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S.M. 2009, c. 15
Bill 18, 3rd Session, 39th Legislature

The Regulated Health Professions Act

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(Assented to June 11, 2009)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

PART 1 INTERPRETATION

Definitions

1(1) The following definitions apply in this Act, except in Parts 14, 15 and 17.

"**advisory council**" means the Health Professions Advisory Council established under subsection 145(1). (« conseil consultatif »)

"**Agreement on Internal Trade**" means the Agreement on Internal Trade, signed in 1994 by the governments of Canada, the provinces, Yukon and the Northwest Territories. (« Accord sur le commerce intérieur »)

"**board of assessors**" means the board of assessors established by a council for the purpose of clause 31(b). (« commission d'évaluation »)

"**by-laws**" means the by-laws made by a council under section 222. (« règlements administratifs »)

"**code of ethics**" means the code of ethics adopted by a council in accordance with section 83. (« code de déontologie »)

"**college**" means the college of a regulated health profession that is continued or established by a regulation under clause 8(b). (« ordre » ou « ordre professionnel »)

"**committee**" means a committee established by a council by or under section 22. (« comité »)

"**council**" means the council of a college established by subsection 12(1). (« conseil »)

"**court**" means the Court of Queen's Bench. (« tribunal »)

"**health care**" means any care, service or procedure

(a) provided to diagnose, treat or maintain an individual's health;

(b) provided to prevent disease or injury or promote health; or

(c) that affects the structure or a function of the body;

and includes the sale or dispensing of a drug, vaccine, appliance, device, equipment or other item pursuant to a prescription. (« soins de santé »)

"health profession" means a profession in which a person exercises skill or judgment in providing health care. (« profession de la santé »)

"health profession corporation" means a corporation holding a valid permit issued under subsection 60(1). (« société professionnelle de la santé »)

"member" means a regulated member and a regulated associate member, except where otherwise stated or when referring to a member of a council, board or committee or the advisory council. (« membre »)

"minister" means the minister appointed by the Lieutenant Governor in Council to administer this Act. (« ministre »)

"practice directions" means the practice directions issued by a council under section 85. (« directives professionnelles »)

"public representative" means, except in Part 8 (Professional Conduct),

(a) in respect of a particular regulated health profession (other than the profession of pharmacy), a person who has never practised the particular regulated health profession and who has not practised any other regulated health profession within the previous five years;

(b) in respect of the profession of pharmacy, a person who has never practised pharmacy nor been a pharmacy owner and who has not practised any other regulated health profession within the previous five years;

and who is appointed under subsection 13(2) or 13(3) as a public representative. (« représentant du public »)

"regional health authority" means a regional health authority established or continued under *The Regional Health Authorities Act*. (« office régional de la santé »)

"register" means a register established by a council under section 26. (« registre »)

"registrar" means an individual appointed under section 23 as the registrar for a college. (« registraire »)

"regulated associate member" means, in respect of a regulated health profession, an individual whose name is entered on the register of regulated associate members. (« membre associé habilité »)

"regulated health profession" means a health profession designated as a regulated health profession by a regulation under clause 8(a). (« profession de la santé réglementée »)

"regulated member" means, in respect of a regulated health profession, an individual whose name is entered on the register of regulated members. (« membre habilité »)

"reserved act" means a reserved act referred to in section 4. (« acte réservé »)

"standards of practice" means the standards of practice established by a council under subsection 82(1). (« normes d'exercice de la profession »)

Included references

1(2). In this Act,

(a) a reference to **"conditions"** includes restrictions and limitations;

(b) a reference to the **"registrar"** includes a deputy registrar and an assistant registrar if the council has appointed them under section 23; and

(c) a reference to **"this Act"** includes the regulations under this Act.

Conditions

1(3). In this Act, the ability to attach conditions to a registration, certificate, permit, licence, authorization or any other approval includes the ability to vary or remove those conditions.

Reference to "practising" members

1(4) A reference in this Act, the regulations or by-laws or in another enactment of Manitoba to a "practising" member of a regulated health profession means a member in good standing of the college of that profession who holds a valid certificate of practice issued by that college under this Act.

PART 2 RESERVED ACTS

INTERPRETATION

Purpose

2 The purpose of this Part is to describe

- (a) acts, done in the course of providing health care, that are to be limited to certain regulated health professions and members of those professions who are qualified and competent to do them; and
- (b) the circumstances in which a person may or may not perform those acts.

Definitions

3 The following definitions apply in this Part and the regulations.

"compound" means

- (a) in respect of a drug or vaccine, to mix ingredients, at least one of which is a drug or vaccine, but does not include reconstituting a drug or vaccine with only water;
- (b) in respect of a therapeutic diet, to mix two or more ingredients of the therapeutic diet. (« préparer »)

"contact lens" includes a lens or mold designed for use in orthokeratology or corneal refractive therapy. (« lentille de contact »)

"dental appliance" means an appliance or device that is designed for a dental condition or another condition of the oro-facial complex, but does not include a ready-to-use or self-adapted mouthguard designed for protection against injury during sporting activities. (« appareil orthodontique »)

"diagnosis" means the identification of a disease, disorder, injury or condition through scientific knowledge and skillful methodology. (« diagnostic »)

"dispense" means

- (a) in respect of a dental appliance, to fabricate or alter it;
- (b) in respect of a drug or vaccine, to provide it pursuant to a prescription, but does not include administering it;
- (c) in respect of a vision appliance, to design, supply, prepare, adjust or verify it;
- (d) in respect of a wearable hearing instrument, to select, prepare, alter, sell or offer to sell it. (« fournir »)

"drug" means a substance or mixture of substances prescribed by regulation. (« médicament »)

"enteral instillation" means instillation directly into the gastrointestinal tract. (« instillation entérale »)

"fit" means

- (a) in respect of a contact lens,
 - (i) to select or recommend the design and type of lens required, or
 - (ii) to perform any tests related to assessing physiological safety or suitability;
- (b) in respect of a dental appliance, to perform any intra-oral procedure, including the making of impressions, related to dispensing;
- (c) in respect of a wearable hearing instrument, to adapt or verify, using sound field testing or real ear measurements. (« ajuster »)

"parenteral instillation" means instillation directly into the bloodstream. (« instillation parentérale »)

"prescribe" means to issue a prescription for a dental appliance, drug, vaccine, vision appliance or wearable hearing instrument. (« prescrire »)

"prescription" means

- (a) in respect of a dental appliance, vision appliance or wearable hearing instrument, to issue an authorization to dispense the appliance or instrument for use by the individual named in the authorization;
- (b) in respect of a drug or vaccine, a direction to dispense a stated amount of a drug or vaccine specified in the direction for the individual named in the direction. (« ordonnance »)

"substance" includes air and water, but does not include a drug or vaccine. (« substance »)

"verify" means, in respect of a vision appliance, to verify objectively to the prescription. (« vérifier »)

"vision appliance" means an appliance or device that is designed for a vision condition, including corrective eyeglasses that are made for use by a named individual, a contact lens and a low vision aid, but does not include complete ready-to-wear corrective eyeglasses that are not made for use by a named individual. (« appareil de correction de la vue »)

"wearable hearing instrument" means an appliance or device wearable on the head or body and designed for a hearing condition, including any ear molds or parts or accessories for the appliance or device, except batteries or cords. (« appareil auditif portable »)

WHAT IS A RESERVED ACT?

List of reserved acts

- 4** A "reserved act" is any of the following acts done with respect to an individual in the course of providing health care:
1. Making a diagnosis and communicating it to an individual or his or her personal representative in circumstances in which it is reasonably foreseeable that the individual or representative will rely on the diagnosis to make a decision about the individual's health care.
 2. Ordering or receiving reports of screening or diagnostic tests.
 3. Performing a procedure on tissue
 - (a) below the dermis;
 - (b) below the surface of a mucous membrane;
 - (c) on or below the surface of the cornea; or
 - (d) on or below the surface of a tooth or dental implant, including the scaling of a tooth or dental implant.
 4. Inserting or removing an instrument or a device, hand or finger
 - (a) into the external ear canal;
 - (b) beyond the point in the nasal passages where they normally narrow;
 - (c) beyond the pharynx;
 - (d) beyond the opening of the urethra;
 - (e) beyond the labia majora;
 - (f) beyond the anal verge; or
 - (g) into an artificial opening in the body.
 5. Administering a substance
 - (a) by injection;
 - (b) by inhalation;
 - (c) by mechanical ventilation;
 - (d) by irrigation;

- (e) by enteral instillation or parenteral instillation;
 - (f) by transfusion; or
 - (g) using a hyperbaric chamber.
6. Prescribing a drug or vaccine.
7. Compounding a drug or vaccine.
8. Dispensing or selling a drug or vaccine.
9. Administering a drug or vaccine by any method.
- 10 Applying or ordering the application of
- (a) ultrasound for diagnostic or imaging purposes, including any application of ultrasound to a fetus;
 - (b) electricity for
 - (i) aversive conditioning,
 - (ii) cardiac pacemaker therapy,
 - (iii) cardioversion,
 - (iv) defibrillation,
 - (v) electrocoagulation,
 - (vi) electroconvulsive shock therapy,
 - (vii) electromyography,
 - (viii) fulguration,
 - (ix) nerve conduction studies, or
 - (x) transcutaneous cardiac pacing;
 - (c) electromagnetism for magnetic resonance imaging;
 - (d) other non-ionizing radiation for the purpose of cutting or destroying tissue or medical imagery;
 - (e) X-rays or other ionizing radiation for diagnostic, imaging or therapeutic purposes, including computerized axial tomography, positron emission tomography and radiation therapy;
 - (f) any other use of a form of energy listed in clauses (a) to (e), if the use is specified by regulation; or
 - (g) any other form of energy that is specified by regulation.
11. In relation to a therapeutic diet that is administered by enteral instillation or parenteral instillation,
- (a) selecting ingredients for the diet; or
 - (b) compounding or administering the diet.
- 12 Setting or casting a fracture of a bone or a dislocation of a joint.
- 13 Putting into the external ear canal, up to the eardrum, a substance that
- (a) is under pressure; or
 - (b) subsequently solidifies.
- 14 Managing labour or the delivery of a baby.
- 15 Administering a high velocity, low amplitude thrust to move a joint of the spine within its anatomical range of motion.
- 16 Prescribing, dispensing or fitting a wearable hearing instrument.
- 17 Prescribing, dispensing or verifying a vision appliance.
- 18 Fitting a contact lens.
- 19 Prescribing, dispensing or fitting a dental appliance.

20 Performing a psycho-social intervention with an expectation of modifying a substantial disorder of thought, mood, perception, orientation or memory that grossly impairs judgment, behaviour, the capacity to recognize reality, or the ability to meet the ordinary demands of life.

21 In relation to allergies,

- (a) performing challenge testing by any method; or
- (b) performing desensitizing treatment by any method.

WHO MAY PERFORM A RESERVED ACT?

Performance of reserved acts restricted

5(1) No person shall perform a reserved act in the course of providing health care unless

- (a) the person is a member of a regulated health profession, and is authorized by regulation to perform the reserved act;
- (b) the performance of the reserved act has been delegated to the person by a member described in clause (a) in accordance with section 6;
- (c) the person performing it
 - (i) has the consent of, and is being supervised by, a member described in clause (a), in accordance with the regulations made by the member's college, and
 - (ii) is authorized to perform the reserved act by a regulation made by the member's college under this Act;
- (d) the person is authorized to perform it by or under another enactment; or
- (e) the person is authorized to perform it by an order under section 7 (public health emergency).

Person or class of persons may be exempted

5(2) An act by a person is not a contravention of subsection (1) if

- (a) the person is exempted by regulation; or
- (b) the person is a member of a class of persons exempted by regulation.

Activities may be exempted

5(3) An act by a person is not a contravention of subsection (1) if it is done in the course of

- (a) doing an activity or class of activities exempted by regulation;
- (b) rendering first aid or temporary assistance in an emergency;
- (c) fulfilling the requirements to become a member of a regulated health profession and the act is within the scope of practice of the profession, and done under the supervision or direction of a member of the profession who is authorized to perform the reserved act;
- (d) treating a person by prayer or spiritual means through the provision of pastoral or spiritual care, including in an interfaith context;
- (e) counselling a person about emotional, social, educational or spiritual matters;
- (f) treating an aboriginal person or member of an aboriginal community in accordance with traditional healing services that are provided by an aboriginal healer;
- (g) treating a member of his or her own household, and the act is a reserved act set out in section 4, Item 1, 2, 4, 5, 9 or 11; or
- (h) assisting a person with his or her routine activities of living, and the act is a reserved act set out in section 4, Item 4, 5, 9 or 11.

Supervision

5(4) No person shall

- (a) supervise or control another person performing a reserved act; or
- (b) purport to consent to supervise or control another person performing a reserved act;

unless the supervisor is authorized under clause (1)(a) to perform the reserved act.

Requiring another person to perform a reserved act

5(5) No person shall require another person to perform a reserved act if that other person is not authorized in accordance with subsection (1) to perform it.

DELEGATION OF A RESERVED ACT

Delegation of a reserved act

6(1) For the purpose of clause 5(1)(b), a member may delegate a reserved act to

- (a) another member of the same regulated health profession;
- (b) a member of a different regulated health profession; or
- (c) any other person providing health care who is competent to perform that reserved act;

but only in accordance with the regulations respecting the delegation of that reserved act made by the council of the delegating member's college.

Council must make regulations

6(2) If a council wishes to permit a member to delegate a reserved act, the council must make regulations respecting the delegation of that act.

Performance of a delegated reserved act

6(3) A member of a regulated health profession may perform a delegated reserved act only in accordance with the delegation authorized under subsection (1) and the regulations respecting the delegation of that reserved act made by the council of that member's college.

PUBLIC HEALTH EMERGENCY

Public health emergency

7(1) If the minister reasonably believes that a serious and immediate threat to public health exists or may exist in all or part of the province, the minister may, by order, authorize a person or class of persons to perform one or more reserved acts in the course of providing health care to prevent, eliminate, remedy, reduce or otherwise deal with the threat. The authorization may be made subject to conditions.

Regulations Act does not apply

7(2) *The Regulations Act* does not apply to an order made under subsection (1).

PART 3 GOVERNANCE

DESIGNATION

Designating regulated health professions, establishing colleges

8 The Lieutenant Governor in Council may make regulations

- (a) designating a health profession as a regulated health profession for the purposes of this Act, and prescribing its scope of practice;
- (b) establishing a college — or continuing an existing association or college — as the college for one or more regulated health professions, and prescribing its name;
- (c) respecting any other matter necessary or advisable for establishing or continuing a college referred to in clause (b).

COLLEGE

College is a corporation

9(1) A college established or continued under clause 8(b) is a corporation.

Powers and capacity

9(2) In carrying out its mandate and duties, a college has all the powers and capacity of a natural person.

Corporations Act does not apply

9(3) *The Corporations Act* does not apply to a college.

Duty to serve the public interest

10(1) A college must carry out its mandate, duties and powers and govern its members in a manner that serves and protects the public interest.

Mandate of college

10(2) A college has the following mandate:

- (a) to regulate the practice of the health profession and govern its members in accordance with this Act and the regulations and by-laws;
- (b) to develop, establish and maintain standards of academic or technical achievement and qualification required for registration as a member and monitor compliance with and enforce those standards;
- (c) to develop, establish and maintain standards of practice to enhance the quality of practice by members and monitor compliance with and enforce those standards;
- (d) to develop, establish and maintain a continuing competency program for members to promote high standards of knowledge and skill;
- (e) to promote the ability of members to respond to changes in practice environments, advances in technology and other emerging issues;
- (f) to work in consultation with the minister towards achieving access for the people of Manitoba to adequate numbers of qualified and competent members of the regulated health profession;
- (g) to develop, establish and maintain programs that provide information about the health profession, and that assist persons in exercising their rights under this Act and the regulations, by-laws and code of ethics;
- (h) to promote and enhance the college's relations with its members, other colleges, key stakeholders and the public;
- (i) to promote inter-professional collaboration with other colleges;
- (j) to administer the college's affairs and perform its duties and carry out its powers in accordance with this Act and the regulations and by-laws.

College must not set professional fees

10(3) A college must not set professional fees, provide guidelines for professional fees or negotiate professional fees on behalf of any or all of its members.

Membership

11 The membership of a college consists of the individuals whose names are on a register of the college and who have paid the fees provided for in the by-laws.

COUNCIL

Council

12(1) For each college established or continued under clause 8(b), a governing body called the council is hereby established.

Council to manage affairs

12(2) A council must

- (a) manage and conduct the business and affairs of the college; and
- (b) exercise and carry out the college's mandate, duties and powers in the college's name and on the college's behalf.

Composition of council

13(1) A council is to consist of at least six persons who are either members of the college or public representatives.

Public representatives appointed by minister

13(2) At least 1/3 of the council members must be public representatives appointed to the council by the minister.

Public representatives appointed by council

13(3) Despite subsection (2), the minister may permit a council to appoint one or more of the public representatives.

Additional council members

13(4) In addition to the persons referred to in subsection (1), the minister may appoint certain specified persons to a college's council if

- (a) the college requests the appointment; or
- (b) the minister considers the appointment to be in the public interest and has consulted with the college.

By-laws for election and appointment of council members

13(5) Except for the persons appointed under subsection (2) or (4), the council members must be elected or appointed in accordance with the college's by-laws.

Term of office

14(1) The term of a council member who is elected or appointed must not exceed four years.

Multiple terms

14(2) A person may be a council member for more than one term. But a person must not be a member for more than twelve consecutive years.

Continuing to hold office

14(3) Despite subsections (1) and (2), a council member continues to hold office after his or her term expires until the member is re-elected or re-appointed or a successor is elected or appointed.

Quorum

15 A majority of the council members, at least one of whom must be a public representative, constitutes a quorum.

Vacancy

16 A council may act despite a vacancy in its membership, as long as there is a quorum.

Council committees

17(1) A council may authorize a committee of the council to exercise and carry out any of the powers or duties imposed on the council by this Act, except the power to make regulations or by-laws, establish standards of practice, adopt a code of ethics, or issue practice directions. The authorization may be subject to conditions.

Public representatives

17(2) At least 1/3 of the members of a committee referred to in subsection (1) must be public representatives.

Remuneration

18 Council members are to be paid the remuneration and expenses that the council may determine by by-law.

Officers

19 The officers of the college must be elected or appointed in the manner and for the term specified in the by-laws.

Oath of office

20(1) A person elected or appointed to be a council member must take and sign, by oath or solemn affirmation, an oath of office prescribed by regulation.

Effect of failure to take oath

20(2) The person cannot act as a council member or attend any council meetings unless and until he or she takes and signs the oath of office.

Who may administer the oath

20(3) The oath of office must be taken and signed before a commissioner of oaths or the registrar.

Copy of oath to registrar

20(4) If the council member takes and signs the oath of office before a commissioner of oaths, the member must provide a copy of the oath to the registrar.

Breach of oath

20(5) If the council is satisfied that a council member has breached the oath of office, the council may

- (a) in the case of an elected council member or a public representative appointed by the council, reprimand, suspend or remove the member from the council by a resolution passed by at least 2/3 of the council members voting on the resolution;
- (b) in the case of a council member appointed by the minister, notify the minister about the breach.

Effect of suspension or removal

20(6) A council member who is suspended must not act as a council member until the suspension is lifted. A council member who is removed from the council ceases to be a council member.

Public representative for only one profession

21 A person may only serve as a public representative on the council of one college at any one time.

COMMITTEES AND REGISTRAR

Committees

22(1) A council

- (a) must establish a complaints investigation committee and an inquiry committee; and
- (b) may establish any other committees that it considers necessary.

Appointments committee re public representatives

22(2) If the minister permits a council to appoint public representatives under subsection 13(3), the council must establish an appointments committee for the purpose of recruiting and selecting public representatives to serve on the council.

Additional committees

22(3) The Lieutenant Governor in Council may make regulations

- (a) specifying additional committees, including interprofessional committees, to be established by a council and their composition and mandate;
- (b) establishing interprofessional committees and specifying their composition and mandate.

Registrar and staff

23 A council must appoint a registrar and may appoint a deputy registrar, an assistant registrar and any other officers, investigators, practice auditors or staff that it considers necessary to carry out the work of the college.

Officials directory

24(1) A council must establish and keep up to date a directory that contains the names of and the contact information for

- (a) the council;
- (b) the officers and members of the council;
- (c) the registrar; and
- (d) any committees of the college and their members.

Directory information public

24(2) The information under subsection (1) must

- (a) be made available to the public during normal business hours; and
- (b) upon request, be provided to the minister.

MEETINGS**Annual general meeting**

25(1) A college must hold a general meeting of the membership of the college at least once each year.

Special meeting

25(2) A college must hold a special meeting of its membership when the council considers it advisable.

Special meeting on written request

25(3) Upon receiving a written request signed by at least 5%, or another percentage prescribed by regulation, of the regulated members of the college entitled to vote, the council must hold a special meeting of its membership for the purpose specified in the request.

Notice of meetings

25(4) Notice of the time and place of each meeting referred to in this section must be given to the membership in accordance with the by-laws.

Public meetings

25(5) A council

- (a) must permit members of the public to attend meetings of the college and the council, except where it considers that a private meeting is necessary to consider matters of a confidential nature or of a personal nature concerning an individual; and
- (b) may hold public meetings, at the council's discretion, to explain the role of the college and to invite public comment.

PART 4**REGISTRATION AND CERTIFICATE OF PRACTICE****REGISTERS****Registers established by council**

26 A council must establish, in accordance with the regulations,

- (a) a register of regulated members for one or more classes of members; and

(b) a register of regulated associate members for one or more classes of associate members, if the college has regulated associate members.

Registrar to maintain registers

27 A registrar must maintain the registers in accordance with this Act.

Register of regulated members

28(1) The register of regulated members must contain the following information for each member:

- (a) the member's name, business address and business telephone number;
- (b) if applicable, the name of the health profession corporation of which the member is a shareholder or director;
- (c) the class of regulated membership, if the college has more than one class of regulated members;
- (d) the conditions, if any, imposed on the member's registration or certificate of practice;
- (e) if applicable, a notation that the member is authorized to perform a reserved act not normally performed by members of that college;
- (f) if applicable, a notation that the member is not authorized to perform a reserved act that is normally performed by members of that college;
- (g) information about each disciplinary proceeding in which a finding under subsection 124(2) or clause 132(1)(b) has been made against the member, including
 - (i) the nature of the finding,
 - (ii) the nature of any order made under section 126, 127 or 132, and
 - (iii) any terms, limits or conditions of the order;
- (h) information that the regulations specify as information to be kept in the register.

Register of regulated associate members

28(2) The register of regulated associate members must contain the following information for each associate member:

- (a) the associate member's name, business address and business telephone number;
- (b) the class of regulated associate membership, if the college has more than one class of regulated associate members;
- (c) the conditions, if any, imposed on the associate member's registration or certificate of practice;
- (d) if applicable, a notation that the associate member is authorized to perform a reserved act not normally performed by associate members of that college;
- (e) if applicable, a notation that the associate member is not authorized to perform a reserved act that is normally performed by associate members of that college;
- (f) information about each disciplinary proceeding in which a finding under subsection 124(2) or clause 132(1)(b) has been made against the associate member, including
 - (i) the nature of the finding,
 - (ii) the nature of any order made under section 126, 127 or 132, and
 - (iii) any terms, limits or conditions of the order;
- (g) information that the regulations specify as information to be kept in the register.

