

The purpose of this regulation is to define the composition, duties and procedures of the Complaints Committee and the Discipline and Fitness to Practice Committees.

## **COMPLAINTS AND DISCIPLINE**

- 1) The Board shall establish the following committees:
  - a) Complaints and Fitness to Practice Committee; and
  - b) Discipline and Fitness to Practice Committee.
- 2) The Board shall appoint one of the members of each committee to be the chairperson of that Committee.
- 3) The Complaints Committee shall have not less than three members, of which one of the members must be a lay representative. All other members of the Complaints Committee shall be Massage Therapists but shall not be a member of the Board or a member of the Discipline and Fitness to Practice Committee as herein established. The Board shall notify the Minister in writing as to the names of individuals appointed under this section.
- 4) Whereas the Registrar receives a complaint in writing and signed by the complainant regarding the conduct or actions of a Member, the Registrar or the Board shall refer the complaint to the Complaints Committee for investigation if the conduct or actions complained of would constitute professional misconduct, incompetence or incapacity.
- 5) In the absence of a complaint, where the Registrar (Board) has reason to believe that a member has committed unprofessional conduct, professional misconduct, conduct unbecoming a Member, incompetence, dishonesty or has demonstrated incapacity or unfitness to practice Massage Therapy, the Registrar or the Board may request the Complaints Committee to investigate the conduct of such Member.
- 6) Upon a complaint being referred to the Complaints Committee, the Complaints Committee shall, within thirty days, cause particulars of the complaint to be forwarded by registered mail to the Member against whom the complaint is made. The complaints Committee shall then investigate the complaint.
- 7) The Member against whom the complaint has been made shall have 15 days from the date from which notice was forwarded to the Member pursuant to section 6) to submit in writing to the Complaints Committee any explanation or representations the Member may wish to make concerning the complaint.
- 8) The Complaints Committee shall consider only written evidence or written submissions.
- 9) The Complaints Committee, in accordance with the information it receives may:

- a) invite the parties to meet to endeavour to affect an informal settlement of the matter complained of, where the complaint is considered by the Complaints Committee to be of a minor nature and affects primarily the relationship between the complainant and the Member complained against rather than the public interest.
  - b) direct the matter be referred, in whole or in part, to the Discipline and Fitness to Practice Committee; or
  - c) dismiss the complaint.
- 10) The Complaints Committee shall give its decision made under section 8 and the reasons therefore in writing to the Registrar for the purposes of section 11.
- 11) Where the Complaints Committee has disposed of a complaint in accordance with section 9), the Registrar shall forward to the Member and to the complainant by registered mail, a copy of the written decision made by the Complaints Committee and the reasons therefore.
- 12) The Complaints Committee shall conduct the proceedings in accordance with its Rules of Procedure and may provide for the investigation of any complaint and in no case is the Complaints Committee bound by technical Rules of Evidence or procedure applicable in judicial proceedings. However, the principles of natural justice will apply to any proceeding.
- 13) Three members of the Complaints Committee shall constitute a quorum.
- 14) The Discipline and Fitness to Practice Committee shall:
- a) have not less than three members, one of whom shall be a lay person appointed by the Lieutenant-Governor in Council and the others shall be Massage Therapists who do not hold office on the Board or are members of the Complaints Committee;
  - b) when so directed by the Complaints Committee, hold a hearing with respect to any allegation or complaint made against a Member.
- 15) Three members of the Discipline and Fitness to Practice Committee shall constitute a quorum.

## **PROFESSIONAL MISCONDUCT**

- 16) The Discipline and Fitness to Practice Committee may find that a Member has committed an act of professional misconduct, without limiting the generality of the term, where:
- a) the Member has pleaded guilty to or been found guilty of an offence that, in the opinion of the committee, is relevant to the Member's suitability to practice;

- 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 committee, constitute professional misconduct under this Act or the regulations;
- 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 the regulations.
- e) the Member has violated or failed to comply with this Act or the regulations;
- 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 Discipline and Fitness to Practice Committee under section 29(f);
- h) the Member has sexually abused a patient;
- i) the member has failed to file a report pursuant to section 31(3);
- j) the Member has been found guilty of an offence relevant to suitability to practice or carry out professional responsibilities upon proof of such conviction; or
- k) the Member has been found guilty, in the opinion of the Discipline and Fitness to Practice Committee, of a serious digression from recognized professional standards or Rules of Practice of the profession for any reason, including but not limited to incompetence, physical or mental incapacity, negligence, mistake or inadvertence.

