. A, s. 71 (4).

Offences
72. (1) A person is guilty of an offence if the person,
(a) wilfully collects, uses or discloses personal health information in contravention of this Act or its regulations;
(b) makes a request under this Act, under false pretences, for access to or correction of a record of personal health information;
(c) in connection with the collection, use or disclosure of personal health information or access to a record of personal health information, makes an assertion, knowing that it is untrue, to the effect that the person,
   (i) is a person who is entitled to consent to the collection, use or disclosure of personal health information about another individual,
   (ii) meets the requirement of clauses 26 (2) (b) and (c),
   (iii) holds the beliefs described in subsection 26 (5), or
   (iv) is a person entitled to access to a record of personal health information under section 52;
(d) disposes of a record of personal health information in the custody or under the control of the custodian with an intent to evade a request for access to the record that the custodian has received under subsection 53 (1);
(e) wilfully disposes of a record of personal health information in contravention of section 13;
(f) contravenes subsection 34 (2), (3) or (4) or clause 47 (15) (a), (e) or (f);

(g) wilfully obstructs the Commissioner or a person known to be acting under the authority of the Commissioner in the performance of his or her functions under this Act;

(h) wilfully makes a false statement to mislead or attempt to mislead the Commissioner or a person known to be acting under the authority of the Commissioner in the performance of his or her functions under this Act;

(i) wilfully fails to comply with an order made by the Commissioner or a person known to be acting under the authority of the Commissioner under this Act; or

(j) contravenes section 70. 2004, c. 3, Sched. A, s. 72 (1).

Penalty

(2) A person who is guilty of an offence under subsection (1) is liable, on conviction,

(a) if the person is a natural person, to a fine of not more than $50,000; and

(b) if the person is not a natural person, to a fine of not more than $250,000. 2004, c. 3, Sched. A, s. 72 (2).

Officers, etc.

(3) If a corporation commits an offence under this Act, every officer, member, employee or other agent of the corporation who authorized the offence, or who had the authority to prevent the offence from being committed but knowingly refrained from doing so, is a party to and guilty of the offence and is liable, on conviction, to the penalty for the offence, whether or not the corporation has been prosecuted or convicted. 2004, c. 3, Sched. A, s. 72 (3).

No prosecution

(4) No person is liable to prosecution for an offence against this or any other Act by reason of complying with a requirement of the Commissioner under this Act. 2004, c. 3, Sched. A, s. 72 (4).

Commencing a prosecution

(5) No person other than the Attorney General or an agent for the Attorney General may commence a prosecution for an offence under subsection (1). 2004, c. 3, Sched. A, s. 72 (5); 2006, c. 21, Sched. C, s. 128.

Regulations

73. (1) Subject to section 74, the Lieutenant Governor in Council may make regulations,

(a) prescribing or specifying anything that this Act describes as being prescribed, specified, described, provided for, authorized or required in the regulations made under this Act;

(b) exempting persons or classes of persons from the persons described in clause (d) of the definition of “health care practitioner” in section 2;

(c) specifying persons or classes of persons who shall not be included in the definition of “health information custodian” in subsection 3 (1);

(d) specifying that certain types of information shall or shall not be included in the definition of “personal health information” in subsection 4 (1);

(e) defining, for the purposes of this Act and its regulations, any word or expression used in this Act that has not already been expressly defined in this Act;

(f) making any provision of this Act or its regulations, that applies to some but not all health information custodians, applicable to a prescribed person mentioned in paragraph 8 of the definition of “health information custodian” in subsection 3 (1) or a member of a prescribed class of persons mentioned in that paragraph;

(g) specifying requirements with respect to information practices for the purposes of subsection 10 (1), including conditions that a health information custodian is required to comply with when collecting, using or disclosing personal health information or classes of personal health information, or specifying procedural processes or requirements for setting requirements with respect to information practices for the purposes of that subsection;

(h) specifying requirements, or a process for setting requirements, for the purposes of subsection 10 (3) with which a health information custodian is required to comply when using electronic means to collect, use, modify, disclose, retain or dispose of personal health information, including standards for transactions, data elements for transactions, code sets for data elements and procedures for the transmission and authentication of electronic signatures;

(i) specifying requirements for the purposes of subsection 17 (1), including requiring that a health information custodian and its agent enter into an agreement that complies with the regulations made under clause (k) before the custodian provides personal health information to the agent;

(j) specifying requirements that an agreement entered into under this Act or its regulations must contain;
(k) specifying requirements, restrictions or prohibitions with respect to the collection, use or disclosure of any class of personal health information by any person in addition to the requirements, restrictions or prohibitions set out in this Act;

(l) specifying requirements that an express instruction mentioned in clause 37 (1) (a), 38 (1) (a) or 50 (1) (e) must meet;

(m) permitting notices, statements or any other things, that under this Act are required to be provided in writing, to be provided in electronic or other form instead, subject to the conditions or restrictions that are specified by the regulations made under this Act;

(n) prescribing under what circumstances the Canadian Blood Services may collect, use and disclose personal health information, the conditions that apply to the collection, use and disclosure of personal health information by the Canadian Blood Services and disclosures that may be made by a health information custodian to the Canadian Blood Services;

(o) specifying information relating to the administration or enforcement of this Act that is required to be contained in a report made under subsection 58 (1) of the Freedom of Information and Protection of Privacy Act;

(p) respecting any matter necessary or advisable to carry out effectively the purposes of this Act. 2004, c. 3, Sched. A, s. 73 (1).

General or specific application

(2) A regulation made under this Act may be of general application or specific to any person or persons or class or classes in its application. 2004, c. 3, Sched. A, s. 73 (2).

Classes

(3) A class described in the regulations made under this Act may be described according to any characteristic or combination of characteristics and may be described to include or exclude any specified member, whether or not with the same characteristics. 2004, c. 3, Sched. A, s. 73 (3).

Public consultation before making regulations

74. (1) Subject to subsection (7), the Lieutenant Governor in Council shall not make any regulation under section 73 unless,

(a) the Minister has published a notice of the proposed regulation in The Ontario Gazette and given notice of the proposed regulation by all other means that the Minister considers appropriate for the purpose of providing notice to the persons who may be affected by the proposed regulation;

(b) the notice complies with the requirements of this section;

(c) the time periods specified in the notice, during which members of the public may exercise a right described in clause (2) (b) or (c), have expired; and

(d) the Minister has considered whatever comments and submissions that members of the public have made on the proposed regulation in accordance with clause (2) (b) or (c) and has reported to the Lieutenant Governor in Council on what, if any, changes to the proposed regulation the Minister considers appropriate. 2004, c. 3, Sched. A, s. 74 (1).

Contents of notice

(2) The notice mentioned in clause (1) (a) shall contain,

(a) a description of the proposed regulation and the text of it;

(b) a statement of the time period during which members of the public may submit written comments on the proposed regulation to the Minister and the manner in which and the address to which the comments must be submitted;

(c) a description of whatever other rights, in addition to the right described in clause (b), that members of the public have to make submissions on the proposed regulation and the manner in which and the time period during which those rights must be exercised;

(d) a statement of where and when members of the public may review written information about the proposed regulation;

(e) all prescribed information; and

(f) all other information that the Minister considers appropriate. 2004, c. 3, Sched. A, s. 74 (2).

Time period for comments

(3) The time period mentioned in clauses (2) (b) and (c) shall be at least 60 days after the Minister gives the notice mentioned in clause (1) (a) unless the Minister shortens the time period in accordance with subsection (4). 2004, c. 3, Sched. A, s. 74 (3).

Shorter time period for comments
(4) The Minister may shorten the time period if, in the Minister’s opinion,
(a) the urgency of the situation requires it;
(b) the proposed regulation clarifies the intent or operation of this Act or the regulations; or
(c) the proposed regulation is of a minor or technical nature. 2004, c. 3, Sched. A, s. 74 (4).

Discretion to make regulations

(5) Upon receiving the Minister’s report mentioned in clause (1) (d), the Lieutenant Governor in Council, without further notice under subsection (1), may make the proposed regulation with the changes that the Lieutenant Governor in Council considers appropriate, whether or not those changes are mentioned in the Minister’s report. 2004, c. 3, Sched. A, s. 74 (5).

No public consultation

(6) The Minister may decide that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 73 if, in the Minister’s opinion,
(a) the urgency of the situation requires it;
(b) the proposed regulation clarifies the intent or operation of this Act or the regulations; or
(c) the proposed regulation is of a minor or technical nature. 2004, c. 3, Sched. A, s. 74 (6).

Same

(7) If the Minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 73,
(a) those subsections do not apply to the power of the Lieutenant Governor in Council to make the regulation; and
(b) the Minister shall give notice of the decision to the public and to the Commissioner as soon as is reasonably possible after making the decision. 2004, c. 3, Sched. A, s. 74 (7).

Contents of notice

(8) The notice mentioned in clause (7) (b) shall include a statement of the Minister’s reasons for making the decision and all other information that the Minister considers appropriate. 2004, c. 3, Sched. A, s. 74 (8).

Publication of notice

(9) The Minister shall publish the notice mentioned in clause (7) (b) in The Ontario Gazette and give the notice by all other means that the Minister considers appropriate. 2004, c. 3, Sched. A, s. 74 (9).

Temporary regulation

(10) If the Minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 73 because the Minister is of the opinion that the urgency of the situation requires it, the regulation shall,
(a) be identified as a temporary regulation in the text of the regulation; and
(b) unless it is revoked before its expiry, expire at a time specified in the regulation, which shall not be after the second anniversary of the day on which the regulation comes into force. 2004, c. 3, Sched. A, s. 74 (10).

No review

(11) Subject to subsection (12), neither a court, nor the Commissioner shall review any action, decision, failure to take action or failure to make a decision by the Lieutenant Governor in Council or the Minister under this section. 2004, c. 3, Sched. A, s. 74 (11).

Exception

(12) Any person resident in Ontario may make an application for judicial review under the Judicial Review Procedure Act on the grounds that the Minister has not taken a step required by this section. 2004, c. 3, Sched. A, s. 74 (12).

Time for application

(13) No person shall make an application under subsection (12) with respect to a regulation later than 21 days after the day on which,
(a) the Minister publishes a notice with respect to the regulation under clause (1) (a) or subsection (9), where applicable; or
(b) the regulation is filed, if it is a regulation described in subsection (10). 2004, c. 3, Sched. A, s. 74 (13).

Review of Act

75. A committee of the Legislative Assembly shall,
(a) begin a comprehensive review of this Act not later than the third anniversary of the day on which this section comes into force; and

(b) within one year after beginning that review, make recommendations to the Assembly concerning amendments to this Act. 2004, c. 3, Sched. A, s. 75.


100. OMITTED (ENACTS SHORT TITLE OF THIS ACT). 2004, c. 3, Sched. A, s. 100.

Français

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S.O. 1996, CHAPTER 2
Schedule A

Consolidation Period: From July 1, 2010 to the e-Laws currency date.
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CONSENT AND CAPACITY BOARD

70. Consent and Capacity Board
Purposes

1. The purposes of this Act are,
   (a) to provide rules with respect to consent to treatment that apply consistently in all settings;
   (b) to facilitate treatment, admission to care facilities, and personal assistance services, for persons lacking the capacity to make decisions about such matters;
   (c) to enhance the autonomy of persons for whom treatment is proposed, persons for whom admission to a care facility is proposed and persons who are to receive personal assistance services by,  
      (i) allowing those who have been found to be incapable to apply to a tribunal for a review of the finding,
      (ii) allowing incapable persons to request that a representative of their choice be appointed by the tribunal for the purpose of making decisions on their behalf concerning treatment, admission to a care facility or personal assistance services, and
      (iii) requiring that wishes with respect to treatment, admission to a care facility or personal assistance services, expressed by persons while capable and after attaining 16 years of age, be adhered to;
   (d) to promote communication and understanding between health practitioners and their patients or clients;
   (e) to ensure a significant role for supportive family members when a person lacks the capacity to make a decision about a treatment, admission to a care facility or a personal assistance service; and
   (f) to permit intervention by the Public Guardian and Trustee only as a last resort in decisions on behalf of incapable persons concerning treatment, admission to a care facility or personal assistance services. 1996, c. 2, Sched. A, s. 1.

Interpretation

2. (1) In this Act,

“attorney for personal care” means an attorney under a power of attorney for personal care given under the Substitute Decisions Act, 1992; (“procureur au soin de la personne”)

“Board” means the Consent and Capacity Board; (“Commission”)
“capable” means mentally capable, and “capacity” has a corresponding meaning; (“capable”, “capacité”)
“care facility” means,
(a) a long-term care home as defined in the Long-Term Care Homes Act, 2007, or
(b) a facility prescribed by the regulations as a care facility; (“établissement de soins”)
“community treatment plan” has the same meaning as in the Mental Health Act; (“plan de traitement en milieu communautaire”)
“course of treatment” means a series or sequence of similar treatments administered to a person over a period of time for a particular health problem; (“série de traitements”)
“evaluator” means, in the circumstances prescribed by the regulations,
(a) a member of the College of Audiologists and Speech-Language Pathologists of Ontario,
(b) a member of the College of Dietitians of Ontario,
(c) a member of the College of Nurses of Ontario,
(d) a member of the College of Occupational Therapists of Ontario,
(e) a member of the College of Physicians and Surgeons of Ontario,
(f) a member of the College of Physiotherapists of Ontario,
(g) a member of the College of Psychologists of Ontario, or
(h) a member of a category of persons prescribed by the regulations as evaluators; (“appréciateur”)
“guardian of the person” means a guardian of the person appointed under the Substitute Decisions Act, 1992; (“tuteur à la personne”)
“health practitioner” means a member of a College under the Regulated Health Professions Act, 1991, a naturopath registered as a drugless therapist under the Drugless Practitioners Act or a member of a category of persons prescribed by the regulations as health practitioners; (“praticien de la santé”)

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “health practitioner” is amended by striking out “a naturopath registered as a drugless therapist under the Drugless Practitioners Act”. See: 2009, c. 26, ss. 10 (2), 27 (2).