Register information public

28(3) The following information about a member contained in a register must be made available to the public during normal business hours:

- (a) the information described in clauses (1)(a) to (f) and (2)(a) to (e);

(b) the information described in clause (1)(g) or (2)(f) relating to a disciplinary proceeding completed within the current calendar year or the 10 previous calendar years;

(c) any additional information that the regulations require to be made available to the public.

Information not to be available on the Internet

28(4) Information that is available to the public under subsection (3) and that relates to an ailment, emotional disturbance or addiction that a member is suffering from, or has suffered from, must not be made available to the public on the Internet.

Honorary membership

29 A college may, in accordance with its by-laws, confer an honorary membership in the college upon any individual, but an honorary membership does not entitle the individual to practise the health profession nor to have his or her name entered on a register.

Corporations and other entities are not members

30 A corporation, including a health profession corporation, partnership or other entity must not be registered as a member.

APPLYING FOR REGISTRATION

Who considers and decides registration applications?

31 A council must do one of the following:

(a) direct the registrar to consider and decide on applications for registration under section 32 or 33;

(b) establish a board of assessors and appoint its members, in accordance with the by-laws, to consider and decide on applications for registration under section 32 or 33.

Registration of regulated members

32(1) The registrar or board of assessors, as the case may be, must approve an application for registration as a regulated member if the applicant

(a) is a graduate of an education program approved by the council or has met competency requirements approved by the council;

(b) has passed any examinations that the council may require;

(c) establishes that his or her name has not been removed — as a result of professional misconduct, or any other cause, that is relevant to his or her suitability to practise the regulated health profession — from the register of persons authorized to engage in the practice of the regulated health profession in which the applicant seeks membership, or any other health profession, in Canada or elsewhere;

(d) establishes that he or she has not been suspended — as a result of professional misconduct, or any other cause, that is relevant to his or her suitability to practise the regulated health profession — by a regulatory authority governing the practice of the regulated health profession in which the applicant seeks membership, or any other health profession, in Canada or elsewhere;

(e) has not been convicted of an offence that is relevant to his or her suitability to practise the regulated health profession;

(f) pays the fees provided for in the college's by-laws; and

(g) meets any other requirements set out in the regulations.

Conditions

32(2) A registration may be made subject to any conditions that the registrar or board of assessors considers advisable.

Labour mobility

32(3) In approving an application for registration, the registrar or board of assessors, as the case may be, must comply with the obligations under Chapter 7 (Labour Mobility) of the Agreement on Internal Trade.

Registration of regulated associate member

33 An application for registration as a regulated associate member must be considered and decided upon in accordance with the regulations.

Application for registration not approved

34 If an application for registration as a regulated member or regulated associate member is not approved, or is approved subject to conditions, the registrar or board of assessors must

- (a) give notice to the applicant in writing, with reasons for the decision; and
- (b) advise the applicant of the right to appeal the decision to the council.

Entry on the register

35 The registrar must enter onto the appropriate register

- (a) the name of a person whose application for registration is approved; and
- (b) the information required by subsection 28(1) or 28(2).

Error on the register

36 The registrar may correct any error or remove any entry made in error on a register.

CERTIFICATE OF REGISTRATION

Certificate of registration

37(1) Upon entering a person's name on a register, the registrar must issue a certificate of registration to that person.

Information to be shown on certificate of registration

37(2) A certificate of registration must include

- (a) the name of the regulated member or regulated associate member;
- (b) a statement or other indication as to whether the person is a regulated member or regulated associate member;
- (c) if the person is a regulated member and the college has more than one class of regulated member, a statement or other indication as to which class of membership the person holds;
- (d) if the person is a regulated associate member and the college has more than one class of regulated associate member, a statement or other indication as to which class of associate membership the person holds;
- (e) the name of the college that is issuing the certificate, and the date it is issued;
- (f) any conditions imposed on the person's registration;
- (g) a statement that the certificate of registration is issued pursuant to this Act; and
- (h) a statement that this certificate does not entitle the person to practise the health profession.

Certificate of registration does not expire

37(3) A certificate of registration does not expire unless it is cancelled.

Certificate of registration may be amended

37(4) If any of the information referred to in clauses (2)(a) to (f) changes, the registrar may amend the certificate and issue a replacement certificate.

APPEALS

Appeal to council

38(1) A person whose application for registration is not approved, or whose application is approved subject to conditions, may appeal the decision to the council.

How to appeal

38(2) The appeal must be made by filing a written notice of appeal with the council within 30 days after the person receives notice of the decision under section 34. The notice of the appeal must specify the reasons for the appeal.

Hearing

38(3) Upon receiving a notice of appeal, the council must schedule an appeal hearing, which must be held within 90 days after it receives the notice. The council must give the applicant written notice of the date, time and place of the hearing.

Panel may hear appeal

38(4) The council may delegate its power to hear and decide an appeal to a panel of the council. The panel is to consist of three or more council members, at least 1/3 of whom must be public representatives.

Decision or action of panel

38(5) A decision or action of a panel is a decision or action of the council in respect of an appeal under this section, and a reference in this section and section 39 to the council includes a reference to the panel.

Right to appear

38(6) An applicant who appeals a decision is entitled to make representations to the council at the hearing.

Counsel

38(7) An applicant who appeals a decision is entitled to appear at the hearing with or without counsel.

Member of council who is also member of board of assessors

38(8) A member of the council who is also a member of the board of assessors must not participate in the appeal hearing.

Decision by council

38(9) The council must decide the appeal within 90 days after the hearing, and either dismiss the appeal or make any decision the registrar or board of assessors could have made.

Notice of decision on appeal

38(10) Within 30 days after deciding the appeal, the council must give the applicant written notice of its decision and the reasons for it.

Appeal to court

39(1) An applicant may appeal the decision of the council to the court by filing a notice of appeal within 30 days after receiving notice of the council's decision under subsection 38(10).

Powers of court on appeal

39(2) Upon hearing an appeal, the court may

- (a) dismiss the appeal;
- (b) make any decision that in its opinion should have been made; or
- (c) refer the matter back to the council for further consideration in accordance with any direction of the court.

CERTIFICATE OF PRACTICE**Certificate of practice — regulated members**

40(1) A registrar must issue a certificate of practice to a regulated member who applies for it and whose name is entered on the register of regulated members if all of the following are satisfied:

- (a) the member's registration is not suspended or cancelled;
- (b) the member meets any requirements for continuing competence that are established by the regulations;

- (c) the member provides evidence of having the amount and type of professional liability insurance or coverage, if any, required by the regulations;
- (d) the member pays the practising fees provided for in the college's by-laws;
- (e) the member provides the registrar with any other information that the regulations require to be provided;
- (f) the member meets any other requirements set out in the regulations.

Conditions

40(2) A certificate of practice may be issued subject to any conditions that the registrar considers advisable.

Information to be shown on certificate of practice

40(3) A certificate of practice under this section must include

- (a) the name of the regulated member;
- (b) the class of regulated membership, if the college has more than one class of regulated members;
- (c) any conditions imposed on the regulated member's practice;
- (d) the name of the college that is issuing the certificate, and the date it is issued;
- (e) a statement that the certificate of practice is issued pursuant to this Act; and
- (f) the expiry date of the certificate.

Certificate of practice — regulated associate members

41(1) If a class of regulated associate members are entitled to practise the regulated health profession, the registrar must issue a certificate of practice to an individual who is a member of that class and who applies for it and whose name is entered on the register of regulated associate members if all of the following are satisfied:

- (a) the associate member's registration is not suspended or cancelled;
- (b) the associate member meets any requirements for continuing competence that are established by the regulations;
- (c) the associate member provides evidence of having the amount and type of professional liability insurance or coverage, if any, required by the regulations;
- (d) the associate member pays the practising fees provided for in the college's by-laws;
- (e) the associate member provides the registrar with any other information that the regulations require to be provided;
- (f) the associate member meets any other requirements set out in the regulations.

Conditions

41(2) A certificate of practice may be issued subject to any conditions that the registrar considers advisable.

Information to be shown on certificate of practice

41(3) A certificate of practice under this section must include

- (a) the name of the regulated associate member;
- (b) the class of associate membership, if the college has more than one class of associate members who are entitled to practise;
- (c) any conditions imposed on the regulated associate member's practice;
- (d) the name of the college that is issuing the certificate, and the date it is issued;
- (e) a statement that the certificate of practice is issued pursuant to this Act; and
- (f) the expiry date of the certificate.

Application not approved

42 If an application for a certificate of practice is not approved, or is approved subject to conditions, the registrar must

- (a) give notice to the member in writing, with reasons for the decision; and

(b) advise the member of the right to appeal the decision to the council.

Appeal

43(1) A person whose application for a certificate of practice is not approved or is approved subject to conditions may appeal the decision.

Sections 38 and 39 apply

43(2) Sections 38 and 39 apply, with the necessary changes, to an appeal under this section.

Producing certificate of practice

44 A member who holds a current valid certificate of practice must, on request, make the certificate available for inspection.

Displaying certificate of practice

45 If required to do so by the regulations, a member who holds a current valid certificate of practice must display that certificate in a conspicuous place on the premises in which the member conducts his or her practice.

RENEWAL

Renewal of certificate of practice

46(1) A certificate of practice must be renewed upon application to the registrar by a member who

- (a) pays the renewal fee required by the council;
- (b) applies within the time period set out in the by-laws; and
- (c) meets the requirements set out in the regulations.

Conditions

46(2) A certificate of practice may be renewed subject to any conditions that the registrar considers advisable.

Certificate of practice continues

46(3) If a renewal application is received by the registrar within the time period set out in the by-laws, the certificate of practice continues in force until a decision on the application has been made.

Non-renewal for failure to pay fees or apply in time

46(4) If a renewal application is not approved because the member has not met the requirements under clause (1)(a) or (b), the registrar must give notice to the member in writing, with reasons for the decision not to renew the certificate.

Application not approved or approved subject to conditions

46(5) If a renewal application is not approved because the member has not met the requirements under clause 1(c), or is approved subject to conditions, the registrar must

- (a) give notice to the member in writing, with reasons for the decision; and
- (b) advise the member of the right to appeal the decision to the council.

Effect of non-renewal

46(6) If a member's certificate of practice is not renewed, the member must not practise the regulated health profession or do anything else authorized by the certificate.

Appeal

47(1) A person whose application for renewal of a certificate of practice is not approved because the member has not met the requirements under clause 46(1)(c), or is approved subject to conditions, may appeal the decision.

Sections 38 and 39 apply

47(2) Sections 38 and 39 apply, with the necessary changes, to an appeal under this section.

CANCELLATION

Registrar's report

48(1) If a registrar is satisfied on reasonable grounds that a member's registration or certificate of practice, or both, have been obtained by means of a false representation or declaration, the registrar must report the matter to the council.

Council may direct registrar to cancel registration or certificate of practice

48(2) After considering the registrar's report, the council may direct the registrar to cancel the member's registration or certificate of practice, or both, but it must first notify the member that it intends to do so and give him or her the opportunity to make submissions.

Cancelled if conviction

48(3) The council may direct the registrar to cancel a member's registration or certificate of practice, or both, if the member has been convicted of an offence that is relevant to his or her suitability to practise, but it must first notify the member that it intends to do so and give him or her the opportunity to make submissions.

Written notice of cancellation required

49(1) If directed to do so by the council under subsection 48(2) or (3), the registrar must cancel the member's registration or certificate of practice, or both, and give written notice of the cancellation to

- (a) the member;
- (b) any person who employs or engages the member to provide health care on a full-time or part-time basis in any capacity, including as an employee, contractor or consultant;
- (c) a hospital or regional health authority that has granted privileges to the member; and
- (d) any other person specified in the regulations.

The college must also make the decision to cancel available to the public.

Appeal

49(2) A member whose registration or certificate of practice or both are cancelled under this section may appeal the cancellation to the court, in which case section 39 applies with the necessary changes.

Surrender

49(3) When a member's registration or certificate of practice is cancelled, the person must promptly surrender the certificate of registration or certificate of practice to the registrar.

Name removed from registrar

49(4) When a member's registration is cancelled, the registrar must also remove the member's name from the appropriate register.

Reinstatement

50 Upon the application of a person whose registration or certificate of practice has been cancelled under section 49, the council may

- (a) direct the registrar to reinstate the registration or certificate of practice, subject to any conditions the council may impose; and
- (b) order the person to pay any costs arising from those conditions.

Cancellation for other reasons

51 A registrar may cancel a member's registration or certificate of practice, or both, in the following circumstances:

- (a) upon the request of the member;
- (b) upon receipt of proof that the member is deceased;
- (c) if the registrar is satisfied that the registration or certificate has been issued in error.

Effect of cancellation

52 If a member's registration or certificate of practice is cancelled, the member must not practise the regulated health profession or do anything else authorized by the registration or certificate of practice.

PROHIBITIONS**Making false representations or declarations**

53(1) No person shall make a representation or declaration knowing it to be false for the purpose of

- (a) being registered; or
- (b) having a certificate of practice issued or renewed.

Assisting the making of false representation

53(2) No person shall knowingly assist a person in making a false representation or declaration for a purpose mentioned in subsection (1).

Unauthorized practice prohibited

54 No person shall practise or profess to practise a regulated health profession unless the person

- (a) is registered as a member of the college that regulates that health profession and holds a valid certificate of practice issued by the registrar of that college; or
- (b) holds a valid health profession corporation permit issued in accordance with section 60.

Prohibition re accredited facilities

55 No member shall use a diagnostic or treatment facility the accreditation of which has been cancelled under section 183 and that the council of the College of Physicians and Surgeons of Manitoba has ordered to cease operations under that section.

PUBLIC HEALTH EMERGENCY**Practising during public health emergency**

56(1) If the minister gives a college written notice that

- (a) a serious and immediate threat to public health exists or may exist in all or part of the province, whether or not an emergency has been declared under an enactment of Manitoba or Canada; and
- (b) the minister has determined, after consulting with public health officials and any other persons that he or she considers advisable, that the services of a member of the same regulated health profession from outside Manitoba are required to assist in dealing with the threat;

then, despite any other provisions in this Act, the registrar or board of assessors, as the case may be, may waive any requirements for registration or practice under this Act in order to allow a person who is authorized to practise that health profession in another jurisdiction in Canada or the United States to practise that profession in Manitoba during the emergency.

Certificate of practice

56(2) If necessary to carry out the intent of this section, the registrar may issue a certificate of practice to a person allowed to practise under subsection (1), on such conditions as the registrar may determine.

Authorized practice

56(3) Section 54 (unauthorized practice prohibited) does not apply to a person who is authorized under this section to practise the regulated health profession in Manitoba.

PART 5**BUSINESS ARRANGEMENTS**

PRACTICE IN ASSOCIATION

Practising in association

57(1) Unless restricted by the regulations, a member may

- (a) practise in association with another member of the same college, a member of any other college or any other person providing health care; and
- (b) refer persons to, and receive referrals from, those persons with whom they practise in association.

Meaning of "practise in association"

57(2) In this section, "**practise in association**" means to conduct a practice in co-operation with another member of the same college, a member of any other college or any other person providing health care that includes one or more of the following:

- (a) joint advertising;
- (b) sharing an office telephone number;
- (c) combined client billing for health care provided by more than one person;
- (d) sharing an office reception area;
- (e) sharing an office or clinic expenses;
- (f) sharing administrative functions or expenses;
- (g) sharing ownership or use of premises, equipment, furnishings or other property;
- (h) sharing employees;
- (i) circumstances that the regulations describe as practising in association.

Ethical and confidential obligations

57(3) The ethical and confidential obligations of a member to a person receiving health care from the member

- (a) are not diminished by the fact that the member is practising in association; and
- (b) apply equally to all the persons practising in association.

Duty to report

57(4) A member who reasonably believes that a member of a different regulated health profession with whom he or she is practising in association is suffering from a physical or mental condition or disorder of a nature or to an extent that the other member is unfit to continue to practise or that his or her practice should be restricted must inform the registrar of the other member's college about that belief and the reasons for it.

Exemption from liability for disclosure

57(5) A member who discloses information under subsection (4) is not subject to any liability as a result, unless it is established that the disclosure was made maliciously.

HEALTH PROFESSION CORPORATIONS

Definitions

58 The following definitions apply in sections 58 to 74.

"health profession corporation" means a corporation holding a valid permit. (« société professionnelle de la santé »)

"permit" means a document issued under subsection 60(1) by a registrar authorizing the corporation named in the document to carry on the practice of the regulated health profession specified in the document, for the time period specified in the document. (« licence »)

"record of health profession corporations" means the record established under section 73. (« registre des sociétés professionnelles de la santé »)

"**voting share**" means, in a relation to a health profession corporation, a share of its capital stock that entitles the holder to vote in any election of the corporation's directors. (« action avec droit de vote »)

"**voting shareholder**" means, in relation to a health profession corporation, a person who owns a voting share of the corporation or is a voting shareholder of another corporation that owns a voting share of the corporation. (« actionnaire avec droit de vote »)

Authority of health profession corporation to practise

59(1). A health profession corporation established by one or more regulated members of the same regulated health profession may carry on the practice of that profession

- (a) under the corporation's name; or
- (b) as a member of a general partnership of health profession corporations or of health profession corporations and regulated members, under a name approved by the registrar in accordance with the by-laws.

How health profession corporation to practise

59(2). A health profession corporation may practise only through regulated members who are authorized under this Act to practise the same regulated health profession in Manitoba.

Permit

Permit for health profession corporation

60(1). Subject to subsection (5), a registrar must issue a permit, or a renewal of a permit, to a corporation that wishes to carry on the practice of the regulated health profession if the registrar is satisfied that

- (a) the corporation is incorporated, formed by amalgamation or continued under *The Corporations Act*, and is in good standing under that Act;
- (b) the name of the corporation includes terms used to describe the regulated health profession, followed by the word "corporation", and is approved by the registrar in accordance with the regulations;
- (c) each voting share of the corporation is both legally and beneficially owned by
 - (i) a regulated member of the college, or
 - (ii) a health profession corporation established for the purpose of carrying on the practice of the same regulated health profession;
- (d) each other share in the capital stock of the corporation is both legally and beneficially owned by a person who is
 - (i) a voting shareholder of the corporation,
 - (ii) a spouse, common-law partner or child, within the meaning of the *Income Tax Act* (Canada), of a voting shareholder of the corporation, or
 - (iii) a corporation, each share of the capital stock of which is legally and beneficially owned by a person referred to in subclause (i) or (ii);
- (e) each director of the corporation is a regulated member of the college;
- (f) the president of the corporation is a regulated member of the college;
- (g) each person through whom the corporation will be carrying on the practice of the health profession is a regulated member of the college;
- (h) the corporation has filed an application, in the form prescribed by by-law, and paid the fee required by the council, for the permit or its renewal; and
- (i) all other requirements prescribed by regulation for the issuance or renewal of the permit have been satisfied.

Conditions

60(2). A permit may be issued or renewed subject to any conditions that the registrar considers advisable.

Validity

60(3) Unless it is cancelled, surrendered or suspended, a permit issued or renewed under subsection (1) is valid for the time period specified in the permit.

Validity during consideration of renewal application

60(4) If an application for renewal is received by the registrar by the date set out in the by-laws, the permit continues in force until a decision on the application has been made.

Refusal to issue or renew permit

60(5) The registrar

(a) must refuse to issue a permit to, or renew the permit of, a corporation if the registrar is not satisfied by proper evidence that the corporation meets the requirements of subsection (1); and

(b) may refuse to issue a permit to, or renew the permit of, a corporation if

(i) a permit previously issued to the corporation has been cancelled or surrendered, or

(ii) a director, officer or shareholder of the corporation is or has been a director, officer or shareholder of a health profession corporation whose permit has been cancelled or surrendered.

Notice of decision

60(6) If the registrar refuses to issue or renew a permit under subsection (5), or issues or renews a permit subject to conditions, the registrar must notify the corporation in writing of the decision and the reasons for it, and of the corporation's right to appeal the decision.

Appeal to council

60(7) A corporation that is refused a permit or renewal of a permit under subsection (5), or whose permit is issued or renewed subject to conditions, may appeal the registrar's decision to the council.

How to appeal

60(8) The appeal must be made by filing a written notice of appeal with the council within 30 days after the corporation receives notice of the decision. The notice of the appeal must specify the reasons for the appeal.

Decision by council

60(9) The council must either dismiss the appeal or make any decision the registrar could have made. The council must give the corporation written notice of its decision and the reasons for it.

Appeal to court

60(10) A corporation may appeal the decision of the council to the court by filing a notice of appeal within 30 days after receiving notice of the council's decision under subsection (9). Subsection 67(3) applies to an appeal under this subsection.

Restrictions

Carrying on practice without permit prohibited

61 Except as permitted by the regulations, no corporation, other than a health profession corporation, shall carry on the practice of a regulated health profession.

Restriction on use of name

62(1) A corporation whose name includes the words "medical corporation", "dental corporation" or any other prescribed phrase must not carry on any business in Manitoba unless it is a health profession corporation holding a valid permit issued under this Act by the registrar of the college of the applicable regulated health profession.

Restriction on business of health profession corporation

62(2) A health profession corporation must not carry on any business or activity other than the practice of the regulated health profession and the provision of health care directly associated with the practice of the regulated health profession carried on by it.

Interpretation of business restriction

62(3) Subsections (1) and (2) must not be construed so as to prohibit a health profession corporation from investing its funds in real property, other than for development purposes, or in stocks, mutual funds, debt obligations, insurance, term deposits or similar investments.

Validity of corporate act

62(4) No act of a health profession corporation, including a transfer of property to or by the corporation, is invalid merely because it contravenes subsection (1) or (2).

Duties and Responsibilities**Conflict in duties**

63 If there is a conflict or potential conflict between a regulated member's duty to a person receiving health care from the member, the college or the public and the member's duty to a health profession corporation as a director or officer of the corporation, the duty to the person receiving health care, the college or the public prevails.

Regulated member must comply with Act, etc.

64(1) A regulated member must comply with this Act and the regulations, by-laws, standards of practice, code of ethics and practice directions for the member's health profession, despite any relationship he or she may have with a health profession corporation.

Contraventions by corporation prohibited

64(2) A health profession corporation must not contravene any provision of this Act or the regulations or by-laws of the college.

Obligations to persons receiving health care not diminished

64(3) The fiduciary and ethical obligations of a regulated member, and the obligations of a regulated member respecting confidentiality, to a person receiving health care from the member

- (a) are not diminished by the fact that the member is practising through a health profession corporation; and
- (b) apply equally to a health profession corporation on whose behalf the health care is provided, and to its directors, officers and shareholders.

Liability of regulated members

64(4) The liability of a regulated member to a person receiving health care is not affected by the fact that the health care is provided on behalf of a corporation.

Liability of voting shareholders

64(5) A person is jointly and severally liable with a health profession corporation, or a corporation acting in contravention of section 61, for all professional liability claims made against the corporation in respect of acts, errors or omissions that were made or occurred while the person was a voting shareholder of the corporation.

Investigation of regulated member practising through corporation

64(6) If the conduct of a regulated member through whom a health profession corporation is or was practising the regulated health profession at the time the conduct occurs or occurred is the subject of a complaint, investigation or inquiry, or a practice audit or review under a continuing competency program,

- (a) any power of entry, inspection, investigation or inquiry that may be exercised in respect of the member, any premises or place where the member practises or has practised the regulated health profession, any equipment, materials or things used by the member or the member's records, substances or things, may be exercised in respect of the corporation, its premises or place, equipment, materials or records, substances or things; and
- (b) the corporation is jointly and severally liable with the member for all fines and costs the member is ordered to pay.

