

2008 (Revised to November 26, 2009)

CHAPTER 01

An Act to Incorporate the College of Massage Therapists of New Brunswick

WHEREAS it is desirable, in the interest of the public and massage therapists in the Province of New Brunswick, to incorporate as a body corporate the College of Massage Therapists of New Brunswick, for the purpose of advancing and maintaining the standard of massage therapy in the Province, to govern and regulate massage therapy services provided to the public and provide for the welfare of members of the public;

AND WHEREAS the Association of New Brunswick Massage Therapists Inc. and the N.B. Massotherapy Association Inc. ask that it be enacted as hereinafter set forth;

THEREFORE, Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

1 This Act may be cited as the “*Massage Therapy Act*”.

DEFINITIONS

2 The following definitions apply in this Act, unless the context otherwise requires.

“Act” means the *Massage Therapy Act*. (*Loi*)

“College” means the College of Massage Therapists of New Brunswick. (*Ordre*)

“by-laws” means the by-laws made under this Act. (*règlements administratifs*)

“Court” means The Court of Queen’s Bench of New Brunswick. (*Cour*)

“Board of Directors” means the Board of Directors of the College constituted under section 10. (*conseil d’administration*)

“massage therapy”, subject to the exclusions contained in section 72 of the Act, means the assessment of the soft tissues and joints of the body and the treatment and prevention of physical dysfunction and pain of the soft tissues and joints by mobilization to develop, maintain, rehabilitate or augment physical function, or relieve pain, and does not include manipulation or movement of the spine or the joints of the body beyond an individual’s usual physiological range of motion, using a high velocity, low amplitude thrust. (*massothérapie*)

“register” means the register kept pursuant to subsection 21(1). (*registre*)

“Registered Massage Therapist” means a massage therapist who is registered as a member of the College of Massage Therapists of New Brunswick. (*massothérapeute autorisé*)

COLLEGE

3(1) The College of Massage Therapists of New Brunswick is hereby incorporated as a body corporate without share capital under the name of the College of Massage Therapists of New Brunswick.

3(2) The College shall consist of persons who are members of the Association of New Brunswick Massage Therapists Inc. or the N.B. Massotherapy Association Inc. on the date this Act comes into force, together with persons who hereafter, pursuant to the provisions of this Act, become members of the College of Massage Therapists of New Brunswick, and whose names are entered upon the register of the College.

3(3) The category of membership of a person who is a member of the Association of New Brunswick Massage Therapists Inc. or the N.B. Massotherapy Association Inc. when this Act comes into force shall not change by reason thereof.

4 The head office of the College shall be as provided by by-law.

5 The College shall have a seal in a form provided by by-law.

OBJECTS

6 The objects of the College are to:

- (a) regulate the practice of massage therapy and govern its members in accordance with this Act and the by-laws, in order to serve and protect the public interest;
- (b) establish, maintain, develop and enforce standards of qualification for the practice of massage therapy, including the required knowledge, skill, efficiency, proficiency and accountability;
- (c) establish and enforce a code of professional ethics;
- (d) administer the affairs of the College;
- (e) promote public awareness of the role of the College and the scope of practice of massage therapy, and communicate and co-operate with other professional organizations for the advancement of the best interests of the College, including the publication of books, papers and journals; and
- (f) encourage studies and research in massage therapy.

POWERS

7 The College, in furtherance of its objects, shall have the power to:

- (a) enact by-laws and rules;
- (b) provide for the discipline, government, control and honour of persons practising the profession of massage therapy in New Brunswick, including the power to determine standards of professional conduct;
- (c) acquire and hold assets and property, both real and personal, by way of purchase, lease, grant, hire, exchange or otherwise, and to dispose of such property by any means;
- (d) provide for the management of its property and assets, and of its affairs and business, including the employment of staff;
- (e) borrow and spend money for the purpose of carrying out any of the objects of the College, and give security for money borrowed on any of its real or personal property by way of mortgage, pledge, charge or otherwise;
- (f) invest money of the College, not immediately required for any of its objects, in any manner as it may from time to time determine;
- (g) establish and maintain a register of massage therapists, which register shall be the official register of persons entitled to practise as Registered Massage Therapists in New Brunswick;
- (h) fix and collect fees payable by any person:
 - (i) upon becoming a member;
 - (ii) writing an examination prescribed by the College with a view to becoming a member or to maintain or reinstate membership; or
 - (iii) as annual dues;
- (i) assess members for any ordinary, special or extraordinary expenditure that may be deemed necessary or expedient to further any of the objects of the College;
- (j) prescribe the qualifications as to education, character, and experience required by any person before being registered as a Registered Massage Therapist in New Brunswick, including continuing education for members as a condition of registration as a Registered Massage Therapist;
- (k) provide for the determination, by examination or other means, of the competency of persons seeking to be registered as Registered Massage Therapists and grant certificates of registration to persons qualified as Registered Massage Therapists;
- (l) arrange and establish ways and means by which members of the College may be identified as such;
- (m) enter into agreements on behalf of the College as may be necessary, incidental or conducive to carry out the objects of the College;
- (n) exempt any person from the payment of fees, dues or assessments for such reason and upon such terms as the College may from time to time determine, and suspend members for non-payment;
- (o) receive gifts, donations and bequests, and make gifts or donations for the promotion of the objects of the College;
- (p) regulate advertising;

- (q) call and regulate meetings and the method of voting;
- (r) provide for the eligibility, nomination, election, number and term of office and duties of members of the Board of Directors and committees, including the appointment and revocation of persons as *ex officio* or honorary officers or members of the Board of Directors of the College;
- (s) provide for the establishment of committees by the College, prescribe their powers and duties, and method of operation, including procedures at meetings and for filling vacancies; and provide for the delegation of powers or duties of the Board of Directors to any committee, and establish the form and frequency of reports to the Board of Directors or the College;
- (t) establish categories of membership in the College, and prescribe the privileges, obligations and conditions of membership;
- (u) provide for the establishment and payment of scholarships, fellowships and other educational incentives, benefits and awards by the College;
- (v) provide for investigations by the Complaints Committee and the Discipline and Fitness to Practise Committee, including the procedures to be followed;
- (w) provide for meetings of the Board of Directors and committees by telephone conference, electronic means or other communications equipment by means of which all persons participating in the meeting can communicate with each other; and
- (x) do all other things as may be necessary or desirable to exercise the powers conferred by this Act, or any powers incidental thereto.

BY-LAWS

- 8(1)** For the purpose of attaining its objects, and for the implementation of its powers, the College may make by-laws not inconsistent with the provisions of this Act.
- 8(2)** No by-law, amendment, or repeal of a by-law shall be effective until passed by a resolution of at least two-thirds of votes cast:
- (a) at the annual general meeting; or
 - (b) at a special meeting of the College called for the purpose.
- 8(3)** A proposed new by-law, amendment or repeal of a by-law, shall be in writing signed by at least 2 members in good standing and shall, not less than 60 days before the meeting, be presented to the secretary who shall include a copy in the notice calling the meeting.
- 8(4)** No new by-law, or the amendment or repeal of a by-law which provides for the qualifications and eligibility of a person to be registered as a Registered Massage Therapist, or which provides for continuing education, standards of practice, or relates to conflicts of interest, shall come into effect until approved by the Minister of Health.

ANNUAL MEETING

- 9(1)** There shall be an annual general meeting of the College at such time and place as fixed in accordance with the by-laws.
- 9(2)** Ten percent of voting members shall constitute a quorum for the transaction of business at an annual general meeting.