“hospital” means a private hospital as defined in the Private Hospitals Act or a hospital as defined in the Public Hospitals Act; (“hôpital”)
“incapable” means mentally incapable, and “incapacity” has a corresponding meaning; (“incapable”, “incapacité”)
“mental disorder” has the same meaning as in the Mental Health Act; (“trouble mental”)
“personal assistance service” means assistance with or supervision of hygiene, washing, dressing, grooming, eating, drinking, elimination, ambulation, positioning or any other routine activity of living, and includes a group of personal assistance services or a plan setting out personal assistance services to be provided to a person, but does not include anything prescribed by the regulations as not constituting a personal assistance service; (“service d’aide personnelle”)
“plan of treatment” means a plan that,
(a) is developed by one or more health practitioners,
(b) deals with one or more of the health problems that a person has and may, in addition, deal with one or more of the health problems that the person is likely to have in the future given the person’s current health condition, and
(c) provides for the administration to the person of various treatments or courses of treatment and may, in addition, provide for the withholding or withdrawal of treatment in light of the person’s current health condition; (“plan de traitement”)
“psychiatric facility” has the same meaning as in the Mental Health Act; (“établissement psychiatrique”)
“recipient” means a person who is to be provided with one or more personal assistance services,
(a) in a long-term care home as defined in the Long-Term Care Homes Act, 2007,
(b) in a place prescribed by the regulations in the circumstances prescribed by the regulations,
(c) under a program prescribed by the regulations in the circumstances prescribed by the regulations, or
(d) by a provider prescribed by the regulations in the circumstances prescribed by the regulations; (“bénéficiaire”)

“regulations” means the regulations made under this Act; (“règlements”)

“treatment” means anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health-related purpose, and includes a course of treatment, plan of treatment or community treatment plan, but does not include,

(a) the assessment for the purpose of this Act of a person’s capacity with respect to a treatment, admission to a care facility or a personal assistance service, the assessment for the purpose of the Substitute Decisions Act, 1992 of a person’s capacity to manage property or a person’s capacity for personal care, or the assessment of a person’s capacity for any other purpose,

(b) the assessment or examination of a person to determine the general nature of the person’s condition,

(c) the taking of a person’s health history,

(d) the communication of an assessment or diagnosis,

(e) the admission of a person to a hospital or other facility,

(f) a personal assistance service,

(g) a treatment that in the circumstances poses little or no risk of harm to the person,

(h) anything prescribed by the regulations as not constituting treatment. (“traitement”) 1996, c. 2, Sched. A, s. 2 (1); 2000, c. 9, s. 31; 2007, c. 8, s. 207 (1); 2009, c. 26, s. 10 (1); 2009, c. 33, Sched. 18, s. 10 (1).

Refusal of consent

(2) A reference in this Act to refusal of consent includes withdrawal of consent. 1996, c. 2, Sched. A, s. 2 (2).

Meaning of “excluded act”

3. (1) In this section,

“excluded act” means,

(a) anything described in clause (b) or (g) of the definition of “treatment” in subsection 2 (1), or

(b) anything described in clause (h) of the definition of “treatment” in subsection 2 (1) and prescribed by the regulations as an excluded act. 1996, c. 2, Sched. A, s. 3 (1).

Excluded act considered treatment

(2) If a health practitioner decides to proceed as if an excluded act were a treatment for the purpose of this Act, this Act and the regulations apply as if the excluded act were a treatment within the meaning of this Act. 1996, c. 2, Sched. A, s. 3 (2).

Capacity

4. (1) A person is capable with respect to a treatment, admission to a care facility or a personal assistance service if the person is able to understand the information that is relevant to making a decision about the treatment, admission or personal assistance service, as the case may be, and able to appreciate the reasonably foreseeable consequences of a decision or lack of decision. 1996, c. 2, Sched. A, s. 4 (1).

Presumption of capacity

(2) A person is presumed to be capable with respect to treatment, admission to a care facility and personal assistance services. 1996, c. 2, Sched. A, s. 4 (2).

Exception

(3) A person is entitled to rely on the presumption of capacity with respect to another person unless he or she has reasonable grounds to believe that the other person is incapable with respect to the treatment, the admission or the personal assistance service, as the case may be. 1996, c. 2, Sched. A, s. 4 (3).

Wishes

5. (1) A person may, while capable, express wishes with respect to treatment, admission to a care facility or a personal assistance service. 1996, c. 2, Sched. A, s. 5 (1).

Manner of expression
Wishes may be expressed in a power of attorney, in a form prescribed by the regulations, in any other written form, orally or in any other manner. 1996, c. 2, Sched. A, s. 5 (2).

Later wishes prevail

Later wishes expressed while capable prevail over earlier wishes. 1996, c. 2, Sched. A, s. 5 (3).

Research, sterilization, transplants

6. This Act does not affect the law relating to giving or refusing consent on another person’s behalf to any of the following procedures:
   1. A procedure whose primary purpose is research.
   2. Sterilization that is not medically necessary for the protection of the person’s health.

Restraint, confinement

7. This Act does not affect the common law duty of a caregiver to restrain or confine a person when immediate action is necessary to prevent serious bodily harm to the person or to others. 1996, c. 2, Sched. A, s. 7.

PART II
TREATMENT

GENERAL

Application of Part

8. (1) Subject to section 3, this Part applies to treatment. 1996, c. 2, Sched. A, s. 8 (1).

Law not affected

(2) Subject to section 3, this Part does not affect the law relating to giving or refusing consent to anything not included in the definition of “treatment” in subsection 2 (1). 1996, c. 2, Sched. A, s. 8 (2).

Meaning of “substitute decision-maker”

9. In this Part, “substitute decision-maker” means a person who is authorized under section 20 to give or refuse consent to a treatment on behalf of a person who is incapable with respect to the treatment. 1996, c. 2, Sched. A, s. 9.

CONSENT TO TREATMENT

No treatment without consent

10. (1) A health practitioner who proposes a treatment for a person shall not administer the treatment, and shall take reasonable steps to ensure that it is not administered, unless,
   a) he or she is of the opinion that the person is capable with respect to the treatment, and the person has given consent; or
   b) he or she is of the opinion that the person is incapable with respect to the treatment, and the person’s substitute decision-maker has given consent on the person’s behalf in accordance with this Act. 1996, c. 2, Sched. A, s. 10 (1).

Opinion of Board or court governs

(2) If the health practitioner is of the opinion that the person is incapable with respect to the treatment, but the person is found to be capable with respect to the treatment by the Board on an application for review of the health practitioner’s finding, or by a court on an appeal of the Board’s decision, the health practitioner shall not administer the treatment, and shall take reasonable steps to ensure that it is not administered, unless the person has given consent. 1996, c. 2, Sched. A, s. 10 (2).

Elements of consent

11. (1) The following are the elements required for consent to treatment:
   1. The consent must relate to the treatment.
   2. The consent must be informed.
   3. The consent must be given voluntarily.
4. The consent must not be obtained through misrepresentation or fraud. 1996, c. 2, Sched. A, s. 11 (1).

Informed consent

(2) A consent to treatment is informed if, before giving it,
(a) the person received the information about the matters set out in subsection (3) that a reasonable person in the same circumstances would require in order to make a decision about the treatment; and
(b) the person received responses to his or her requests for additional information about those matters. 1996, c. 2, Sched. A, s. 11 (2).

Same

(3) The matters referred to in subsection (2) are:
2. The expected benefits of the treatment.
3. The material risks of the treatment.
4. The material side effects of the treatment.
5. Alternative courses of action.
6. The likely consequences of not having the treatment. 1996, c. 2, Sched. A, s. 11 (3).

Express or implied

(4) Consent to treatment may be express or implied. 1996, c. 2, Sched. A, s. 11 (4).

Included consent

12. Unless it is not reasonable to do so in the circumstances, a health practitioner is entitled to presume that consent to a treatment includes,
(a) consent to variations or adjustments in the treatment, if the nature, expected benefits, material risks and material side effects of the changed treatment are not significantly different from the nature, expected benefits, material risks and material side effects of the original treatment; and
(b) consent to the continuation of the same treatment in a different setting, if there is no significant change in the expected benefits, material risks or material side effects of the treatment as a result of the change in the setting in which it is administered. 1996, c. 2, Sched. A, s. 12.

Plan of treatment

13. If a plan of treatment is to be proposed for a person, one health practitioner may, on behalf of all the health practitioners involved in the plan of treatment,
(a) propose the plan of treatment;
(b) determine the person’s capacity with respect to the treatments referred to in the plan of treatment; and
(c) obtain a consent or refusal of consent in accordance with this Act,
   (i) from the person, concerning the treatments with respect to which the person is found to be capable, and
   (ii) from the person’s substitute decision-maker, concerning the treatments with respect to which the person is found to be incapable. 1996, c. 2, Sched. A, s. 13.

Withdrawal of consent

14. A consent that has been given by or on behalf of the person for whom the treatment was proposed may be withdrawn at any time,
(a) by the person, if the person is capable with respect to the treatment at the time of the withdrawal;
(b) by the person’s substitute decision-maker, if the person is incapable with respect to the treatment at the time of the withdrawal. 1996, c. 2, Sched. A, s. 14.

Capacity depends on treatment
15. (1) A person may be incapable with respect to some treatments and capable with respect to others. 1996, c. 2, Sched. A, s. 15 (1).

Capacity depends on time
(2) A person may be incapable with respect to a treatment at one time and capable at another. 1996, c. 2, Sched. A, s. 15 (2).

Return of capacity
16. If, after consent to a treatment is given or refused on a person’s behalf in accordance with this Act, the person becomes capable with respect to the treatment in the opinion of the health practitioner, the person’s own decision to give or refuse consent to the treatment governs. 1996, c. 2, Sched. A, s. 16.

Information
17. A health practitioner shall, in the circumstances and manner specified in guidelines established by the governing body of the health practitioner’s profession, provide to persons found by the health practitioner to be incapable with respect to treatment such information about the consequences of the findings as is specified in the guidelines. 1996, c. 2, Sched. A, s. 17.

Treatment must not begin
18. (1) This section applies if,
(a) a health practitioner proposes a treatment for a person and finds that the person is incapable with respect to the treatment;
(b) before the treatment is begun, the health practitioner is informed that the person intends to apply, or has applied, to the Board for a review of the finding; and
(c) the application to the Board is not prohibited by subsection 32 (2). 1996, c. 2, Sched. A, s. 18 (1).

Same
(2) This section also applies if,
(a) a health practitioner proposes a treatment for a person and finds that the person is incapable with respect to the treatment;
(b) before the treatment is begun, the health practitioner is informed that,
(i) the incapable person intends to apply, or has applied, to the Board for appointment of a representative to give or refuse consent to the treatment on his or her behalf; or
(ii) another person intends to apply, or has applied, to the Board to be appointed as the representative of the incapable person to give or refuse consent to the treatment on his or her behalf; and
(c) the application to the Board is not prohibited by subsection 33 (3). 1996, c. 2, Sched. A, s. 18 (2).

Same
(3) In the circumstances described in subsections (1) and (2), the health practitioner shall not begin the treatment, and shall take reasonable steps to ensure that the treatment is not begun,
(a) until 48 hours have elapsed since the health practitioner was first informed of the intended application to the Board without an application being made;
(b) until the application to the Board has been withdrawn;
(c) until the Board has rendered a decision in the matter, if none of the parties to the application before the Board has informed the health practitioner that he or she intends to appeal the Board’s decision; or
(d) if a party to the application before the Board has informed the health practitioner that he or she intends to appeal the Board’s decision,
(i) until the period for commencing the appeal has elapsed without an appeal being commenced, or
(ii) until the appeal of the Board’s decision has been finally disposed of. 1996, c. 2, Sched. A, s. 18 (3).

Emergency
(4) This section does not apply if the health practitioner is of the opinion that there is an emergency within the meaning of subsection 25 (1). 1996, c. 2, Sched. A, s. 18 (4).

Order authorizing treatment pending appeal

19. (1) If an appeal is taken from a Board or court decision that has the effect of authorizing a person to consent to a treatment, the treatment may be administered before the final disposition of the appeal, despite section 18, if the court to which the appeal is taken so orders and the consent is given. 1996, c. 2, Sched. A, s. 19 (1).

Criteria for order

(2) The court may make the order if it is satisfied,

(a) that,

(i) the treatment will or is likely to improve substantially the condition of the person to whom it is to be administered, and the person’s condition will not or is not likely to improve without the treatment, or

(ii) the person’s condition will or is likely to deteriorate substantially, or to deteriorate rapidly, without the treatment, and the treatment will or is likely to prevent the deterioration or to reduce substantially its extent or its rate;

(b) that the benefit the person is expected to obtain from the treatment outweighs the risk of harm to him or her;

(c) that the treatment is the least restrictive and least intrusive treatment that meets the requirements of clauses (a) and (b); and

(d) that the person’s condition makes it necessary to administer the treatment before the final disposition of the appeal. 1996, c. 2, Sched. A, s. 19 (2).

Consent on Incapable Person’s Behalf

Consent

List of persons who may give or refuse consent

20. (1) If a person is incapable with respect to a treatment, consent may be given or refused on his or her behalf by a person described in one of the following paragraphs:

1. The incapable person’s guardian of the person, if the guardian has authority to give or refuse consent to the treatment.

2. The incapable person’s attorney for personal care, if the power of attorney confers authority to give or refuse consent to the treatment.

3. The incapable person’s representative appointed by the Board under section 33, if the representative has authority to give or refuse consent to the treatment.

4. The incapable person’s spouse or partner.

5. A child or parent of the incapable person, or a children’s aid society or other person who is lawfully entitled to give or refuse consent to the treatment in the place of the parent. This paragraph does not include a parent who has only a right of access. If a children’s aid society or other person is lawfully entitled to give or refuse consent to the treatment in the place of the parent, this paragraph does not include the parent.