Regulated member's conditions apply to corporation

64(7) Any condition imposed on the registration or certificate of practice of a regulated member practising a regulated health profession on behalf of a health profession corporation applies to the permit of the corporation in relation to the practice of the health profession through that member.

Suspension or Cancellation

Suspending or cancelling permit

- 65(1) Subject to subsections (2) and (3), the council may suspend or cancel a health profession corporation's permit if
- (a) the corporation ceases to meet any of the requirements of eligibility for a permit set out or referred to in subsection 60(1);
 - (b) the corporation contravenes any provision of this Act or the regulations or by-laws of the college or any condition on the corporation's permit; or
 - (c) a regulated member, in the course of providing health care on behalf of the corporation, does or fails to do anything as a result of which the member's registration or certificate of practice is suspended or cancelled.

Limitation

- 65(2) A health profession corporation's permit must not be cancelled or suspended by reason only of the fact that
- (a) one or more shares of the corporation have vested in
 - (i) an executor or administrator of the estate of an individual as a consequence of the death of the individual, or
 - (ii) a trustee in bankruptcy on the bankruptcy of the owner of the shares,unless the corporation is not carrying on the practice of the regulated health profession through any other regulated member or the shares continue to be vested in the executor, administrator or trustee for more than 180 days, or for any longer period allowed by the registrar;
 - (b) the former spouse or common-law partner of a voting shareholder continues to own a share of the corporation after the end of their marriage or common-law relationship;
 - (c) the registration or certificate of practice of a regulated member has been suspended, unless
 - (i) the member remains a director or officer of the corporation for more than 14 days after the commencement of the suspension, or
 - (ii) the corporation is not providing health care through any other regulated member;
 - (d) the registration or certificate of practice of a regulated member has been surrendered or cancelled, unless
 - (i) the member remains a director or officer of the corporation for more than 14 days after the surrender or cancellation,
 - (ii) the member remains a voting shareholder of the corporation for more than 90 days after the surrender or cancellation, or for any longer period allowed by the council, or
 - (iii) the corporation is not providing health care through any other regulated member.

Surrender of permit

- 65(3) When a health profession corporation's permit is cancelled, it must promptly surrender the permit to the registrar.

Alternatives to suspending or cancelling permit

66 Instead of suspending or cancelling the health profession corporation's permit under section 65, the council may take any other action it considers appropriate, including one or more of the following:

- (a) reprimanding the corporation or one or more directors or voting shareholders of the corporation;
- (b) imposing conditions on the permit;
- (c) imposing a fine on the corporation, payable to the college, in an amount not exceeding \$25,000.

Written notice of cancellation required

- 67(1) The council must

- (a) give notice to the health profession corporation in writing with the reasons for the council's decision to suspend or cancel its permit or take any action under section 66; and
- (b) advise the health profession corporation of the right to appeal the decision to the court.

Appeal to court

67(2) A health profession corporation may appeal the decision of the council to the court by filing a notice of appeal within 30 days after receiving notice of the council's decision.

Powers of court on appeal

67(3) Upon hearing an appeal, the court may

- (a) dismiss the appeal;
- (b) make any decision that in its opinion should have been made; or
- (c) refer the matter back to the council for further consideration in accordance with any direction of the court.

Notice of changes

68 A health profession corporation must notify the registrar — within the time period and in the form and manner determined under the by-laws of the college — of any change in the voting shareholders, the other shareholders, the directors or the officers of the corporation.

Agreements

Voting agreements void

69(1) An agreement or proxy that vests the authority to exercise any voting right attached to a share of a health profession corporation in a person who is not a regulated member is void.

Unanimous shareholders' agreements void

69(2) A unanimous shareholders' agreement within the meaning of subsection 140(2) of *The Corporations Act* in respect of a health profession corporation is void unless each shareholder of the corporation is a regulated member or a health profession corporation.

Prohibitions

Holding out as a health profession corporation

70(1) No corporation shall hold itself out as a health profession corporation unless it holds a valid permit.

Holding out as a shareholder, officer, etc.

70(2) No person shall hold himself or herself out as a shareholder, officer, director, agent or employee of a health profession corporation unless the corporation holds a valid permit.

Making false representations or declarations

71(1) No person shall make a representation or declaration for the purpose of having a health profession corporation permit issued or renewed if he or she knows it to be false.

Assisting the making of false representation

71(2) No person shall knowingly assist a person in making a false representation or declaration for the purpose mentioned in subsection (1).

Prohibition re accredited facilities

72 No health profession corporation shall use a diagnostic or treatment facility the accreditation of which has been cancelled under section 183 and that the council of the College of Physicians and Surgeons of Manitoba has ordered to cease operations under that section.

Record of Health Profession Corporations

Record of health profession corporations

73(1) A council must establish, in accordance with the regulations, a record of all health profession corporations holding permits issued under this Part.

Registrar to maintain record

73(2) A registrar must maintain the record of health profession corporations in accordance with this Act.

Contents of record

73(3) The record of health profession corporations must contain the following information for each health profession corporation:

- (a) the name of the health profession corporation;
- (b) the name of each regulated member who is a shareholder or director of the health profession corporation;
- (c) the name of each regulated member through whom the health profession corporation will be carrying on the practice of the regulated health profession;
- (d) the conditions, if any, imposed on the permit;
- (e) the date the permit was issued;
- (f) information that the regulations specify as information to be kept in the record.

Record information public

73(4) The following information about a health profession corporation contained in the record must be made available to the public during normal business hours:

- (a) the information described in clauses (3)(a) to (e);
- (b) any additional information that the regulations require to be made available to the public.

Miscellaneous

College powers

74 Any power that a college may exercise in respect of a regulated member may be exercised in respect of a health profession corporation.

Non-application to pharmacies

75 Sections 58 to 74 do not apply to the establishment or operation of a pharmacy as defined in section 188.

ADVERTISING

Prohibition re false advertising

76 No member or health profession corporation shall engage in advertising that is untruthful, inaccurate or otherwise capable of misleading or misinforming the public.

PART 6**TITLE RESTRICTION****Title restriction: member of college**

77 No person shall use a name, title, description or abbreviation in a manner that expresses or implies that he or she is a member of a college, unless the person is a member of that college.

Restricted use of "doctor", "surgeon", "physician"

78(1) No person shall use the title "doctor", "surgeon" or "physician" — or a variation or abbreviation of any of them or an equivalent in another language — in the course of providing health care unless the person is permitted to use the title, variation or abbreviation by this Act or another Act.

College of Physicians and Surgeons

78(2) A member of the College of Physicians and Surgeons of Manitoba may, as authorized by the regulations, use the title "doctor", "surgeon" or "physician", or a variation or abbreviation of any of them or an equivalent in another language.

College of Dentists

78(3) A member of the College of Dentists of Manitoba may, as authorized by the regulations, use the title "doctor" or "surgeon" or a variation or abbreviation of them or an equivalent in another language, but only in conjunction with the word "dentist" or "dental" or the words "of dentistry" or "of dental surgery".

College of Chiropractors

78(4) A member of the College of Chiropractors of Manitoba may, as authorized by the regulations, use the title "doctor" or a variation or abbreviation of it or an equivalent in another language, but only if the word "Chiropractor" or "Chiropractic" is used immediately before or after the member's name.

College of Naturopathic Doctors

78(5) A member of the College of Naturopathic Doctors of Manitoba may, as authorized by the regulations, use the title "doctor" or a variation or abbreviation of it or an equivalent in another language, but only if the word "Naturopathy", "Naturopath" or the words "Naturopathic Medicine" are used immediately before or after the member's name.

College of Optometrists

78(6) A member of the College of Optometrists of Manitoba may, as authorized by the regulations, use the title "doctor" or a variation or abbreviation of it or an equivalent in another language, but only if the word "Optometry" or "Optometrist" is used immediately before or after the member's name.

College of Pharmacists

78(7) A member of the College of Pharmacists of Manitoba may, as authorized by the regulations, use the title "doctor" or a variation or abbreviation of it or an equivalent in another language, but only if

- (a) the member has obtained or earned a doctoral degree in a program of pharmacy approved by the college; and
- (b) the word "Pharmacy" is used immediately before or after the member's name.

College of Podiatrists

78(8) A member of the College of Podiatrists of Manitoba may, as authorized by the regulations, use the title "doctor" or "surgeon" or a variation or abbreviation of them or an equivalent in another language, but only if the word "Podiatry" or "Podiatrist" or the words "Podiatric Surgeon" are used immediately before or after the member's name.

College of Psychologists

78(9) A member of the College of Psychologists of Manitoba may, as authorized by the regulations, use the title "doctor" or a variation or abbreviation of it or an equivalent in another language, but only if

- (a) the member has obtained or earned a doctoral degree in a program of psychology approved by the college; and
- (b) the member identifies the program or discipline in which the member earned or received the doctoral degree.

Non-application

78(10) Subsection (1) does not apply to a person who uses the title "doctor", "surgeon" or "physician", or a variation or an abbreviation of any of them or an equivalent in another language, alone or in combination with other words in connection with teaching, research or administration.

Holding out as a college

79(1) No person or entity shall

- (a) represent or hold out, expressly or by implication, that it is a body that regulates, under statutory authority, persons who provide health care;
- (b) use any sign, display, title or advertisement implying that it is a body that regulates, under statutory authority, persons who provide health care; or
- (c) use the term "college" in a manner that states or implies that it is a college regulated under this Act, unless it is authorized to do so under this Act.

Non-application

79(2) Subsection (1) does not apply to a person or entity that is exempted by regulation.

Holding out as a college officer or employee

80 No individual shall represent or hold himself or herself out, expressly or by implication, as an officer, employee or agent of a body that the individual falsely represents as or knows is falsely represented as regulating, under statutory authority, persons who provide health care.

Use of "registered", "licensed"

81(1) No person who is providing health care shall use the term "registered" or "licensed", or a variation or abbreviation of either of them or an equivalent in another language, in association with or as part of the title describing his or her work, unless that person

- (a) is a member of a college whose members provide that type of health care; and
- (b) is using that term in accordance with the regulations.

Exception

81(2) Despite subsection (1) but subject to section 77, a person may use the term "registered" or "licensed" as part of a title describing his or her work if

- (a) the person is a member of an organization or class of organizations specified by regulation; or
- (b) the person is authorized in another jurisdiction to use the title to indicate membership in a body substantially similar to the college in Manitoba that regulates that health profession and, in using the title, indicates
 - (i) the name of the other jurisdiction, and
 - (ii) that he or she is currently authorized to practise the health profession in the other jurisdiction.

PART 7

STANDARDS OF PRACTICE, CODE OF ETHICS, PRACTICE DIRECTIONS AND CONTINUING COMPETENCY PROGRAMS

Standards of practice

82(1) A council must, by regulation, establish standards of practice to regulate the quality of practice of its members.

Incorporation by reference

82(2) A regulation made under subsection (1) may incorporate by reference, in whole or in part, any code, standard or guideline relating to standards of practice of the regulated health profession, and the regulation may incorporate it as amended from time to time and with any necessary changes.

External document

82(3) A document adopted by reference under subsection (2) must have been created by a body recognized by the council and must not be a document created by the college.

Scope of regulations

82(4) A regulation may be general or particular in its application and may apply to one or more classes of members.

College regulates more than one health profession

82(5) If a college regulates more than one regulated health profession, a regulation may apply to one or more of those professions.

Consultation

82(6) Before making a regulation, the council must

- (a) provide a copy of the proposed regulation, for review and comment, to
 - (i) the members of the college,
 - (ii) the minister, and
 - (iii) any other person the council considers necessary; and
- (b) consider the comments received.

Approval of regulations

82(7) A regulation does not come into force until it is approved by the Lieutenant Governor in Council.

Code of ethics

83(1) A council must, in accordance with the procedures set out in the by-laws, adopt a code of ethics governing the conduct of the members of the college.

Incorporation by reference

83(2) A code of ethics may incorporate by reference, in whole or in part, any code, standard or other document, and the code of ethics may incorporate it as amended from time to time.

Consultation

83(3) Before adopting a code of ethics, the council must

- (a) provide a copy of the proposed code of ethics, for review and comment, to
 - (i) the members of the college,
 - (ii) the minister, and
 - (iii) any other person the council considers necessary; and
- (b) consider the comments received.

Copies to be made available

84 A copy of every code, standard or guideline adopted by reference under subsection 82(2) or 83(2) is to be made available in the college's office for public inspection during normal business hours and is to be accessible on or through the college's website.

Practice directions

85 A council may issue practice directions in respect of the practice of the regulated health profession.

Member must comply with Act, etc.

86 A member must comply with this Act and the regulations, by-laws, standards of practice, code of ethics and practice directions for the member's health profession.

Continuing competency program

87(1) A council must establish, by regulation, a continuing competency program to maintain the competence of the members and to enhance the practice of the regulated health profession. The program may provide for, but is not limited to,

- (a) reviewing the professional competence of members;
- (b) requiring members to participate in programs intended to ensure competence; and

(c) conducting practice audits in accordance with this Act.

Consultation and approval requirements

87(2). Subsections 82(2) to (7) apply to a regulation made under this section, with the necessary changes.

PART 8

PROFESSIONAL CONDUCT

WHAT DEFINITIONS APPLY IN THIS PART?

Definitions

88. The following definitions apply in this Part.

"**complaint**" includes a deemed complaint referred to in subsection 90(3). (« plainte »)

"**complaints investigation committee**" means the complaints investigation committee established by a council under subsection 93(1). (« comité d'examen des plaintes »)

"**conduct**" includes an omission. (« conduite »)

"**external regulatory body**" means a body with statutory authority to license or regulate the same or a similar health profession in a jurisdiction other than Manitoba. (« organisme de réglementation externe »)

"**investigated member**" means a member or former member who is the subject of a complaint under this Part. (« membre visé par la plainte »)

"**public representative**" means a person on a roster established under section 89 who, in respect of a particular regulated health profession, has not practised that profession. (« représentant du public »)

HOW IS THE ROSTER OF PUBLIC REPRESENTATIVES MADE?

Roster of public representatives

89(1). The minister must establish a roster of persons from which a council is to appoint public representatives to committees under this Part.

Separate roster for one or more professions

89(2). If the minister considers it desirable, he or she may establish a separate roster for one or more health professions.

Council may nominate persons for roster

89(3). A council may nominate persons to be named to a roster under this section by giving the names of its nominees to the minister. But the minister is not required to name any nominee to a roster.

HOW IS A COMPLAINT MADE?

Complaint about a member's conduct

90(1). Any person may make a complaint about a member's conduct.

How to complain

90(2). A complaint must be made in writing to the registrar.

Complaint if registrar aware of professional misconduct

90(3). If the registrar believes that the conduct of a member or former member may constitute conduct about which a finding could be made under subsection 124(2), the registrar may treat the information as a complaint even though no complaint has been made under subsection (2), and may refer it to the complaints investigation committee under clause 91(2)(b). The information is deemed to be a complaint.

Complaint against former member

90(4) A complaint may be made about a member even if his or her registration or certificate of practice has been cancelled, suspended or not renewed, but only if the complaint is made within five years after the cancellation, suspension or non-renewal.

HOW IS A COMPLAINT DEALT WITH?**Notice to complainant**

91(1) Within 30 days after receiving a complaint, the registrar must notify the complainant of the action that has been taken or will be taken with respect to it.

Registrar's actions

91(2) The registrar may take the following actions in respect of a complaint:

- (a) encourage the complainant and the investigated member to communicate with each other and resolve the complaint;
- (b) refer the complaint to the complaints investigation committee;
- (c) dismiss the complaint if the registrar is satisfied that it is trivial or vexatious or that there is insufficient evidence or no evidence of conduct about which a finding could be made under subsection 124(2).

Notice of dismissal

92(1) If the registrar dismisses a complaint, the registrar must promptly notify the complainant of the dismissal and the right to have it reviewed by the complaints investigation committee under this section. The registrar must also notify the investigated member.

Complainant may apply for review

92(2) Within 30 days after being notified of the dismissal, the complainant may apply to the registrar for a review by the complaints investigation committee. The application must be in writing and state reasons.

Referral to committee

92(3) The registrar must refer the application to the complaints investigation committee.

Hearing not required

92(4) The complaints investigation committee is not required to hold a hearing before making a decision under this section, but must give the investigated member and the complainant an opportunity to make written submissions.

Decision of committee

92(5) After reviewing a decision to dismiss the complaint, the complaints investigation committee must

- (a) confirm the dismissal if the committee is satisfied that the complaint is trivial or vexatious or that there is insufficient evidence or no evidence of conduct about which a finding could be made under subsection 124(2); or
- (b) reverse the dismissal and
 - (i) try to resolve the complaint informally under section 95, or
 - (ii) appoint an investigator under subsection 96(1).

WHAT IS THE COMPLAINTS INVESTIGATION COMMITTEE?**Establishing complaints investigation committee**

93(1) A council must establish a complaints investigation committee.

Role of the committee

93(2) The complaints investigation committee is responsible for investigating complaints and, when the committee considers it appropriate, attempting to resolve them informally.

Members

- 94(1) The complaints investigation committee is to consist of
- (a) a member of the college who is appointed as chair;
 - (b) one or more other members of the college; and
 - (c) one or more public representatives, who must make up at least 1/3 of the committee's membership.

Panels

- 94(2) The complaints investigation committee may sit in panels of three or more committee members.

Public representatives

- 94(3) At least 1/3 of the members of a panel must be public representatives.

Chair to select panel

- 94(4) When a complaint is referred to the complaints investigation committee, the chair may select a panel from among the members of the committee to deal with it, and appoint a member of the panel as the panel's chair.

Quorum

- 94(5) A quorum for a panel is three members, one of whom must be a public representative.

Decision of panel

- 94(6) A decision or action of a panel is a decision or action of the complaints investigation committee, and a reference in this Act to the complaints investigation committee includes a panel of the committee.

INFORMAL RESOLUTION**Informal resolution**

- 95 Upon the referral of a complaint to the complaints investigation committee, the committee or a person designated by the committee may try to resolve it informally if the committee considers informal resolution to be appropriate.

THE INVESTIGATION**Appointment of an investigator**

- 96(1) If a complaint cannot be resolved informally, the complaints investigation committee must appoint an investigator to investigate it.

Investigation generally

- 96(2) The complaints investigation committee may also appoint an investigator for any complaint whenever the committee considers it appropriate to do so.

Who may be an investigator?

- 96(3) Any person — including a member of the complaints investigation committee but not including the registrar — is eligible for appointment as an investigator.

Chair or registrar may perform responsibilities

- 96(4) If the regulations permit, the chair of the complaints investigation committee or the registrar may perform the committee's responsibilities under subsection (1) or (2).

Notice of investigation

- 97(1) If an investigation is to be conducted under this Part, the registrar must
- (a) inform the complainant that an investigator has been appointed; and

(b) unless it would significantly harm the investigation, give the investigated member the name of the investigator and reasonable particulars of the complaint to be investigated.

When information to be given

97(2) If the investigated member is not given the information referred to in clause (1)(b) when an investigation is to be conducted, the registrar must give the information

- (a) when there would be no significant harm to the investigation; or
- (b) before the investigation is completed;

whichever is earlier.

WHAT DOES AN INVESTIGATOR DO?

Investigator's duty

98(1) An investigator must investigate a complaint.

Related matters

98(2) In the course of an investigation under subsection (1), an investigator may investigate any other matter related to the professional conduct or the skill in practice of the investigated member that arises in the course of the investigation.

Legal counsel and experts

98(3) A council may engage legal counsel and employ any other experts that the investigator considers necessary to assist him or her.

WHAT POWERS DOES AN INVESTIGATOR HAVE?

Powers of an investigator

99(1) An investigator may, at any reasonable time and where reasonably required for the purposes of an investigation under this Part,

- (a) enter and inspect any premises or place where the investigated member practises or has practised the regulated health profession;
- (b) inspect, observe or audit the investigated member's practice;
- (c) examine any equipment, materials or any other thing used by the investigated member;
- (d) require the investigated member to respond to the complaint in writing;
- (e) require any person to answer any questions, or provide any information, that the investigator considers relevant to the investigation; and
- (f) require any person to give the investigator any record, substance or thing that the investigator considers relevant to the investigation and in the person's possession or under his or her control.

An investigator may exercise the powers referred to in clauses (a) to (c) only on the direction of the complaints investigation committee or, if it is necessary to protect the public from exposure to serious risk, on the direction of the chair of that committee.

Identification card

99(2) An investigator must, upon request, present an identification card issued by the council.

Person must provide information

99(3) If an investigator requires a person to answer questions or provide information under clause (1)(e) or give him or her any record, substance or thing under clause (1)(f), the person must comply with the request.

Computers, photographs and copies

99(4) For the purposes of an investigation, an investigator may

- (a) use any computer system used in connection with the investigated member's practice in order to produce a record in readable form;
- (b) photograph or create images of the premises or place; or
- (c) use any copying equipment at the premises or place to make copies of any record related to the investigated member's practice.

Removal

99(5) An investigator may remove any record, substance or thing for the purpose of making copies, producing records, or for testing or further inspection, but the copying, production, testing or further inspection must be carried out within a reasonable time and the items must be returned without delay to the person from whom they were taken.

Admissibility of copies

99(6) A copy of a record made under subsection (4) or (5) and certified to be a true copy by the investigator is, in the absence of evidence to the contrary, admissible in evidence in any proceeding or prosecution as proof of the original record and its contents.

WHAT HAPPENS IF A PERSON DOES NOT COOPERATE WITH AN INVESTIGATION?

College may apply for court order

100(1) If a person fails to produce any document, substance or thing or fails to answer any question or provide any information, the college may apply to the court for an order directing one or both of the following:

- (a) directing any person to produce to the investigator any record, substance or thing that the investigator considers to be relevant to the investigation and in the person's possession or under his or her control;
- (b) directing any person to attend before the investigator to provide information to the investigator, or answer any question that the investigator may have, relating to the investigation.

Failure to produce records, etc. is professional misconduct

100(2) Any of the following actions done by an investigated member or any other member or former member is professional misconduct:

- (a) failing to produce to an investigator any record, substance or thing in his or her possession or under his or her control;
- (b) failing to give an investigator access to any premises or place under his or her control;
- (c) failing to provide any information to an investigator or answer any questions that the investigator may have relating to the investigation;
- (d) obstructing an investigator;
- (e) withholding or concealing from an investigator any record, substance or thing relevant to an investigation;
- (f) destroying any record, substance or thing relevant to an investigation.

Warrant to enter and investigate

100(3) A justice, upon being satisfied by information on oath that

- (a) an investigator has been refused entry to any premises or place to carry out an investigation under section 99; or
- (b) there are reasonable grounds to believe that
 - (i) an investigator will be refused entry to any premises or place to carry out an investigation under section 99, or
 - (ii) if an investigator were to be refused entry to any premises or place to carry out an investigation under section 99, delaying the investigation in order to obtain a warrant on the basis of the refusal could be detrimental to the investigation;

may at any time issue a warrant authorizing the investigator and any other person named in the warrant to enter the premises or place and carry out an investigation under section 99.

Application without notice

100(4) An order or warrant under this section may be issued upon application without notice.

Offences re investigation

100(5) No person shall

- (a) obstruct an investigator;
- (b) withhold or conceal from an investigator any record, substance or thing relevant to an investigation; or
- (c) destroy any record, substance or thing relevant to an investigation.