BOARD OF DIRECTORS

- 10(1)** There shall be a Board of Directors of the College consisting of:
- (a) the president, past president, vice-president, secretary and treasurer, all of whom shall be elected by the members of the College in the manner and for the terms prescribed in the by-laws; and
 - (b) two lay persons, not members of the College, to act as public representatives on the Board of Directors, who shall be appointed by the Minister of Health; the Minister of Health may choose from a panel of not less than four persons nominated by the Board of Directors.
- 10(2)** The offices of Secretary and Treasurer may be held by the same person.
- 10(3)** Subject to the provisions of this Act and the by-laws, the management of the College shall be vested in the Board of Directors.
- 10(4)** A majority of members of the Board of Directors shall constitute a quorum for the transaction of business.

11(1) The term of office of the members of the Board of Directors shall be fixed by by-law.

11(2) Notwithstanding subsection (1), in the event of a vacancy occurring on the Board of Directors, the vacancy may be filled for the balance of the unexpired term:

(a) where the vacancy is with respect to a person elected under paragraph 10(1)(a), by the Board of Directors appointing a replacement; and

(b) where the vacancy is with respect to a person appointed under paragraph 10(1)(b), by the Minister of Health, who may appoint a replacement from a panel of not less than four persons nominated by the Board of Directors.

11(3) At the first meeting following the election of the Board of Directors, or as soon after as possible, the Board of Directors shall appoint such other persons or committees as may be necessary for the carrying out of the provisions of this Act, who shall hold office during the pleasure of the Board of Directors or as provided by by-law.

RULES BY THE BOARD OF DIRECTORS

12(1) The Board of Directors may make rules not inconsistent with the provisions of this Act or the by-laws, providing for:

(a) the appointment, revocation and filling of vacancies on committees;

(b) calling and conducting meetings of all committees;

(c) preliminary investigations into the conduct of a member;

(d) the custody and use of the College seal;

(e) the execution of documents by the College;

(f) banking and finance;

(g) calling and conducting meetings of the Board of Directors and the duties of members of the Board of Directors;

(h) the payment of necessary expenses of the Board of Directors and committees in the conduct of their business;

(i) the management of the property of the College;

(j) the appointment, composition, powers and duties of additional or special committees; and

(k) the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safekeeping of its securities.

12(2) A rule adopted by the Board of Directors under subsection (1) is in effect, subject to ratification by the membership.

ADMISSIONS COMMITTEE

Appointment

13(1) The Board of Directors shall appoint an Admissions Committee consisting of at least three members, one to be named by the Board of Directors as chairperson and one as vice-chairperson.

13(2) Members of the Admissions Committee shall be appointed for a term of two years and may be reappointed.

13(3) The Admissions Committee may sit in panels of three, consisting of the chairperson or vice-chairperson, plus two additional members; decisions of a panel shall be by majority vote.

13(4) If the term of a member of the Admissions Committee expires before it concludes a matter before it, the member whose term has expired shall continue in office until the matter is concluded.

13(5) Subject to subsection (4), if a member of a panel of the Admissions Committee is unable to continue to act for any reason, the chairperson or vice-chairperson of the Committee shall assign another member of the Committee to the panel.

Inquiries

14(1) At the request of the Board of Directors the Admissions Committee shall inquire into:

(a) an application for membership in the College;

(b) an application for reinstatement in the College by a former member; and

(c) an application for transfer into the College by a member of another college.

14(2) The Admissions Committee may, in inquiring into an application under subsection (1):

(a) consider the matter summarily; or

(b) conduct, or authorize any person to conduct, an investigation.

14(3) An applicant in respect of whom an inquiry is being made shall produce documents and disclose information to the Admissions Committee that is within the applicant's possession or power and that the Committee considers relevant.

14(4) Where the Admissions Committee conducts an investigation under paragraph (2)(b) it may, by written notice, require the applicant to appear before it to answer questions or provide additional information relevant to the application.

Report to the Board of Directors

15(1) The Admissions Committee shall, after completing its inquiry under section 14, make a recommendation to the Board of Directors in writing with reasons:

(a) rejecting the application;

(b) approving the application without conditions; or

(c) approving the application, subject to the conditions set out in its recommendation.

15(2) The recommendation of the Admissions Committee shall be given to the applicant and shall be final unless the applicant requests a review by the Board of Directors within twenty days after receiving the recommendation.

15(3) In considering a review under subsection (2) the Board of Directors may by simple majority:

(a) confirm the recommendation of the Admissions Committee;

(b) change the recommendation of the Admissions Committee and allow the application subject to such conditions the Board of Directors considers appropriate; or

(c) refer the application to the Admissions Committee to take such action as the Board of Directors directs.

MEMBERSHIP

16 The categories of membership, and the rights and privileges allocated to each category of membership, in the College shall be as provided by by-law.

Application for registration

17(1) An application for registration as an active member of the College shall be made to the Registrar and shall be referred to the Admissions Committee for review and recommendation.

17(2) The Board of Directors, upon the recommendation of the Admissions Committee, may approve for registration a person who:

(a) holds a diploma in massage therapy from an institution whose accreditation is acceptable to the College or has equivalent experience as defined in the by-laws;

(b) produces satisfactory evidence of good character, including letters of reference and, if required, evidence satisfactory to the Board of Directors of professional reputation and practice;

(c) undertakes to comply with any reasonable requirements imposed by the Board of Directors with respect to attendance at an applicants' orientation program approved by the Board of Directors;

(d) passes any and all exams as required by the Admissions Committee;

(e) provides evidence satisfactory to the Board of Directors of having professional liability insurance in compliance with the by-laws;

(f) is a member in good standing of the Association of New Brunswick Massage Therapists Inc. or the N.B. Massotherapy Association Inc.; the registration of a person who does not continue to be a member in good standing of the Association of New Brunswick Massage Therapists Inc. or the N.B. Massotherapy Association Inc. shall be considered to be revoked;

(g) is a citizen of Canada or is lawfully admitted to and entitled to work in Canada; and

(h) meets all other requirements which may be prescribed in the by-laws.

17(3) Upon compliance with subsection (2) the Board of Directors may instruct the Registrar to issue a certificate of registration to the applicant.

17(4) The Registrar shall annually renew the certificate of registration to Registered Massage Therapists who meet the requirements of this Act and by-laws.

17(5) When a person registered under this Act ceases to be a member, the Board of Directors shall instruct the Registrar to strike the name of the person from the register.

17(6) Notwithstanding anything in this Act, the Board of Directors may deny registration to any person who:

(a) has been convicted of an indictable offence;

(b) has been refused registration in a jurisdiction outside New Brunswick;

(c) has been removed from the register of a recognized massage therapy college; or

(d) for any other reason is considered unfit to practise massage therapy in New Brunswick.

17(7) A person whose certificate of registration is revoked, suspended or expired or who resigns as a member continues to be subject to the jurisdiction of the College for professional misconduct, incompetence and incapacity referable to the time when the person was a member or to the period of suspension.

Registration by-laws

18 The Board of Directors may make by-laws:

(a) prescribing the proofs to be furnished as to education, good character and experience;

(b) prescribing the subjects for examination of applicants for registration as Registered Massage Therapists;

(c) setting the fees to be paid to take examinations for registration;

(d) relating to holding examinations, and the duties and functions of examiners; and

(e) respecting such other matters as the Board of Directors considers necessary or advisable with respect to the discharge of its responsibilities in examining and registering members, including the registration of persons for temporary membership or provisional membership.