6. A parent of the incapable person who has only a right of access.

7. A brother or sister of the incapable person.


Requirements

(2) A person described in subsection (1) may give or refuse consent only if he or she,

(a) is capable with respect to the treatment;

(b) is at least 16 years old, unless he or she is the incapable person’s parent;

(c) is not prohibited by court order or separation agreement from having access to the incapable person or giving or refusing consent on his or her behalf;

(d) is available; and

(e) is willing to assume the responsibility of giving or refusing consent. 1996, c. 2, Sched. A, s. 20 (2).
Ranking

(3) A person described in a paragraph of subsection (1) may give or refuse consent only if no person described in an earlier paragraph meets the requirements of subsection (2). 1996, c. 2, Sched. A, s. 20 (3).

Same

(4) Despite subsection (3), a person described in a paragraph of subsection (1) who is present or has otherwise been contacted may give or refuse consent if he or she believes that no other person described in an earlier paragraph or the same paragraph exists, or that although such a person exists, the person is not a person described in paragraph 1, 2 or 3 and would not object to him or her making the decision. 1996, c. 2, Sched. A, s. 20 (4).

No person in subs. (1) to make decision

(5) If no person described in subsection (1) meets the requirements of subsection (2), the Public Guardian and Trustee shall make the decision to give or refuse consent. 1996, c. 2, Sched. A, s. 20 (5).

Conflict between persons in same paragraph

(6) If two or more persons who are described in the same paragraph of subsection (1) and who meet the requirements of subsection (2) disagree about whether to give or refuse consent, and if their claims rank ahead of all others, the Public Guardian and Trustee shall make the decision in their stead. 1996, c. 2, Sched. A, s. 20 (6).

Meaning of “spouse”

(7) Subject to subsection (8), two persons are spouses for the purpose of this section if,
   (a) they are married to each other; or
   (b) they are living in a conjugal relationship outside marriage and,
      (i) have cohabited for at least one year,
      (ii) are together the parents of a child, or
      (iii) have together entered into a cohabitation agreement under section 53 of the Family Law Act. 1996, c. 2, Sched. A, s. 20 (7); 2004, c. 3, Sched. A, s. 84 (1-3).

Not spouse

(8) Two persons are not spouses for the purpose of this section if they are living separate and apart as a result of a breakdown of their relationship. 2004, c. 3, Sched. A, s. 84 (4).

Meaning of “partner”

(9) For the purpose of this section, “partner” means,
   (a) REPEALED: 2004, c. 3, Sched. A, s. 84 (5).
   (b) either of two persons who have lived together for at least one year and have a close personal relationship that is of primary importance in both persons’ lives. 2002, c. 18, Sched. A, s. 10; 2004, c. 3; Sched. A, s. 84 (5, 6).

Meaning of “relative”

(10) Two persons are relatives for the purpose of this section if they are related by blood, marriage or adoption. 1996, c. 2, Sched. A, s. 20 (10).

Meaning of “available”

(11) For the purpose of clause (2) (d), a person is available if it is possible, within a time that is reasonable in the circumstances, to communicate with the person and obtain a consent or refusal. 1996, c. 2, Sched. A, s. 20 (11).

Principles for giving or refusing consent

21. (1) A person who gives or refuses consent to a treatment on an incapable person’s behalf shall do so in accordance with the following principles:
   1. If the person knows of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, the person shall give or refuse consent in accordance with the wish.
2. If the person does not know of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, or if it is impossible to comply with the wish, the person shall act in the incapable person’s best interests. 1996, c. 2, Sched. A, s. 21 (1).

Best interests

(2) In deciding what the incapable person’s best interests are, the person who gives or refuses consent on his or her behalf shall take into consideration,

(a) the values and beliefs that the person knows the incapable person held when capable and believes he or she would still act on if capable;

(b) any wishes expressed by the incapable person with respect to the treatment that are not required to be followed under paragraph 1 of subsection (1); and

(c) the following factors:

1. Whether the treatment is likely to,
   i. improve the incapable person’s condition or well-being,
   ii. prevent the incapable person’s condition or well-being from deteriorating, or
   iii. reduce the extent to which, or the rate at which, the incapable person’s condition or well-being is likely to deteriorate.

2. Whether the incapable person’s condition or well-being is likely to improve, remain the same or deteriorate without the treatment.

3. Whether the benefit the incapable person is expected to obtain from the treatment outweighs the risk of harm to him or her.

4. Whether a less restrictive or less intrusive treatment would be as beneficial as the treatment that is proposed. 1996, c. 2, Sched. A, s. 21 (2).

Information

22. (1) Before giving or refusing consent to a treatment on an incapable person’s behalf, a substitute decision-maker is entitled to receive all the information required for an informed consent as described in subsection 11 (2). 1996, c. 2, Sched. A, s. 22.

Conflict

(2) Subsection (1) prevails despite anything to the contrary in the Personal Health Information Protection Act, 2004. 2004, c. 3, Sched. A, s. 84 (7).

Ancillary treatment

23. Authority to consent to a treatment on an incapable person’s behalf includes authority to consent to another treatment that is necessary and ancillary to the treatment, even if the incapable person is capable with respect to the necessary and ancillary treatment. 1996, c. 2, Sched. A, s. 23.

Admission to hospital, etc.

24. (1) Subject to subsection (2), a substitute decision-maker who consents to a treatment on an incapable person’s behalf may consent to the incapable person’s admission to a hospital or psychiatric facility or to another health facility prescribed by the regulations, for the purpose of the treatment. 1996, c. 2, Sched. A, s. 24 (1).

Objection, psychiatric facility

(2) If the incapable person is 16 years old or older and objects to being admitted to a psychiatric facility for treatment of a mental disorder, consent to his or her admission may be given only by,

(a) his or her guardian of the person, if the guardian has authority to consent to the admission; or

(b) his or her attorney for personal care, if the power of attorney contains a provision authorizing the attorney to use force that is necessary and reasonable in the circumstances to admit the incapable person to the psychiatric facility and the provision is effective under subsection 50 (1) of the Substitute Decisions Act, 1992. 1996, c. 2, Sched. A, s. 24 (2).

Emergency treatment
Meaning of “emergency”

25. (1) For the purpose of this section and section 27, there is an emergency if the person for whom the treatment is proposed is apparently experiencing severe suffering or is at risk, if the treatment is not administered promptly, of sustaining serious bodily harm. 1996, c. 2, Sched. A, s. 25 (1).

Emergency treatment without consent: incapable person

(2) Despite section 10, a treatment may be administered without consent to a person who is incapable with respect to the treatment, if, in the opinion of the health practitioner proposing the treatment,

(a) there is an emergency; and

(b) the delay required to obtain a consent or refusal on the person’s behalf will prolong the suffering that the person is apparently experiencing or will put the person at risk of sustaining serious bodily harm. 1996, c. 2, Sched. A, s. 25 (2).

Emergency treatment without consent: capable person

(3) Despite section 10, a treatment may be administered without consent to a person who is apparently capable with respect to the treatment, if, in the opinion of the health practitioner proposing the treatment,

(a) there is an emergency;

(b) the communication required in order for the person to give or refuse consent to the treatment cannot take place because of a language barrier or because the person has a disability that prevents the communication from taking place;

(c) steps that are reasonable in the circumstances have been taken to find a practical means of enabling the communication to take place, but no such means has been found;

(d) the delay required to find a practical means of enabling the communication to take place will prolong the suffering that the person is apparently experiencing or will put the person at risk of sustaining serious bodily harm; and

(e) there is no reason to believe that the person does not want the treatment. 1996, c. 2, Sched. A, s. 25 (3).

Examination without consent

(4) Despite section 10, an examination or diagnostic procedure that constitutes treatment may be conducted by a health practitioner without consent if,

(a) the examination or diagnostic procedure is reasonably necessary in order to determine whether there is an emergency; and

(b) in the opinion of the health practitioner,

(i) the person is incapable with respect to the examination or diagnostic procedure, or

(ii) clauses (3) (b) and (c) apply to the examination or diagnostic procedure. 1996, c. 2, Sched. A, s. 25 (4).

Record

(5) After administering a treatment in reliance on subsection (2) or (3), the health practitioner shall promptly note in the person’s record the opinions held by the health practitioner that are required by the subsection on which he or she relied. 1996, c. 2, Sched. A, s. 25 (5).

Continuing treatment

(6) Treatment under subsection (2) may be continued only for as long as is reasonably necessary to find the incapable person’s substitute decision-maker and to obtain from him or her a consent, or refusal of consent, to the continuation of the treatment. 1996, c. 2, Sched. A, s. 25 (6).

Same

(7) Treatment under subsection (3) may be continued only for as long as is reasonably necessary to find a practical means of enabling the communication to take place so that the person can give or refuse consent to the continuation of the treatment. 1996, c. 2, Sched. A, s. 25 (7).

Search

(8) When a treatment is begun under subsection (2) or (3), the health practitioner shall ensure that reasonable efforts are made for the purpose of finding the substitute decision-maker, or a means of enabling the communication to take place, as the case may be. 1996, c. 2, Sched. A, s. 25 (8).

Return of capacity
(9) If, after a treatment is begun under subsection (2), the person becomes capable with respect to the treatment in the opinion of the health practitioner, the person’s own decision to give or refuse consent to the continuation of the treatment governs. 1996, c. 2, Sched. A, s. 25 (9).

No treatment contrary to wishes

26. A health practitioner shall not administer a treatment under section 25 if the health practitioner has reasonable grounds to believe that the person, while capable and after attaining 16 years of age, expressed a wish applicable to the circumstances to refuse consent to the treatment. 1996, c. 2, Sched. A, s. 26.

Emergency treatment despite refusal

27. If consent to a treatment is refused on an incapable person’s behalf by his or her substitute decision-maker, the treatment may be administered despite the refusal if, in the opinion of the health practitioner proposing the treatment,

(a) there is an emergency; and

(b) the substitute decision-maker did not comply with section 21. 1996, c. 2, Sched. A, s. 27.

Admission to hospital, etc.

28. The authority to administer a treatment to a person under section 25 or 27 includes authority to have the person admitted to a hospital or psychiatric facility for the purpose of the treatment, unless the person objects and the treatment is primarily treatment of a mental disorder. 1996, c. 2, Sched. A, s. 28.

PROTECTION FROM LIABILITY

Protection from liability

Apparently valid consent to treatment

29. (1) If a treatment is administered to a person with a consent that a health practitioner believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, the health practitioner is not liable for administering the treatment without consent. 1996, c. 2, Sched. A, s. 29 (1).

Apparently valid refusal of treatment

(2) If a treatment is not administered to a person because of a refusal that a health practitioner believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, the health practitioner is not liable for failing to administer the treatment. 1996, c. 2, Sched. A, s. 29 (2).

Apparently valid consent to withholding or withdrawal

(3) If a treatment is withheld or withdrawn in accordance with a plan of treatment and with a consent to the plan of treatment that a health practitioner believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, the health practitioner is not liable for withholding or withdrawing the treatment. 1996, c. 2, Sched. A, s. 29 (3).

Emergency: treatment administered

(4) A health practitioner who, in good faith, administers a treatment to a person under section 25 or 27 is not liable for administering the treatment without consent. 1996, c. 2, Sched. A, s. 29 (4).

Emergency: treatment not administered

(5) A health practitioner who, in good faith, refrains from administering a treatment in accordance with section 26 is not liable for failing to administer the treatment. 1996, c. 2, Sched. A, s. 29 (5).

Reliance on assertion

(6) If a person who gives or refuses consent to a treatment on an incapable person’s behalf asserts that he or she,

(a) is a person described in subsection 20 (1) or clause 24 (2) (a) or (b) or an attorney for personal care described in clause
32 (2) (b);

(b) meets the requirement of clause 20 (2) (b) or (c); or

(c) holds the opinions required under subsection 20 (4),
a health practitioner is entitled to rely on the accuracy of the assertion, unless it is not reasonable to do so in the circumstances. 1996, c. 2, Sched. A, s. 29 (6).

Person making decision on another's behalf
30. A person who gives or refuses consent to a treatment on another person’s behalf, acting in good faith and in accordance with this Act, is not liable for giving or refusing consent. 1996, c. 2, Sched. A, s. 30.

Admission to hospital, etc.

31. (1) Sections 29 and 30, except subsection 29 (4), apply, with necessary modifications, to admission of the incapable person to a hospital, psychiatric facility or other health facility referred to in section 24, for the purpose of treatment. 1996, c. 2, Sched. A, s. 31 (1).

Same

(2) A health practitioner who, in good faith, has a person admitted to a hospital or psychiatric facility under section 28 is not liable for having the person admitted without consent. 1996, c. 2, Sched. A, s. 31 (2).

APPLICATIONS TO BOARD

Application for review of finding of incapacity

32. (1) A person who is the subject of a treatment may apply to the Board for a review of a health practitioner’s finding that he or she is incapable with respect to the treatment. 1996, c. 2, Sched. A, s. 32 (1).

Exception

(2) Subsection (1) does not apply to,

(a) a person who has a guardian of the person, if the guardian has authority to give or refuse consent to the treatment;

(b) a person who has an attorney for personal care, if the power of attorney contains a provision waiving the person’s right to apply for the review and the provision is effective under subsection 50 (1) of the Substitute Decisions Act, 1992.

1996, c. 2, Sched. A, s. 32 (2).

Parties

(3) The parties to the application are:

1. The person applying for the review.

2. The health practitioner.

3. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 32 (3).

Powers of Board

(4) The Board may confirm the health practitioner’s finding or may determine that the person is capable with respect to the treatment, and in doing so may substitute its opinion for that of the health practitioner. 1996, c. 2, Sched. A, s. 32 (4).