WHAT HAPPENS WHEN AN INVESTIGATION IS COMPLETED?

Investigator's report to the committee

101(1) After completing an investigation, the investigator must report his or her findings to the complaints investigation committee.

Notice to investigated member

101(2) The complaints investigation committee must give a copy of the report to the investigated member and advise the investigated member of the right to make a written submission under subsection 102(2).

Investigating other member

101(3) If the report reveals information about a member or former member who is not the investigated member and the complaints investigation committee believes that the matter should be investigated further, the committee must refer the matter to the registrar for consideration under subsection 91(2) (registrar's actions).

WHAT DECISIONS CAN THE COMMITTEE MAKE?

Decision of complaints investigation committee

102(1) After reviewing the investigator's report, the complaints investigation committee may do one or more of the following:

- (a) refer the complaint, in whole or in part, to the inquiry committee;
- (b) direct that no further action be taken;
- (c) refer the complaint to mediation, if the committee decides that it is of concern only to the complainant and the investigated member, both of whom agree to mediation;
- (d) censure the investigated member, if
 - (i) at least one committee member has met with the investigated member and the investigated member agrees to accept the censure, and
 - (ii) the committee has decided that no action is to be taken against the investigated member other than censure;
- (e) accept the voluntary surrender of the investigated member's registration or certificate of practice;
- (f) accept an undertaking from the investigated member that provides for one or more of the following:
 - (i) assessment of the investigated member's capacity or fitness to practise the regulated health profession,
 - (ii) counselling or treatment of the investigated member,
 - (iii) monitoring or supervision of the investigated member's practice,
 - (iv) completion by the investigated member of a specified course of studies by way of remedial training,
 - (v) placing conditions on the investigated member's right to practise the regulated health profession, which may include the conditions relating to reinstatement set out in section 106;
- (g) take any other action it considers appropriate that is not inconsistent with or contrary to this Act or the regulations or by-laws.

Hearing not required

102(2) Before making a decision under this section, the complaints investigation committee must allow the investigated member to make a written submission, but the committee is not required to hold a hearing.

Decision given to parties

102(3) The complaints investigation committee must give the investigated member and the complainant a copy of any decision it makes under subsection (1), with reasons for the decision.

If mediation unsuccessful

103 If a complaint has been referred for mediation under subsection 102(1) but cannot be resolved, the matter must be referred back to the complaints investigation committee, which may make any other decision under subsection 102(1) that it considers appropriate.

WHAT HAPPENS IF THE INVESTIGATED MEMBER IS CENSURED?

Investigated member may be required to attend in person to be censured

104(1) When an investigated member is censured under subsection 102(1), the complaints investigation committee may require him or her to appear in person before the committee to be censured.

Censure may be made publicly available

104(2) Subject to subsection (3), the complaints investigation committee may make available to the public the name of an investigated member who has been censured and a description of the circumstances that led to the censure.

Censure relates to ailment, addiction, etc.

104(3) If, in agreeing to accept a censure, the investigated member admits to suffering from an ailment, emotional disturbance or addiction that impairs his or her ability to practise the regulated health profession, the complaints investigation committee

- (a) must not make any information about the investigated member or the censure available under subsection (2); and
- (b) may inform an employer, person or entity referred to in section 134 of the censure and provide a description of the circumstances that led to it.

Order for costs

104(4) The complaints investigation committee may order an investigated member who is censured to pay all or part of the costs of the investigation.

WHAT HAPPENS IF THE INVESTIGATED MEMBER VOLUNTARILY SURRENDERS HIS OR HER REGISTRATION?

Voluntary surrender of registration

105(1) If the complaints investigation committee accepts the voluntary surrender of an investigated member's registration or certificate of practice under subsection 102(1), it may direct the investigated member to do one or more of the following, to the satisfaction of a specified person or committee, before the registration or certificate of practice may be reinstated:

- (a) take counselling or receive treatment;
- (b) complete a specified course of studies;
- (c) obtain supervised experience under a restricted certificate of practice issued for that purpose.

Order for costs

105(2) The complaints investigation committee may order the investigated member to pay

- (a) all or part of any costs incurred by the college in monitoring compliance with a direction given under subsection (1); and
- (b) all or part of the costs of the investigation up to the time that the voluntary surrender takes effect.

Voluntary surrender may be made publicly available

105(3) Subject to subsection (4), the complaints investigation committee may make available to the public the name of the investigated member, the fact that the member has voluntarily surrendered his or her registration or certificate of practice and a description of the circumstances that led to the voluntary surrender.

Voluntary surrender relates to ailment, addiction, etc.

105(4) If, in agreeing to voluntarily surrender his or her registration or certificate of practice, the investigated member admits to suffering from an ailment, emotional disturbance or addiction that impairs his or her ability to practise the regulated health profession, the complaints investigation committee

- (a) must not make any information about the investigated member or the voluntary surrender available under subsection (3); and
- (b) must inform an employer, person or entity referred to in section 134 of the voluntary surrender and provide a description of the circumstances that led to it.

HOW CAN AN INVESTIGATED MEMBER BE REINSTATED AFTER A VOLUNTARY SURRENDER?

Conditions on reinstatement

106 A voluntary surrender remains in effect until the complaints investigation committee is satisfied that the conduct or complaint under investigation has been resolved. At that time, the committee may impose conditions on the investigated member's right to practise the regulated health profession, including requirements that he or she do one or more of the following:

- (a) limit his or her practice;
- (b) practise under supervision;
- (c) not engage in sole practice;
- (d) permit periodic inspections or audits of his or her practice, including inspections or audits of practice records;
- (e) report to the committee or the registrar on specific matters;
- (f) comply with any other conditions the committee considers appropriate in the circumstances;
- (g) pay all or part of the costs incurred by the college in monitoring compliance with the conditions.

Costs if conditions placed on right to practise

107 If the complaints investigation committee accepts an undertaking from an investigated member that provides for conditions on the investigated member's right to practise under subsection 102(1), the committee may order the member to pay all or part of

- (a) the costs of the investigation; and
- (b) the costs incurred by the college in monitoring compliance with the conditions.

CAN A COMPLAINANT APPEAL THE COMMITTEE'S DECISION?

Appeal by complainant to council

108(1) The complainant may appeal to the council any decision made by the complaints investigation committee under clause 102(1)(b), (f) or (g).

How to appeal

108(2) To make an appeal, the complainant must give the registrar a written notice of appeal, including reasons for the appeal, within 30 days after receiving notice of the committee's decision under subsection 102(3).

Appointing an appeal panel

108(3) Upon receiving notice of an appeal from the registrar, the chair of the council must

- (a) appoint an appeal panel consisting of not less than three members of the council, at least 1/3 of whom must be public representatives; and
- (b) appoint a member of the panel as chair.

Non-council members may be appointed

108(4) Despite clause (3)(a), the chair of a council may appoint one or more members of the college who are not members of the council to an appeal panel, if there are an insufficient number of council members without a conflict of interest, or potential conflict of interest, in the case under appeal. This does not negate the requirement that 1/3 of the panellists must be public representatives.

Exclusion from appeal panel

108(5) No person may be appointed to the appeal panel who has taken part in the review or investigation of the matter that is the subject of the appeal.

Decision of appeal panel

108(6) A decision or action of an appeal panel is a decision or action of the council.

Power on appeal

109(1) On an appeal, the panel must

- (a) dismiss the appeal;
- (b) make any decision that in its opinion ought to have been made by the complaints investigation committee; or
- (c) refer the matter back to the complaints investigation committee for further investigation or consideration in accordance with any direction that the panel may give.

Notice of decision

109(2) The council must give the investigated member and the complainant written notice of the appeal panel's decision and the reasons for it.

Hearing not required

109(3) Before making a decision under this section, the appeal panel must allow both the investigated member and the complainant an opportunity to make a written submission, but the appeal panel is not required to hold a hearing.

CAN AN INVESTIGATED MEMBER BE SUSPENDED BEFORE A DECISION IS MADE?

Suspension or conditions pending decision

110(1) Despite any other provision of this Act, the complaints investigation committee or the chair of that committee may direct the registrar to suspend or place conditions on the investigated member's registration or certificate of practice pending the outcome of proceedings under this Part, but only if the committee or the chair, as the case may be, considers it necessary to protect the public from exposure to serious risk.

Notice of suspension or conditions

110(2) Upon receiving a direction under subsection (1), the registrar must give written notice of the suspension or conditions and the committee or chair's reasons for the suspension or conditions to the investigated member and, where applicable, to the member's employer or another person specified in the regulations.

Appeal of suspension or conditions

110(3) An investigated member whose registration or certificate of practice is suspended or has conditions placed on it under subsection (1) may, by giving notice in writing to the registrar, appeal the suspension or imposition of conditions to the council.

Hearing by council

110(4) The council must hold a hearing as soon as reasonably possible but no later than 30 days after receiving the notice of appeal from the registrar.

Right to appear and be represented

110(5) The college and the investigated member may appear and be represented by counsel at a hearing before the council, and the council may have counsel to assist it.

Powers on appeal

110(6). On an appeal under this section, the council must decide whether the suspension or conditions are to be quashed, varied or confirmed, and may make an order as to any costs that may arise from its decision.

Application for stay

110(7). The investigated member may apply to the court for an order staying a decision of the council under subsection (6) to vary or confirm the suspension or conditions pending the outcome of proceedings under this Part.

Application served on the registrar

110(8). The application must be served on the registrar.

BREACH OF AN UNDERTAKING**Referral to inquiry committee if undertaking is breached**

111. If the investigated member fails to comply with an undertaking or a condition of an undertaking given under subsection 102(1), the complaints investigation committee may refer the conduct or complaint that was the subject of the investigation to the inquiry committee.

DISCLOSURE TO LAW ENFORCEMENT**Information may be disclosed to law enforcement**

112. If, in the course of an investigation under this Part, the complaints investigation committee obtains information that leads to a reasonable belief that a member or former member has been engaged or is engaging in possible criminal activity, the committee may disclose the information to a law enforcement agency.

WITHOUT PREJUDICE COMMUNICATIONS**Without prejudice communications**

113. The following are confidential and are deemed to have been made without prejudice to the parties if they are used in any further proceedings in respect of the complaint:

- (a) any communications made during mediation under clause 102(1)(c);
- (b) the records of a facilitator or mediator made in respect of meetings held for the purpose of clause 102(1)(c).

WHAT IS THE INQUIRY COMMITTEE?**Appointing an inquiry committee**

114(1). A council must appoint an inquiry committee that is to sit in panels in accordance with section 115.

Role of the committee

114(2). The inquiry committee is responsible for holding hearings on matters referred to it by the complaints investigation committee and making disciplinary decisions about the conduct of investigated members.

Members

115(1). The inquiry committee is to consist of

- (a) a member of the college who is appointed as chair;
- (b) one or more other members of the college or former members of the college, one of whom is appointed as vice-chair; and
- (c) one or more public representatives, who must make up at least 1/3 of the committee's membership.

Panel

115(2). When a matter is referred to the inquiry committee, the chair or vice-chair must select a panel from among the members of the inquiry committee to hold a hearing, and appoint a member of the panel as the chair.

Members of the panel

115(3). A panel is to consist of three or more committee members, at least 1/3 of whom must be public representatives.

Who cannot sit on panel

115(4). A person who has taken part in the review or investigation of what is to be the subject matter of the hearing must not be selected for the panel.

If member unable to continue

115(5). If a member of a panel is unable to continue to sit after a hearing begins, the panel may complete the hearing if at least three members remain and one of them is a public representative.

Decision of panel

115(6). A decision or action of a panel is a decision or action of the inquiry committee, and a reference in this Act to the inquiry committee includes a panel of the committee.

HOW DOES A PANEL HOLD A HEARING?

Hearing

116(1). When a panel is selected, it must hold a hearing.

Date of hearing

116(2). The hearing must begin within 120 days after the complaint is referred to the inquiry committee, unless the investigated member consents in writing to a later date.

Notifying complainant

116(3). The registrar must notify the complainant in writing if the hearing will not begin within the time period set out in subsection (2).

Notice of hearing

116(4). At least 30 days before the hearing begins, the registrar must give written notice to the investigated member and the complainant stating the date, time and place of the hearing, and identifying in general terms the complaint or matter about which the hearing will be held.

Public notice of hearing

116(5). The registrar may issue a public notice of the hearing in any manner he or she considers appropriate, but the notice must not include the investigated member's name.

Procedure

117(1). Subject to any procedural rules established for the inquiry committee in the by-laws, the inquiry committee may determine its own practice and procedure.

Rules of evidence do not apply

117(2). A panel is not bound by the rules of evidence that apply to judicial proceedings.

Right to appear and be represented

117(3). The college and the investigated member may appear and be represented by counsel at the hearing, and the panel may have counsel to assist it.

Adjournments

117(4). The chair of the panel may adjourn the hearing from time to time.

Hearing in absence of investigated member

118. If it has been proved that the investigated member has received notice of the hearing, the panel may

- (a) proceed with the hearing in the absence of the investigated member; and
- (b) act or decide or report on the matter being heard in the same way as if the member were in attendance.

Witnesses

119(1). Any person who, in the panel's opinion, has knowledge of the subject matter of the hearing is a compellable witness in a proceeding before the panel.

Oral and affidavit evidence

119(2). Evidence may be given at a proceeding before a panel by oral testimony or affidavit or both, but an investigated member's registration or certificate of practice cannot be suspended or cancelled on affidavit evidence alone.

Oral evidence

119(3). The oral evidence of a witness at a hearing must be recorded and taken on oath, and the parties have the right to cross-examine witnesses and call evidence in defence and reply.

Oaths

119(4). The registrar and any member of the panel may administer oaths for the purpose of a hearing under this Part.

Notice to attend and produce records

119(5). The registrar may issue a notice requiring a witness to attend and give evidence at a hearing and to produce records. Such a notice may be issued at the request of the college or the investigated member.

Witness fees

119(6). Except for the investigated member, a witness who has been served with a notice to attend or produce records is entitled to be paid the same fees in the same way as a witness in an action in court.

Failure to attend or give evidence

119(7). Proceedings for civil contempt of court may be brought against a witness

- (a) who fails to attend at a hearing as required by a notice to attend;
- (b) who fails to produce any records as required by a notice to produce them; or
- (c) who refuses to be sworn or to affirm, or to answer any question he or she is directed to answer by the panel.

Evidence taken outside Manitoba

119(8). The registrar may apply to the court for an order for the examination of a witness outside Manitoba. The *Queen's Bench Rules* apply to the obtaining of such an order.

Prior notice of evidence

120(1). Evidence is admissible at a hearing only if the party intending to introduce it gives the other party, at least 14 days before the hearing,

- (a) in the case of documentary evidence, an opportunity to inspect the document;
- (b) in the case of expert testimony,
 - (i) the name and qualifications of the expert,
 - (ii) a copy of any written report the expert has prepared about the matter, and
 - (iii) if the expert did not prepare a written report, a written summary of the evidence the expert will present at the hearing; and

(c) in the case of testimony of a witness who is not an expert, the name of the witness and an outline of his or her anticipated evidence.

Introducing evidence without proper notice

120(2) Even if the requirements of subsection (1) have not been met, the panel may allow evidence to be introduced if it is satisfied that doing so is necessary to ensure that the legitimate interests of a party will not be unduly prejudiced.

Evidence of other matters

121 The panel may receive evidence on, and hear, any other matter concerning the conduct of the investigated member that arises during its proceedings, but only after

- (a) declaring its intent to do so; and
- (b) giving the investigated member a reasonable opportunity to prepare a response.

IS THE HEARING OPEN TO THE PUBLIC?

Hearing open to public

122(1) A hearing must be open to the public unless the panel orders otherwise under this section.

Request for an order that a hearing be private or that a person be identified only by initials

122(2) The investigated member or the college may request the panel to make an order requiring

- (a) that the hearing or any part of it be held in private; or
- (b) that the investigated member, complainant or any witness be identified only by initials.

When order may be made

122(3) The panel may make an order described in subsection (2) on the request of the investigated member or the college, or on the panel's own initiative, but only if the panel is satisfied that

- (a) matters involving public security may be disclosed;
- (b) financial, personal or other matters may be disclosed that are of such a nature that the desirability of avoiding public disclosure of those matters outweighs the desirability of adhering to the principle that meetings be open to the public;
- (c) a person involved in a civil or criminal proceeding may be prejudiced; or
- (d) a person's safety may be jeopardized.

Reasons for the order to be available

122(4) The panel must ensure that an order made under subsection (3) and the reasons for it are either given orally at the hearing or made available to the public in writing.

No publication other than initials

122(5) No person, whether or not a member of the news media, shall publish anything else that identifies or may identify a person who, by virtue of an order made under subsection (2), can only be identified by initials.

No publication of identifying information

123(1) No person, whether or not a member of the news media, shall publish anything that identifies, or may identify,

- (a) the investigated member; or
- (b) the business name or location of the investigated member's practice;

unless and until a panel has made a finding under subsection 124(2).

Exception

123(2) Despite subsection (1), the registrar may act under subsection 110(2) to give written notice of a suspension or imposition of conditions pending the outcome of proceedings under this Part.

WHAT FINDINGS CAN THE PANEL MAKE?

Decision of the panel

124(1) At the conclusion of a hearing, the panel may decide that no further action is to be taken against the investigated member, or it may make any finding described in subsection (2).

Findings

124(2) If, at the conclusion of a hearing, the panel finds that the investigated member

- (a) is guilty of professional misconduct;
- (b) has contravened this Act or a regulation, by-law, standard of practice or practice direction or the code of ethics;
- (c) has been found guilty of an offence that is relevant to his or her suitability to practise the regulated health profession;
- (d) has displayed a lack of knowledge or a lack of skill or judgment in the practice of the regulated health profession;
- (e) has demonstrated an incapacity or unfitness to practise the regulated health profession;
- (f) is suffering from an ailment that might be a danger to the public if the investigated member continues to practise the regulated health profession;
- (g) is suffering from an ailment, emotional disturbance or addiction that impairs his or her ability to practise the regulated health profession; or
- (h) is guilty of conduct unbecoming a member;

the panel may make an order against the investigated member provided for in this Part.

Deemed professional misconduct

125(1) A member is deemed to have been found guilty of professional misconduct by a panel under clause 124(2)(a) if the member

- (a) is convicted of an indictable offence; or
- (b) has had his or her registration, certificate of practice, licence or other authorization to practise a regulated health profession suspended, restricted or revoked by an external regulatory body as a result of a disciplinary proceeding.

Member may make submissions before order made

125(2) Before making an order under section 126 against a member deemed guilty of professional misconduct under subsection (1), the panel must give the member an opportunity to make submissions to it about any aspect of the matter.

Form of submissions

125(3) A submission under subsection (2) may be written or oral and may be made by counsel acting on behalf of the member.

WHAT ORDERS CAN THE PANEL MAKE?

Orders of panel

126(1) If the panel makes a finding under subsection 124(2), including a deemed finding under subsection 125(1), it may make an order doing one or more of the following:

- (a) reprimanding the investigated member;
- (b) suspending the investigated member's registration or certificate of practice for a stated period;
- (c) suspending or restricting the investigated member's registration or certificate of practice until he or she
 - (i) has completed a specified course of studies,
 - (ii) has completed supervised practical experience under a restricted certificate of practice issued for that purpose, or

- (iii) has complied with the requirements of both subclauses (i) and (ii),
to the satisfaction of a person or committee specified by the panel;
- (d) suspending the investigated member's registration or certificate of practice until he or she satisfies a person or committee specified by the panel that the ailment, emotional disturbance or addiction no longer impairs his or her ability to practise the regulated health profession;
- (e) accepting, in place of a suspension under clause (b), (c) or (d), the investigated member's undertaking to limit his or her practice;
- (f) imposing conditions on the investigated member's right to practise a regulated health profession, including conditions that he or she
- (i) limit his or her practice,
 - (ii) practise under supervision,
 - (iii) permit periodic inspections or audits of his or her practice, including inspections or audits of practice records,
 - (iv) report on specified matters to a person or committee specified by the panel,
 - (v) not engage in sole practice;
- (g) requiring the investigated member to take counselling or receive treatment;
- (h) directing the investigated member to repay money that was paid to him or her where payment was, in the panel's opinion, unjustified for any reason;
- (i) cancelling the investigated member's registration or certificate of practice.

Previous censures and orders

126(2) To assist it in making an order under this section, the panel may consider any censure or order previously issued to the investigated member and the circumstances under which it was issued.

Ancillary orders

126(3) The panel may make any ancillary order that is appropriate or required in connection with an order made under subsection (1), or may make any other order that it considers appropriate in the circumstances, including an order that

- (a) a further or new investigation be held into any matter; or
- (b) a panel be convened to hear any matter without an investigation.

Suspending or cancelling registration or certificate of practice

126(4) If an investigated member's registration or certificate of practice is suspended or cancelled by an order made under subsection (1), the investigated member must not practise the regulated health profession, or do anything else authorized by the registration or certificate of practice.

Costs re undertaking or conditions

126(5) If the panel accepts an undertaking from the investigated member to limit his or her practice or imposes conditions on the investigated member's right to practise, the panel may order the member to pay all or part of the costs incurred by the college in monitoring compliance with the undertaking or conditions.

Contravention of order

126(6) If the council is satisfied that an investigated member has contravened an order made under subsection (1), it may cancel or suspend the investigated member's registration or certificate of practice without a further hearing.

WHAT COSTS AND FINES CAN THE PANEL IMPOSE?

Costs and fines

127(1) In addition to or instead of dealing with the investigated member's conduct under section 126, the panel may order the member to pay to the college, within the time period set in the order,

- (a) all or part of the costs of the investigation, hearing and appeal;
- (b) a fine not exceeding
 - (i) the amount that is set out in the column of the table of professional misconduct fines in Schedule 1 that is specified for the college, by regulation, for each finding of professional misconduct, or
 - (ii) the aggregate amount set out in that column for all of the findings arising out of the hearing; or
- (c) both the costs under clause (a) and the fine under clause (b).

Nature of costs

127(2) The costs referred to in subsection (1) may include, but are not limited to,

- (a) all disbursements incurred by the college, including
 - (i) fees and reasonable expenses for experts, investigators and auditors whose reports or attendance were reasonably necessary for the investigation or hearing,
 - (ii) fees, travel costs and reasonable expenses of witnesses required to appear at the hearing,
 - (iii) fees for retaining a reporter and preparing transcripts of the proceedings, and
 - (iv) costs for serving documents, long distance telephone and facsimile charges, courier delivery charges and similar miscellaneous expenses;
- (b) payment of remuneration and reasonable expenses to members of the panel or the complaints investigation committee; and
- (c) costs incurred by the college in providing counsel for the college and the panel, whether or not counsel is employed by the college.

Failure to pay costs and fines by time ordered

127(3) If an investigated member fails to pay a fine or costs ordered under subsection (1), or costs ordered under subsection 126(5), within the required time, the registrar may suspend the member's registration or certificate of practice, or both, until payment is made.

Filing of order

127(4) The college may file an order made under subsection (1) or subsection 126(5) in the court, and the order may be enforced in the same manner as a judgment of the court.

THE DECISION

Written decision

128(1) Within 90 days after a hearing is concluded, the panel must make a written decision on the matter, consisting of its findings, any order made by it and the reasons for the decision.

Decision forwarded to registrar

128(2) The panel must promptly forward the decision, the record of the proceedings and all exhibits and documents to the registrar.