PROVISIONAL MEMBERSHIP REGISTRATION

19(1) An application for registration as a provisional member shall be made to the Board of Directors.

19(2) The Board of Directors may approve the provisional registration of a person who qualifies for provisional registration in accordance with the by-laws.

TITLE

20 Subject to the exclusions contained in section 72 of the Act, no person other than a member of the College may use the title "registered massage therapist", a variation or abbreviation or an equivalent in another language.

REGISTRATION AND FEES

Registration

21(1) The Registrar shall maintain in accordance with the by-laws a register of all persons authorized to practise massage therapy under this Act.

21(2) No name shall be entered in the register other than as authorized by this Act or the by-laws, and unless the Registrar is satisfied by proper evidence that the person is entitled to be registered.

21(3) Any person affected by a decision of the Registrar with respect to registration may appeal to the Board of Directors which may reconsider the Registrar's decision and may order that the person's name be entered in the register.

21(4) Each year the Registrar shall print and keep for inspection at the office of the College, free of charge, an alphabetical list, together with address, of all persons registered as of the first day of January, or such other date as established by by-law, for the ensuing twelve months.

21(5) The register, or a copy of the list printed in accordance with subsection (4) is *prima facie* evidence in all courts that the persons named are registered in accordance with the provisions of this Act and, in the case of any person whose name does not appear on the list, the Registrar may certify the entry of the name in the register, and such is evidence that the person is registered under the provisions of this Act.

21(6) The Registrar, upon entering the name of a member of the College in the register, shall give the member a certificate of registration.

Payment of fees

22(1) Every member shall, on or before the first day of January of each year, or such other date established by by-law, pay to the College the annual fees fixed by the by-laws.

22(2) Subject to subsection (3), a member who fails to pay the annual fees as required by subsection (1) loses all rights and privileges conferred under this Act and the member's name shall not be placed in the register.

22(3) Where a person fails to comply with subsection (1), that person shall make full payment of fees within six months of the time payment was due, in which case the person's name may be added to the register effective the date of payment only.

22(4) If payment is not made as provided by subsection (3), the person's name cannot be added to the register except upon application to the Board of Directors for approval, in which case the Board of Directors may upon consideration of the circumstances:

- (a) direct the Registrar to add the person's name to the register upon payment of such fees as it considers appropriate, but in no event less than payment for one full year;
- (b) require the person to pass such examinations as it considers necessary; or
- (c) impose such other conditions as it considers in the public interest.

RIGHT TO PRACTISE

23(1) Subject to the exclusions contained in section 72 of the Act, no person shall practise massage therapy in New Brunswick, either privately or employed by another, unless registered to practise under the provisions of this Act and by-laws.

23(2) A corporation may be permitted to practise massage therapy as provided under section 24.

PROFESSIONAL CORPORATIONS

24(1) The following definitions apply in this section, unless the context otherwise requires.

"professional corporation" means the incorporated business of a Registered Massage Therapist or group of Registered Massage Therapists providing massage therapy services.

(*corporation professionnelle*)

"permit" means a permit issued under subsection (3) and includes a renewed permit. (*permis*)

24(2) A professional corporation may provide massage therapy services.

24(3) Subject to subsection (5), the Registrar shall issue a permit to a professional corporation that is a corporation as defined in the *Business Corporations Act* and is in good standing under that Act, if satisfied that:

(a) the name of the professional corporation:

- (i) is restricted to the names of present and former members of the College; and
- (ii) includes the words "professional corporation" or "corporation professionnelle" or the abbreviation "P.C." or "C.P.";

(b) a majority of the issued voting shares are legally and beneficially owned by one or more members or by one or more professional corporations, or both;

(c) all the directors of the professional corporation are members of the College and the professional corporation's practice of massage therapy is managed only by directors who are members in good standing; and

(d) all the persons who will be practising massage therapy for the corporation:

- (i) are practising members of the College; or
- (ii) subject to the provisions of this Act and the by-laws, are employees of the corporation, acting under the supervision of a practising member in good standing.

24(4) The Board of Directors may impose conditions on permits issued, renewed or reinstated under this Act.

24(5) The Board of Directors may refuse to issue a permit to a professional corporation under subsection (3) where

- (a) the professional corporation has previously had its permit suspended or revoked; or
- (b) a shareholder of the professional corporation was a shareholder of a professional corporation that previously had its permit revoked.

24(6) A professional corporation shall not provide massage therapy services unless it holds a valid permit issued under this Act.

24(7) A professional corporation shall not carry on any activities other than providing massage therapy services or services that are directly associated with the practice of massage therapy.

24(8) Nothing in subsection (7) shall be interpreted to prohibit a professional corporation from investing its funds in real estate, personal property, mortgages, stocks, bonds, insurance or any other types of investments.

24(9) No act of a professional corporation, including a transfer of property to or by the professional corporation, is invalid by reason only that it contravenes subsection (6) or (7).

24(10) A professional corporation is not required, as a condition of providing massage therapy services, to obtain a municipal business license or business permit.

24(11) No shareholder of a professional corporation who is a practising member shall enter into a voting trust agreement, a proxy or any other type of agreement or instrument vesting in a person who is not a practising member of the College the authority to exercise the voting rights attached to any or all of that member's shares or restraining the practising member from freely exercising the voting rights attached to any or all of that member's shares in the professional corporation.

24(12) Where a professional corporation has not paid the renewal fee fixed by the Board of Directors by the date it is due, the permit of the corporation ceases to be valid and the corporation shall:

- (a) forthwith surrender the permit to the College; and
- (b) cease providing massage therapy services.

Responsibility of members of professional corporation

25(1) Liability for acts or omissions as a Registered Massage Therapist by a person who is a shareholder, director, officer, employee or contractor of a professional corporation shall be decided as if such acts or omissions occurred in the absence of the professional corporation for whom the person acted or failed to act.

25(2) The relationship of a member to a professional corporation, whether as a shareholder, director, officer, employee or contractor, does not affect the application to that person of the provisions of this Act or the by-laws.

25(3) Nothing in section 24 affects the fiduciary, confidential or ethical relationships between a Registered Massage Therapist and the person receiving the services of that Registered Massage Therapist.

25(4) The relationship between a professional corporation providing massage therapy services and a person receiving the services of that professional corporation is subject to all applicable laws relating to the fiduciary, confidential and ethical relationships between a Registered Massage Therapist and a patient.

25(5) A member of the College who, while practising massage therapy for a professional corporation, acquires information relating to a patient that is confidential shall ensure that such information is not disclosed to a shareholder of the professional corporation who is not a member of the College.

26 If a permit is revoked under this Act, the Registrar shall give written notice of the revocation:

- (a) to the Director as defined in the *Business Corporations Act*, and
- (b) to the professional corporation, which shall forthwith cease providing massage therapy services.

27 In a disciplinary proceeding under this Act:

- (a) a professional corporation may appear by its legal counsel or other representative, and
- (b) every shareholder, director, officer, employee or contractor with the professional corporation
 - (i) is a compellable witness, and
 - (ii) may be required to produce all documents that are in their possession or power that are relevant to matters raised in the disciplinary proceeding.

Application of other provisions to corporations

28 With necessary modifications, the provisions of this Act and the by-laws apply to professional corporations to the same extent as to members.

Interpretation of other laws

29 Unless the context indicates a contrary intention, all laws that refer to a person authorized to practise massage therapy in New Brunswick shall be read to include a professional corporation.