Restriction on repeated applications

(5) If a health practitioner’s finding that a person is incapable with respect to a treatment is confirmed on the final disposition of an application under this section, the person shall not make a new application for a review of a finding of incapacity with respect to the same or similar treatment within six months after the final disposition of the earlier application, unless the Board gives leave in advance. 1996, c. 2, Sched. A, s. 32 (5).

Same

(6) The Board may give leave for the new application to be made if it is satisfied that there has been a material change in circumstances that justifies reconsideration of the person’s capacity. 1996, c. 2, Sched. A, s. 32 (6).

Decision effective while application for leave pending

(7) The Board’s decision under subsection (5) remains in effect pending an application for leave under subsection (6). 2000, c. 9, s. 32.

Application for appointment of representative

33. (1) A person who is 16 years old or older and who is incapable with respect to a proposed treatment may apply to the Board for appointment of a representative to give or refuse consent on his or her behalf. 1996, c. 2, Sched. A, s. 33 (1).

Application by proposed representative

(2) A person who is 16 years old or older may apply to the Board to have himself or herself appointed as the representative of a person who is incapable with respect to a proposed treatment, to give or refuse consent on behalf of the incapable person. 1996, c. 2, Sched. A, s. 33 (2).
Exception

(3) Subsections (1) and (2) do not apply if the incapable person has a guardian of the person who has authority to give or refuse consent to the proposed treatment, or an attorney for personal care under a power of attorney conferring that authority. 1996, c. 2, Sched. A, s. 33 (3).

Parties

(4) The parties to the application are:

1. The incapable person.
2. The proposed representative named in the application.
3. Every person who is described in paragraph 4, 5, 6 or 7 of subsection 20 (1).
4. The health practitioner who proposed the treatment.
5. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 33 (4).

Appointment

(5) In an appointment under this section, the Board may authorize the representative to give or refuse consent on the incapable person’s behalf,

(a) to the proposed treatment;
(b) to one or more treatments or kinds of treatment specified by the Board, whenever a health practitioner proposing that treatment or a treatment of that kind finds that the person is incapable with respect to it; or
(c) to treatment of any kind, whenever a health practitioner proposing a treatment finds that the person is incapable with respect to it. 1996, c. 2, Sched. A, s. 33 (5).

Criteria for appointment

(6) The Board may make an appointment under this section if it is satisfied that the following requirements are met:

1. The incapable person does not object to the appointment.
2. The representative consents to the appointment, is at least 16 years old and is capable with respect to the treatments or the kinds of treatment for which the appointment is made.
3. The appointment is in the incapable person’s best interests. 1996, c. 2, Sched. A, s. 33 (6).

Powers of Board

(7) Unless the incapable person objects, the Board may,

(a) appoint as representative a different person than the one named in the application;
(b) limit the duration of the appointment;
(c) impose any other condition on the appointment;
(d) on any person’s application, remove, vary or suspend a condition imposed on the appointment or impose an additional condition on the appointment. 1996, c. 2, Sched. A, s. 33 (7).

Termination

(8) The Board may, on any person’s application, terminate an appointment made under this section if,

(a) the incapable person or the representative requests the termination of the appointment;
(b) the representative is no longer capable with respect to the treatments or the kinds of treatment for which the appointment was made;
(c) the appointment is no longer in the incapable person’s best interests; or
(d) the incapable person has a guardian of the person who has authority to consent to the treatments or the kinds of treatment for which the appointment was made, or an attorney for personal care under a power of attorney conferring that authority. 1996, c. 2, Sched. A, s. 33 (8).

Application with respect to place of treatment
34. (1) A person may apply to the Board for a review of a decision to consent on the person’s behalf to the person’s admission to a hospital, psychiatric facility or other health facility referred to in section 24 for the purpose of treatment. 1996, c. 2, Sched. A, s. 34 (1).

Exception

(2) Subsection (1) does not apply to a decision to consent on the person’s behalf to the person’s admission to a psychiatric facility as an informal patient, as defined in the Mental Health Act, if the person is at least 12 years old but less than 16 years old. 1996, c. 2, Sched. A, s. 34 (2).

Admission and treatment despite application

(3) The decision to admit the person to the hospital, psychiatric facility or health facility may take effect, and the treatment may be administered, even if the person indicates that he or she intends to apply to the Board under subsection (1) or under subsection 13 (1) of the Mental Health Act and even if the application to the Board has been made and has not yet been finally disposed of. 1996, c. 2, Sched. A, s. 34 (3).

Parties

(4) The parties to the application are:
   1. The person applying for the review.
   2. The person who consented to the admission.
   3. The health practitioner who proposed the treatment.

Considerations

(5) In reviewing the decision to admit the person to the hospital, psychiatric facility or health facility for the purpose of treatment, the Board shall consider,
   (a) whether the hospital, psychiatric facility or health facility can provide the treatment;
   (b) whether the hospital, psychiatric facility or health facility is the least restrictive setting available in which the treatment can be administered;
   (c) whether the person’s needs could more appropriately be met if the treatment were administered in another place and whether space is available for the person in the other place;
   (d) the person’s views and wishes, if they can be reasonably ascertained; and
   (e) any other matter that the Board considers relevant. 1996, c. 2, Sched. A, s. 34 (5).

Order

(6) The Board may,
   (a) direct that the person be discharged from the hospital, psychiatric facility or health facility; or
   (b) confirm the decision to admit the person to the hospital, psychiatric facility or health facility. 1996, c. 2, Sched. A, s. 34 (6).

Restriction on repeated applications

(7) If the decision to admit the person is confirmed on the final disposition of an application under this section, the person shall not make a new application for a review of the decision to admit within six months after the final disposition of the earlier application, unless the Board gives leave in advance. 1996, c. 2, Sched. A, s. 34 (7).

Same

(8) The Board may give leave for the new application to be made if it is satisfied that there has been a material change in circumstances that justifies reconsideration of the decision to admit. 1996, c. 2, Sched. A, s. 34 (8).

Application under Mental Health Act

(9) For the purpose of subsection (7), a final disposition of an application made under section 13 of the Mental Health Act shall be deemed to be a final disposition of an application under this section. 1996, c. 2, Sched. A, s. 34 (9).

Application for directions
35. (1) A substitute decision-maker or a health practitioner who proposed a treatment may apply to the Board for directions if the incapable person expressed a wish with respect to the treatment, but,
   (a) the wish is not clear;
   (b) it is not clear whether the wish is applicable to the circumstances;
   (c) it is not clear whether the wish was expressed while the incapable person was capable; or
   (d) it is not clear whether the wish was expressed after the incapable person attained 16 years of age. 1996, c. 2, Sched. A, s. 35 (1); 2000, c. 9, s. 33 (1).

Notice to substitute decision-maker
   (1.1) A health practitioner who intends to apply for directions shall inform the substitute decision-maker of his or her intention before doing so. 2000, c. 9, s. 33 (2).

Parties
   (2) The parties to the application are:
      1. The substitute decision-maker.
      2. The incapable person.
      3. The health practitioner who proposed the treatment.
      4. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 35 (2).

Directions
   (3) The Board may give directions and, in doing so, shall apply section 21. 2000, c. 9, s. 33 (3).

Application to depart from wishes
36. (1) If a substitute decision-maker is required by paragraph 1 of subsection 21 (1) to refuse consent to a treatment because of a wish expressed by the incapable person while capable and after attaining 16 years of age,
   (a) the substitute decision-maker may apply to the Board for permission to consent to the treatment despite the wish; or
   (b) the health practitioner who proposed the treatment may apply to the Board to obtain permission for the substitute decision-maker to consent to the treatment despite the wish. 2000, c. 9, s. 34 (1).

Notice to substitute decision-maker
   (1.1) A health practitioner who intends to apply under clause (1) (b) shall inform the substitute decision-maker of his or her intention before doing so. 2000, c. 9, s. 34 (2).

Parties
   (2) The parties to the application are:
      1. The substitute decision-maker.
      2. The incapable person.
      3. The health practitioner who proposed the treatment.
      4. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 36 (2).

Criteria for permission
   (3) The Board may give the substitute decision-maker permission to consent to the treatment despite the wish if it is satisfied that the incapable person, if capable, would probably give consent because the likely result of the treatment is significantly better than would have been anticipated in comparable circumstances at the time the wish was expressed. 1996, c. 2, Sched. A, s. 36 (3).

Application to determine compliance with s. 21
37. (1) If consent to a treatment is given or refused on an incapable person’s behalf by his or her substitute decision-maker, and if the health practitioner who proposed the treatment is of the opinion that the substitute decision-maker did not comply with section 21, the health practitioner may apply to the Board for a determination as to whether the substitute decision-maker complied with section 21. 1996, c. 2, Sched. A, s. 37 (1).

Parties
(2) The parties to the application are:
1. The health practitioner who proposed the treatment.
2. The incapable person.
3. The substitute decision-maker.
4. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 37 (2).

Power of Board
(3) In determining whether the substitute decision-maker complied with section 21, the Board may substitute its opinion for that of the substitute decision-maker. 1996, c. 2, Sched. A, s. 37 (3).

Directions
(4) If the Board determines that the substitute decision-maker did not comply with section 21, it may give him or her directions and, in doing so, shall apply section 21. 1996, c. 2, Sched. A, s. 37 (4).

Time for compliance
(5) The Board shall specify the time within which its directions must be complied with. 1996, c. 2, Sched. A, s. 37 (5).

Deemed not authorized
(6) If the substitute decision-maker does not comply with the Board’s directions within the time specified by the Board, he or she shall be deemed not to meet the requirements of subsection 20 (2). 1996, c. 2, Sched. A, s. 37 (6).

Subsequent substitute decision-maker
(6.1) If, under subsection (6), the substitute decision-maker is deemed not to meet the requirements of subsection 20 (2), any subsequent substitute decision-maker shall, subject to subsections (6.2) and (6.3), comply with the directions given by the Board on the application within the time specified by the Board. 2000, c. 9, s. 35.

Application for directions
(6.2) If a subsequent substitute decision-maker knows of a wish expressed by the incapable person with respect to the treatment, the substitute decision-maker may, with leave of the Board, apply to the Board for directions under section 35. 2000, c. 9, s. 35.

Inconsistent directions
(6.3) Directions given by the Board under section 35 on a subsequent substitute decision-maker’s application brought with leave under subsection (6.2) prevail over inconsistent directions given under subsection (4) to the extent of the inconsistency. 2000, c. 9, s. 35.

P.G.T.
(7) If the substitute decision-maker who is given directions is the Public Guardian and Trustee, he or she is required to comply with the directions, and subsection (6) does not apply to him or her. 1996, c. 2, Sched. A, s. 37 (7).

Deemed application concerning capacity
37.1 An application to the Board under section 33, 34, 35, 36 or 37 shall be deemed to include an application to the Board under section 32 with respect to the person’s capacity to consent to treatment proposed by a health practitioner unless the person’s capacity to consent to such treatment has been determined by the Board within the previous six months. 2000, c. 9, s. 36.

PART III
ADMISSION TO CARE FACILITIES

GENERAL

Application of Part
38. This Part applies to admission to a care facility. 1996, c. 2, Sched. A, s. 38.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 38 is repealed by the Statutes of Ontario, 2007, chapter 8, subsection 207 (2) and the following substituted:
38. This Part applies to admission to a care facility, including admission to a secure unit of a care facility. 2007, c. 8, s. 207 (2).
See: 2007, c. 8, ss. 207 (2), 232 (2).

Definitions

39. In this Part,
“crisis” means a crisis relating to the condition or circumstances of the person who is to be admitted to the care facility; (“crise”)

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “crisis” is repealed by the Statutes of Ontario, 2007, chapter 8, subsection 207 (3) and the following substituted:
“crisis” means a situation prescribed by the regulations as a crisis; (“crise”)

See: 2007, c. 8, ss. 207 (3), 232 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 39 is amended by the Statutes of Ontario, 2007, chapter 8, subsection 207 (4) by adding the following definition:
“secure unit” means a secure unit within the meaning of the Long-Term Care Homes Act, 2007; (“unité de sécurité”)

See: 2007, c. 8, ss. 207 (4), 232 (2).

“substitute decision-maker” means a person who is authorized under section 41 to give or refuse consent to admission to a care facility on behalf of a person who is incapable with respect to the admission. (“mandataire spécial”) 1996, c. 2, Sched. A, s. 39.

CONSENT ON INCAPABLE PERSON’S BEHALF

Consent on incapable person’s behalf

40. (1) If a person’s consent to his or her admission to a care facility is required by law and the person is found by an evaluator to be incapable with respect to the admission, consent may be given or refused on the person’s behalf by his or her substitute decision-maker in accordance with this Act. 1996, c. 2, Sched. A, s. 40 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed by the Statutes of Ontario, 2007, chapter 8, subsection 207 (5) and the following substituted:
Consent on incapable person’s behalf
(1) If a person’s consent to his or her admission to a care facility is required by law and the person is found by an evaluator to be incapable with respect to the admission,
(a) consent may be given or refused on the person’s behalf by his or her substitute decision-maker in accordance with this Act; and
(b) the person responsible for authorizing admissions to the care facility shall take reasonable steps to ensure that the person’s admission is not authorized unless the person’s substitute decision-maker has given consent on the person’s behalf in accordance with this Act. 2007, c. 8, s. 207 (5).

See: 2007, c. 8, ss. 207 (5), 232 (2).

Opinion of Board or court governs

(2) If a person who is found by an evaluator to be incapable with respect to his or her admission to a care facility is found to be capable with respect to the admission by the Board on an application for review of the evaluator’s finding, or by a court on an appeal of the Board’s decision, subsection (1) does not apply. 1996, c. 2, Sched. A, s. 40 (2).

Determining who may give or refuse consent

41. Section 20 applies, with necessary modifications, for the purpose of determining who is authorized to give or refuse consent to admission to a care facility on behalf of a person who is incapable with respect to the admission. 1996, c. 2, Sched. A, s. 41.