## **SEXUAL ABUSE OF PATIENT**

17) 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; or
- b) touching, behaviour, or remarks towards the patient.

18) For the purpose of section 1), "sexual nature" does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.

- 19) A Member who, in the course of practicing 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 (6) 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.
- 20) A Member is not required to file a report pursuant to section 21) if the Member does not know the name of the Health Professional who would be the subject of the report.
- 21) If the reasonable grounds for filing a report under section 21) 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.
- 22) A report referred to in section 21) 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 the section 22), 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.
- 23) The name of a 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.
- 24) Sections 16) and 17) apply with the necessary modifications to sexual abuse of a patient or client by another Health professional.
- 25) No action or other proceeding shall be taken against a Member who in good faith files a report pursuant to section 18).
- 26) Where the Discipline and Fitness to Practice Committee finds a member guilty of one or more of the offences listed in section 15), the Discipline and Fitness to Practice Committee shall hear the parties with respect to the penalty and shall serve the written decision on the parties within thirty days of the close of the hearing.

27) Where the facts alleged against a Member are of such a nature that their continuance or repetition would tend to compromise seriously the protection of the public, the Discipline and Fitness to Practice Committee may make an order imposing provisional suspension of the Member subject to the final disposition to be given within 30 days of a hearing by the Discipline and Fitness to Practice Committee.

28) The Discipline and Fitness to Practice Committee may order any one of the following penalties, or any combination thereof, on a member found guilty of one of the offences listed in section 15), or found to be incapacitated or incompetent:

- a) revoke the license of the Member;
- b) suspend the license of the Member for a stated period;
- c) impose such restrictions on the license of the Member for such period and subject to such conditions as the Discipline and Fitness to Practice Committee designates, including conditions of engaging in professional activities or practicing only under supervision, not engaging in sole practice, requiring periodic inspections by the Discipline and Fitness to Practice Committee or its delegate or reporting to the Discipline and Fitness to Practice Committee about specified matters;
- d) admonish or reprimand the Member;
- e) impose a fine to a maximum of \$5,000.00 to be paid by the Member for payment into the funds of the association and such fine may be recovered by the Association by civil action for debts;
- f) require the Member to undertake to limit professional activities in lieu of suspension;
- g) order the Member to undergo counselling;
- h) order publication of the Member's name incidental to any of the foregoing orders in some daily or weekly newspaper having general circulation in the county within which the Member is practicing;
- i) direct the imposition of a penalty be suspended or postponed for such period and upon such terms as the Discipline and Fitness to Practice Committee designates;
- j) order the Member to pay the costs of the Association relating to the hearing; or require the Member to waive, reduce or repay a fee for services provided by the Member that, in the opinion of the Discipline and Fitness to Practice Committee, were not provided or were improperly provided.
- k) make such other or ancillary orders as the Discipline and Fitness to Practice Committee considers appropriate or just.