DISCIPLINE

Definitions

30 The following definitions apply in this part, unless the context otherwise requires.

“health professional” means a person who provides a service related to:

- a)* the preservation or improvement of the health of individuals; or
- b)* the diagnosis, treatment or care of individuals who are injured, sick, disabled or infirm,

and who is regulated under a private Act of the Legislature with respect to the provision of the service and includes a social worker registered under the *New Brunswick Association of Social Workers Act, 1988. (professionnel de la santé)*

“hearing” means a hearing conducted by a committee. (*audience*)

“incapacitated” means, in relation to a member, that the member is subject to a physical or mental condition or disorder that makes it desirable in the interest of the public that the member no longer be permitted to practise or that the member’s practice be restricted, and “incapacity” has a corresponding meaning. (*incapacité*)

“incompetence” means, in relation to a member, that the member’s professional care of a patient displays a lack of knowledge, skill or judgment or disregard for the welfare of the patient 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. (*incompétence*)

“member” means a person who is a member of the College. (*membre*)

Professional misconduct

31 A member has committed an act of professional misconduct if:

- (a)* the member has pleaded guilty to or been found guilty of an offence that, in the opinion of the Discipline and Fitness to Practise Committee, is relevant to the member’s suitability to practise;
- (b)* the governing body of a health profession in a jurisdiction other than New Brunswick has found that the member committed an act of professional misconduct that would, in the opinion of the Discipline and Fitness to Practise Committee, constitute professional misconduct under this Act or the by-laws;
- (c)* the member has digressed from established or recognized professional standards or rules of practice of the profession;
- (d)* the member has committed an act of professional misconduct as defined in this Act or the by-laws;
- (e)* the member has violated or failed to comply with this Act or the by-laws;
- (f)* the member has violated or failed to comply with a term, condition or limitation imposed on the member’s certificate of registration;
- (g)* the member has failed to submit to an examination ordered by the Board of Directors under section 59;
- (h)* the member has sexually abused a patient; or
- (i)* the member has failed to file a report pursuant to section 61.

Complaints Committee

32(1) The College shall have a standing committee, called the Complaints Committee.

32(2) The Board of Directors shall appoint the members of the Complaints Committee, whose composition shall be as follows:

(a) four active members, at least one of whom shall be proficient in both English and French; and
(b) one person who has never been a Registered Massage Therapist.

32(3) The Board of Directors shall appoint a chairperson for the Complaints Committee from among the persons appointed to the Committee.

32(4) No person who is a member of the Complaints Committee shall concurrently be appointed a member of any other committee.

32(5) Three members of the Committee, one of whom shall be a person who has never been a Registered Massage Therapist, constitute a quorum and a decision may be made by majority vote.

32(6) The Board of Directors shall advise the Minister of Health of the name of the person appointed pursuant to paragraph 32(2)(b) above, forthwith following the appointment.

Complaints

33(1) A person may make a complaint to the Registrar regarding the conduct, competency or capacity of a member.

33(2) A complaint shall be in writing and shall include the complainant's name and mailing address.

33(3) Upon receipt of a complaint under subsection (1) it shall be immediately referred to the Complaints Committee for investigation.

Request by Registrar for investigation

34 In the absence of a complaint, if the Registrar has reason to believe that the conduct or actions of a member may constitute professional misconduct, incompetence or incapacity, the Registrar may request in writing that the Complaints Committee investigate the member.

Investigation by Complaints Committee

35(1) The Complaints Committee shall consider and investigate complaints regarding the conduct, competency or capacity of a member, but no action shall be taken by the Committee under subsection (2) unless:

(a) the member being investigated has been notified of the complaint and given 30 days in which to submit in writing to the Committee any explanations or representations the member may wish to make concerning the complaint; the notice to the member against whom the allegations have been made shall include reasonable particulars of the matter to be investigated, shall advise the member that the member may make a written submission to the Committee with respect to the matter within thirty days after receiving the notice, and shall advise the member that the Committee may proceed with the hearing in his or her absence; and

(b) the Committee has examined or has made every reasonable effort to examine relevant information and documents relating to the complaint.

35(2) After completion of the investigation, and after considering the submission of the member under subsection (1), if any, the Complaints Committee may:

(a) direct that no further action be taken if, in its opinion, the complaint is frivolous or vexatious or there is insufficient evidence of professional misconduct, incompetence or incapacity;

(b) refer, in whole or in part, the allegations of professional misconduct, incompetence or incapacity to the Discipline and Fitness to Practise Committee;

(c) caution the member and, if it considers it appropriate, require an undertaking by the member in respect of a specified act or omission; or

(d) take such other action as it considers appropriate in the circumstances to resolve the complaint as long as such is consistent with this Act or by-laws.

35(3) The Complaints Committee shall give a summary of its findings and decision in writing to the Registrar to deliver or send by registered or certified mail to the complainant, if any, and the member complained against.

35(4) Nothing in this section requires that examinations ordered under section 59 be carried out before the Complaints Committee acts under subsection (2).

Request for review of complaint by Board of Directors

36(1) A complainant who is not satisfied with the disposition of the complaint by the Complaints Committee may apply to the Board of Directors within 30 days of receipt of decision of the Committee for a review of the treatment of the complaint.

36(2) Upon a review under subsection (1) the Board of Directors may by resolution:

(a) dismiss the complaint;

(b) refer the complaint back to the Complaints Committee with such instructions as it considers necessary with respect to further investigation and disposition under subsection 35(2); or

(c) refer the matter to the Discipline and Fitness to Practise Committee to hold a hearing.

Discipline and Fitness to Practise Committee

37(1) The College shall have a standing committee, called the Discipline and Fitness to Practise Committee.

37(2) The Board of Directors shall appoint the members of the Discipline and Fitness to Practise Committee, whose composition shall be as follows:

(a) four active members, at least one of whom shall be proficient in both English and French; and

(b) one person who has never been a Registered Massage Therapist.

37(3) The Board of Directors shall advise the Minister of Health of the name of the person appointed pursuant to paragraph 37(2)(b) above, forthwith following the appointment.

37(4) The Board of Directors shall appoint a chairperson for the Discipline and Fitness to Practise Committee from among the persons appointed to the Committee.

37(5) No person who is a member of the Discipline and Fitness to Practise Committee shall concurrently be appointed a member of any other committee.

37(6) Three members of the Discipline and Fitness to Practise Committee, one of whom shall be a person who has never been a Registered Massage Therapist, constitute a quorum and a decision may be made by majority vote.

Hearing by Discipline and Fitness to Practise Committee

38(1) The Discipline and Fitness to Practise Committee shall hold a hearing respecting the allegations of professional misconduct, incompetence or incapacity of a member that have been referred to it by the Complaints Committee under paragraph 35(2)(b) or by the Board of Directors under paragraph 36(2)(c).

38(2) Subject to subsection (3), the Discipline and Fitness to Practise Committee shall commence a hearing as soon as possible, but not later than sixty days after the date on which the matter was referred to the Committee pursuant to paragraph 35(2)(b) or paragraph 36(2)(c), unless the parties otherwise agree.

38(3) The Discipline and Fitness to Practise Committee shall, not less than thirty days before the date set for the hearing, serve on the College, the member against whom the complaint has been made, and the complainant, if any, a notice of hearing in a form prescribed by by-law setting out the date, time and place of the hearing.

38(4) Members of the Discipline and Fitness to Practise Committee shall not have taken part before the hearing in any investigation of the subject matter of the hearing, and shall not communicate directly or indirectly in relation to the subject matter of the hearing with any person or with any party or representative of the party, except upon notice to and opportunity for all parties to participate, but the Committee may seek legal advice.