Principles for giving or refusing consent

42. (1) A person who gives or refuses consent on an incapable person’s behalf to his or her admission to a care facility shall do so in accordance with the following principles:
1. If the person knows of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, the person shall give or refuse consent in accordance with the wish.
2. If the person does not know of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, or if it is impossible to comply with the wish, the person shall act in the incapable person’s best interests. 1996, c. 2, Sched. A, s. 42 (1).

Best interests

(2) In deciding what the incapable person’s best interests are, the person who gives or refuses consent on his or her behalf shall take into consideration,

(a) the values and beliefs that the person knows the incapable person held when capable and believes he or she would still act on if capable;

(b) any wishes expressed by the incapable person with respect to admission to a care facility that are not required to be followed under paragraph 1 of subsection (1); and

(c) the following factors:

1. Whether admission to the care facility is likely to,
   i. improve the quality of the incapable person’s life,
   ii. prevent the quality of the incapable person’s life from deteriorating, or
   iii. reduce the extent to which, or the rate at which, the quality of the incapable person’s life is likely to deteriorate.

2. Whether the quality of the incapable person’s life is likely to improve, remain the same or deteriorate without admission to the care facility.

3. Whether the benefit the incapable person is expected to obtain from admission to the care facility outweighs the risk of negative consequences to him or her.

4. Whether a course of action that is less restrictive than admission to the care facility is available and is appropriate in the circumstances. 1996, c. 2, Sched. A, s. 42 (2).

Admission to secure units

(3) Subject to paragraph 1 of subsection (1), the person shall not give consent on the incapable person’s behalf to his or her admission to a secure unit of a care facility, unless the admission is essential to prevent serious bodily harm to the incapable person or to others, or allows the incapable person greater freedom or enjoyment. 2007, c. 8, s. 207 (6).

See: 2007, c. 8, ss. 207 (6), 232 (2).
Withdrawal of consent

45. Authority to consent on an incapable person’s behalf to his or her admission to a care facility includes authority to withdraw the consent at any time before the admission. 1996, c. 2, Sched. A, s. 45.

Admission must not be authorized

46. (1) This section applies if,

(a) an evaluator finds that a person is incapable with respect to his or her admission to a care facility;

(b) before the admission takes place, the person responsible for authorizing admissions to the care facility is informed that the person who was found to be incapable intends to apply, or has applied, to the Board for a review of the finding; and

(c) the application to the Board is not prohibited by subsection 50 (2). 1996, c. 2, Sched. A, s. 46 (1).

Same

(2) This section also applies if,

(a) an evaluator finds that a person is incapable with respect to his or her admission to a care facility;

(b) before the admission takes place, the person responsible for authorizing admissions to the care facility is informed that,

(i) the incapable person intends to apply, or has applied, to the Board for appointment of a representative to give or refuse consent to the admission on his or her behalf, or

(ii) another person intends to apply, or has applied, to the Board to be appointed as the representative of the incapable person to give or refuse consent to the admission on his or her behalf; and

(c) the application to the Board is not prohibited by subsection 51 (3). 1996, c. 2, Sched. A, s. 46 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 46 is amended by the Statutes of Ontario, 2007, chapter 8, subsection 207 (7) by adding the following subsection:

Same

(2.1) This section also applies if,

(a) an evaluator finds that a person is incapable with respect to admission to a care facility;

(b) consent to the incapable person’s admission to a secure unit of a care facility is given on the person’s behalf by his or her substitute decision-maker; and

(c) before the admission takes place, the person responsible for authorizing admissions to the care facility is informed that the incapable person intends to apply, or has applied, to the Board for a determination as to whether the substitute decision-maker complied with section 42. 2007, c. 8, s. 207 (7).

See: 2007, c. 8, ss. 207 (7), 232 (2).

Same

(3) In the circumstances described in subsections (1) and (2), the person responsible for authorizing admissions to the care facility shall take reasonable steps to ensure that the person’s admission is not authorized and that the person is not admitted,

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by the Statutes of Ontario, 2007, chapter 8, subsection 207 (8) by striking out “subsections (1) and (2)” in the portion before clause (a) and substituting “subsections (1), (2) and (2.1)” See: 2007, c. 8, ss. 207 (8), 232 (2).

(a) until 48 hours have elapsed since the person responsible for authorizing admissions to the care facility was first informed of the intended application to the Board without an application being made;

(b) until the application to the Board has been withdrawn;

(c) until the Board has rendered a decision in the matter, if none of the parties to the application before the Board has informed the person responsible for authorizing admissions to the care facility that he or she intends to appeal the Board’s decision; or

(d) if a party to the application before the Board has informed the person responsible for authorizing admissions to the care facility that he or she intends to appeal the Board’s decision,

(i) until the period for commencing the appeal has elapsed without an appeal being commenced, or
Crisis

(4) This section does not apply if the person responsible for authorizing admissions to the care facility is of the opinion that the incapable person requires immediate admission to a care facility as a result of a crisis. 1996, c. 2, Sched. A, s. 46 (4).

Admission for definite stay

(5) This section does not apply to a person’s admission, or the authorization of a person’s admission, to a care facility for a stay of a definite number of days not exceeding 90. 1996, c. 2, Sched. A, s. 46 (5).

CRISIS ADMISSION

Authorization of admission without consent

47. (1) Despite any law to the contrary, if a person is found by an evaluator to be incapable with respect to his or her admission to a care facility, the person’s admission may be authorized, and the person may be admitted, without consent, if in the opinion of the person responsible for authorizing admissions to the care facility,

(a) the incapable person requires immediate admission to a care facility as a result of a crisis; and

(b) it is not reasonably possible to obtain an immediate consent or refusal on the incapable person’s behalf. 1996, c. 2, Sched. A, s. 47 (1).

Consent or refusal to be obtained

(2) When an admission to a care facility is authorized under subsection (1), the person responsible for authorizing admissions to the care facility shall obtain consent, or refusal of consent, from the incapable person’s substitute decision-maker promptly after the person’s admission. 2007, c. 8, s. 207 (9).

Incapacity

Information

47.1 An evaluator shall, in the circumstances and manner specified in guidelines established by the governing body of the evaluator’s profession, provide to persons found by the evaluator to be incapable with respect to admission to a care facility such information about the consequences of the findings as is specified in the guidelines. 2007, c. 8, s. 207 (10).

PROTECTION FROM LIABILITY

Apparently valid consent to admission

48. (1) If the person responsible for authorizing admissions to a care facility admits, or authorizes the admission of, a person to the care facility with a consent that he or she believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, he or she is not liable for admitting the person, or authorizing the person’s admission, without consent. 1996, c. 2, Sched. A, s. 48 (1).

Apparently valid refusal of admission

(2) If the person responsible for authorizing admissions to a care facility does not admit, or does not authorize the admission of, a person to the care facility because of a refusal that he or she believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, he or she is not liable for failing to admit the person or failing to authorize the person’s admission. 1996, c. 2, Sched. A, s. 48 (2).

Crisis admission

(3) If the person responsible for authorizing admissions to a care facility admits, or authorizes the admission of, a person to the care facility under section 47 in good faith, he or she is not liable for admitting the person, or authorizing the person’s admission, without consent. 1996, c. 2, Sched. A, s. 48 (3).

Reliance on assertion

(4) If a person who gives or refuses consent to admission to a care facility on an incapable person’s behalf asserts that he or she,

(a) is a person described in subsection 20 (1), as it applies for the purpose of section 41, or an attorney for personal care described in clause 50 (2) (b);

(b) meets the requirement of clause 20 (2) (b) or (c), as it applies for the purpose of section 41; or

(c) holds the opinions required under subsection 20 (4), as it applies for the purpose of section 41,
the person responsible for authorizing admissions to the care facility is entitled to rely on the accuracy of the assertion, unless it is not reasonable to do so in the circumstances. 1996, c. 2, Sched. A, s. 48 (4).

**Person making decision on another’s behalf**

49. A person who gives or refuses consent on another person’s behalf to his or her admission to a care facility, acting in good faith and in accordance with this Act, is not liable for giving or refusing consent. 1996, c. 2, Sched. A, s. 49.

**APPLICATIONS TO BOARD**

**Application for review of finding of incapacity**

50. (1) A person may apply to the Board for a review of an evaluator’s finding that he or she is incapable with respect to his or her admission to a care facility. 1996, c. 2, Sched. A, s. 50 (1).

**Exception**

(2) Subsection (1) does not apply to,

(a) a person who has a guardian of the person, if the guardian has authority to give or refuse consent to the person’s admission to a care facility;

(b) a person who has an attorney for personal care, if the power of attorney contains a provision waiving the person’s right to apply for the review and the provision is effective under subsection 50 (1) of the *Substitute Decisions Act, 1992*. 1996, c. 2, Sched. A, s. 50 (2).

**Parties**

(3) The parties to the application are:

1. The person applying for the review.
2. The evaluator.
3. The person responsible for authorizing admissions to the care facility.
4. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 50 (3).

**Subs. 32 (4) to (7) apply**

(4) Subsections 32 (4) to (7) apply, with necessary modifications, to an application under this section. 1996, c. 2, Sched. A, s. 50 (4); 2000, c. 9, s. 37.

**Application for appointment of representative**

51. (1) A person who is 16 years old or older and who is incapable with respect to his or her admission to a care facility may apply to the Board for appointment of a representative to give or refuse consent on his or her behalf. 1996, c. 2, Sched. A, s. 51 (1).

**Application by proposed representative**

(2) A person who is 16 years old or older may apply to the Board to have himself or herself appointed as the representative of a person who is incapable with respect to his or her admission to a care facility, to give or refuse consent on behalf of the incapable person. 1996, c. 2, Sched. A, s. 51 (2).

**Exception**

(3) Subsections (1) and (2) do not apply if the incapable person has a guardian of the person who has authority to give or refuse consent to the person’s admission to a care facility, or an attorney for personal care under a power of attorney conferring that authority. 1996, c. 2, Sched. A, s. 51 (3).

**Parties**

(4) The parties to the application are:

1. The incapable person.
2. The proposed representative named in the application.
3. Every person who is described in paragraph 4, 5, 6 or 7 of subsection 20 (1), as it applies for the purpose of section 41.
4. The person responsible for authorizing admissions to the care facility.
5. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 51 (4).
Appointment

(5) In an appointment under this section, the Board may authorize the representative to give or refuse consent on the incapable person’s behalf,

(a) to his or her admission to the care facility; or

(b) to his or her admission to any care facility, or to any of several care facilities specified by the Board, whenever an evaluator finds that the person is incapable with respect to the admission. 1996, c. 2, Sched. A, s. 51 (5).

Subss. 33 (6) to (8) apply

(6) Subsections 33 (6) to (8) apply, with necessary modifications, to an appointment under this section. 1996, c. 2, Sched. A, s. 51 (6).

Application for directions

52. (1) A substitute decision-maker or the person responsible for authorizing admissions to a care facility may apply to the Board for directions if the incapable person expressed a wish with respect to his or her admission to the care facility, but,

(a) the wish is not clear;

(b) it is not clear whether the wish is applicable to the circumstances;

(c) it is not clear whether the wish was expressed while the incapable person was capable; or

(d) it is not clear whether the wish was expressed after the incapable person attained 16 years of age. 1996, c. 2, Sched. A, s. 52 (1); 2000, c. 9, s. 38 (1).

Notice to substitute decision-maker

(1.1) If the person responsible for authorizing admissions to the care facility intends to apply for directions, the person shall inform the substitute decision-maker of his or her intention before doing so. 2000, c. 9, s. 38 (2).

Parties

(2) The parties to the application are:

1. The substitute decision-maker.

2. The incapable person.

3. The person responsible for authorizing admissions to the care facility.

4. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 52 (2).

Directions

(3) The Board may give directions and, in doing so, shall apply section 42. 2000, c. 9, s. 38 (3).

Application to depart from wishes

53. (1) If a substitute decision-maker is required by paragraph 1 of subsection 42 (1) to refuse consent to the incapable person’s admission to a care facility because of a wish expressed by the incapable person while capable and after attaining 16 years of age,

(a) the substitute decision-maker may apply to the Board for permission to consent to the admission despite the wish; or

(b) the person responsible for authorizing admissions to the care facility may apply to the Board to obtain permission for the substitute decision-maker to consent to the admission despite the wish. 2000, c. 9, s. 39 (1).

Notice to substitute decision-maker

(1.1) If the person responsible for authorizing admissions to the care facility intends to apply under subsection (1), the person shall inform the substitute decision-maker of his or her intention before doing so. 2000, c. 9, s. 39 (2).

Parties

(2) The parties to the application are:

1. The substitute decision-maker.

2. The incapable person.

3. The person responsible for authorizing admissions to the care facility.
4. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 53 (2).

Criteria for permission

(3) The Board may give the substitute decision-maker permission to consent to the admission despite the wish if it is satisfied that the incapable person, if capable, would probably give consent because the likely result of the admission is significantly better than would have been anticipated in comparable circumstances at the time the wish was expressed. 1996, c. 2, Sched. A, s. 53 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by the Statutes of Ontario, 2007, chapter 8, subsection 207 (11) by adding the following section:

Application with respect to admission to secure units

53.1 (1) If consent to a person’s admission to a secure unit of a care facility is given on an incapable person’s behalf by a substitute decision-maker, the person may apply to the Board for a determination as to whether his or her substitute decision-maker complied with section 42. 2007, c. 8, s. 207 (11).

Applicable provisions

(2) Subsections 54 (2) to (7) apply with respect to an application under this section. 2007, c. 8, s. 207 (11).

Restriction on repeated applications

(3) If the decision to consent to the admission of the person is confirmed on the final disposition of an application under this section, the person shall not make a new application for a review of the decision to consent within six months after the final disposition of the earlier application, unless the Board gives leave in advance. 2007, c. 8, s. 207 (11).