- 29) Notwithstanding any other provision in the Act, if at any time a Member admits in writing any allegations in a complaint alleging a matter set out in section 30, and the Member waives in writing the right to any or further hearing or proceedings pursuant to this part, the Discipline and Fitness to Practice Committee may agree to cancel all hearings or proceedings and may:
- a) agree to accept the revocation of the membership on such terms and conditions as the Discipline and Fitness to Practice Committee may specify; or
  - b) make any order, finding or decision that may be made pursuant to subsection (12)
- 30) A Member whose license has been revoked or suspended, shall forthwith return the license to the Registrar.
- 31) The decision of the Discipline and Fitness to Practice Committee shall be recorded in writing and signed by the members of the Discipline and Fitness to Practice Committee who conducted the hearing and it shall contain the findings and conclusions made on the hearing, the penalty, and the reasons for the decision.
- 32) The Discipline and Fitness to Practice Committee shall forward to the Registrar the written decision of the Discipline and Fitness to Practice Committee, and the record of the hearing and all the documents and other things put into evidence.
- 33) Where the Discipline and Fitness to Practice Committee has disposed of a complaint in accordance with this section, the Registrar shall forward to the Member and to the complainant by registered mail, a copy of the written decision made by the Discipline and Fitness to Practice Committee and the reasons therefore.
- 34) Where the Discipline and Fitness to Practice Committee suspends, revokes or restricts the license on any grounds, including incompetence, the decision shall take effect immediately notwithstanding that an Appeal has been taken from the decision.
- 35) Where a proceeding is commenced before the Discipline and Fitness to Practice Committee and the term of office of a member of the Discipline and Fitness to Practice Committee expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall continue to be a member of the Discipline and Fitness to Practice Committee for the purpose of completing the disposition of the proceeding in the same manner as if the term of office had not expired or terminated.

- 36) In all proceedings before the Complaints Committee, the Discipline and Fitness to Practice Committee, the Board and the Court of Queen's Bench, the complainant, the Association and the Member whose conduct is being complained of in the proceeding are parties to the proceeding.
- 37) A solicitor may represent any party to a hearing.
- 38) At least 10 days before the hearing, a Member shall be afforded an opportunity to examine any written or documentary evidence that will be produced, or any report, the contents of which will be given in evidence at the hearing, and be provided the identity of any witness on request.
- 39) At least 10 days before the hearing, the Member against whom the allegations have been made shall give the Association 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.
- 40) The Discipline and Fitness to Practice Committee may, in its discretion, allow the introduction of evidence that has not been disclosed under subsection [2 preceding] and may make such directions it considers necessary to ensure that the Member or the Association is not prejudiced, as the case may be.
- 41) The members of the Discipline and Fitness to Practice Committee who shall participate in the hearing under this Act shall not have taken part before the hearing in any investigation of the subject matter of the hearing other than at a previous hearing of the Discipline and Fitness to Practice Committee, nor shall the members communicate, directly or indirectly in relation to the subject matter of the hearing, with any party or representative, except upon notice to all parties providing to them an opportunity for them to participate.
- 42) The Discipline and Fitness to Practice Committee may seek legal advice from an advisor independent of the parties, and in such case the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.
- 43) The oral evidence taken before the Discipline and Fitness to Practice Committee at the hearing shall be taken under oath or solemn affirmation and recorded and, if so required, copies or a transcript thereof shall be furnished to the parties at their own costs.
- 44) Notice of the time and place of the hearing before the Discipline and Fitness to Practice Committee shall be served on the complainant and the Member whose conduct is being complained of in the proceedings not less than 14 days before the date fixed for the hearing by the Discipline and Fitness to Practice Committee.
- 45) The notice to the Member against whom the allegations have been made shall describe the subject matter of the hearing and advise the Member that the committee may proceed with the hearing in his or her absence.

- 46) The committee may at any time permit notice of hearing of allegations against a Member to be amended to correct errors or omissions of 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.
- 47) The Discipline and Fitness to Practice Committee shall conduct all hearings in camera, but if the Member whose conduct is being investigated requests otherwise by a notice delivered to the Registrar at least five days before the date fixed for the hearing, the Discipline and Fitness to Practice Committee shall conduct the hearing in public except, where:
  - a) matters involving public security may be disclosed; or
  - b) the possible disclosure of intimate, financial or personal matters, outweighs the desirability of holding the hearing in public.
- 48) The Discipline and Fitness to Practice Committee, on proof of service of the notice of hearing on the Member against whom allegations are made, may proceed with the hearing in the absence of the Member, and without further notice to the Member, take any action that is authorized to be taken under this Act or the regulations.
- 49) If any other matter concerning the Member against whom allegations have been made arises during the course of the hearing, the Discipline and Fitness to Practice 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.
- 50) The complainant, if any, may attend the hearing in its entirety and may make a written or oral submission to the Committee before the calling of evidence and after the completion of evidence.
- 51) Notwithstanding subsection [preceding], 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, a committee may exclude a complainant from the portion of the hearing that receives the testimony of the witness.
- 52) In subsection [preceding], "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
- 53) No member of the Discipline and Fitness to Practice Committee shall participate in a decision of the Discipline and Fitness to Practice Committee pursuant to a hearing unless he or she was present throughout the hearing and heard the evidence and arguments of the parties.
- 54) The parties or the complainant, if any, may, upon request and at their expense, examine the record of the hearing or any part of the record and the documents and other things put into evidence.