38(5) No member of the Discipline and Fitness to Practise Committee shall participate in the decision of the Committee unless the member was present throughout the hearing and heard the evidence and argument of the parties.

38(6) Where the registration and certificate of registration of a member of a committee who is a Registered Massage Therapist expires after a hearing commences or where the term of appointment of a committee member expires after a hearing commences, the member shall be deemed to remain a member of the committee for the purpose of disposing of that matter.

Notice of hearing

39(1) The notice to the member against whom the complaint has been made shall describe the subject matter of the hearing and advise the member that the Discipline and Fitness to Practise Committee may proceed with the hearing in the absence of the member.

39(2) The Discipline and Fitness to Practise Committee 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 it may make any Order it considers necessary to prevent prejudice to the member.

39(3) The Discipline and Fitness to Practise Committee, on proof of service of the notice of hearing on the member against whom a complaint is made, may:

- (a) proceed with the hearing in the absence of the member; and
- (b) without further notice to the member, take any action that is authorized to be taken under this Act or by-laws.

39(4) If any other matter concerning the member against whom the allegations have been made arises during the course of the hearing, the Discipline and Fitness to Practise Committee may hear the matter, but it shall notify the parties of its intention to do so and shall ensure that the member is given a reasonable opportunity to respond to the matter.

Sanctions by Discipline and Fitness to Practise Committee

40(1) On the completion of a hearing, the Discipline and Fitness to Practise Committee may

- (a) dismiss the complaint; or
- (b) find that the member has committed an act of professional misconduct, is incompetent or incapacitated or any combination of these three.

40(2) If the Discipline and Fitness to Practise Committee finds that the member has committed an act of professional misconduct, or finds that the member is incompetent or incapacitated, it may, by order, do one or more of the following as in its opinion it considers appropriate to the circumstances:

- (a) reprimand the member;
- (b) require the member to waive, reduce or repay a fee for services provided by the member that, in the opinion of the Committee, were not provided or were improperly provided;
- (c) impose a fine to a maximum of twenty thousand dollars to be paid by the member to the College;
- (d) impose specified terms, conditions and limitations on the member's right to practise for a specified period of time or until specified conditions are satisfied, including the requirement to successfully complete specified courses of study or requiring that the member:

- (i) engage in the practice of massage therapy only under the personal supervision and direction of another member;

- (ii) not alone engage in the practice of massage therapy;

- (iii) accept periodic inspections by the Committee, or its delegate, of the books, accounts, records and work of the member in connection with the member's practice; or

- (iv) report to the Registrar, or to such committee of the Board of Directors as the Committee may specify, on such matters with respect to the member's practice for such period and times, and in such form, as the Committee may specify;

- (e) suspend the member's membership for a specified period of time or until specified criteria are satisfied;

- (f) revoke the member's membership, in which case the Discipline and Fitness to Practise Committee may order that the member not be permitted to apply for reinstatement before a period of time it specifies has elapsed;

- (g) direct the Registrar to give public notice of any order by the Committee that the Registrar is not otherwise required to give under this Act;

- (h) where the Registrar is not otherwise required to do so, direct the Registrar to enter the result of the proceeding before the Discipline and Fitness to Practise Committee in the records of the College and to make the result available to the public;

- (i) fix the costs of any investigation or procedures by the Complaints Committee and the Discipline

and Fitness to Practise Committee to be paid by the member to the College; or

j) make such other order as the Committee considers appropriate.

40(3) Where a committee finds that a member has committed an act of professional misconduct or is incompetent or incapacitated, the parties to the hearing and the complainant or the complainant's counsel may, before the penalty is determined, make submissions to the committee as to the penalty and the parties may, subject to the discretion of the committee, call further evidence in respect to the penalty.

40(4) The costs and expenses payable under paragraph (2)(i) may be taxed by the Registrar of the Court as between solicitor and client on filing the order of the Committee with the Registrar of the Court and on payment of fees prescribed by the Rules of Court, and judgment may be entered for such taxed costs in Form 1, with such modifications as are necessary.

40(5) For the purposes of this Act, "costs" includes:

- a) all legal and other costs, expenses or disbursements incurred by the College, the Board of Directors, the Admissions Committee, the Complaints Committee or the Discipline and Fitness to Practise Committee in relation to an investigation, proceeding, hearing or appeal;
- b) honoraria and expenses paid to members of the College, the Board of Directors, the Admissions Committee, the Complaints Committee or the Discipline and Fitness to Practise Committee in relation to an investigation, proceeding, hearing or appeal; and
- c) the legal costs, expenses and disbursements incurred by any party to an investigation, proceeding, hearing or appeal.

Costs against College

41 The Discipline and Fitness to Practise Committee, if it is of the opinion that the hearing was unwarranted, may order the College to pay all or part of the member's legal costs.

Decision

42(1) The Discipline and Fitness to Practise Committee shall state in writing its findings, the grounds for its findings and the penalty imposed, and shall serve a copy of it on the parties and to the complainant, if any, along with a statement of the rights of the parties to appeal the decision to the Court.

42(2) Subject to section 49, an Order of the Discipline and Fitness to Practise Committee under subsection 40(2) takes effect immediately, or at such other time as the Committee may direct, notwithstanding that an appeal has been taken from the Order.

Suspension on failure to pay fine and costs

43 Where a member fails to pay a fine or costs imposed under subsection 40(2) within the time ordered, the Registrar may, without notice to the member, suspend the membership of the member until the fine or costs are paid and shall serve the member with notice of the suspension.

Suspension for violation of order

44(1) The Board of Directors, if it is satisfied that a member has violated or failed to comply with an Order of the Discipline and Fitness to Practise Committee, may without notice to the member, revoke or suspend the member's membership.

44(2) The Registrar shall send the member a written notice of the revocation or suspension under subsection (1) by registered mail addressed to the last recorded address of the member in the register, and the member shall be deemed to have received the notice on the third day following the date the notice was sent by the Registrar.

Decision and record to Registrar

45(1) The Discipline and Fitness to Practise Committee shall forward to the Registrar

- (a) its written decision; and
- (b) the record of the hearing and all documents and other things put into evidence.

45(2) Within a reasonable time after the matter in issue has been finally determined, the Registrar shall release documents and other things put into evidence at a hearing on the request of the person who produced them.

Discipline Procedure

46(1) In a hearing before the Discipline and Fitness to Practise Committee, the College and the member against whom a complaint is made are parties to the hearing and may be represented by counsel.

46(2) The Discipline and Fitness to Practise Committee may obtain legal advice with respect to the hearing from an advisor independent from the witnesses.

46(3) The College shall give the member against whom a complaint has been made 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; and

(c) in the case of evidence of a witness, the identity of the witness.

46(4) The member against whom a complaint has been made shall give the College at least ten days before the hearing, 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 of the expert.

46(5) The Discipline and Fitness to Practise Committee may, in its discretion, allow the introduction of evidence that has not been disclosed under subsection (3) or (4) and may make such directions it considers necessary to ensure that the member or the College is not prejudiced, as the case may be.

46(6) Hearings of the Discipline and Fitness to Practise Committee shall be open to the public unless otherwise ordered by Discipline and Fitness to Practise Committee.

46(7) Oral evidence taken before the Discipline and Fitness to Practise Committee shall be recorded, and if a party requests a copy of the transcript, it shall be furnished at that party's expense.