Restriction where other applications

(4) A person shall not make an application under this section for a review of a decision to consent to the admission within six months after any of the following, unless the Board gives leave in advance:

1. A final disposition of an application under section 52 if the result of the final disposition was that directions were given with respect to a wish, applicable to the circumstances, expressed by the person while capable and after attaining 16 years of age.

2. A final disposition of an application under section 53 if the result of the final disposition was that permission was given to the substitute decision-maker to consent to the admission despite a wish expressed by the person while capable and after attaining 16 years of age.

3. A final disposition of an application under section 54 if the result of the final disposition was that directions were given with respect to the consent to the admission. 2007, c. 8, s. 207 (11).

Same

(5) The Board may give leave for the new application to be made if it is satisfied that there has been a material change in circumstances that justifies reconsideration of the decision to consent to the admission. 2007, c. 8, s. 207 (11).

See: 2007, c. 8, ss. 207 (11), 232 (2).

Application to determine compliance with s. 42

54. (1) If consent to admission to a care facility is given or refused on an incapable person’s behalf by his or her substitute decision-maker, and if the person responsible for authorizing admissions to the care facility is of the opinion that the substitute decision-maker did not comply with section 42, the person responsible for authorizing admissions to the care facility may apply to the Board for a determination as to whether the substitute decision-maker complied with section 42. 1996, c. 2, Sched. A, s. 54 (1).

Parties

(2) The parties to the application are:

1. The person responsible for authorizing admissions to the care facility.

2. The incapable person.

3. The substitute decision-maker.

4. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 54 (2).

Power of Board
In determining whether the substitute decision-maker complied with section 42, the Board may substitute its opinion for that of the substitute decision-maker. 1996, c. 2, Sched. A, s. 54 (3).

Directions

(4) If the Board determines that the substitute decision-maker did not comply with section 42, it may give him or her directions and, in doing so, shall apply section 42. 1996, c. 2, Sched. A, s. 54 (4).

Time for compliance

(5) The Board shall specify the time within which its directions must be complied with. 1996, c. 2, Sched. A, s. 54 (5).

Deemed not authorized

(6) If the substitute decision-maker does not comply with the Board’s directions within the time specified by the Board, he or she shall be deemed not to meet the requirements of subsection 20 (2), as it applies for the purpose of section 41. 1996, c. 2, Sched. A, s. 54 (6).

Subsequent substitute decision-maker

(6.1) If, under subsection (6), the substitute decision-maker is deemed not to meet the requirements of subsection 20 (2), any subsequent substitute decision-maker shall, subject to subsections (6.2) and (6.3), comply with the directions given by the Board on the application within the time specified by the Board. 2000, c. 9, s. 40.

Application for directions

(6.2) If a subsequent substitute decision-maker knows of a wish expressed by the incapable person with respect to the admission to a care facility, the substitute decision-maker may, with leave of the Board, apply to the Board for directions under section 52. 2000, c. 9, s. 40.

Inconsistent directions

(6.3) Directions given by the Board under section 52 on a subsequent substitute decision-maker’s application brought with leave under subsection (6.2) prevail over inconsistent directions given under subsection (4) to the extent of the inconsistency. 2000, c. 9, s. 40.

P.G.T.

(7) If the substitute decision-maker who is given directions is the Public Guardian and Trustee, he or she is required to comply with the directions, and subsection (6) does not apply to him or her. 1996, c. 2, Sched. A, s. 54 (7).

Deemed application concerning capacity

54.1 An application to the Board under section 51, 52, 53 or 54 shall be deemed to include an application to the Board under section 50 with respect to the person’s capacity to consent to his or her admission to a care facility unless the person’s capacity to consent to such admission has been determined by the Board within the previous six months. 2000, c. 9, s. 41.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 54.1 is amended by the Statutes of Ontario, 2007, chapter 8, subsection 207 (12) by striking out “53 or 54” and substituting “53, 53.1 or 54”. See: 2007, c. 8, ss. 207 (12), 232 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, Part III is amended by the Statutes of Ontario, 2007, chapter 8, subsection 207 (13) by adding the following section:

Application to transfer to a secure unit

54.2 (1) This Part applies to the transfer of a resident of a long-term care home to a secure unit in the home as though the resident were being admitted to the secure unit, with the following modifications set out in paragraphs 1 and 2 and any other necessary modifications:

1. References to the person responsible for authorizing admissions to a care facility shall be deemed to be references to the licensee of the home.

2. References to admission to a care facility shall be deemed to be references to transfer to the secure unit. 2007, c. 8, s. 207 (13).

Definition of certain terms

(2) In this section, “licensee”, “long-term care home” and “resident” have the same meaning as in the Long-Term Care Homes Act, 2007. 2007, c. 8, s. 207 (13).

See: 2007, c. 8, ss. 207 (13), 232 (2).
PART IV
PERSONAL ASSISTANCE SERVICES

GENERAL

Application of Part

55. This Part applies to personal assistance services. 1996, c. 2, Sched. A, s. 55.

Meaning of “substitute decision-maker”

56. In this Part, “substitute decision-maker” means a person who is authorized under section 58 to make a decision concerning a personal assistance service on behalf of a recipient who is incapable with respect to the service. 1996, c. 2, Sched. A, s. 56.

DECISION ON INCAPABLE RECIPIENT’S BEHALF

Decision on incapable recipient’s behalf

57. (1) If a recipient is found by an evaluator to be incapable with respect to a personal assistance service, a decision concerning the service may be made on the recipient’s behalf by his or her substitute decision-maker in accordance with this Act. 1996, c. 2, Sched. A, s. 57 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed by the Statutes of Ontario, 2007, chapter 8, subsection 207 (14) and the following substituted:

Decision on incapable recipient’s behalf

(1) If a recipient is found by an evaluator to be incapable with respect to a personal assistance service,

(a) a decision concerning the service may be made on the recipient’s behalf by his or her substitute decision-maker in accordance with this Act; and

(b) the person who provides the service shall not rely on the consent of the substitute decision-maker unless the person has taken reasonable steps to ensure that the substitute decision-maker has given consent on the recipient’s behalf in accordance with this Act. 2007, c. 8, s. 207 (14).

See: 2007, c. 8, ss. 207 (14), 232 (2).

Opinion of Board or court governs

(2) If a recipient who is found by an evaluator to be incapable with respect to a personal assistance service is found to be capable with respect to the service by the Board on an application for review of the evaluator’s finding, or by a court on an appeal of the Board’s decision, subsection (1) does not apply. 1996, c. 2, Sched. A, s. 57 (2).

Determining who may make decision

58. For the purpose of determining who is authorized to make a decision concerning a personal assistance service on behalf of a recipient who is incapable with respect to the service,

(a) section 20, except subsections 20 (5) and (6), applies with necessary modifications;

(b) if no person described in subsection 20 (1) meets the requirements of subsection 20  (2), the Public Guardian and Trustee may make the decision concerning the personal assistance service; and

(c) if two or more persons who are described in the same paragraph of subsection 20 (1) and who meet the requirements of subsection 20 (2) disagree about the decision to be made concerning the personal assistance service, and if their claims rank ahead of all others, the Public Guardian and Trustee may make the decision in their stead. 1996, c. 2, Sched. A, s. 58.

Principles for making decision

59. (1) A person who makes a decision on an incapable recipient’s behalf concerning a personal assistance service shall do so in accordance with the following principles:

1. If the person knows of a wish applicable to the circumstances that the recipient expressed while capable and after attaining 16 years of age, the person shall make the decision in accordance with the wish.

2. If the person does not know of a wish applicable to the circumstances that the recipient expressed while capable and after attaining 16 years of age, or if it is impossible to comply with the wish, the person shall act in the recipient’s best interests. 1996, c. 2, Sched. A, s. 59 (1).
Best interests

(2) In deciding what the recipient’s best interests are, the person shall take into consideration,

(a) the values and beliefs that the person knows the recipient held when capable and believes he or she would still act on if capable;

(b) any wishes expressed by the recipient with respect to the personal assistance service that are not required to be followed under paragraph 1 of subsection (1); and

(c) the following factors:

1. Whether the personal assistance service is likely to,
   i. improve the quality of the recipient’s life,
   ii. prevent the quality of the recipient’s life from deteriorating, or
   iii. reduce the extent to which, or the rate at which, the quality of the recipient’s life is likely to deteriorate.

2. Whether the quality of the recipient’s life is likely to improve, remain the same or deteriorate without the personal assistance service.

3. Whether the benefit the recipient is expected to obtain from the personal assistance service outweighs the risk of harm to him or her.

4. Whether a less restrictive or less intrusive personal assistance service would be as beneficial as the personal assistance service that is the subject of the decision.

5. Whether the personal assistance service fosters the recipient’s independence. 1996, c. 2, Sched. A, s. 59 (2).

Confinement, monitoring devices, restraint

(3) Subject to paragraph 1 of subsection (1), the person shall not give consent on the recipient’s behalf to the use of confinement, monitoring devices or means of restraint, unless the practice is essential to prevent serious bodily harm to the recipient or to others, or allows the recipient greater freedom or enjoyment. 1996, c. 2, Sched. A, s. 59 (3).

Participation

(4) The person shall encourage the recipient to participate, to the best of his or her abilities, in the person’s decision concerning the personal assistance service. 1996, c. 2, Sched. A, s. 59 (4).

Information

60. (1) Before making a decision on an incapable recipient’s behalf concerning a personal assistance service, a substitute decision-maker is entitled to receive all the information required in order to make the decision. 1996, c. 2, Sched. A, s. 60.

Conflict

(2) Subsection (1) prevails despite anything to the contrary in the Personal Health Information Protection Act, 2004. 2004, c. 3, Sched. A, s. 84 (10).

Change of decision

61. Authority to make a decision on an incapable recipient’s behalf concerning a personal assistance service includes authority to change the decision at any time. 1996, c. 2, Sched. A, s. 61.

Included consent

62. Unless it is not reasonable to do so in the circumstances, a person who provides a personal assistance service to a recipient is entitled to presume that consent to a personal assistance service includes consent to variations or adjustments in the service, if the nature and risks of the changed service are not significantly different from the nature and risks of the original service. 1996, c. 2, Sched. A, s. 62.

Information

62.1 An evaluator shall, in the circumstances and manner specified in guidelines established by the governing body of the evaluator’s profession, provide to persons found by the evaluator to be incapable with respect to a personal assistance service such information about the consequences of the findings as is specified in the guidelines. 2007, c. 8, s. 207 (15).

Protection from liability
Personal assistance service provided

63. (1) If a person provides a personal assistance service to a recipient in accordance with a decision made on the recipient’s behalf that the person believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, the person is not liable for providing the personal assistance service without consent. 1996, c. 2, Sched. A, s. 63 (1).

Personal assistance service not provided

(2) If a person does not provide a personal assistance service to a recipient because of a decision made on the recipient’s behalf that the person believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, the person is not liable for failing to provide the personal assistance service. 1996, c. 2, Sched. A, s. 63 (2).

Reliance on assertion

(3) If a person who makes a decision on an incapable recipient’s behalf concerning a personal assistance service asserts that he or she,

(a) is a person described in subsection 20 (1), as it applies for the purpose of section 58;
(b) meets the requirement of clause 20 (2) (b) or (c), as it applies for the purpose of section 58; or
(c) holds the opinions required under subsection 20 (4), as it applies for the purpose of section 58,

a person who provides a personal assistance service to the recipient is entitled to rely on the accuracy of the assertion, unless it is not reasonable to do so in the circumstances. 1996, c. 2, Sched. A, s. 63 (3).

Person making decision on recipient’s behalf

64. A person who makes a decision on a recipient’s behalf concerning a personal assistance service, acting in good faith and in accordance with this Act, is not liable for making the decision. 1996, c. 2, Sched. A, s. 64.

APPLICATIONS TO BOARD

Application for review of finding of incapacity

65. (1) A recipient may apply to the Board for a review of an evaluator’s finding that he or she is incapable with respect to a personal assistance service. 1996, c. 2, Sched. A, s. 65 (1).

Exception

(2) Subsection (1) does not apply to,

(a) a recipient who has a guardian of the person, if the guardian has authority to make a decision concerning the personal assistance service;
(b) a recipient who has an attorney for personal care, if the power of attorney contains a provision waiving the recipient’s right to apply for the review and the provision is effective under subsection 50 (1) of the Substitute Decisions Act, 1992. 1996, c. 2, Sched. A, s. 65 (2).

Parties

(3) The parties to the application are:

1. The recipient applying for the review.
2. The evaluator.
3. The member of the service provider’s staff who is responsible for the personal assistance service.
4. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 65 (3).

Subss. 32 (4) to (7) apply

(4) Subsections 32 (4) to (7) apply, with necessary modifications, to an application under this section. 1996, c. 2, Sched. A, s. 65 (4); 2000, c. 9, s. 42.

Application for appointment of representative

66. (1) A recipient who is 16 years old or older and who is incapable with respect to a personal assistance service may apply to the Board for appointment of a representative to make a decision on his or her behalf concerning the service. 1996, c. 2, Sched. A, s. 66 (1).

Application by proposed representative
(2) A person who is 16 years old or older may apply to the Board to have himself or herself appointed as the representative of a recipient who is incapable with respect to a personal assistance service, to make a decision on behalf of the recipient concerning the service. 1996, c. 2, Sched. A, s. 66 (2).

Exception

(3) Subsections (1) and (2) do not apply if the recipient has a guardian of the person who has authority to make decisions concerning the personal assistance service, or an attorney for personal care under a power of attorney conferring that authority. 1996, c. 2, Sched. A, s. 66 (3).

Parties

(4) The parties to the application are:

1. The recipient.

2. The proposed representative named in the application.

3. Every person who is described in paragraph 4, 5, 6 or 7 of subsection 20 (1), as it applies for the purpose of section 58.

4. The member of the service provider’s staff who is responsible for the personal assistance service.

5. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 66 (4).