Decision given to investigated member and complainant

128(3) Upon receiving the decision, the registrar must give a copy of it to the investigated member and to the complainant.

Transcripts

128(4) The investigated member or the complainant may examine the record of proceedings before the panel and is entitled to receive, on payment of the cost of providing it, a transcript of the oral evidence given before the panel. However, if any part of a hearing was held in private and in the absence of the complainant, the complainant may not examine the record of proceedings, or receive a copy of the transcript, relating to that part of the hearing.

Protecting privacy and personal health information

128(5) Before making the transcript available to the complainant under subsection (4), the college may edit it for the purpose of protecting

- (a) the personal health information of the investigated member; and
- (b) the privacy (including the personal health information) of any person, other than the investigated member or the complainant.

Decision available to the public

129(1) Subject to subsections (2) and (3), the college must make any finding made under subsection 124(2) and any order it has made under section 126 or 127, including the name of the investigated member, available to the public.

College may edit decision

129(2) For the purpose of protecting the privacy of the complainant or any witnesses, or both, the college may edit the decision or order — not including an edit that deletes the investigated member's name — before making it available to the public. Without limitation, edits may include using pseudonyms to describe the complainant or witnesses and deleting geographical references.

If ailment, emotional disturbance or addiction impairs member's ability to practise

129(3) If a finding has been made under clause 124(2)(g), the college, when making information available to the public under subsection (1), must not make available to the public

- (a) the name of the investigated member; or
- (b) any personal health information about the investigated member;

unless the college is satisfied that the public interest in making the information available to the public substantially outweighs the privacy interests of the investigated member. In this subsection, "**personal health information**" means personal health information as defined in *The Personal Health Information Act*.

Appeal of decision under subsection 129(3)

130(1) If the college intends to make information available to the public under subsection 129(3), the college

- (a) must give notice of its intention to the investigated member, and advise the investigated member of his or her right to appeal the decision as set out in this section; and
- (b) must not make any information described in clause 129(3)(a) or (b) available to the public under subsection 129(1) until the time period described in subsection (2) has lapsed, or, if an appeal has been filed, the investigated member's appeal is exhausted.

Notice of appeal

130(2) An investigated member may appeal a decision by filing, within 10 days after receiving notice from the college under clause (1)(a), a notice of appeal with the court.

Copy of notice must be given to the college

130(3) The investigated member must, without delay, give a copy of the notice of appeal to the college, and the college is a party to the appeal.

Decision of the court

130(4) After hearing an appeal under this section, the court may confirm, reverse or vary the college's decision to make the information available to the public.

Court to protect privacy

130(5) On an appeal, the court must take reasonable precautions to protect the investigated member's privacy, including his or her identity, which may include receiving representations ex parte, conducting hearings in private and examining records in private.

IS THERE A RIGHT TO APPEAL?

Appeal to Court of Appeal

131(1) The investigated member or the college may appeal the following decisions of a panel to the Court of Appeal:

- (a) a decision that no further action is to be taken under subsection 124(1);
- (b) a finding made under subsection 124(2);
- (c) an order made under section 126 or 127.

How to appeal

131(2) An appeal must be commenced by filing a notice of appeal within 30 days after the decision of the panel is given to the investigated member. If the investigated member appeals the decision, he or she must promptly give a copy of the notice to the registrar.

Appeal on the record

131(3) An appeal must be based on the record of the proceedings before the panel and the decision of the panel, including the reasons for the decision.

Sealing part of the record

131(4) If part of the hearing was held in private, the college must seal the part of the record that relates to the private hearing.

Review of sealed record by Court

131(5) The part of the record that is sealed by the college under subsection (4) may be reviewed by the Court of Appeal, which may direct that it remain sealed or that it be unsealed in whole or in part.

Powers of Court on appeal

132(1) Upon hearing the appeal, the Court of Appeal may

- (a) dismiss the appeal;
- (b) make any finding or order that in its opinion ought to have been made; or
- (c) refer the matter back to a panel for further consideration in accordance with any direction of the Court.

Stay pending appeal

132(2) The decision and any order of the panel remains in effect pending an appeal unless the Court of Appeal, on application, stays them pending the appeal.

CAN AN INVESTIGATED MEMBER WHO IS DISCIPLINED BE REINSTATED?

Reinstatement

133 Upon application by a person whose registration or certificate of practice has been cancelled under this Part, the council may

- (a) direct the registrar to reinstate the person's registration or certificate of practice, subject to any conditions the council may impose; and
- (b) order the person to pay any costs arising from those conditions.

WHO IS INFORMED ABOUT THE DISCIPLINING OF A MEMBER ?

Notice to employers and others of discipline

134 If an investigated member's registration or certificate of practice is suspended or cancelled or any conditions are imposed on a member's practice after a finding has been made under subsection 124(2), the registrar must provide that information to

- (a) a person who engages the member to provide health care on a full-time or part-time basis including
 - (i) an employer,
 - (ii) a person who engages the member as a contractor,
 - (iii) a person who engages the member as a consultant, and

- (iv) a person who engages the member as volunteer, if known to the college;
- (b) a hospital, if the member is a member of the hospital's professional staff;
- (c) a hospital or regional health authority that has granted privileges to the member;
- (d) any minister who, or an organization specified in the regulations that, administers the payment of fees for the health care that the member provides; and
- (e) the external regulatory bodies in other provinces or territories.

PART 9 OTHER COLLEGE DUTIES AND RESPONSIBILITIES

PRACTICE AUDITORS

Appointment of practice auditors

135(1) A council may appoint one or more practice auditors to audit the practice of a member for the purposes of this Act and the regulations, by-laws, standards of practice, code of ethics and practice directions.

Entry of premises and inspection of records

135(2) For the purpose of carrying out an audit, a practice auditor may, at any reasonable time,

- (a) enter and inspect any premises or place where the member practises or has practised the regulated health profession;
- (b) inspect, observe or audit the member's practice;
- (c) examine any equipment, materials or any other thing used by the member;
- (d) require the member to answer any questions or provide any information that the practice auditor considers relevant to the audit;
- (e) require the member to give to the practice auditor any record, substance or thing that the practice auditor considers relevant to the audit and that the member possesses or that is under his or her control.

The practice auditor must, upon request, present an identification card issued by the council.

Person must provide information

135(3) If a practice auditor requires a member to answer questions or provide information under clause (2)(d) or give him or her any record, substance or thing under clause (2)(e), the member must comply with the request.

Computers, photographs and copies

135(4) For the purposes of an audit, a practice auditor may

- (a) use any computer system used in connection with the member's practice in order to produce a record in readable form;
- (b) photograph or create images of the premises or place; or
- (c) use any copying equipment at the premises or place to make copies of any record related to the member's practice.

Removal

135(5) A practice auditor may remove any record, substance or thing for the purpose of making copies, producing records or for examination or further inspection, but the copying, production, examination or further inspection must be carried out within a reasonable time and the items must be returned without delay to the person from whom they were taken.

Admissibility of copies

135(6) A copy of a record made under subsection (4) or (5) and certified to be a true copy by the practice auditor is, in the absence of evidence to the contrary, admissible in evidence in any proceeding or prosecution as proof of the original record and its contents.

College may apply for court order

135(7) If a member fails to produce any record, substance or thing or fails to answer any question or provide any information, the college may apply to the court for an order directing one or both of the following:

- (a) directing the member to produce to the practice auditor any record, substance or thing that the practice auditor considers to be relevant to the audit and in the member's possession or under his or her control;
- (b) directing the member to attend before the practice auditor to provide information to the practice auditor, or answer any question that the practice auditor may have, relating to the audit.

Failure to produce records, etc. is professional misconduct

135(8) Any of the following actions done by a member is professional misconduct:

- (a) failing to produce to a practice auditor any record, substance or thing in his or her possession or under his or her control;
- (b) failing to give a practice auditor access to any premises or place under his or her control;
- (c) failing to provide any information to the practice auditor or answer any relevant questions that the practice auditor may have relating to the audit;
- (d) obstructing a practice auditor;
- (e) withholding or concealing from a practice auditor any record, substance or thing relevant to an audit;
- (f) destroying any record, substance or thing relevant to an audit.

Warrant to enter and investigate

135(9) A justice, upon being satisfied by information on oath that

- (a) a practice auditor has been refused entry to any premises or place to carry out an audit under this section; or
- (b) there are reasonable grounds to believe that
 - (i) a practice auditor will be refused entry to any premises or place to carry out an audit under this section, or
 - (ii) if a practice auditor were to be refused entry to any premises or place to carry out an audit under this section, delaying the audit in order to obtain a warrant on the basis of the refusal could be detrimental to the audit;

may at any time issue a warrant authorizing the practice auditor and any other person named in the warrant to enter the premises or place and carry out an audit under this section.

Application without notice

135(10) An order or warrant under this section may be issued upon application without notice.

Obstruction of practice auditor

135(11) No person shall

- (a) obstruct a practice auditor;
- (b) withhold or conceal from a practice auditor any record, substance or thing relevant to an audit; or
- (c) destroy any record, substance or thing relevant to an audit.

Audit for other professions

136 When a college receives a written request from a body having statutory authority to regulate

- (a) another regulated health profession in Manitoba; or
- (b) the practice of a health profession in a jurisdiction outside of Manitoba;

the college may direct the practice auditor to conduct an audit or inspection of a member's practice, and may share information resulting from the audit or inspection with the requesting body.

PRACTITIONER PROFILES

Practitioner profiles

137(1) A council may collect information in order to create and make available to the public individual practitioner profiles of members who hold a certificate of practice.

Definition

137(2) In this section, "**member**" includes a person whose certificate of practice is suspended.

Regulations

137(3) With the approval of the Lieutenant Governor in Council, a council may make regulations respecting practitioner profiles, including, but not limited to, regulations

(a) requiring members to provide the registrar with any or all of the following information:

(i) if applicable to the regulated health profession and the member, the name of the educational institution from which the member graduated or attained the educational requirements necessary to practise the regulated health profession, and the date by which he or she graduated or attained the educational requirements,

(ii) if applicable to the regulated health profession and the member, the date on which he or she completed any assessment process required for registration,

(iii) if applicable to the regulated health profession and the member, any post-graduate education,

(iv) the address at which the member primarily conducts his or her practice,

(v) if applicable to the regulated health profession and the member, any certification that he or she holds from a certification, accreditation or external regulatory body or association specified in the regulations,

(vi) a description of any offence under the *Criminal Code* (Canada), the *Controlled Drugs and Substances Act* (Canada) or the *Food and Drugs Act* (Canada)

(A) that is reasonably related to the member's competence or to the safe practice of the regulated health profession, and

(B) of which the member has been found guilty, within the time period specified in the regulations,

(vii) a description of any final disciplinary action taken against the member by the body regulating the profession in which the member is or has been registered, whether in Manitoba or elsewhere, within the time period specified in the regulations,

(viii) a description of any malpractice court judgments, and any other malpractice claims against the member, as specified in the regulations,

(ix) any other information the regulations may specify;

(b) specifying the time and manner in which the information must be provided;

(c) respecting how practitioner profiles are to be made available to the public;

(d) specifying any matter authorized to be dealt with by regulation and defining any word or expression used in this section;

(e) respecting any other matter about practitioner profiles the council considers necessary or advisable.

Verification of information

137(4) The council may take any steps it considers necessary to verify the accuracy of information that a member provides in accordance with regulations made under subsection (3), including collecting information from other persons.

Prior review

137(5) At the request of a member, before his or her practitioner profile is made publicly available, the council must give the member an opportunity to review the profile and correct any factual inaccuracies.

Scope of regulations

137(6) A regulation may be general or particular in its application and may apply to one or more classes of members.

College regulates more than one regulated health profession

137(7) If a college regulates more than one regulated health profession, a regulation may apply to one or more of those professions.

Regulation required by the minister

137(8) The minister may require a council to make, amend or repeal a regulation about practitioner profiles.

L.G. in C. may make regulation

137(9) If the council does not comply with a requirement under subsection (8) within 90 days, the Lieutenant Governor in Council may make, amend or repeal the regulation.

DUTY OF MEMBERS TO REPORT

Duty of members to report

138(1) A member who reasonably believes that another member of the same regulated health profession

(a) is unfit to practise, incompetent or unethical; or

(b) suffers from a mental or physical disorder or illness that may affect his or her fitness to practise, and continues to practise despite having been counselled not to;

must disclose that belief to the registrar, along with the name of the other member and particulars of the suspected disorder, illness, lack of fitness to practise, incompetency or unethical behaviour.

Exemption from liability for disclosure

138(2) A member who discloses information under subsection (1) is not subject to any liability as a result, unless it is established that the disclosure was made maliciously.

CONSULTATION RE PROGRAM OF STUDY

Consultation with ministers re program of study

139 Before approving or removing approval from a program of study in respect of the practice of a regulated health profession, the council for that profession must consult with the minister and the Minister of Advanced Education and Literacy and must consider the comments received from them.

CONFIDENTIALITY AND COLLECTING AND SHARING INFORMATION

Definitions

140(1) The following definitions apply in this section and section 141.

"personal health information" means personal health information as defined in *The Personal Health Information Act*.
(« renseignements médicaux personnels »)

"personal information" means personal information as defined in *The Freedom of Information and Protection of Privacy Act*.
(« renseignements personnels »)

Confidentiality of information

140(2) Every person employed, engaged or appointed for the purpose of administering or enforcing this Act, and every member of a council, a committee of a council or board established under this Act, must maintain as confidential all information that comes to his or her knowledge in the course of his or her duties and must not disclose this information to any other person or entity except in the following circumstances:

(a) the information is available to the public under this Act;

(b) the information is authorized or required to be disclosed under this Act;

(c) disclosure of the information is necessary to administer or enforce this Act or the regulations, by-laws, standards of practice, code of ethics or practice directions, including where disclosure is necessary to register members, issue certificates of registration or practice, permits and licences, grant approvals or authorizations, deal with complaints or allegations that a member is incapable, unfit or incompetent, deal with allegations of professional misconduct, or govern the profession;

(d) disclosure of the information is

- (i) necessary to administer or enforce *The Health Services Insurance Act* or *The Prescription Drugs Cost Assistance Act*, or
- (ii) to the medical review committee established under *The Health Services Insurance Act*;

(e) disclosure of the information is

- (i) authorized or required to be disclosed by another enactment of Manitoba or Canada, or
- (ii) for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body with jurisdiction to compel the production of information or with a rule of court that relates to the production of information;

(f) the information is disclosed to a body that has statutory authority to regulate

- (i) a profession in Manitoba, or
- (ii) the practice of the same or a similar health profession in any other jurisdiction,

if disclosure is necessary for that body to carry out its responsibilities;

(g) the information is disclosed to a person who employs or engages a member to provide health care, or to a hospital or regional health authority that grants privileges to a member, if the purpose of the disclosure is to protect any individual or group of individuals;

(h) the information is disclosed to a department of the government, a regional health authority or another agency of the government, or any department or agency of the government of Canada or a province or territory of Canada, dealing with health issues

(i) if

- (A) the purpose of the disclosure is to protect any individual or group of individuals or to protect public health or safety, or
- (B) the information concerns the practice of a health profession in any jurisdiction, and

(ii) the information does not reveal personal health information;

(i) disclosure of the information is necessary to obtain legal advice or legal services;

(j) the information is disclosed with the written consent of the person to whom the information relates.

Limits on disclosure of personal information and personal health information

140(3) When disclosing information under subsection (2), the following rules apply:

(a) personal information and personal health information must be disclosed only if non-identifying information will not accomplish the purpose for which the information is disclosed;

(b) any personal information or personal health information disclosed must be limited to the minimum amount necessary to accomplish the purpose for which it is disclosed.

Registrar to collect information

141(1) In addition to any other information maintained for the purposes of this Act, a registrar must collect and record each member's

- (a) date of birth;
- (b) sex; and
- (c) education or training, as required for registration and practice of the regulated health profession.

Member to provide information

141(2) A member must provide the registrar with the information required under subsection (1), in the form and at the time set by the registrar.

Minister may require information

141(3) The minister may request in writing that the registrar provide information about members, including personal information, contained in the register or collected under subsection (1) for the following purposes:

- (a) to validate the identity of a member seeking access to an individual's personal health information maintained in electronic form;
- (b) to generate information for statistical purposes;
- (c) for health human resource planning and management.

Registrar to provide information

141(4) The registrar must provide the minister with the information, including personal information, requested under subsection (3), in the form and within the time period specified by the minister after consulting with the registrar.

Minister may disclose information

141(5) Despite any provision of this Act or any other enactment, the minister may

- (a) disclose information, including personal information, provided under subsection (4) to any entity authorized to receive it under subsection (6); and
- (b) impose conditions on that entity about the use, protection, retention and further disclosure of the information.

The entity must comply with any conditions imposed on it by the minister.

Authorized entity

141(6) The following entities are authorized to receive information under subsection (5):

- (a) a regional health authority;
- (b) Regional Health Authorities of Manitoba, Inc.;
- (c) CancerCare Manitoba established under *The CancerCare Manitoba Act*;
- (d) The Manitoba Centre for Health Policy at the University of Manitoba;
- (e) Canadian Institute for Health Information;
- (f) a government or organization with which the Government of Manitoba has entered into an agreement to share information for the purposes stated in subsection (3).

ANNUAL REPORT

Annual report

142(1) A college must submit an annual report to the minister within four months after the end of the college's fiscal year.

Contents of report

142(2) The report must include the following information for the year in respect of which the report is submitted:

- (a) a description of the structure of the college, including the names and a description of the committees of the council and their functions;
- (b) the names of the council members and of the members of the committees of the council;
- (c) a copy of the by-laws and any amendments to by-laws that were made;
- (d) the number of members by registration category;
- (e) the number of members who hold a certificate of practice;
- (f) the number of applications for registration that were received and their disposition;
- (g) the number of applications for certificates of practice that were received and their disposition;

- (h) the number of complaints that were received and their disposition;
- (i) the number of members disciplined, the reasons for the discipline and the sanctions imposed;
- (j) the number of practice audits conducted and the results of the audits;
- (k) a description of the continuing competency program of the college and other methods used to maintain the competence of the members;
- (l) a financial report on the operation of the college;
- (m) any other information the minister requires.

COLLEGE WEBSITE

College website

143(1) A college must have a website available to the public and must include on that website

- (a) the college's annual report;
- (b) the college's regulations, by-laws, standards of practice, code of ethics and practice directions;
- (c) the codes, standards or guidelines referred to in section 84; and
- (d) the information prescribed by regulation.

Paper or electronic form

143(2) Upon the request of any person, the college must provide the information on its website to the person in paper or electronic form. The college may charge a reasonable fee for doing so.

LETTERS OF STANDING OR CERTIFICATE OF CONDUCT

Letters of standing or certificate of conduct

144 Upon the request of a member, the registrar must issue a letter of standing or certificate of conduct about the member, in accordance with policies approved by the council. It must include

- (a) all information about the member recorded in any register; and
- (b) a description of every matter outstanding before the complaints investigation committee or inquiry committee.

PART 10

HEALTH PROFESSIONS ADVISORY COUNCIL

Advisory council established

145(1) The Health Professions Advisory Council is hereby established.

Composition of advisory council

145(2) The advisory council must be composed of at least three but not more than seven individuals appointed by the Lieutenant Governor in Council.

Chairperson of advisory council

145(3) The Lieutenant Governor in Council must designate one member of the advisory council to be the chairperson.

First members

145(4) The Lieutenant Governor in Council may designate the chairperson and two other members as the first members of the advisory council.

Ineligible advisory council members

146 A person cannot be appointed as a member of the advisory council if he or she

(a) is employed in the civil service as defined in *The Civil Service Act* or by a government agency as defined in *The Financial Administration Act*; or

(b) is a member of the college of a regulated health profession or its council.

Term of office

147(1) The term of office of a member (other than a first member) must not exceed three years.

Term of office: first members

147(2) The term of office of a first member designated under subsection 145(4) must not exceed four years.

Appointment of successors

147(3) Despite subsections (1) and (2), a member whose term of office expires continues to hold office until he or she is re-appointed or a successor is appointed.

Re-appointment

147(4) A member whose term of office expires may be re-appointed for one further term of three years.

Vacancy

147(5) The advisory council may act despite a vacancy in its membership.

Advisory council duties

148(1) In addition to its duties under Part 11 (New Regulated Health Professions), the advisory council must, on the minister's request, inquire into matters related to this Act and give advice to the minister, including advice about

- (a) whether the list of reserved acts should be revised;
- (b) who may or may not perform a reserved act;
- (c) the use of professional or occupational titles, and other work-related descriptive terms, by members of a regulated health profession or other persons;
- (d) entry-to-practice requirements for health professions, including education, training, technical achievement, competencies, credentials and other substantive or procedural requirements;
- (e) the continuing competency programs established by colleges;
- (f) health human resource planning and management; and
- (g) any other matter related to this Act.

Terms of reference

148(2) The minister may establish terms of reference for the advisory council to follow in making inquiries or providing advice to the minister under this Part or conducting an investigation under Part 11.

Advisory council to follow terms of reference

148(3) The advisory council must comply with the terms of reference established under subsection (2).

Function is advisory only

149(1) The function of the advisory council is advisory only.

Prohibited matters

149(2) The advisory council must not consider or become involved in any other way in any matter respecting

- (a) a specific person who is applying to a college for registration as a member of the college or for reinstatement of registration;
- (b) a specific person who is applying to a college for a certificate of practice or for reinstatement of a certificate of practice;
- (c) a specific member or former member;

(d) a specific person applying to a college for a health profession corporation permit.

Powers

150 In carrying out its duties under this Part and Part 11, the advisory council may

- (a) consult, as it considers necessary or advisable, with any person who, in the advisory council's opinion, has expertise or information relevant to its work;
- (b) receive submissions;
- (c) hold public meetings;
- (d) conduct or participate in research, studies or activities; and
- (e) engage, on a temporary basis or for a specific purpose, any person who has technical or specialized knowledge of a matter that is related to the work of the advisory council as the advisory council considers necessary or appropriate.

Advisory council to consult with affected colleges

151(1) The advisory council must consult with, and consider the comments received from, any college that may be affected by the advisory council's advice to the minister under this Part or by its recommendations to the minister under section 161.

Colleges to work with the advisory council

151(2) At the request of the minister or the advisory council, a college must work with the advisory council to provide advice to the minister, including advice about health human resource planning and management.

Meetings of the advisory council

152 The advisory council is to meet at the call of the chairperson.

Procedure

153 Subject to Part 11 and the terms of reference established under subsection 148(2), the advisory council may determine its own practice and procedure.

Member's remuneration and expenses

154 The minister may approve the payment of remuneration and reasonable expenses to the advisory council members out of money appropriated under an Act of the Legislature for the purposes of this Act.

Advisory council to report annually to the minister

155 The advisory council must report annually to the minister, in the form and within the time period specified by the minister, about its activities in the immediately preceding year.

PART 11

NEW REGULATED HEALTH PROFESSIONS

APPLICATION

Applying to be a regulated health profession

156(1) If a group of persons representing a health profession wishes that profession to be regulated under this Act, the group must apply to the minister for the health profession to be designated as a regulated health profession under clause 8(a).

Application requirements

156(2) The application must be in the form and contain the information required by the minister, and must be accompanied by the application fee prescribed by regulation.

Group to represent majority of practitioners

156(3) An application under subsection (1) must be made by the organization that represents the majority of persons carrying on that health profession in Manitoba.