46(8) In the conduct of a hearing before the Discipline and Fitness to Practise Committee

(a) the parties shall be allowed to call evidence and to cross-examine witnesses;

(b) the Committee, subject to this Act, may determine its own rules of procedure;

(c) the Committee is not bound by the rules of evidence which apply in judicial proceedings;

(d) the Committee may adjourn the hearing from time to time at the request of the parties upon reasonable grounds being shown;

(e) the burden of proof is the same as in civil cases;

(f) the member against whom the complaint is made is a compellable witness; and

(g) a witness shall not be excused from answering any question on the ground that the answer:

(i) tends to incriminate;

(ii) might subject the witness to punishment under this Act; or

(iii) might tend to establish liability in a civil proceeding or liability to prosecution.

46(9) The complainant, if any, may attend the hearing before the Discipline and Fitness to Practise Committee in its entirety with or without counsel, and may make a written or oral submission to the Committee before the calling of evidence and after the completion of evidence.

46(10) Notwithstanding subsection (9), at the request of a witness whose testimony is in relation to allegations of a member's misconduct of a sexual nature involving the witness, the Discipline and Fitness to Practise Committee may exclude a complainant from the portion of the hearing that receives the testimony of the witness.

46(11) In subsection (10), "allegations of a member's misconduct of a sexual nature" means allegations that the member sexually abused the witness when the witness was a patient of the member.

Attendance of witnesses

47(1) The Discipline and Fitness to Practise Committee, or someone designated by it to act on its behalf, may by summons in a form prescribed by by-law on the written request of any party to the proceedings, require the attendance before it of any person whose evidence may be material to the subject matter of the hearing and may order any person to produce such records, reports or other documents as

appear necessary for the purpose of the hearing.

47(2) A person served with a summons shall attend and answer all questions concerning matters being inquired into at the hearing and shall produce to the Discipline and Fitness to Practise Committee all records, reports or other documents that are requested in the summons.

47(3) The testimony of a witness may be taken under oath or affirmation administered by the chairperson of the Discipline and Fitness to Practise Committee or any person designated to do so on the chairperson's behalf.

47(4) If a person on whom a summons has been served, either personally or by leaving a copy with some adult person at the person's last or most usual place of residence or business, fails to appear before the Discipline and Fitness to Practise Committee or upon appearing refuses to be sworn or refuses without sufficient cause to answer any question relevant to the hearing, the Committee may by application to the Court, cause the person to be cited for contempt under the provisions of the Rules of Court in the same manner and to the same extent as if the alleged contempt took place in proceedings before the Court.

47(5) If the person referred to in subsection (4) is a member, the failure or refusal to attend and give evidence is professional misconduct.

47(6) A person, other than the member whose conduct is the subject of the hearing, who is served with a summons under this section shall be tendered the same fees as are payable to a witness in an action in the Court at the time the summons is served.

Appeal

48(1) A party to a proceeding before the Discipline and Fitness to Practise Committee may appeal within thirty days from the date of the decision or order of the Committee to the Court by way of Notice of Application in accordance with the Rules of Court.

48(2) When requested by a party intending to appeal, and on payment of any reasonable expenses relating to the request, the Registrar shall provide the party with a copy of all or part of the record of the proceedings, including the documents received in evidence and the decision or Order being appealed.

48(3) An appeal under this section shall be based on the record of the proceedings before the Discipline and Fitness to Practise Committee and its decision, and may be on questions of law or fact, or both.

48(4) On an appeal from the decision of the Discipline and Fitness to Practise Committee the Court may

(a) affirm, vary or reverse the decision of the Committee;

(b) exercise all powers of the Committee;

(c) substitute its decision for that of the Committee;

(d) refer the matter back to the Committee for rehearing in whole or in part, in accordance with such directions as the Court considers proper; or

(e) make any other Order it considers appropriate with respect to costs.

Application for stay

49(1) A member who appeals an Order of the Discipline and Fitness to Practise Committee may apply to the Court for a stay of the Order of the Committee pending the disposition of the appeal, and the Court may make any Order it considers appropriate.

49(2) A member shall give the College at least one week's notice of an application under subsection (1) to stay an Order of the Committee.

Notice of discipline

50(1) The Registrar shall give public notice of the suspension or revocation of a member's membership as a result of proceedings before a Discipline and Fitness to Practise Committee, which public notice, including the member's name, shall be made in any or all of a newspaper having general circulation in the area in which the member is practicing, the College website, College publications or in such other form as directed by the Committee.

50(2) Public notice under subsection (1) shall state the finding of the Discipline and Fitness to Practise Committee and the penalty imposed and, in the case of a finding of professional misconduct, a brief description of the nature of the professional misconduct, and shall be given within two weeks after the finding of the Committee.

Records to be made available to the public

51(1) The Registrar shall enter forthwith in the records of the College:

(a) a summary of the result of every proceeding before a Discipline and Fitness to Practise Committee that:

(i) resulted in suspension or revocation of membership; or

(ii) was directed to be entered in the records of the College and made available to the public; and

(b) where the finding of a Discipline and Fitness to Practise Committee that resulted in the suspension or revocation of membership or was directed to be entered into the records of the College is appealed, a notation that it is under appeal.

51(2) Where an appeal of a finding of a Discipline and Fitness to Practise Committee is finally disposed of, the notation referred to in paragraph (1)(b) shall be removed and the records adjusted accordingly.

51(3) The Registrar shall provide the information contained in the records referred to in subsection (1) to any person who inquires about a member or former member:

(a) for an indefinite period if the member or former member was found to have sexually abused a patient; and

(b) for a period of five years following the conclusion of the proceedings referred to in subsection (1) in all other cases.

51(4) The Registrar, upon payment of a reasonable fee, shall provide a copy or a statement of the information contained in the records referred to in subsection (1) that pertain to a member or former member to a person who requests a copy.

51(5) For the purpose of paragraph (1)(a), “result”, when used in reference to proceedings before a Discipline and Fitness to Practise Committee means the Committee’s findings and the penalty imposed, and in the case of a finding of professional misconduct, a brief description of the nature of the professional misconduct.

Member to return certificate of registration

52 A member whose certificate of registration has been suspended or revoked shall immediately return his or her certificate of registration to the Registrar.

INVESTIGATIONS

Power to investigate and appointment and powers of investigator

53(1) In the absence of a complaint, the Board of Directors, if it has a reason to believe that the conduct or actions of a member may constitute professional misconduct, incompetence or incapacity, may investigate the member with respect to the conduct or actions.

53(2) The Board of Directors may appoint one or more investigators to assist in an investigation under subsection (1), or to assist the Complaints Committee in any investigation it is required to conduct under this Act.

53(3) An investigator appointed by the Board of Directors may at any reasonable time, and upon producing proof of appointment, enter and inspect the business premises of a member and examine anything found there that the investigator has reason to believe will provide evidence in respect of the matter being investigated.

53(4) Subsection (1) applies notwithstanding any provision in any Act relating to the confidentiality of health records.

Search warrant

54(1) The Court may, upon the application of an investigator, issue a warrant authorizing the investigator to enter and search a place and examine anything that is relevant to the investigation, if the Court

is satisfied that the investigator has been properly appointed and there are reasonable grounds for believing that:

(a) the member being investigated has committed an act of professional misconduct, is incompetent or incapacitated; and

(b) there is something that the investigator has reason to believe will provide evidence in respect to the matter being investigated.

54(2) 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.

54(3) An investigator entering and searching a place under the authority of a warrant issued under subsection (1), shall produce identification and a copy of the warrant, upon request, to any person at that place.