Appointment

(5) In an appointment under this section, the Board may authorize the representative to make a decision on the recipient’s behalf,

(a) concerning the personal assistance service; or

(b) concerning any personal assistance service, or any of several personal assistance services or kinds of personal assistance services specified by the Board, whenever a decision is sought concerning that service or a service of that kind and an evaluator finds that the recipient is incapable with respect to it. 1996, c. 2, Sched. A, s. 66 (5).

Subs. 33 (6) to (8) apply

(6) Subsections 33 (6) to (8) apply, with necessary modifications, to an appointment under this section. 1996, c. 2, Sched. A, s. 66 (6).

Application for directions

67. (1) A substitute decision-maker or the member of a service provider’s staff who is responsible for the personal assistance service may apply to the Board for directions if the incapable recipient expressed a wish with respect to the personal assistance service, but,

(a) the wish is not clear;

(b) it is not clear whether the wish is applicable to the circumstances;

(c) it is not clear whether the wish was expressed while the recipient was capable; or

(d) it is not clear whether the wish was expressed after the recipient attained 16 years of age. 1996, c. 2, Sched. A, s. 67 (1); 2000, c. 9, s. 43 (1).

Notice to substitute decision-maker

(1.1) If the member of the service provider’s staff responsible for the personal assistance service intends to apply under subsection (1), the member shall inform the substitute decision-maker of his or her intention before doing so. 2000, c. 9, s. 43 (2).

Parties

(2) The parties to the application are:

1. The substitute decision-maker.

2. The recipient.

3. The member of the service provider’s staff who is responsible for the personal assistance service.

4. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 67 (2).

Directions
(3) The Board may give directions and, in doing so, shall apply section 59. 2000, c. 9, s. 43 (3).

Application to depart from wishes

68. (1) If a substitute decision-maker is required by paragraph 1 of subsection 59 (1) to refuse consent to a personal assistance service because of a wish expressed by the incapable recipient while capable and after attaining 16 years of age,

(a) the substitute decision-maker may apply to the Board for permission to consent to the personal assistance service despite the wish; or

(b) the member of the service provider’s staff who is responsible for the personal assistance service may apply to the Board to obtain permission for the substitute decision-maker to consent to the personal assistance service despite the wish. 2000, c. 9, s. 44 (1).

Notice to substitute decision-maker

(1.1) If the member of the service provider’s staff who is responsible for the personal assistance service intends to apply under subsection (1), the member shall inform the substitute decision-maker of his or her intention before doing so. 2000, c. 9, s. 44 (2).

Parties

(2) The parties to the application are:

1. The substitute decision-maker.
2. The recipient.
3. The member of the service provider’s staff who is responsible for the personal assistance service.
4. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 68 (2).

Criteria for permission

(3) The Board may give the substitute decision-maker permission to consent to the personal assistance service despite the wish if it is satisfied that the recipient, if capable, would probably give consent because the likely result of the personal assistance service is significantly better than would have been anticipated in comparable circumstances at the time the wish was expressed. 1996, c. 2, Sched. A, s. 68 (3).

Application to determine compliance with s. 59

69. (1) If a decision concerning a personal assistance service is made on an incapable recipient’s behalf by his or her substitute decision-maker and, if the member of the service provider’s staff who is responsible for the personal assistance service is of the opinion that the substitute decision-maker did not comply with section 59, the member of the service provider’s staff who is responsible for the personal assistance service may apply to the Board for a determination as to whether the substitute decision-maker complied with section 59. 1996, c. 2, Sched. A, s. 69 (1).

Parties

(2) The parties to the application are:

1. The member of the service provider’s staff who is responsible for the personal assistance service.
2. The recipient.
3. The substitute decision-maker.
4. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 69 (2).

Power of Board

(3) In determining whether the substitute decision-maker complied with section 59, the Board may substitute its opinion for that of the substitute decision-maker. 1996, c. 2, Sched. A, s. 69 (3).

Directions

(4) If the Board determines that the substitute decision-maker did not comply with section 59, it may give him or her directions and, in doing so, shall apply section 59. 1996, c. 2, Sched. A, s. 69 (4).

Time for compliance

(5) The Board shall specify the time within which its directions must be complied with. 1996, c. 2, Sched. A, s. 69 (5).

Deemed not authorized
(6) If the substitute decision-maker does not comply with the Board’s directions within the time specified by the Board, he or she shall be deemed not to meet the requirements of subsection 20 (2), as it applies for the purpose of section 58. 1996, c. 2, Sched. A, s. 69 (6).

Subsequent substitute decision-maker

(6.1) If, under subsection (6), the substitute decision-maker is deemed not to meet the requirements of subsection 20 (2), any subsequent substitute decision-maker shall, subject to subsections (6.2) and (6.3), comply with the directions given by the Board on the application within the time specified by the Board. 2000, c. 9, s. 45.

Application for directions

(6.2) If a subsequent substitute decision-maker knows of a wish expressed by the incapable person with respect to the personal assistance service, the substitute decision-maker may, with leave of the Board, apply to the Board for directions under section 67. 2000, c. 9, s. 45.

Inconsistent directions

(6.3) Directions given by the Board under section 67 on a subsequent substitute decision-maker’s application brought with leave under subsection (6.2) prevail over inconsistent directions given under subsection (4) to the extent of the inconsistency. 2000, c. 9, s. 45.

P.G.T.

(7) If the substitute decision-maker who is given directions is the Public Guardian and Trustee, he or she is required to comply with the directions, and subsection (6) does not apply to him or her. 1996, c. 2, Sched. A, s. 69 (7).

Deemed application concerning capacity

69.1 An application to the Board under section 66, 67, 68 or 69 shall be deemed to include an application to the Board under section 65 with respect to the person’s capacity to consent to a personal assistance service unless the person’s capacity to consent to such service has been determined by the Board within the previous six months. 2000, c. 9, s. 46.

PART V
CONSENT AND CAPACITY BOARD

Consent and Capacity Board

70. (1) The board known as the Consent and Capacity Review Board in English and as Commission de révision du consentement et de la capacité in French is continued under the name Consent and Capacity Board in English and Commission du consentement et de la capacité in French. 1996, c. 2, Sched. A, s. 70 (1).

Composition

(2) The members of the Board shall be appointed by the Lieutenant Governor in Council. 1996, c. 2, Sched. A, s. 70 (2).

(3) REPEALED: 2006, c. 34, s. 34.

Remuneration and expenses

(4) The members of the Board shall be paid the remuneration fixed by the Lieutenant Governor in Council and the reasonable expenses incurred in the course of their duties under this Act. 1996, c. 2, Sched. A, s. 70 (4).

Limit on jurisdiction

70.1 (1) The Board shall not inquire into or make a decision concerning the constitutional validity of a provision of an Act or a regulation. 2006, c. 19, Sched. L, s. 2.

Same

(2) Subsection (1) shall be deemed always to have applied to the Board, but its enactment does not affect any proceeding that was finally determined before the date on which this section came into force. 2006, c. 19, Sched. L, s. 2.

Chair and vice-chairs

71. (1) The Lieutenant Governor in Council shall designate one of the members of the Board as chair and one or more others as vice-chairs. 1996, c. 2, Sched. A, s. 71 (1).

Role of chair

(2) The chair is the chief executive officer of the Board. 1996, c. 2, Sched. A, s. 71 (2).

Power to specify qualifications
Role of vice-chair

(4) If the chair is unable to act as such for any reason, the vice-chair (if there are two or more vice-chairs, the one whom the chair designates to replace him or her or, in the absence of a designation, the one who was appointed to the Board first) shall act in the chair’s place. 1996, c. 2, Sched. A, s. 71 (4).

Same

(5) A vice-chair also has the powers and duties that the chair delegates to him or her in writing. 1996, c. 2, Sched. A, s. 71 (5).

Immunity

71.1 No proceeding for damages shall be commenced against the Board, a member, employee or agent of the Board or anyone acting under the authority of the chair of the Board for any act done in good faith in the performance or intended performance of the person’s duty or for any alleged neglect or default in the performance in good faith of the person’s duty. 2000, c. 9, s. 47.

Staff

72. (1) Such employees as are necessary for the proper conduct of the Board’s work may be appointed under Part III of the Public Service of Ontario Act, 2006. 1996, c. 2, Sched. A, s. 72 (1); 2006, c. 35, Sched. C, s. 52.

Government services and facilities

(2) The Board shall, if appropriate, use the services and facilities of a ministry or agency of the Government of Ontario. 1996, c. 2, Sched. A, s. 72 (2).

Assignment of Board members to deal with applications

73. (1) The chair shall assign the members of the Board to sit alone or in panels of three or five members to deal with particular applications. 1996, c. 2, Sched. A, s. 73 (1).

Qualifications of member sitting alone

(2) A member of the Board may be assigned to sit alone to deal with an application only if,

(a) throughout the two-year period immediately preceding the assignment, he or she has been a member of the Board or of the review board established by section 37 of the Mental Health Act, as it read before the day subsection 20 (23) of the Consent and Capacity Statute Law Amendment Act, 1992 came into force;

(b) he or she is a person licensed under the Law Society Act to practise law in Ontario as a barrister and solicitor and, throughout the 10-year period immediately preceding the assignment, he or she has been,

(i) a person licensed under the Law Society Act to practise law in Ontario as a barrister and solicitor, or

(ii) a member of the Law Society of Upper Canada and, subsequently, a person licensed under the Law Society Act to practise law in Ontario as a barrister and solicitor;

(c) in the case of an application for a review of a finding of incapacity, he or she has experience that, in the opinion of the chair, is relevant to adjudicating capacity; and

(d) he or she meets all of the other qualifications specified by the chair under subsection 71 (3). 1996, c. 2, Sched. A, s. 73 (2); 2006, c. 21, Sched. C, s. 111 (1).

Same

(2.1) Despite subsection (2), in the case of an application referred to the Board under the Mandatory Blood Testing Act, 2006, a member of the Board may be assigned to sit alone to deal with the application if,

(a) he or she has expertise, in the opinion of the chair, in blood-borne pathogens; and

(b) he or she meets all of the other qualifications specified by the chair under subsection 71 (3). 2006, c. 26, s. 14 (2).

Panel proceedings

(3) If a panel is assigned to deal with an application,
(a) the chair shall designate one member of the panel to preside over the hearing to be conducted by the panel in relation to the application; and

(b) a majority of the members of the panel constitutes a quorum. 1996, c. 2, Sched. A, s. 73 (3).

Decision of Board

(4) If a member of the Board is assigned to sit alone to deal with an application, the decision of the member is the decision of the Board, and if a panel is assigned to deal with an application, the decision of a majority of the members of the panel is the decision of the Board. 1996, c. 2, Sched. A, s. 73 (4).

Disqualification

74. (1) A member of the Board shall not take part in the hearing of a matter that concerns a person who is or was the member’s patient or client. 1996, c. 2, Sched. A, s. 74 (1).

Same

(2) A member of the Board who is an officer or employee of a hospital or other facility or has a direct financial interest in such a facility shall not take part in the hearing of a matter that concerns a person who is a patient of the facility or who resides in the facility. 1996, c. 2, Sched. A, s. 74 (2).

Application hearings

Board to fix time and place of hearing

75. (1) When the Board receives an application, it shall promptly fix a time and place for a hearing. 1996, c. 2, Sched. A, s. 75 (1).

Hearing to begin within seven days

(2) The hearing shall begin within seven days after the day the Board receives the application, unless the parties agree to a postponement. 1996, c. 2, Sched. A, s. 75 (2).

Exception

(2.1) Despite subsection (2), the hearing of an application under section 39.2 of the Mental Health Act shall begin within 30 days after the day the Board receives the application, unless the parties agree to a postponement. 2010, c. 1, Sched. 9, s. 1.

Decision

(3) The Board shall render its decision and provide a copy of the decision to each party or the person who represented the party within one day after the day the hearing ends. 2006, c. 21, Sched. C, s. 111 (2).

Reasons

(4) If, within 30 days after the day the hearing ends, the Board receives a request from any of the parties for reasons for its decision, the Board shall, within four business days after the day the request is received,

(a) issue written reasons for its decision; and

(b) provide a copy of the reasons to each person who received a copy of the decision under subsection (3). 2006, c. 21, Sched. C, s. 111 (2); 2009, c. 33, Sched. 18, s. 10 (2).

Notice of right to request reasons

(5) The Board shall advise all parties to the application that each party has a right to request reasons for the Board’s decision. 1996, c. 2, Sched. A, s. 75 (5).

Method of sending decision and reasons

(6) Despite subsection 18 (1) of the Statutory Powers Procedure Act, the Board shall send the copy of the decision and, if reasons are required to be issued under subsection (4), the copy of the reasons,

(a) by electronic transmission;

(b) by telephone transmission of a facsimile; or

(c) by some other method that allows proof of receipt, in accordance with the tribunal’s rules made under section 25.1 of the Statutory Powers Procedure Act. 1996, c. 2, Sched. A, s. 75 (6).

Deemed day of receipt

(7) Despite subsection 18 (3) of the Statutory Powers Procedure Act, 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 that 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. 1996, c. 2, Sched. A, s. 75 (7).

Exception

(8) 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 date that is later than the deemed day of receipt, the actual date of receipt governs. 1996, c. 2, Sched. A, s. 75 (8).

Meaning of “business day”

(9) In subsection (4), “business day” means any day other than Saturday or a holiday. 1996, c. 2, Sched. A, s. 75 (9).

Examination of documents

76. (1) Before the hearing, the parties shall be given an opportunity to examine and copy any documentary evidence that will be produced and any report whose contents will be given in evidence. 1996, c. 2, Sched. A, s. 76 (1).

Health record

(2) The party who is the subject of the treatment, the admission or the personal assistance service, as the case may be, and the person authorized under the Law Society Act to represent him or her are entitled to examine and to copy, at their own expense, any medical or other health record prepared in respect of the party, subject to subsections 35 (6) and (7) of the Mental Health Act (withholding record of personal health information), subsections 33 (2), (3) and (4) of the Home Care and Community Services Act, 1994 (withholding record of personal health information) and subsections 183 (2) to (6) of the Child and Family Services Act (withholding record of mental disorder). 2004, c. 3, Sched. A, s. 84 (11); 2006, c. 21, Sched. C, s. 111 (3); 2007, c. 8, s. 207 (16).