INVESTIGATION

Actions

- 157 Upon receiving an application under section 156, the minister may
- (a) investigate whether an unregulated health profession should be regulated under this Act;
 - (b) direct the advisory council to investigate whether the profession should be regulated under this Act;
 - (c) refuse the application without investigation; or
 - (d) if the minister considers that it is in the public interest to do so, approve the application without investigation.

Investigation initiated by minister

- 158 In the absence of an application under section 156, the minister may
- (a) investigate whether an unregulated health profession should be regulated under this Act; or
 - (b) direct the advisory council to investigate whether the profession should be regulated under this Act.

Investigation by advisory council

- 159 In conducting an investigation under section 157 or 158, the advisory council must have regard to all matters that it considers relevant, which may include:
- (a) whether a substantial proportion of the practitioners of the health profession are engaged in activities that are under the minister's jurisdiction;
 - (b) whether the primary objective of the health profession is to provide health care as contemplated by this Act;
 - (c) the nature and degree, if any, of the risk of harm to the health and safety of the public from incompetent, unethical or impaired practice of the health profession, having regard to
 - (i) the health care provided by the practitioners,
 - (ii) the technology, including instruments and materials, used by the practitioners, and
 - (iii) the invasiveness of the procedures or methods of treatment used by the practitioners;
 - (d) the degree of supervision that a practitioner receives or is likely to receive with respect to the practice of the health profession;
 - (e) whether there are more appropriate means to regulate the members of the health profession other than under this Act;
 - (f) whether the health profession is a distinct and identifiable profession with a distinct and identifiable body of knowledge that is used by members of the profession to provide health care;
 - (g) the qualifications and minimum standards of competence for persons applying to the practice of the health profession, and how the continuing competence of practitioners is to be maintained;
 - (h) the education programs available with respect to the practice of the health profession;
 - (i) the ability of the proposed college of the health profession to carry out the mandate, powers and duties of a college under this Act and whether they could be carried out by an existing college;
 - (j) the potential economic impact of regulating the health profession, including the expected effect on practitioner availability, education and training programs, access to service, and the quality, price and efficiency of that service.

Costs of investigation

160 The minister may charge to the group that made the application under section 156 all or part of the costs, including the administrative costs, incurred in conducting the advisory council's investigation, as determined in accordance with the regulations.

RECOMMENDATIONS

Recommendation of advisory council to minister

161(1) Upon completing an investigation, the advisory council must recommend to the minister, with reasons, whether or not it would be in the public interest that the health profession be regulated under this Act.

Other recommendations

161(2) If the recommendation is that the health profession be regulated under this Act, the advisory council may also make recommendations about

- (a) a college for the proposed regulated health profession, including whether a college that already regulates one or more regulated health professions should also regulate the proposed profession;
- (b) a scope of practice for the proposed regulated health profession;
- (c) a listing of the reserved acts that the proposed regulated health profession may perform and any conditions on the performance of those acts;
- (d) a name, a title and initials for the proposed regulated health profession and its members; and
- (e) any other matter that is compatible with the recommendation that the health profession be regulated under this Act.

Recommendation to L.G. in C.

162 If the minister determines that it would be in the public interest that the health profession be regulated under this Act, the minister is to recommend to the Lieutenant Governor in Council that the health profession be designated as a regulated health profession under clause 8(a).

TRANSITIONAL COUNCIL**Transitional council of a college**

163(1) When the Lieutenant Governor in Council has designated an unregulated health profession as a regulated health profession, prescribed its scope of practice and established a college for that profession, the Lieutenant Governor in Council may also appoint a transitional council for the college of the new regulated health profession.

Powers of the transitional council

163(2) Before this Act applies to the new regulated health profession, the transitional council and its staff and committees may do anything that is necessary or advisable for this Act to apply to the profession and may perform any activities that the council and its staff, board of assessors or committees could do under this Act in respect of that profession.

Registration in transitional period

163(3) Without limiting the generality of subsection (2), the transitional council may appoint a registrar. The registrar and the transitional council's board of assessors, if one is established, may accept and process applications for registration, certificates of practice and permits, and the registrar may charge application fees and issue certificates and permits.

Powers of minister

163(4) The minister may

- (a) review the transitional council's activities and require the transitional council to provide reports and information;
- (b) require the transitional council to make, amend or revoke a regulation under this Act; and
- (c) require the transitional council to do anything that, in the minister's opinion, is necessary or advisable for this Act to apply to the new regulated health profession.

Transitional council to comply with the minister's request

163(5) If the minister requires the transitional council to do anything under subsection (4), the transitional council must, within the time and in the manner specified by the minister, comply with the requirement and submit a report to the minister.

Regulations made by Lieutenant Governor in Council

163(6) If the minister requires the transitional council to make, amend or revoke a regulation under clause (4)(b), and the transitional council does not do so within 60 days, the Lieutenant Governor in Council may make, amend or revoke the regulation.

Transition

163(7) After this Act applies to the new regulated health profession, the transitional council is to be the council if it is constituted in accordance with subsections 13(1) and (2) or, if it is not, it is deemed to be the council until a new council is constituted in accordance with subsections 13(1) and (2).

PART 12 MINISTERIAL POWERS

INQUIRY

Inquiry

164(1) If, after consulting with the affected college or colleges, the minister considers it to be in the public interest, he or she may appoint a person to inquire into and make recommendations about

- (a) any aspect of the administration or operation of the college or colleges; or
- (b) the state of practice of one or more regulated health professions
 - (i) in Manitoba or a geographic region of Manitoba, or
 - (ii) within one or more facilities.

Subject of inquiry

164(2) An inquiry under subsection (1) may include an inquiry into the exercise of a power or the performance of a duty, or the failure to exercise a power or perform a duty, under this Act or the regulations or by-laws.

Evidence Act powers

164(3) A person appointed under subsection (1) has the powers of a commissioner under Part V of *The Manitoba Evidence Act* when conducting an inquiry under this Act.

Terms of reference

164(4) A person appointed under subsection (1) must comply with any terms of reference the minister may establish concerning the conduct of the inquiry.

Expenses

164(5) The expenses incurred by the government under this section in respect of a college are a debt due by the college to the government and are recoverable in a court of competent jurisdiction.

DIRECTIVES

Directives

165(1) Upon completion of an inquiry under section 164, the minister may issue a directive to the college about the subject of the inquiry if, in the minister's opinion,

- (a) it is in the public interest to do so; or
- (b) the directive would provide for matters related to health, safety or quality assurance in the practice of the regulated health profession.

Scope of directive

165(2) A directive under subsection (1) may

- (a) require the council to exercise its powers or perform its duties under this Act, the regulations or the by-laws, including the making, amending or revoking of regulations or by-laws, to address the issues that were the subject of the inquiry;
- (b) set out the procedure that the council must follow in developing, proposing, consulting on and reviewing a regulation or by-law;
- (c) require the council to submit a written report to the minister, within the specified time period, detailing the measures the council has taken to implement the directive.

Matters not to be included in directive

165(3) Despite clause (2)(a), a directive must not require a council to

- (a) adopt a standard, limit or condition on the practice of the regulated health profession; or
- (b) do anything with respect to a specific member, former member or applicant.

Council must comply with directive

165(4) A council must comply with a directive issued to it under this section.

Regulations

165(5) If a directive under subsection (1) requires the council to make, amend or revoke a regulation and, despite subsection (4), the council does not do as directed within 90 days, the Lieutenant Governor in Council may make, amend or revoke the regulation.

ORDERS**Order re administrator**

166(1) The minister may, by order, do one or more of the following in respect of a college:

- (a) provide for the appointment of one or more persons as administrators of the college for a specified term;
- (b) authorize the payment of remuneration or expenses out of the college's funds to any person appointed as an administrator;
- (c) authorize a person appointed as an administrator to carry out, as specified in the order, any of the powers and duties of the college, its council, officers or committees under this Act or the regulations and by-laws.

Support requested or required

166(2) The minister may make an order under subsection (1) only if

- (a) the college requests that the minister exercise the power; or
- (b) the minister is of the opinion that
 - (i) the college requires support in carrying out its mandate, powers and duties under this Act and the regulations and by-laws, or
 - (ii) it is in the public interest to provide support to the college for the carrying out its mandate, powers and duties under this Act and the regulations and by-laws.

Deemed to be carrying out duty of college

166(3) The carrying out of a power or duty by a person appointed as an administrator under subsection (1) is deemed to be the carrying out of a power or duty by the college or its council, officers or committees.

Termination of appointment

166(4) If, in the minister's opinion, the administrator is no longer required, the minister may terminate his or her appointment before the end of the specified period and on the terms and conditions that the minister considers advisable.

PART 13**GENERAL PROVISIONS****Responsibility to ensure registration, valid certificate of practice**

167 A person who employs or engages another person to provide health care as a member of a regulated health profession must ensure that the other person is registered and holds a valid certificate of practice issued under this Act during the period of employment or engagement.

Responsibility to report misconduct

168(1) If a person

- (a) employs or engages a member to provide health care on a full-time or part-time basis in any capacity, including as an employee, contractor or consultant; and
- (b) suspends or terminates the employment or engagement of the member for misconduct, incompetence or incapacity;

then that person must promptly report the suspension or termination to the council of the member's college and give the member a copy of the report.

Hospital's or regional health authority's responsibility to report misconduct

168(2) If a hospital or regional health authority

- (a) employs or engages a member as a member of its professional or medical staff; and
- (b) suspends or terminates the employment or engagement of the member, or withdraws the member's privileges, for misconduct, incompetence or incapacity;

then the hospital or regional health authority must promptly report the suspension, termination or withdrawal to the council of the member's college and give the member a copy of the report.

Prohibition

169 No person who employs or engages a member shall knowingly permit the member to

- (a) contravene a provision of this Act or of the regulations; or
- (b) fail to comply with a condition of the member's registration or certificate of practice.

INJUNCTION

Injunction

170 Upon the application of a college, the court may grant an injunction enjoining any person from doing one or both of the following:

- (a) practising or professing to practise the regulated health profession of which the college is the regulatory body, without being registered under this Act and holding a valid certificate of practice;
- (b) doing anything that contravenes this Act or the regulations, by-laws, standards of practice, code of ethics or practice directions, despite any penalty that may be provided by this Act in respect of that contravention.

OFFENCES

Offence

171(1) A person who contravenes a provision of this Act, other than section 140 (confidentiality of information), or of the regulations is guilty of an offence and is liable on summary conviction to a fine

- (a) in the case of an individual,
 - (i) for a first offence, to a fine of not more than \$10,000, and
 - (ii) for each subsequent offence, to a fine of not more than \$50,000; and
- (b) in the case of a corporation,
 - (i) for a first offence, to a fine of not more than \$25,000, and
 - (ii) for each subsequent offence, to a fine of not more than \$100,000.

Offence: section 140

171(2) A person who contravenes section 140 (confidentiality of information) is guilty of an offence and is liable on summary conviction to a fine of not more than \$50,000.

Directors, officers and employees of health profession corporations

171(3) If a health profession corporation commits an offence under this Act, a director, officer or employee of the corporation who authorized, permitted or acquiesced in the commission of the offence is also guilty of an offence and is liable on summary conviction, whether or not the corporation has been prosecuted or convicted,

- (a) for a first offence, to a fine of not more than \$10,000; and
- (b) for a second or subsequent offence, to a fine of not more than \$50,000.

Limitation on prosecution

171(4) A prosecution under this Act may be commenced within two years after the commission of the alleged offence, but not afterwards.

Fines payable to the government

171(5) Any fines recovered under this section are first paid to the convicting court and then paid to the government.

Prosecution of offence

172(1) Any person may be a prosecutor in the prosecution of an offence under this Act, and the government may pay to the prosecutor a portion of any fine recovered, in the amount that it considers appropriate, toward the costs of the prosecution.

Stay of proceedings

172(2) When a college is the prosecutor of an offence under this Act, it may apply for a stay of proceedings in the prosecution, and the court must grant the stay.

Proof of offence

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

PROTECTION FROM LIABILITY**Protection from liability**

174 No action or proceeding lies against a college, council, board, the advisory council or any other person or entity acting under the authority of, or engaged in the administration or enforcement of, this Act or the regulations or by-laws for anything done or omitted to be done by the person or entity in good faith in the performance or exercise, or intended performance or exercise, of any power or duty under this Act or the regulations or by-laws.

Limitation period

175 No member or health profession corporation is liable in an action for negligence or malpractice by reason of the regulated health profession's services or procedures requested or rendered, unless the action is commenced within two years after the date when, in the matter complained of, those services or procedures ended.

MISCELLANEOUS**Service of documents**

176(1) A notice, order or other document under this Act is sufficiently given or served if it is

- (a) delivered personally; or
- (b) sent by registered mail, or by another service that provides the sender with proof of delivery, to the intended recipient at that person's last address appearing in the applicable college's records.

Deemed receipt

176(2) A notice, order or other document sent by registered mail is deemed to be given or served five days after the day it was sent.

Registrar's certificate

177 Any person may request a certificate, signed by a registrar of a regulated health profession and stating that a named person was or was not, on a specified day or during a specified period,

- (a) a member of the college of the profession;
- (b) an inspector appointed by the council of that college; or
- (c) a member of the council, a committee or the board of assessors established by or under this Act or the regulations or by-laws;

and the certificate is admissible in evidence in any proceeding as proof of the facts stated, unless the contrary is shown. Proof of the registrar's appointment or signature is not required.

Proof of conviction

178 For the purpose of proceedings under this Act, a certified copy — under the seal of the court, or signed by the convicting judge or a clerk of The Provincial Court — of the conviction of a person for any offence under the *Criminal Code* (Canada) or any other Act or regulation is conclusive evidence that the person committed the offence, unless it is shown that the conviction has been quashed or set aside.

PART 14**THE COLLEGE OF PHYSICIANS AND SURGEONS OF MANITOBA****DEFINITIONS****Definitions**

179 The following definitions apply in this Part.

"by-laws" means the by-laws made by the council under section 222. (« règlements administratifs »)

"college" means the College of Physicians and Surgeons of Manitoba that is continued by a regulation made under clause 8(b). (« ordre »)

"council" means the council of the college. (« conseil »)

"medical corporation" means a health profession corporation holding a valid permit issued by the registrar under subsection 60(1) authorizing the corporation named in the document to carry on the practice of the medical profession. (« société professionnelle de médecins »)

"medical profession" means the profession of medicine that is designated as a regulated health profession under clause 8(a). (« profession médicale »)

"member" means an individual whose name is entered on the register of regulated members or the register of associate regulated members. (« membre »)

"minister" means the minister appointed by the Lieutenant Governor in Council to administer this Act. (« ministre »)

"practice directions" means the practice directions issued by the council under section 85. (« directives professionnelles »)

"public representative" means a person who has never practised the medical profession and who has not practised any other regulated health profession within the previous five years. (« représentant du public »)

"register" means a register established by the council under section 26. (« registre »)

"registrar" means the individual appointed as the registrar for the college and includes an individual appointed as deputy registrar or assistant registrar under section 23. (« registraire »)

"regulated associate member" means an individual whose name is entered on the register of regulated associate members. (« membre associé habilité »)

"**regulated member**" means an individual whose name is entered on the register of regulated members. (« membre habilité »)

"**standards of practice**" means the standards of practice established by the council under subsection 82(1). (« normes d'exercice de la profession »)

"**university**" means the University of Manitoba. (« université »)

COUNCIL

Composition of council

180(1) The council of the college is to consist of the following persons:

- (a) eight regulated members who are practising physicians and elected in accordance with the by-laws;
- (b) six public representatives, three of whom are appointed by the minister and three of whom are appointed by the council;
- (c) one regulated associate member, elected by the regulated associate members in accordance with the by-laws;
- (d) one regulated member of the college who is a practising physician and is selected by the Faculty of Medicine at the university from members of that faculty, or his or her alternate, when he or she is not available;
- (e) the president of the council, whether or not he or she has been re-elected or re-appointed as a council member;
- (f) the past-president of the council, whether or not he or she has been re-elected or re-appointed as a council member.

Non-application of section 13

180(2) Section 13 (composition of council) does not apply to the college.

Term of office for regulated associate member

180(3) Despite subsection 14(1), the term of office of the regulated associate member of the council is one year.

REGISTRATION OF FACULTY MEMBERS

Registration re faculty members

181(1) The registrar must approve an application for registration

- (a) as a regulated member, if the applicant
 - (i) is granted a certificate by the university in accordance with subsection (2), and
 - (ii) meets the requirements set out in clauses 32(1)(c) to (g);
- (b) as a regulated associate member, if the applicant
 - (i) is granted a certificate by the university in accordance with subsection (2), and
 - (ii) meets the requirements set out in the regulations.

University may grant certificate

181(2) The university may grant a certificate under the academic seal of the university to an applicant who meets both of the following requirements:

- (a) the applicant is a full-time member of the Faculty of Medicine;
- (b) the applicant provides evidence to the university's satisfaction that he or she has passed any examinations required by the university and has met any other requirements of the university.

Conditions

181(3) A registration may be subject to any conditions that the registrar considers advisable.

STANDARDS COMMITTEE

Standards committee

182(1) The council must establish a standards committee that is responsible for supervising the practice of medicine by members and may establish any subcommittees of the standards committee. The committee or a subcommittee may

- (a) review the professional competence of a member, either on the council's direction or on its own initiative; and
- (b) for the purpose of clause (a), retain the services of experts.

Powers of an investigator

182(2) The standards committee or a subcommittee, or a person designated by it, may, for the purpose of subsection (1), exercise the powers of an investigator set out in section 99, which applies with the necessary changes. Section 100 also applies, with the necessary changes, to an investigation under this section.

Limit on requiring production of records and information

182(3) Despite any other provision of this Act, no person acting under the authority of this Act, including an investigator, shall require the production of any record or information, including an opinion or advice, prepared solely for the use of the standards committee or a subcommittee, or collected, compiled or prepared by the standards committee or subcommittee for the sole purpose of carrying out its duties under this section.

Refresher training

182(4) On the advice of the standards committee, the council may direct a member to complete a specific course of studies or supervised practical experience.

ACCREDITED FACILITIES

Application of this section

183(1) This section applies to any facility in which a member performs or causes to be performed diagnostic or treatment services, such as a non-hospital medical or surgical facility or a nuclear medicine facility, other than

- (a) a facility that is designated as a hospital under *The Health Services Insurance Act*;
- (b) a hospital or health care facility operated by the government, the government of Canada or a municipal government; and
- (c) a facility or class of facility exempted by regulation from the application of this section.

Facilities must apply for accreditation

183(2) A facility to which this section applies must apply, in accordance with the by-laws, for accreditation under this section.

By-laws

183(3) The council may make by-laws

- (a) respecting the accreditation of facilities, including imposing conditions on accreditation;
- (b) respecting the establishment, operation and expansion of a diagnostic or treatment facility, including the requirement to have a medical director;
- (c) respecting the diagnostic or treatment procedures that may be performed by members in a facility that requires or has been granted accreditation, and governing the performance of those diagnostic or treatment procedures;
- (d) respecting fees payable by applicants for accreditation and by accredited facilities;
- (e) respecting arrangements with other colleges for accreditation of facilities at which members of those colleges perform diagnostic or treatment procedures.

Consultation with minister

183(4) Before making a by-law under subsection (3), the council must

- (a) provide the minister with a copy of the proposed by-law for his or her review and comment; and
- (b) review and consider any comments received.

Standards of practice and practice directions

183(5) The council may establish standards of practice and issue practice directions with respect to the operation of facilities to which this section applies, and the performance of diagnostic or treatment procedures by members at those facilities.

Council may establish program review committee

183(6) The council may establish a program review committee

- (a) to consider and decide on applications for accreditation and issue certificates of accreditation;
- (b) to monitor the compliance of facilities with the requirements of this Act and the by-laws; and
- (c) to investigate and inspect facilities and proposed facilities for the purposes of accreditation and to monitor compliance.

The program review committee or a person designated by the committee may exercise the powers of an investigator set out in section 99, which applies with the necessary changes. Section 100 also applies, with the necessary changes, to an investigation under this section.

Accreditation not granted

183(7) If accreditation is not granted, or is granted subject to conditions, the program review committee must

- (a) give notice to the applicant in writing, with reasons for the decision; and
- (b) advise the applicant of the right to appeal the decision to the council.

Section 38 applies

183(8) Section 38 applies, with the necessary changes, to an appeal under this section.

Report of committee to council

183(9) When the program review committee or its designated person inspects a facility for the purpose of monitoring compliance, the program review committee must provide a report of the findings to the council upon completing the inspection.

Council may order closure of facility

183(10) If, after considering a report received under subsection (9), the council determines that the facility does not meet the relevant standards of practice or is not in compliance with the requirements of this Act and the regulations, by-laws and practice directions, the council may cancel the certificate of accreditation and order the facility to immediately cease operation until the standards or requirements are met.

Notice of decision

183(11) Before acting under subsection (10), the council must give the facility written notice of the decision and the reasons for it. Within ten days of receiving the notice, the facility may make written submissions to the council, but the council is not required to hold a hearing.

Immediate closure

183(12) Despite subsection (11), if the council considers it necessary to protect the public from exposure to serious risk, the council may order the facility to immediately cease operation, without notice, for a period of no more than 45 days.

Prohibition

183(13) No member or medical corporation shall utilize a diagnostic or treatment facility the accreditation of which has been cancelled and that the council has ordered to cease operation.

Member must not work in non-accredited facilities

183(14) A member must not perform or cause to be performed diagnostic or treatment procedures in a facility that, in the council's opinion, requires accreditation under this section, but is not accredited.

Application to other facilities

183(15) The council may enter into agreements with the government, the government of Canada or a municipal government to make this section applicable to any facility or any part of a facility that falls within that government's jurisdiction.

Agreement to specify processes

183(16) An agreement under subsection (15) must specify the processes, not inconsistent with this Act, to be followed when the program review committee is of the opinion that the facility does not appear to meet the relevant standards of practice or the requirements of this Act and the regulations, by-laws and practice directions.

College to provide information to minister

183(17) The college must provide the minister with

- (a) a copy of each application for accreditation of a diagnostic facility, or for the expansion of a diagnostic facility, as soon as practicable after the college receives an application;
- (b) a copy of each certificate of accreditation for a diagnostic facility, or for a diagnostic facility as expanded, as soon as practicable after the certificate has been issued;
- (c) particulars, as soon as practicable after the information becomes available to the council, of any arrangement between
 - (i) an accredited diagnostic facility, and
 - (ii) a hospital or other facility that provides emergency medical treatment,
 in relation to the care of patients who require emergency attention as a result of a diagnostic procedure; and
- (d) a report of the activities of the program review committee, including but not limited to non-identifying statistical information.

Timing and contents of report

183(18) The college must give the report under clause (17)(d) to the minister within four months after the end of each fiscal year. The report must contain the information required under that clause for the year in respect of which it is submitted.

Conduct of member practising on behalf of medical corporation

184 If the conduct of a regulated member through whom a medical corporation is practising at the time the conduct occurred is the subject of an investigation by the standards committee or program review committee, then subsection 64(6) applies, with necessary changes, to that investigation.

NON-TRADITIONAL THERAPIES

Non-traditional therapies

185 A regulated member must not be found guilty of professional misconduct or of incompetence solely on the basis that the member practises a therapy that is non-traditional or departs from the prevailing medical practice, unless it can be demonstrated that the therapy poses a greater risk to a patient's health or safety than the traditional or prevailing practice.