54(4) A person conducting an entry or search who finds anything not described in the warrant that the person believes on reasonable grounds will provide evidence in respect of the matter being investigated, may seize and remove that thing.

Copy and removal of documents

55(1) An investigator may copy, at the expense of the College, any document that the investigator may examine under subsection 53(3) or under the authority of a warrant under subsection 54(1).

55(2) An investigator may remove any document referred to in subsection (1) if it is not practicable to copy it in the place where it is examined or a copy is not sufficient for the purposes of the investigation and may remove any object that is relevant to the investigation and shall provide the person in whose possession it was with a receipt for the document or object.

55(3) An investigator, where a copy can be made, shall return the document removed under subsection (2) within a reasonable time.

55(4) A copy of a document 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 itself.

56 An investigator shall report the results of the investigation to the Board of Directors in writing.

Responsibilities of Member

57(1) A member who is being investigated under this Act shall cooperate with the Board of Directors and the investigator, and shall produce all documents and disclose to the Board of Directors or the investigator all information that may be relevant to the investigation.

57(2) No person shall obstruct, or cause to be obstructed, an investigator while the investigator is performing duties under this Act.

57(3) No person shall withhold, conceal or destroy, or cause to be withheld, concealed or destroyed, anything that is relevant to an investigation under this Act.

57(4) A member who violates subsection (1), (2) or (3) commits an act of professional misconduct.

ACTION BY BOARD OF DIRECTORS TO PROTECT PUBLIC

58(1) If the Board of Directors considers it necessary for the protection of the public during an investigation of a member or pending the conduct and completion of proceedings under this Act in respect of a member, the Board of Directors may:

(a) direct the Registrar to impose specified terms, limitations and conditions on the member's right to practise; or

(b) direct the Registrar to suspend the member's right to practise.

58(2) Where the Board of Directors intends to take action under subsection (1), it shall notify the member of its intention in writing, to be delivered by registered mail addressed to the last recorded address of the member in the register; the member shall be deemed to have received the notice on the third day following the date the notice was sent by the Registrar and shall have ten days after the notice is received, to make representation to the Board of Directors in respect of the matter.

58(3) Where the Board of Directors takes action under subsection (1), it shall notify the member of its decision in writing and of the reasons for the decision.

58(4) A decision under subsection (1) is not effective until three days after the notice is mailed by registered mail to the member at the member's last recorded address in the College's register.

58(5) A member against whom action is taken under subsection (1) may apply to the Court for an order staying the action of the Board of Directors.

58(6) If an order is made under subsection (1) by the Board of Directors in relation to a matter referred to a Discipline and Fitness to Practise Committee, the College and the Board of Directors shall act expeditiously in relation to the matter.

EXAMINATION OF MEMBER

59(1) Where the Board of Directors has reasonable grounds to believe that a member who is the subject of an investigation is incapacitated, it may require the member to submit to physical or mental examinations, or both, by one or more health professionals selected by the Board of Directors and, subject to subsection (3), may make an order directing the Registrar to suspend the member's right to practise until the member submits to the examinations.

59(2) Where the Board of Directors has reasonable grounds to believe that a member who is the subject of an investigation is incompetent, the Board of Directors may require the member to submit to such examinations as the Board of Directors may require in order to determine whether the member has adequate skill and knowledge to practise massage therapy and, subject to subsection (4), may make an order directing the Registrar to suspend the member's certificate of registration until the member submits to the examinations.

59(3) No Order shall be made with respect to a member by the Board of Directors unless the member has been given:

(a) notice of the intention of the Board of Directors to make the Order; and

(b) at least ten days to make written submissions to the Board of Directors after receiving the notice.

59(4) A person who conducts an examination pursuant to this section shall prepare and sign an examination report containing the findings and facts on which they are based, and shall deliver the report to the Board of Directors.

59(5) The Board of Directors shall forthwith deliver a copy of the examination report to the member who is the subject of the examination.

59(6) A report prepared and signed by a person under subsection (4) is admissible as evidence at a hearing without proof of its making or of the person's signature if the party introducing the report gives the other party a copy of the report at least ten days before the hearing.

59(7) The Board of Directors, at any time after requiring a member to submit to examinations under this section, may refer the matter of the member's alleged incapacity or incompetence to a Discipline and Fitness to Practise Committee.

59(8) A member who fails to submit to an examination under subsection (1) or (2) commits an act of professional misconduct.

SEXUAL ABUSE OF PATIENT

Definition

60(1) Sexual abuse of a patient by a member includes, but is not limited to:

(a) sexual intercourse or other forms of physical sexual relations between the member and the patient;

(b) touching, of a sexual nature or in a sexual manner, of the patient by the member; or

(c) behaviour or remarks of a sexual nature by the member towards the patient.

60(2) For the purposes of subsection (1), "sexual nature" does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.

Reporting sexual abuse

61(1) A member who, in the course of practising the profession, has reasonable grounds to believe that another health professional has sexually abused a patient or client and who fails to file a report in writing in accordance with subsection (4) with the governing body of the health professional within twenty-one days after the circumstances occur that give rise to the reasonable grounds for the belief

commits an act of professional misconduct.

61(2) A member is not required to file a report pursuant to subsection (1) if the member does not know the name of the health professional who would be the subject of the report.

61(3) If the reasonable grounds for filing a report under subsection (1) have been obtained from one of the member's patients, the member shall use his or her best efforts to advise the patient that the member is filing the report before doing so.

61(4) A report referred to in subsection (1) shall contain the following information:

- (a) the name of the member filing the report;
- (b) the name of the health professional who is the subject of the report;
- (c) the information the member has of the alleged sexual abuse; and
- (d) subject to subsection (5), if the grounds of the member filing the report are related to a particular patient or client of the health professional who is the subject of the report, the name of the patient or client.

61(5) The name of the patient or client who may have been sexually abused shall not be included in a report unless the patient or client or, if the patient or client is incapable, the patient's or client's representative, consents in writing to the inclusion of the patient's or client's name.

61(6) Section 60 applies with the necessary modifications to sexual abuse of a patient or client by another health professional.

61(7) No action or other proceeding shall be taken against a member who in good faith files a report pursuant to subsection (1).

Measures to prevent sexual abuse

62(1) The College shall undertake measures for the prevention of sexual abuse of patients by its members.

62(2) Such measures referred to in subsection (1) shall include:

- (a) education of members about sexual abuse;
- (b) guidelines for the conduct of members with patients;
- (c) providing information to the public respecting such guidelines; and
- (d) informing the public as to the complaint procedures under this Act.

62(3) Measures referred to in subsection (2) may, where appropriate, be taken jointly with other organizations or colleges of health professionals.

Board of Directors to report to Minister

63(1) The Board of Directors shall report to the Minister of Health within two years after the commencement of this section, and within thirty days at any time thereafter on the request of the Minister, respecting the measures it is taking and has taken to prevent and deal with the sexual abuse of patients by members of the College.

63(2) The Board of Directors shall report to the Minister of Health respecting all complaints received during the calendar year respecting sexual abuse of patients by members or former members of the College.