- 55) Documents and other things put in evidence at a hearing of the Discipline and Fitness to Practice Committee shall upon request of the person who produced them, be released to the person by the Discipline and Fitness to Practice Committee upon the conclusion of the time limited for appealing from the decision or order of the Committee without an appeal being taken or, if taken, the appeal has been disposed or abandoned.
- 56) Any member of the Discipline and Fitness to Practice Committee may administer oaths and affirmations for the purposes of any of its proceedings. For the purposes of a hearing, the members of a committee are conferred with the powers of a commissioner of oaths under the Commissioners for Taking Affidavits Act.
- 57) Each party to the hearing has the right to cross-examine witnesses and call evidence.
- 58) The Discipline and Fitness to Practice Committee shall conduct its proceedings in accordance with its Rules of Procedure and may do all things necessary to provide for the investigation of any complaint and in no case is the Discipline and Fitness to Practice Committee bound by technical Rules of Evidence or Procedure applicable in judicial proceedings. OR:
- Subject to this Part, the Discipline and Fitness to Practice Committee may determine its rules of procedure.
- A committee is not bound by the rules of evidence which apply to judicial proceedings.
- The Discipline and Fitness to Practice Committee may adjourn the hearing from time to time.
- No member of the Discipline and Fitness to Practice Committee shall communicate outside the hearing, in relation to the subject matter of the hearing, with a party or the party's representative unless every other party has been given notice of the subject matter of the communication and an opportunity to be present during the communication.
- 59) Upon the application of any party to a hearing before the
- 60) Discipline and Fitness to Practice Committee and upon any payment of any fees prescribed, the chairman of the Discipline and Fitness to Practice Committee may summon in prescribed form for the purpose of procuring and compelling the attendance and evidence of witnesses and the production of things relating to matters in question before the Discipline and Fitness to Practice Committee or the Board.
- The Discipline and Fitness to Practice Committee or the Registrar may order a person to attend a hearing to give evidence and to produce records, documents and other things in the possession of or under the control of the person.



The Discipline and Fitness to Practice Committee or the Registrar shall order a person referred to in subsection [preceding] by issuing a notice requiring the person's attendance, stating the date and time of such attendance and requiring the production of the records, documents or other things in the person's possession or under the person's control.

A person, other than the Member whose conduct is the subject of the hearing, who is served with a notice under this section shall be tendered the same fees as are payable to witness in an action in The Court of Queen's Bench of New Brunswick at the time the notice is served.

On application by the Discipline and Fitness to Practice Committee to The Court of Queen's Bench of New Brunswick, a person who fails to attend or to produce records, documents or other things as required by an order of the Discipline and Fitness to Practice Committee or Registrar, or who refuses to be sworn or affirmed as a witness or to answer any question the Discipline and Fitness to Practice Committee directs that person to answer, may be found liable for contempt as if the person were in breach of an order or judgment of The Court of Queen's Bench of New Brunswick.

If the person referred to in subsection [preceding] is a Member, the failure or refusal may be held by the Discipline and Fitness to Practice Committee to be professional misconduct.

Where a Member fails to pay a fine or costs imposed under this Part within the time ordered, the

Registrar may, without notice to the Member, suspend the certificate of registration of the Member until the fine or costs are paid and shall serve the Member with notice of the suspension.

The Discipline and Fitness to Practice Committee, if it is satisfied that a Member has violated or failed to comply with an order of a committee, may without notice to the Member, revoke or suspend the Member's certificate of registration.