PROFESSIONAL CONDUCT

Purpose of section 187

186 *The purpose of section 187 is to retain for the medical profession several features of the complaints and discipline process that existed in **The Medical Act**, R.S.M. 1987, c. M90, immediately before the coming into force of this Part, including the three-committee process composed of the following committees:*

- (a) *complaints committee;*
- (b) *investigation committee;*
- (c) *inquiry committee.*

Modified provisions for complaints made to the College of Physicians and Surgeons

187(1) *For the purpose of complaints made to the college, certain provisions of this Act are to be read as set out in this section.*

187(2) *The references to the "complaints investigation committee" in Part 8, except for section 92, are to be read as references to the "investigation committee".*

187(3) *Subsection 90(3) is to be read as follows:*

Complaint if registrar aware of professional misconduct

90(3) If the registrar believes that the conduct of a member or former member may constitute conduct about which a finding could be made under subsection 124(2), the registrar may treat the information as a complaint even though no complaint has been made under subsection (2), and may refer it to the complaints committee or the investigation committee under clause 91(2)(b). The information is deemed to be a complaint.

187(4) *Clause 91(2)(b) is to be read as follows:*

(b) refer the complaint to the complaints committee or the investigation committee;

187(5) *In section 92, references to the "complaints investigation committee" are to be read as references to the "complaints committee".*

187(6) *Part 8 is to be read as having the following added after section 92:*

COMPLAINTS COMMITTEE

Complaints committee

92.1(1) The council must appoint a complaints committee consisting of

- (a) a member of the council who is to be the chair; and
- (b) other members of the college and public representatives appointed from time to time.

Public representatives

92.1(2) At least 1/3 of the persons appointed to the complaints committee must be public representatives.

Selection of panel

92.1(3) Upon the referral of a complaint or other matter to the complaints committee, the chair must select a panel from among the members of the complaints committee to fulfill the obligations and exercise the powers of the complaints committee in relation to the complaint or other matter.

Members of the panel

92.1(4) A panel is to consist of three or more committee members, at least 1/3 of whom must be public representatives.

If member unable to continue

92.1(5) If a member of the panel is unable to sit after a hearing has begun, the panel may complete the hearing if at least three members remain and one of them is a public representative.

Decision of panel

92.1(6) A decision or action of a panel is a decision or action of the complaints committee.

Reference to complaints committee

92.1(7) A reference to the complaints committee in this Act includes any panel of the complaints committee.

Resolution of complaints

92.2(1) The complaints committee must review a complaint or other matter referred to it and must attempt to resolve it informally if the committee considers informal resolution to be appropriate.

Advice to the member

92.2(2) Upon resolving a complaint or other matter, the complaints committee may provide advice to the investigated member about the practice of medicine.

Referral to the investigation committee

92.2(3) If a complaint or other matter that is referred to the complaints committee is not resolved to the complainant's satisfaction, the complainant may, within 30 days after being informed of the complaints committee's decision, request that the complaint or matter be referred to the investigation committee, and the complaints committee must make the referral.

187(7) *Clause 94(1)(a) is to be read as follows:*

(a) a member of the council who is appointed as chair;

187(8) *Clause 144(b) is to be read as follows:*

(b) a description of every matter outstanding before the complaints committee, investigation committee or inquiry committee.

PART 15

THE COLLEGE OF PHARMACISTS OF MANITOBA, AND OTHER MATTERS RE PHARMACEUTICAL PRODUCTS

DEFINITIONS

Definitions

188 The following definitions apply in this Part.

"**by-laws**" means the by-laws made by the council under section 222. (« règlements administratifs »)

"**code of ethics**" means the code of ethics adopted by the college in accordance with section 212. (« code de déontologie »)

"**college**" means the College of Pharmacists of Manitoba, as continued by a regulation made under clause 8(b). (« ordre »)

"**council**" means the council of the college. (« conseil »)

"**court**" means the Court of Queen's Bench. (« tribunal »)

"**dispense**" means, in respect of a drug, to provide it pursuant to a prescription, but does not include administering it. (« fournir »)

"**drug**" means a substance or mixture of substances prescribed in the regulations. (« médicament » ou « drogue »)

"**external regulatory body**" means a body with statutory authority to license or regulate pharmacists or pharmacies, or both pharmacists and pharmacies, in a jurisdiction other than Manitoba. (« organisme de réglementation externe »)

"**member**" means an individual whose name is entered on the register of regulated members or the register of regulated associate members. (« membre »)

"**minister**" means the minister appointed by the Lieutenant Governor in Council to administer this Act. (« ministre »)

"**owner**" means a person who holds a pharmacy licence of any category and whose name is entered on the register of licensed pharmacies. (« propriétaire »)

"**pharmacy**" means a facility used for any aspect of the practice of pharmacy, and includes a satellite facility and every other facility, wherever located, used in the practice. (« pharmacie »)

"**pharmacy licence**" means a licence of any category, issued under section 194 to an owner, authorizing the operation of a pharmacy. (« licence de pharmacie »)

"**practice directions**" means the practice directions issued by the council under sections 85 and 206. (« directives professionnelles »)

"**practitioner**" means

(a) a person authorized to practise medicine, dentistry, veterinary medicine, veterinary surgery or veterinary dentistry in Manitoba or in another province or territory of Canada; or

(b) a person designated as a practitioner in the regulations, or who is a member of a class of persons designated as practitioners in the regulations. (« praticien »)

"**prescription**" means a direction given by a practitioner to dispense a stated amount of a drug specified in the direction for the individual named or animal described in the direction. (« ordonnance »)

"**register**" means a register established by the council under section 26 or subsection 189(1). (« registre »)

"**registrar**" means the individual appointed as the registrar for the college and includes an individual appointed as deputy registrar or assistant registrar under section 23. (« registraire »)

"**regulated associate member**" means an individual whose name is entered on the register of regulated associate members. (« membre associé habilité »)

"**regulated member**" means an individual whose name is entered on the register of regulated members. (« membre habilité »)

"**standards of practice**" means the standards of practice established by the council under subsection 82(1). (« normes d'exercice de la profession »)

REGISTER OF LICENSED PHARMACIES

Register of licensed pharmacies

189(1) The council must establish, in accordance with the regulations, a register of licensed pharmacies.

Registrar to maintain register

189(2) The registrar must maintain the register of licensed pharmacies in accordance with this Act.

Information in register

190(1) The register of licensed pharmacies must contain the following information for each pharmacy:

- (a) the name of the licensed pharmacy, the name or names under which it conducts business and the name of the owner who holds the pharmacy licence;
- (b) the business address and phone number of the licensed pharmacy;
- (c) the conditions, if any, imposed on the pharmacy licence;
- (d) information about each disciplinary proceeding in which a finding under subsection 124(2) or clause 132(1)(b) has been made against the owner, including
 - (i) the nature of the finding,
 - (ii) the nature of any order made under section 126, 127 or 132, and
 - (iii) any terms, limits or conditions of the order; and
- (e) information that the regulations specify as information to be kept in the register.

Access to register information

190(2) The following information about a licensed pharmacy contained in the register of licensed pharmacies must be made available to the public during normal business hours:

- (a) the information described in clauses (1)(a) to (c);
- (b) the information described in clause (1)(d) relating to a disciplinary proceeding completed within the current calendar year or the 10 previous calendar years;
- (c) any additional information that the regulations require to be made available to the public.

Information not to be available on the Internet

190(3) Information that is available to the public under subsection (2) and that relates to an ailment, emotional disturbance or addiction that an owner is suffering from, or has suffered from, must not be made available to the public on the Internet.

PHARMACIES

Pharmacy licence

191 No person shall establish or operate a pharmacy except under the authority of a pharmacy licence issued under this Part for a pharmacy of that category.

Application for licence

192(1) An applicant for a pharmacy licence must, at least 30 days before the date the applicant intends to operate a pharmacy, or at such other time as may be acceptable to the registrar, file an application with the registrar for a pharmacy licence for the category of pharmacy that the applicant intends to operate, in a form and providing such information as may be required by the by-laws.

Contents of application

192(2) The application must include

- (a) the location and work to be performed at each facility to be included under the pharmacy licence;
- (b) evidence satisfactory to the registrar
 - (i) respecting the ownership of the pharmacy, and if the applicant is a corporation, respecting the legal and beneficial ownership of the corporation's shares, the names of the corporation's officers and directors, and confirmation that the corporation is in good standing under *The Corporations Act*,
 - (ii) that the premises are suitable for the purpose of a pharmacy, and
 - (iii) that a practising pharmacist will be physically present in the pharmacy as required by the standards of practice and all relevant practice directions;
- (c) the name or names under which the pharmacy will conduct business, and evidence satisfactory to the registrar that the name or names will not contravene the code of ethics;
- (d) the name of the practising pharmacist who will be designated as the pharmacy manager;
- (e) evidence satisfactory to the registrar that
 - (i) the applicant,
 - (ii) if the applicant is a corporation, the corporation's legal and beneficial owners, officers and directors, and
 - (iii) if the applicant is a partnership, its partners,have not been subject to disciplinary, criminal or administrative sanction in any jurisdiction which, in the registrar's opinion, would make it inappropriate for the applicant to operate a pharmacy;
- (f) an undertaking that the pharmacy will be operated in accordance with this Act and the regulations, by-laws, standards of practice, code of ethics and all relevant practice directions; and
- (g) any other information required by the regulations.

Pharmacy manager

192(3) The person designated to be the pharmacy manager under clause (2)(d) must

- (a) satisfy the registrar that he or she has not been subject to disciplinary, criminal or administrative sanction in any jurisdiction which, in the registrar's opinion, would make it inappropriate for him or her to act as a pharmacy manager;
- (b) satisfy the registrar that he or she meets any other qualifications or requirements set out in the regulations; and
- (c) provide the registrar with an undertaking that the pharmacy will be operated in accordance with this Act and the regulations, by-laws, standards of practice, code of ethics and all relevant practice directions.

Application by a corporation

192(4) If the applicant is a corporation, the application must include

- (a) the name and address of every director of the corporation; and
- (b) the name of every director of the corporation who is a member.

Application by a partnership

192(5) If the applicant is a partnership, the application must

- (a) include the name and address of each partner, and indicate whether or not each partner is a member; and
- (b) identify whether each partner is a general partner, a limited partner, or both a general and a limited partner.

Separate application for each facility

193 An applicant must file a separate application for a separate facility that is part of the pharmacy operation, if required by the regulations.

Issuing pharmacy licence

194(1) The registrar must issue a pharmacy licence to the applicant, in a form prescribed by the by-laws, if the applicant

- (a) meets all of the requirements of section 192;
- (b) meets any other requirements specified in the regulations; and
- (c) pays the fee provided for in the by-laws for the appropriate category of pharmacy licence.

Conditions

194(2) A pharmacy licence may be issued subject to any conditions the registrar considers advisable.

Duration

194(3) A pharmacy licence remains in force for the time prescribed in the by-laws.

Register of licensed pharmacies

194(4) The registrar must enter on the register of licensed pharmacies the name of a person to whom a licence is issued under this Part.

Application to renew a pharmacy licence

195(1) An owner may apply for renewal of a pharmacy licence, before the date the licence expires or at such other time as may be acceptable to the registrar, by filing an application and complying with the other requirements of section 192.

Renewing a pharmacy licence

195(2) The registrar must renew a pharmacy licence if the applicant

- (a) meets all of the requirements of section 192;
- (b) meets any other requirements specified in the regulations; and
- (c) pays the renewal fee provided for in the by-laws for the appropriate category of pharmacy licence.

Subsections 194(2) to (4) apply, with the necessary changes, to the renewal of a pharmacy licence.

Appeal

196 If the registrar refuses to issue or renew a pharmacy licence, or issues or renews a licence subject to conditions, the applicant may appeal the registrar's decision, and sections 38 and 39 apply with the necessary changes.

Suspending pharmacy licence

197(1) The registrar may suspend an owner's pharmacy licence if

- (a) the owner fails to pay the fees provided for in the by-laws;
- (b) the owner is insolvent or bankrupt;
- (c) the owner has temporarily ceased operating a pharmacy; or
- (d) the owner requests suspension.

Cancelling pharmacy licence

197(2) The registrar may cancel an owner's pharmacy licence if the registrar is satisfied on reasonable grounds that

- (a) the pharmacy licence was obtained by means of a false representation or declaration;
- (b) the owner has been convicted of an offence that is relevant to his or her suitability to operate a pharmacy;
- (c) the owner is insolvent or bankrupt;

- (d) the owner has permanently ceased operating the pharmacy;
- (e) the owner has died, or in the case of a corporation or a partnership, has ceased operating or has been dissolved;
- (f) the owner requests cancellation; or
- (g) the owner has been issued a pharmacy licence in error.

Appeal

197(3) A person whose pharmacy licence is suspended or cancelled under this section may appeal the suspension or cancellation, and sections 38 and 39 apply with the necessary changes.

Surrender of licence

197(4) A person whose pharmacy licence has been suspended or cancelled under this section must surrender the licence to the registrar.

Publication of suspension or cancellation

197(5) The college may publish the fact that the person's pharmacy licence is suspended or cancelled under this section. The publication may include the person's name and a description of the circumstances that led to the suspension or cancellation.

Reinstatement

198 Upon the application of a person whose pharmacy licence has been cancelled or suspended under section 197, the council may

- (a) direct the registrar to reinstate the pharmacy licence, subject to any conditions the council may impose; and
- (b) order the person to pay any costs arising from those conditions.

Court order appointing custodian

199(1) A judge of the court may, upon application by the college after the cancellation, suspension or expiry of a pharmacy licence, make an order appointing a person to

- (a) take custody of the pharmacy operation; and
- (b) manage the pharmacy operation or wind it up.

Contents of order

199(2) An order under subsection (1) may authorize the custodian to do one or more of the following:

- (a) enter and take possession of any premises in which the judge is satisfied there are reasonable grounds to believe that any property of the pharmacy operation is located;
- (b) take possession of the records and drugs of the pharmacy operation;
- (c) take possession of any other property of the pharmacy operation;
- (d) operate the pharmacy operation until it can be returned to the owner;
- (e) operate the pharmacy operation for the purpose of winding it up;
- (f) request the assistance of a peace officer.

Costs

199(3) Unless the court orders otherwise, the college may charge the owner of the pharmacy operation with the costs

- (a) of obtaining, implementing and enforcing the order; and
- (b) paid to the custodian for managing, operating or winding up the pharmacy operation.

Notice of application

199(4) An application for an order under this section may be made without notice, or with notice as required by the court.

Service of court order

200 An order under section 199 must be served on the owner of the pharmacy whose licence was cancelled or suspended or has expired.

Obligations of owner

201 The owner of a licensed pharmacy must

- (a) ensure that a practising pharmacist is physically present in the pharmacy as required by the standards of practice and all relevant practice directions;
- (b) ensure that the pharmacy licence, and the certificate of practice of every member employed in the pharmacy, is displayed in a conspicuous public place in the pharmacy;
- (c) notify the registrar in writing of the name of the pharmacy manager and every member employed by the owner, and notify the registrar of any change in the employment of those persons within seven days after the change; and
- (d) comply with any other requirements specified in the regulations.

Complaints

202 A complaint against a pharmacy must be dealt with under Part 8 (Professional Conduct) as a complaint against the owner or the pharmacy manager, or both of them.

Responsibility for employees

203 An owner or a pharmacy manager is liable for

- (a) every offence against this Act; and
- (b) every matter referred to the complaints investigation committee under clause 91(2)(b);

committed by or arising out of the conduct of an employee, or any person under the supervision of the owner or manager, if the owner or manager directed, authorized, permitted or acquiesced in the commission of the offence or in the matter.

Change in ownership of pharmacy

204 If

- (a) the ownership or control of a pharmacy changes in the manner or to the extent prescribed in the regulations; or
- (b) in a pharmacy owned or operated by a corporation, a majority of the shares of the corporation are sold, transferred or otherwise disposed of;

the holder of the pharmacy licence must notify the registrar within seven days after the change, and the registrar may cancel the licence and require that an application for a new pharmacy licence under this Part be made.

Carrying on business of bankrupt person

205 An owner who becomes bankrupt or insolvent or makes an assignment for the benefit of creditors must so notify the registrar, and the trustee in bankruptcy, receiver, receiver-manager or assignee may operate the pharmacy for the purposes of the bankruptcy, insolvency or assignment if the pharmacy continues to be overseen by a pharmacy manager.

Practice directions

206 In addition to the practice directions referred to in section 85, the council may issue practice directions in respect of the operation of pharmacies.

Owner must comply with Act, etc.

207 An owner must comply with this Act and the regulations, and with the owner's undertaking under clause 192(2)(f) that the pharmacy will be operated in accordance with the by-laws, standards of practice, code of ethics, and all relevant practice directions.

PROFESSIONAL CONDUCT***Modified meanings of Part 8 (Professional Conduct) provisions***

208(1) For the purpose of their application to complaints made to the college, certain provisions of Part 8 (Professional Conduct) are to be read as set out in this section in order to make those provisions applicable not only to members of the college, but also to owners and pharmacy operations.

208(2) The definition "investigated member" in section 88 is to be read as follows:

"investigated member" means a member or former member, or an owner or former owner, who is the subject of a complaint under this Part. (« membre visé par la plainte »)

208(3) The definition "public representative" in section 88 is to be read as follows:

"public representative" means a person on a roster established under section 89 who

- (a) has not practised pharmacy; and
- (b) is not, and has never been, an owner. (« représentant du public »)

208(4) Subsection 90(1) is to be read as follows:

Complaint about a member's or owner's conduct

90(1) Any person may make a complaint about the conduct of a member or an owner.

208(5) Subsection 90(3) is to be read as follows:

Complaint if registrar aware of professional misconduct

90(3) If the registrar believes that the conduct of a member, owner, former member or former owner may constitute conduct about which a finding could be made under subsection 124(2), the registrar may treat the information as a complaint even though no complaint has been made under subsection (2), and may refer it to the complaints investigation committee under clause 91(2)(b). The information is deemed to be a complaint.

208(6) Subsection 90(4) is to be read as follows:

Complaint against former member or owner

90(4) A complaint may be made about

- (a) a member whose registration or certificate of practice has been cancelled, suspended or not renewed; or
- (b) an owner whose pharmacy licence has been cancelled, suspended or not renewed;

but only if the complaint is made within five years after the cancellation, suspension or non-renewal.

208(7) Clauses 99(1)(a) and (b) are to be read as follows:

- (a) enter and inspect
 - (i) any premises or place where the investigated member practises or has practised pharmacy, and
 - (ii) in the case of a complaint against an investigated member who is an owner or former owner, a pharmacy or any other business premises under the control of the investigated member;
- (b) inspect, observe or audit
 - (i) the investigated member's practice, and
 - (ii) in the case of a complaint against an investigated member who is an owner or former owner, the operation of a pharmacy or other business premises described in subclause (a)(ii);

208(8) Subsection 99(4) is to be read as follows:

Computers, photographs and copies

99(4) For the purposes of an investigation, an investigator may

- (a) use any computer system used in connection with
 - (i) an investigated member's practice, or
 - (ii) in the case of an investigated member who is an owner, a pharmacy owned by the investigated member,

in order to produce a record in readable form;

(b) photograph or create images of the premises or place; or

(c) use any copying equipment at the premises or place to make copies of any record related to the investigated member's practice, or in the case of an investigated member who is an owner, the investigated member's pharmacy.

208(9) *Subsection 100(2) is to be read as follows:*

Failure to produce records, etc. is professional misconduct

100(2) Any of the following actions done by an investigated member or any other member, owner, former member or former owner is professional misconduct:

(a) failing to produce to an investigator any record, substance or thing in his or her possession or under his or her control;

(b) failing to give an investigator access to any premises or place under his or her control;

(c) failing to provide any information to an investigator or answer any questions that the investigator may have relating to the investigation;

(d) obstructing an investigator;

(e) withholding or concealing from an investigator any record, substance or thing relevant to an investigation;

(f) destroying any record, substance or thing relevant to an investigation.

208(10) *Subsection 101(3) is to be read as follows:*

Investigating other member or owner

101(3) If the report reveals information about a member, owner, former member or former owner who is not the investigated member and the complaints investigation committee believes that the matter should be investigated further, the committee must refer the matter to the registrar for consideration under subsection 91(2) (registrar's actions).

208(11) *Clause 102(1)(e) is to be read as follows:*

(e) accept the voluntary surrender of the investigated member's registration or certificate of practice, or, in the case of an investigated member who is an owner, the investigated member's pharmacy licence;

208(12) *Subclause 102(1)(f)(i) is to be read as follows:*

(i) assessment of the investigated member's capacity or fitness to practise pharmacy, or in the case of an investigated member who is an owner, to hold a pharmacy licence,

208(13) *Subclause 102(1)(f)(iii) is to be read as follows:*

(iii) monitoring or supervision of the investigated member's practice of pharmacy, or in the case of an investigated member who is an owner, the investigated member's operation of one or more pharmacies,

208(14) *Subclause 102(1)(f)(v) is to be read as follows:*

(v) placing conditions, which may include the conditions relating to reinstatement set out in section 106, on the investigated member's right to

(A) practise pharmacy, or

(B) in the case of an investigated member who is an owner, operate a pharmacy;

208(15) *Subsection 105(1) is to be read as follows:*

Voluntary surrender of registration

105(1) If, under subsection 102(1), the complaints investigation committee accepts the voluntary surrender of an investigated member's registration or certificate of practice, or the pharmacy licence of an investigated member who is an owner, it may direct the investigated member to do one or more of the following, to the satisfaction of a specified person or committee, before the registration, certificate of practice or licence may be reinstated:

(a) take counselling or receive treatment;

- (b) complete a specified course of studies;
- (c) obtain supervised experience under a restricted certificate of practice or licence issued for that purpose.

208(16). *Subsections 105(3) and (4) are to be read as follows:*

Voluntary surrender may be made publicly available

105(3) Subject to subsection (4), the complaints investigation committee may make available to the public the name of the investigated member, the fact that the investigated member has voluntarily surrendered his or her registration, certificate of practice or pharmacy licence, as the case may be, and a description of the circumstances that led to the voluntary surrender.

Voluntary surrender relates to ailment, addiction, etc.

105(4) If an investigated member, in agreeing to voluntarily surrender his or her registration, certificate of practice or pharmacy licence, as the case may be, admits to suffering from an ailment, emotional disturbance or addiction that impairs his or her ability to practise the regulated health profession or operate a pharmacy, the complaints investigation committee

- (a) must not make any information about the investigated member or voluntary surrender available under subsection (3); and
- (b) must inform an employer, person or entity referred to in section 134 or 134.1 of the voluntary surrender and provide a description of the circumstances that led to it.

208(17). *Section 106 is to be read as follows:*

Conditions on reinstatement

106 A voluntary surrender remains in effect until the complaints investigation committee is satisfied that the conduct or complaint under investigation has been resolved. At that time, the committee may impose conditions on the investigated member's right to practise pharmacy or, in the case of an investigated member who is an owner, to operate a pharmacy, including requirements that he or she do one or more of the following:

- (a) limit his or her practice of pharmacy or, in the case of an investigated member who is an owner, his or her pharmacy operation;
- (b) practise pharmacy under supervision or, in the case of an investigated member who is an owner, operate a pharmacy under supervision;
- (c) not engage in sole practice;
- (d) permit periodic inspections or audits of his or her practice of pharmacy or, in the case of an investigated member who is an owner, of his or her pharmacy operation, including inspections or audits of records;
- (e) report to the committee or the registrar on specific matters;
- (f) comply with any other conditions the committee considers appropriate in the circumstances;
- (g) pay all or part of the costs incurred by the college in monitoring compliance with the conditions.