Communication re subject-matter of hearing

77. (1) The member or members of the Board conducting a hearing shall not communicate about the subject-matter of the hearing directly or indirectly with any person, unless all the parties and the persons representing the parties under the authority of the Law Society Act receive notice and have an opportunity to participate. 2006, c. 21, Sched. C, s. 111 (4).

Exception

(2) However, the member or members of the Board conducting the hearing may seek advice from an adviser independent of the parties, and in that case the nature of the advice shall be communicated to all the parties and the persons representing the parties under the authority of the Law Society Act so that they may make submissions as to the law. 1996, c. 2, Sched. A, s. 77 (2); 2006, c. 21, Sched. C, s. 111 (5).

Only members at hearing to participate in decision

78. No member of the Board shall participate in a decision unless he or she was present throughout the hearing and heard the parties’ evidence and argument. 1996, c. 2, Sched. A, s. 78.

Release of evidence

79. (1) Within a reasonable time after the final disposition of the proceeding, documents and things put in evidence at the hearing shall, on request, be released to the person who produced them. 1996, c. 2, Sched. A, s. 79 (1).

Return of original record

(2) If an original clinical record respecting a person’s care or treatment was put in evidence, it shall be returned to the place from which it was obtained as soon as possible after the final disposition of the proceeding. 1996, c. 2, Sched. A, s. 79 (2).

Appeal

80. (1) A party to a proceeding before the Board may appeal the Board’s decision to the Superior Court of Justice on a question of law or fact or both. 1996, c. 2, Sched. A, s. 80 (1); 2000, c. 9, s. 48.

Time for filing notice of appeal

(2) The appellant shall serve his or her notice of appeal on the other parties and shall file it with the court, with proof of service, within seven days after he or she receives the Board’s decision. 1996, c. 2, Sched. A, s. 80 (2).

Notice to Board

(3) The appellant shall give a copy of the notice of appeal to the Board. 1996, c. 2, Sched. A, s. 80 (3).
Record

(4) On receipt of the copy of the notice of appeal, the Board shall promptly serve the parties with the record of the proceeding before the Board, including a transcript of the oral evidence given at the hearing, and shall promptly file the record and transcript, with proof of service, with the court. 1996, c. 2, Sched. A, s. 80 (4).

Time for filing appellant’s factum

(5) Within 14 days after being served with the record and transcript, the appellant shall serve his or her factum on the other parties and shall file it, with proof of service, with the court. 1996, c. 2, Sched. A, s. 80 (5).

Time for filing respondent’s factum

(6) Within 14 days after being served with the appellant’s factum, the respondent shall serve his or her factum on the other parties and shall file it, with proof of service, with the court. 1996, c. 2, Sched. A, s. 80 (6).

Extension of time

(7) The court may extend the time for filing the notice of appeal, the appellant’s factum or the respondent’s factum, even after the time has expired. 1996, c. 2, Sched. A, s. 80 (7).

Early date for appeal

(8) The court shall fix for the hearing of the appeal the earliest date that is compatible with its just disposition. 1996, c. 2, Sched. A, s. 80 (8).

Appeal on the record, exception

(9) The court shall hear the appeal on the record, including the transcript, but may receive new or additional evidence as it considers just. 1996, c. 2, Sched. A, s. 80 (9).

Powers of court on appeal

(10) On the appeal, the court may,

(a) exercise all the powers of the Board;
(b) substitute its opinion for that of a health practitioner, an evaluator, a substitute decision-maker or the Board;
(c) refer the matter back to the Board, with directions, for rehearing in whole or in part. 1996, c. 2, Sched. A, s. 80 (10).

Counsel for incapable person

81. (1) If a person who is or may be incapable with respect to a treatment, managing property, admission to a care facility or a personal assistance service is a party to a proceeding before the Board and does not have legal representation,

(a) the Board may direct Legal Aid Ontario to arrange for legal representation to be provided for the person; and
(b) the person shall be deemed to have capacity to retain and instruct counsel. 1996, c. 2, Sched. A, s. 81 (1); 2009, c. 33, Sched. 18, ss. 10 (3, 4).

Responsibility for legal fees

(2) If legal representation is provided for a person in accordance with clause (1) (a) and no certificate is issued under the Legal Aid Services Act, 1998 in connection with the proceeding, the person is responsible for the legal fees. 1996, c. 2, Sched. A, s. 81 (2); 1998, c. 26, s. 104.

Same

(2.1) Nothing in subsection (2) affects any right of the person to an assessment of a solicitor’s bill under the Solicitors Act or other review of the legal fees and, if it is determined that the person is incapable of managing property, the assessment or other review may be sought on behalf of the person by,

(a) the person’s guardian of property appointed under the Substitute Decisions Act, 1992; or
(b) the person’s attorney under a continuing power of attorney for property given under the Substitute Decisions Act, 1992. 2009, c. 33, Sched. 18, s. 10 (5).

Child in secure treatment program

(3) If a child who has been admitted to a secure treatment program under section 124 of the Child and Family Services Act is a party to a proceeding before the Board, the Children’s Lawyer shall provide legal representation for the child unless the Children’s Lawyer is satisfied that another person will provide legal representation for the child. 1996, c. 2, Sched. A, s. 81 (3).
PART VI
MISCELLANEOUS

Offence: false assertion

82. (1) No person who gives or refuses consent to a treatment on an incapable person’s behalf shall make an assertion referred to in subsection 29 (6), knowing that it is untrue. 1996, c. 2, Sched. A, s. 82 (1).

Same

(2) No person who gives or refuses consent to admission to a care facility on an incapable person’s behalf shall make an assertion referred to in subsection 48 (4), knowing that it is untrue. 1996, c. 2, Sched. A, s. 82 (2).

Same

(3) No person who makes a decision concerning a personal assistance service on an incapable recipient’s behalf shall make an assertion referred to in subsection 63 (3), knowing that it is untrue. 1996, c. 2, Sched. A, s. 82 (3).

Penalty

(4) A person who contravenes subsection (1), (2) or (3) is guilty of an offence and is liable, on conviction, to a fine not exceeding $10,000. 1996, c. 2, Sched. A, s. 82 (4).

Offence: misrepresentation of wishes

83. (1) No person shall knowingly misrepresent wishes someone has expressed with respect to treatment, admission to a care facility or a personal assistance service. 1996, c. 2, Sched. A, s. 83 (1).

Penalty

(2) A person who contravenes subsection (1) is guilty of an offence and is liable, on conviction, to a fine not exceeding $10,000. 1996, c. 2, Sched. A, s. 83 (2).

Offence: decision contrary to wishes

84. (1) A person who knowingly contravenes paragraph 1 of subsection 21 (1), paragraph 1 of subsection 42 (1) or paragraph 1 of subsection 59 (1) is guilty of an offence and is liable, on conviction, to a fine not exceeding $10,000. 1996, c. 2, Sched. A, s. 84 (1).

Exception

(2) Subsection (1) does not apply if the person acts in accordance with permission given under section 36, 53 or 68 or in accordance with directions given under section 35, 37, 52, 54, 67 or 69. 1996, c. 2, Sched. A, s. 84 (2).

Regulations

85. (1) The Lieutenant Governor in Council may make regulations,

(a) prescribing facilities as care facilities for the purpose of clause (b) of the definition of “care facility” in subsection 2 (1) and providing transitional rules for the application of the Act to such facilities;

(b) for the purpose of the definition of “evaluator” in subsection 2 (1), prescribing categories of persons as evaluators and prescribing the circumstances in which those persons or other persons described in the definition may act as evaluators;

(c) prescribing categories of persons as health practitioners for the purpose of the definition of “health practitioner” in subsection 2 (1);

(d) prescribing things that do not constitute a personal assistance service for the purpose of the definition of “personal assistance service” in subsection 2 (1);

(e) prescribing places, programs, providers and circumstances for the purpose of the definition of “recipient” in subsection 2 (1);

(f) prescribing things that do not constitute treatment for the purpose of the definition of “treatment” in subsection 2 (1);

(g) prescribing excluded acts for the purpose of clause 3 (1) (b);

(h) governing determinations by health practitioners of capacity with respect to treatment and governing determinations by evaluators of capacity with respect to admission to a care facility or a personal assistance service;

(i) prescribing health facilities for the purpose of subsection 24 (1);
Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by the Statutes of Ontario, 2007, chapter 8, subsection 207 (18) by adding the following clauses:

(i.1) prescribing a situation as a crisis for the purposes of the definition of “crisis” in section 39;

(i.2) clarifying the modifications necessary in the application of Part III under section 54.2;

See: 2007, c. 8, ss. 207 (18), 232 (2).

(j) regulating the amounts that a person who is entitled to copy medical or other health records under subsection 76 (2) may be charged for copies of the records;

(k) governing the transfer of information between an evaluator and the person responsible for authorizing admissions to a care facility, or between an evaluator and the member of a service provider’s staff who is responsible for a personal assistance service;

(l) governing the transfer of information that is relevant to the making of a decision under this Act concerning a treatment, admission to a care facility or a personal assistance service, including regulating the disclosure of such information to the person who is the subject of the decision or to his or her substitute decision-maker and requiring or permitting the disclosure of such information with the consent of the person or his or her substitute decision-maker;

(m) prescribing forms for the purpose of this Act or the regulations. 1996, c. 2, Sched. A, s. 85 (1); 2007, c. 8, s. 207 (17); 2009, c. 26, s. 10 (3).

Application

(2) A regulation may be general or specific in its application. 1996, c. 2, Sched. A, s. 85 (2).

86. REPEALED: 1996, c. 2, Sched. A, s. 86 (2).

Transition, treatment

87. (1) This Act applies to a treatment that is begun after the day this Act comes into force, even if a finding as to capacity was made or consent was given before that day. 1996, c. 2, Sched. A, s. 87 (1).

Same

(2) This Act does not apply to a treatment that is begun on or before the day this Act comes into force. 1996, c. 2, Sched. A, s. 87 (2).

Transition, admission

88. (1) This Act applies to the admission to a care facility of a person who is placed on the waiting list for the facility after the day this Act comes into force, even if a finding as to capacity was made or consent was given before that day. 1996, c. 2, Sched. A, s. 88 (1).

Same

(2) This Act does not apply to the admission to a care facility of a person who is placed on the waiting list for the facility on or before the day this Act comes into force. 1996, c. 2, Sched. A, s. 88 (2).

Application of section

(3) This section does not apply to a care facility described in clause (d) of the definition of “care facility” in subsection 2 (1). 1996, c. 2, Sched. A, s. 88 (3).

Transition, section 19

89. Section 19 applies to an appeal commenced before the day this Act comes into force if, on the day this Act comes into force, the appeal has not been finally disposed of and an order authorizing administration of the treatment before the final disposition of the appeal has not been made. 1996, c. 2, Sched. A, s. 89.

Transition, section 32

90. (1) If, on the day this Act comes into force, an application commenced under section 28 of the Consent to Treatment Act, 1992 has not been finally disposed of:

(a) subsections 32 (3) and (4) of this Act apply to the application;

(b) subsection 32 (2) of this Act does not apply to the application; and

(c) subsection 28 (6) of the Consent to Treatment Act, 1992, as it read immediately before the day this Act comes into force, continues to apply to the application. 1996, c. 2, Sched. A, s. 90 (1).
Same

(2) For the purpose of subsection 32 (5) of this Act, a final disposition of the following applications shall be deemed to be a final disposition of an application under section 32 of this Act:

1. An application commenced under section 28 of the Consent to Treatment Act, 1992 before the day this Act comes into force.


Transition, section 33

91. (1) If, on the day this Act comes into force, an application commenced under section 29 of the Consent to Treatment Act, 1992 has not been finally disposed of,

(a) subsections 33 (5) and (6) and clauses 33 (7) (a), (b) and (c) of this Act apply to the application;

(b) subsections 33 (3) and (4) of this Act do not apply to the application; and

(c) subsections 29 (3) and (7) of the Consent to Treatment Act, 1992, as they read immediately before the day this Act comes into force, continue to apply to the application. 1996, c. 2, Sched. A, s. 91 (1).

Same

(2) Clause 33 (7) (d) and subsection 33 (8) of this Act apply to an appointment made pursuant to an application commenced under section 29 of the Consent to Treatment Act, 1992 before the day this Act comes into force. 1996, c. 2, Sched. A, s. 91 (2).

Transition, section 34

92. (1) If, on the day this Act comes into force, an application commenced under section 32 of the Consent to Treatment Act, 1992 has not been finally disposed of,

(a) subsections 34 (3), (4), (5) and (6) of this Act apply to the application; and

(b) subsection 34 (2) of this Act does not apply to the application. 1996, c. 2, Sched. A, s. 92 (1).

Same

(2) For the purpose of subsection 34 (7) of this Act, a final disposition of an application commenced under section 32 of the Consent to Treatment Act, 1992 before the day this Act comes into force shall be deemed to be a final disposition of an application under section 34 of this Act. 1996, c. 2, Sched. A, s. 92 (2).

Transition, section 35

93. If, on the day this Act comes into force, an application commenced under section 30 of the Consent to Treatment Act, 1992 has not been finally disposed of, subsections 35 (2) and (3) of this Act apply to the application if it was commenced by a person who is a substitute decision-maker as defined in Part II of this Act. 1996, c. 2, Sched. A, s. 93.

Transition, section 36

94. If, on the day this Act comes into force, an application commenced under section 31 of the Consent to Treatment Act, 1992 has not been finally disposed of, subsections 36 (2) and (3) of this Act apply to the application if it was commenced by a person who is a substitute decision-maker as defined in Part II of this Act. 1996, c. 2, Sched. A, s. 94.