63(3) A report under subsection (2) shall be made within two months after the end of each calendar year and shall contain the following information:

- (a) the number of complaints received during the calendar year for which the report is made and the date each complaint was received;
- (b) with respect to each complaint received during the calendar year for which the report is made:
 - (i) a description of the complaint in general non-identifying terms;
 - (ii) the decision of the Board of Directors with respect to the complaint and the date of the decision;
 - (iii) if allegations are referred to the Discipline and Fitness to Practise Committee, the findings and decision of the Committee and the date of the decision; and
 - (iv) whether an appeal was made from the findings and decision of the Discipline and Fitness to Practise Committee and the date and outcome of the appeal; and
- (c) with respect to each complaint reported in a previous calendar year, a report on the status of the

complaint in accordance with subsection (b) if the proceedings initiated as a result of the complaint were not finally determined in the calendar year in which the complaint was first received.

OFFENCES

64(1) Subject to section 72 of the Act, any person not registered to practise as a Registered Massage Therapist under this Act, or whose registration is revoked or suspended, and who:

(a) practises massage therapy; (b) uses the title “registered massage therapist”, a variation or abbreviation or an equivalent in another language, or any name, title or designation which may lead to the belief that the person is a Registered Massage Therapist; or

(c) advertises in any way or by any means represents to be a Registered Massage Therapist, commits an offence punishable under Part II of the *Provincial Offences Procedure Act* as a category H offence.

64(2) Any person who procures or attempts to procure admission to the College for that person or another by making, or causing to be made, any false or fraudulent representation or declaration, either oral or written, or who makes any false statement in any application, declaration or other document under this Act or the by-laws, commits an offence punishable under Part II of the *Provincial Offences Procedure Act* as a category H offence.

65 Where an offence under this Act is committed by a corporation, including a professional corporation, every director, manager, secretary or other officer of that corporation who has assented to the commission of the offence is a party to the offence.

66 In any prosecution under this Act, it shall be sufficient proof of an offence if it is proved that the accused has done or committed a single act of unlawful practice, or has committed on one occasion any of the acts prohibited by this Act.

67 Any information alleging an offence under this Act may be laid in accordance with the *Provincial Offences Procedure Act* in the name of the College on oath or solemn affirmation of the Registrar or of a person authorized by the Board of Directors.

68(1) Where an offence under this Act continues for more than one day:

(a) the minimum fine that may be imposed is the minimum fine set by the *Provincial Offences Procedure Act* multiplied by the number of days during which the offence continues; and

(b) the maximum fine that may be imposed is the maximum fine set by the *Provincial Offences Procedure Act* multiplied by the number of days during which the offence continues.

68(2) All fines recoverable under this Act shall be paid to the College, and shall form part of its funds.

69(1) The Court may, on application by the College and on being satisfied that there is reason to believe that a person has violated or will violate this Act, or has been charged with or convicted of an offence, and it is probable that the person will in future commit or continue to commit the offence, grant an injunction restraining the person from committing or continuing to commit such acts and, pending disposition of the application seeking the injunction, the Court may grant an interim injunction.

69(2) An injunction granted under this section may be enforced in the same manner as an injunction granted to enjoin a civil wrong.

69(3) A contravention may be restrained under subsection (1) whether or not a penalty or other remedy has been provided by this Act or the by-laws made under this Act.

REINSTATEMENT

70(1) A person who has had terms, conditions and limitations imposed on his or her certificate of registration or whose certificate of registration has been suspended or revoked as a result of proceedings before a committee may apply to the Registrar in writing to have the terms, conditions and limitations removed or the suspension removed or a new certificate of registration issued.

70(2) Where a certificate of registration has been revoked, a person shall not make an application under subsection (1) earlier than one year after the revocation if the committee has not specified a period of time under subsection 40(2).

70(3) Subsequent applications to the Registrar after an initial application for the removal of terms, conditions and limitations imposed on a member's certificate of registration or for the removal of a suspension or the issuance of a new certificate of registration shall not be made earlier than six months after any previous application under this section.

71(1) Subject to subsection (2), where the Registrar receives an application under section 70, the Registrar shall refer the application to the Discipline and Fitness to Practise Committee.

71(2) Where terms, conditions and limitations have been imposed on a certificate of registration for a specified period of time and no specified criteria have been imposed or where a certificate of registration has been suspended for a specified period of time and no specified criteria have been imposed, the Registrar may remove the terms, conditions and limitations or the suspension if the specified period of time has elapsed.

71(3) A person who makes an application under section 70 shall provide the Committee with such information as the Committee may require in relation to the application.

71(4) The Committee may, with or without a hearing, with respect to a person whose application has been referred to the Committee, make an order doing one or more of the following:

- (a) directing the Registrar to remove some or all of the terms, conditions and limitations imposed on the certificate of registration;
- (b) directing the Registrar to remove the suspension;
- (c) directing the Registrar to issue a new certificate of registration to the person; or
- (d) directing the Registrar to impose specified terms, conditions and limitations on the person's certificate of registration if a direction has been given under paragraph (b) or (c).

EXCLUSIONS

72(1) Nothing in this Act applies to or prevents:

- (a) the practice of medicine under the *Medical Act*;
- (b) the carrying on of any occupation, calling or profession authorized by an Act of the Province;
- (c) the practice of nursing or the practice of a nurse practitioner by a person authorized to carry on such practice under the provisions of the *Nurses Act*;
- (d) the practice of dentistry under the *New Brunswick Dental Act, 1985*;
- (e) the practice of physiotherapy under the *Physiotherapy Act 1985*;
- (f) the practice of massage or reflexology by a member of the N.B. Podiatry Assoc. Inc., pursuant to the *Podiatrists Act*; or
- (g) the practice of chiropractic by a chiropractor under *The Chiropractors' Act, 1997*.

72(2) Nothing in this Act shall be construed so as to alter or in any way modify any provision of any of the Acts referred to in subsection (1) or require a person to become registered under this Act to

perform any of the functions referred to in subsection (1).

GENERAL

73 No action lies against members, officers or directors of the College, the Board of Directors, or any committees of the College or its employees or agents for anything done in good faith under the provisions of this Act or the by-laws or for the neglect or default in the performance or exercise in good faith of any duty or power.

74 No member shall be personally liable for any debt of the College beyond the amount of that member's unpaid dues, fees or other amounts for which a member may become liable under this Act or the by-laws.

75 No action against a member of the College for negligence or malpractice in the practice of massage therapy shall be commenced except within:

- (a) two years from the day the person commencing the action knew or ought to have known the facts upon which the person alleges negligence or malpractice; or
- (b) where the person entitled to bring an action is, at the time where the cause of action arises, a minor, a mental incompetent, or a person of unsound mind, two years from the date when such person becomes of full age, or of sound mind or as the case may be, whichever is longer.

76(1) All persons who are active members in good standing of the Association of New Brunswick Massage Therapists Inc. and the N.B. Massotherapy Association Inc. on the day this Act comes into force shall continue as members of the College under this Act.

76(2) All disciplinary proceedings in progress on the day this Act comes into force, shall be continued and disposed of by the Association of New Brunswick Massage Therapists Inc. and/or the N.B. Massotherapy Association Inc.

76(3) All complaints and investigations concerning matters of discipline, incompetence or incapacity received after this Act comes into force shall be dealt with under this Act notwithstanding when the subject matter of the complaint arose.

FORM 1

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

JUDGMENT

A Discipline and Fitness to Practise Committee having on the day of , 20 , ordered that pay all or part of the costs of the College of Massage Therapists of New Brunswick on a hearing before the Committee; and

The costs including disbursements of the College of Massage Therapists of New Brunswick having been taxed by the Registrar of The Court of Queen's Bench of New Brunswick on the day of , 20 ;

It is this day adjudged that the College of Massage Therapists of New Brunswick recover from the sum of \$.

DATED this day of , 20 .

Registrar Court of Queen's Bench of New Brunswick