208(18). *Section 107 is to be read as follows:*

Costs if conditions placed on right to practise or to operate a pharmacy

107 If the complaints investigation committee accepts an undertaking under subsection 102(1) from an investigated member that provides for conditions on the investigated member's right to practise pharmacy or, in the case of an investigated member who is an owner, that provides for conditions on the owner's right to operate a pharmacy, the committee may order the member to pay all or part of

- (a) the costs of the investigation; and
- (b) the costs incurred by the college in monitoring compliance with the conditions.

208(19). *Subsection 110(1) is to be read as follows:*

Suspension or conditions pending decision

110(1) Despite any other provision of this Act, the complaints investigation committee or the chair of that committee may direct the registrar to suspend or place conditions on

- (a) the investigated member's registration or certificate of practice; or
- (b) the pharmacy licence, in the case of an investigated member who is an owner;

pending the outcome of proceedings under this Part, but only if the committee or the chair, as the case may be, considers it necessary to protect the public from exposure to serious risk.

208(20). *Subsection 110(3) is to be read as follows:*

Appeal of suspension or conditions

110(3). An investigated member

- (a) whose registration or certificate of practice; or
- (b) in the case of an investigated member who is an owner, whose pharmacy licence;

is suspended or has conditions placed on it under subsection (1) may, by giving notice in writing to the registrar, appeal the suspension or imposition of conditions to the council.

208(21). *Section 112 is to be read as follows:*

Information may be disclosed to law enforcement

112 If, in the course of an investigation under this Part, the complaints investigation committee obtains information that leads to a reasonable belief that a member, owner, former member or former owner has been engaged or is engaging in possible criminal activity, the committee may disclose the information to a law enforcement agency.

208(22). *Subsection 119(2) is to be read as follows:*

Oral and affidavit evidence

119(2). Evidence may be given at a proceeding before a panel by oral testimony or affidavit or both, but an investigated member's

- (a) registration or certificate of practice; or
- (b) pharmacy licence, in the case of an investigated member who is an owner;

cannot be suspended or cancelled on affidavit evidence alone.

208(23). *Clause 123(1)(b) is to be read as follows:*

- (b) the business name or location of the investigated member's practice or, in the case of an investigated member who is an owner, the business name or location of the investigated member's pharmacy;

208(24). *Clauses 124(2)(c) to (h) are to be read as follows:*

- (c) has been found guilty of an offence that is relevant to his or her suitability to practise pharmacy or, in the case of an investigated member who is an owner, to operate a pharmacy;
- (d) has displayed a lack of knowledge or a lack of skill or judgment in the practice of pharmacy or, in the case of an investigated member who is an owner, in the operation of a pharmacy;
- (e) has demonstrated an incapacity or unfitness to practise pharmacy or, in the case of an investigated member who is an owner, to operate a pharmacy;
- (f) is suffering from an ailment that might be a danger to the public if the member continues to practise pharmacy or, in the case of an investigated member who is an owner, to operate a pharmacy;
- (g) is suffering from an ailment, emotional disturbance or addiction that impairs his or her ability to practise pharmacy or, in the case of an investigated member who is an owner, to operate a pharmacy; or
- (h) is guilty of conduct unbecoming a member or an owner;

208(25). *Section 125 is to be read as follows:*

Deemed professional misconduct

125(1) A member or owner is deemed to have been found guilty of professional misconduct by a panel under clause 124(2)(a) if

- (a) the member or owner is convicted of an indictable offence;

(b) in the case of a member, he or she has had his or her registration, certificate of practice, licence or other authorization to practise pharmacy suspended, restricted or revoked by an external regulatory body as a result of a disciplinary proceeding; or

(c) in the case of an owner, he or she has had his or her licence or other authorization to operate a pharmacy suspended, restricted or revoked by an external regulatory body as a result of a disciplinary proceeding.

Member or owner may make submissions before order made

125(2) Before making an order under section 126 against a member or owner deemed guilty of professional misconduct under subsection (1), the panel must give the member or owner an opportunity to make submissions to it about any aspect of the matter.

Form of submissions

125(3) A submission under subsection (2) may be written or oral and may be made by counsel acting on behalf of the member or owner.

208(26) *Subsection 126(1) is to be read as follows:*

Orders of panel

126(1) If the panel makes a finding under subsection 124(2), including a deemed finding under subsection 125(1), it may make an order doing one or more of the following:

(a) reprimanding the investigated member;

(b) suspending

(i) the investigated member's registration or certificate of practice, or

(ii) the pharmacy licence, in the case of an investigated member who is an owner,

for a stated period;

(c) suspending or restricting

(i) the investigated member's registration or certificate of practice, or

(ii) the pharmacy licence, in the case of an investigated member who is an owner,

until he or she has, to the satisfaction of a person or committee specified by the panel,

(iii) completed a specified course of studies,

(iv) completed supervised practical experience under a restricted certificate of practice or licence issued for that purpose, or

(v) complied with the requirements of both subclauses (iii) and (iv);

(d) suspending

(i) the investigated member's registration or certificate of practice, or

(ii) the pharmacy licence, in the case of an investigated member who is an owner,

until he or she satisfies a person or committee specified by the panel that the ailment, emotional disturbance or addiction no longer impairs his or her ability to practise pharmacy, or in the case of an investigated member who is an owner, to operate a pharmacy;

(e) accepting, in place of a suspension under clause (b), (c) or (d),

(i) the investigated member's undertaking to limit his or her practice of pharmacy, or

(ii) in the case of an investigated member who is an owner, the investigated member's undertaking to limit his or her operation of a pharmacy;

(f) imposing conditions on the investigated member's right to practise pharmacy, including conditions that he or she

(i) limit his or her practice,

(ii) practise pharmacy under supervision,

(iii) permit periodic inspections or audits of his or her practice, including inspections or audits of practice records,

(iv) report on specified matters to a person or committee specified by the panel,

- (v) not engage in sole practice;
- (g) in the case of an investigated member who is an owner, imposing conditions on the investigated member's right to operate a pharmacy, including conditions that he or she
 - (i) limit his or her pharmacy operation,
 - (ii) operate a pharmacy under supervision,
 - (iii) permit periodic inspections or audits of his or her pharmacy operations, including inspections or audits of the operation's records,
 - (iv) report on specified matters to a person or committee specified by the panel;
- (h) requiring the investigated member to take counselling or receive treatment;
- (i) directing the investigated member to repay money that was paid to him or her where payment was, in the panel's opinion, unjustified for any reason;
- (j) cancelling
 - (i) the investigated member's registration or certificate of practice, or
 - (ii) the pharmacy licence, in the case of an investigated member who is an owner.

208(27) Subsections 126(4) to (6) are to be read as follows:

Suspending or cancelling registration, certificate of practice or pharmacy licence

126(4) If an investigated member's

- (a) registration or certificate of practice; or
- (b) pharmacy licence, in the case of an investigated member who is an owner;

is suspended or cancelled by an order made under subsection (1), the investigated member must not practise pharmacy or operate a pharmacy, as the case may be, or do anything else authorized by the registration, certificate of practice or pharmacy licence.

Costs when conditions imposed

126(5) If the panel

- (a) accepts an undertaking from the investigated member to limit his or her
 - (i) practice of pharmacy, or
 - (ii) operation of a pharmacy, in the case of an investigated member who is an owner; or
- (b) imposes conditions on the investigated member's right to
 - (i) practise pharmacy, or
 - (ii) operate a pharmacy, in the case of an investigated member who is an owner;

the panel may order the investigated member to pay all or part of the costs incurred by the college in monitoring compliance with the undertaking or conditions.

Contravention of order

126(6) If the council is satisfied that an investigated member has contravened an order made under subsection (1), it may, without a further hearing, cancel or suspend

- (a) the investigated member's registration or certificate of practice; or
- (b) the pharmacy licence, in the case of an investigated member who is an owner.

208(28) Subsection 127(3) is to be read as follows:

Failure to pay costs and fines by time ordered

127(3) If an investigated member fails to pay a fine or costs ordered under subsection (1), or costs ordered under subsection 126(5), within the required time, the registrar may suspend, until payment is made,

- (a) the investigated member's registration or certificate of practice; or
- (b) the pharmacy licence, in the case of an investigated member who is an owner.

208(29). *Section 133 is to be read as follows:*

Reinstatement

133 Upon application by a person whose registration, certificate of practice or pharmacy licence has been cancelled under this Part, the council may

- (a) direct the registrar to reinstate the registration, certificate of practice or pharmacy licence, subject to any conditions the council may impose; and
- (b) order the person to pay any costs arising from those conditions.

208(30). *Part 8 is to be read as having the following added after section 134:*

Notice of discipline involving pharmacy owner

134.1 If, after a finding is made under subsection 124(2), an investigated member who is an owner has his or her pharmacy licence suspended or cancelled, or if any conditions are imposed on the operation of a pharmacy owned by the investigated member, the registrar must provide that information to

- (a) the external regulatory bodies in other provinces or territories; and
- (b) any other person or class of persons specified in the regulations.

OTHER COLLEGE DUTIES AND RESPONSIBILITIES

Modified meanings of Part 9 (Other College Duties and Responsibilities) provisions

209(1). *For the purpose of their application to the college, certain provisions of Part 9 are to be read as set out in this section.*

209(2). *Subsection 135(1) is to be read as follows:*

Appointment of practice auditors

135(1) The council may appoint one or more practice auditors to audit the practice of a member or the operation of a pharmacy, for the purposes of this Act and the regulations, by-laws, standards of practice, code of ethics and practice directions.

209(3). *Subsection 135(2) is to be read as follows:*

Entry of premises and inspection of records

135(2) For the purpose of carrying out an audit, a practice auditor may, at any reasonable time,

- (a) enter and inspect any premises or place where the member practises or has practised pharmacy, or where the owner is operating or has operated a pharmacy;
- (b) inspect, observe or audit the member's practice or the pharmacy operation;
- (c) examine any equipment, materials or any other thing used by the member or in the pharmacy operation;
- (d) require the member, or the owner of the pharmacy, to answer any questions or provide any information that the practice auditor considers relevant to the audit;
- (e) require the member or owner to give to the practice auditor any record, substance or thing that the practice auditor considers relevant to the audit and that the member or owner possesses or that is under his or her control.

The practice auditor must, upon request, present an identification card issued by the council.

209(4). *Clause 135(4)(a) is to be read as follows:*

- (a) use any computer system used in connection with the member's practice or the pharmacy operation in order to produce a record in readable form;

209(5). *Clause 135(4)(c) is to be read as follows:*

(c) use any copying equipment at the premises or place to make copies of any record related to the member's practice or to the pharmacy operation;

209(6) *Subsections 135(7) and (8) are to be read as follows:*

College may apply for court order

135(7) If a member or owner fails to produce any record, substance or thing or fails to answer any question or provide any information, the college may apply to the court for an order directing one or both of the following:

- (a) directing the member or owner to produce to the practice auditor any record, substance or thing that the practice auditor considers to be relevant to the audit and in the possession of the member or owner or under his or her control;
- (b) directing the member or owner to attend before the practice auditor to provide information to the practice auditor, or answer any question that the practice auditor may have, relating to the audit.

Failure to produce records, etc. is professional misconduct

135(8) Any of the following actions done by a member or owner is professional misconduct:

- (a) failing to produce to a practice auditor any record, substance or thing in his or her possession or under his or her control;
- (b) failing to give a practice auditor access to any premises or place under his or her control;
- (c) failing to provide any information to the practice auditor or answer any questions that the practice auditor may have relating to the audit;
- (d) obstructing a practice auditor;
- (e) withholding or concealing from a practice auditor any record, substance or thing relevant to an audit;
- (f) destroying any record, substance or thing relevant to an audit.

209(7) *Section 136 is to be read as follows:*

Audit for other professions

136 When the college receives a written request from a body having statutory authority to regulate

- (a) a regulated health profession in Manitoba; or
- (b) the practice of a health profession, or the operation of pharmacies, in a jurisdiction outside of Manitoba;

the college may direct the practice auditor to conduct an audit or inspection of a member's practice or an owner's pharmacy operation, and may share information resulting from the audit or inspection with the requesting body.

GENERAL PROVISIONS RE COLLEGE

Council at meetings of members

210 All council members have the right to attend, speak, make a motion and vote at general and special meetings of members.

Approval of regulations

211 In addition to the approval of the Lieutenant Governor in Council required under subsections 82(7) and 221(9), a regulation made by the council under section 82 or 221 does not come into force unless it is approved by a majority of the members

- (a) present and voting at a general meeting; or
- (b) voting in a mail vote or other method of voting conducted in accordance with the by-laws.

Code of ethics

212(1) The college must, by resolution passed at an annual general meeting of its members, adopt a code of ethics governing the conduct of its members.

Incorporation by reference

212(2) A code of ethics may incorporate by reference, in whole or in part, any code, standard or other document, and the code of ethics may incorporate it as amended from time to time.

Amendment or repeal of code of ethics

212(3) After notice is given in accordance with the by-laws, a code of ethics may be amended or repealed by a majority of the members of the college entitled to vote

- (a) who are present and voting at a general or special meeting of members; or
- (b) who are voting in a mail vote or by another method of voting conducted in accordance with the by-laws.

Copies to be made available

212(4) A copy of any code, standard or other document adopted by reference under subsection (2) is to be made available in the college's office for public inspection during normal business hours and is to be accessible on or through the college's website.

Letters of standing

213(1) The registrar must, on the request of an owner, issue a letter of standing about the owner, in accordance with policies approved by the council. A letter of standing must contain

- (a) all information about the owner recorded in the register of licensed pharmacies; and
- (b) a description of every matter outstanding before the complaints investigation committee or inquiry committee.

Registrar's certificate

213(2) For the purpose of section 177 (registrar's certificate), a person may also request a certificate in respect of an owner.

ACTIVITIES NOT AFFECTED BY THIS ACT

Activities not affected by Act

214 Nothing in this Act prevents

- (a) a wholesale distributor from supplying a drug in the ordinary course of wholesale dealing, if the drug is in a sealed manufacturer's package and the person receiving the drug is authorized by law to supply, administer or dispense the drug, or to sell the drug by retail sale;
- (b) a person from compounding or dispensing a drug that is to be administered to an animal, or from administering a drug to an animal;
- (c) a practising pharmacist from dispensing, for administration to an animal, a drug in accordance with a prescription that is made by a practitioner authorized to practise veterinary medicine, veterinary surgery or veterinary dentistry;
- (d) a person from selling a drug that under the *Food and Drugs Act* (Canada) or its regulations may be sold for agricultural or veterinary purposes without a prescription; or
- (e) the manufacturer of a drug from carrying on its business.

INTERCHANGEABLE PHARMACEUTICAL PRODUCTS

Definitions

215(1) The following definitions apply in this section and in sections 216 to 218.

"dispenser" means a person who dispenses a drug pursuant to a prescription. (« fournisseur »)

"formulary" means the formulary established by regulation under section 218. (« liste »)

"interchangeable product" means a product

- (a) that contains a drug or drugs in the same or similar amounts of the same or similar active ingredients in the same or similar dosage form as the product directed by a prescription; and

(b) that is designated in the formulary as interchangeable with that other product directed by the prescription. (« produit interchangeable »)

Dispense as written

215(2) No dispenser shall, in dispensing a drug pursuant to a prescription, substitute one drug for another, or one brand of drug for another, without the consent of the practitioner, or except as allowed under sections 216 to 218.

Substitution of interchangeable product

216(1) If a prescription directs the dispensing of a specific interchangeable product, the dispenser must dispense either the interchangeable product that is prescribed or another interchangeable product at a cost that is not more than the sum of

- (a) subject to subsection (2), the cost for the lowest priced interchangeable product prescribed in the formulary; and
- (b) the maximum additional amount prescribed in the regulations.

Product not available

216(2) If the lowest priced interchangeable product is not available despite reasonable efforts to obtain it, the amount in clause (1) (a) must be the cost of the next lowest priced interchangeable product that is available.

Exception if "no substitution" instructions

216(3) Subsection (1) does not apply if the dispenser is instructed by the practitioner issuing the prescription, or by the patient, to dispense the specific drug prescribed.

Method of giving "no substitution" instructions

216(4) Instructions under subsection (3) are to be given

- (a) by the practitioner, by documenting "no substitution" on the original prescription or by giving oral instructions to the dispenser; or
- (b) by the patient, by giving oral or written instructions to the dispenser.

In either case, the dispenser must ensure that instructions for "no substitution" are documented on the original prescription, and that the documentation indicates whether the instructions were received from the practitioner or from the patient.

"No substitution" instructions continue

216(5) If an interchangeable product is prescribed for a person on a continuing basis and the original prescription is subject to a "no substitution" instruction under subsection (3), any subsequent oral authorization for the continuation of that prescription must be dispensed according to the "no substitution" instruction, unless at the time of issuing a subsequent authorization the practitioner or the patient rescinds the "no substitution" instruction.

Amount charged if "no substitution" instruction

216(6) If a prescription that includes a "no substitution" instruction directs the dispensing of an interchangeable product, the dispenser must not charge more for the product than the sum of

- (a) the cost of the product that is prescribed in the formulary; and
- (b) the maximum additional amount prescribed in the regulations.

No liability for dispensing interchangeable products

217 If an interchangeable product is dispensed in accordance with sections 215 to 218, no action or other proceeding may be commenced against the practitioner who issued the prescription or the dispenser on the grounds that an interchangeable product other than the one prescribed was dispensed.

Regulations

218 The minister may make regulations

- (a) establishing a formulary that
 - (i) designates products as interchangeable with one or more other products,

- (ii) prescribes the maximum costs chargeable for interchangeable products, and
 - (iii) sets out information respecting interchangeable products;
- (b) removing a product from a formulary if
- (i) a condition prescribed under clause (d) has not been complied with, or
 - (ii) the minister considers it advisable in the public interest to do so;
- (c) prescribing the maximum additional charges for interchangeable products for the purpose of clauses 216(1)(b) and (6)(b);
- (d) prescribing conditions, including the payment of fees, to be met by manufacturers of products in order for those products to be designated as interchangeable products in the formulary.

PART 16 REGULATIONS AND BY-LAWS

LIEUTENANT GOVERNOR IN COUNCIL REGULATIONS

Regulations made by L.G. in C.

219(1) The Lieutenant Governor in Council may make regulations

Reserved Acts

- (a) specifying the reserved acts that a member of a regulated health profession is authorized to perform;
- (b) further defining the word "diagnosis" for the practice of a regulated health profession;
- (c) prescribing substances and mixtures of substances as drugs for the purpose of the definition "drug" in section 3;
- (d) specifying other uses of a form of energy for the purpose of section 4, Item 10(f);
- (e) specifying other forms of energy for the purpose of section 4, Item 10(g);
- (f) governing the performance of reserved acts by a person or class of persons referred to in clause 5(1)(e), and specifying the purposes for which, or the circumstances in which, the acts may be performed;
- (g) providing for the exemption of a person or class of persons for the purpose of subsection 5(2), governing the performance of those acts by the person or class of persons and specifying the purposes for which, or the circumstances in which, those acts may be performed;
- (h) providing for the exemption of an activity or class of activities for the purpose of clause 5(3)(a), and specifying the purposes for which, or the circumstances in which, reserved acts may be performed during those activities;

Governance

- (i) specifying additional committees, including interprofessional committees, to be established by a council and their composition and mandate;
- (j) establishing interprofessional committees and specifying their composition and mandate;
- (k) prescribing a percentage of the regulated members of a college entitled to vote for the purpose of subsection 25(3);

Business Arrangements

- (l) permitting a corporation or class of corporations (other than a health profession corporation) to carry on the practice of a regulated health profession;
- (m) prescribing a phrase, and any variation or abbreviation of a phrase, that must be included in the name of a health profession corporation for the purpose of subsection 62(1);

Other College Duties and Responsibilities

(n) respecting the issuance and use of unique numeric or alphanumeric identifiers for the purpose of section 141 (registrar to collect information);

New Regulated Health Professions

(o) respecting the transition of an unregulated health profession to a health profession regulated under this Act, including exempting the regulated health profession from the application of any provision of this Act or the regulations during the transition period, and specifying the date on which this Act is to apply to the regulated health profession;

General Provisions

(p) prohibiting members from acting beyond the scope of practice of the regulated health profession in the course of practising the profession;

(q) governing or prohibiting the application of ultrasound, including any application of ultrasound to a fetus, for non-diagnostic imaging purposes;

(r) defining any word or phrase used but not defined in this Act;

(s) respecting any other matter necessary or advisable to carry out the intent and purpose of this Act.

Scope of regulations

219(2) A regulation may be general or particular in its application and may apply to one or more regulated health professions and one or more classes of members of a regulated health profession.

Incorporation by reference

219(3) A regulation may incorporate by reference, in whole or in part, any code, standard, guideline or drug schedule, and the regulation may incorporate it as amended from time to time, and subject to any changes that the Lieutenant Governor in Council considers necessary.

Public consultation in regulation development

219(4) Except in circumstances that the minister considers to be of an emergency nature, in the formation or substantive review of regulations made under clauses (1)(a) to (h) (reserved acts), the minister must provide an opportunity for public consultation regarding the proposed regulation or amendment.

Notifying colleges re regulation development

219(5) If the minister acts under subsection (4), he or she must notify any college which, in the minister's opinion, will be affected by the proposed regulation or amendment about the opportunity for consultation.

MINISTERIAL REGULATIONS

Regulations made by minister

220(1) The minister may make regulations

Governance

(a) prescribing an oath of office for the purpose of subsection 20(1);

Title Restriction

(b) exempting a person or entity from the application of subsection 79(1) (holding out as a college);

(c) specifying an organization or class of organizations for the purpose of clause 81(2)(a) (exception to use of "registered" or "licensed");

Professional Conduct

(d) specifying an organization for the purpose of clause 134(d);

Other College Duties and Responsibilities

(e) prescribing information as information to be posted on a college website for the purpose of clause 143(1)(d);

New Regulated Health Professions

(f) prescribing fees, or the manner of determining fees, to be submitted with an application under subsection 156(2);

(g) specifying the nature of the costs of conducting the investigation and the manner in which the costs are to be calculated for the purpose of section 160;

*The College of Pharmacists of Manitoba and**Other Matters re Pharmaceutical Products*

(h) prescribing substances and mixtures of substances as drugs for the purpose of the definition "drug" in section 188;

(i) specifying drugs that can only be sold to a practitioner or pursuant to a prescription;

(j) designating persons or classes of persons as "practitioners" for the purpose of Part 15.

Scope of regulations

220(2) A regulation may be general or particular in its application and may apply to one or more regulated health professions.

Incorporation by reference

220(3) A regulation may incorporate by reference, in whole or in part, any code, standard, guideline or drug schedule, and the regulation may incorporate it as amended from time to time, and subject to any changes that the minister considers necessary.

COUNCIL REGULATIONS**Regulations made by council**

221(1) A council may make regulations

Reserved Acts

(a) if members are authorized to perform reserved acts, governing the performance of those reserved acts and specifying classes of members who may perform each act, and the purposes for which, or the circumstances in which, each act may be performed;

(b) if members are authorized to perform the reserved act referred to in section 4, Item 2 (screening or diagnostic tests),

(i) specifying the qualifications and other requirements that members must have or meet,

(ii) designating the screening or diagnostic tests that members may order or receive,

(iii) specifying the circumstances in which members may order or receive those tests;

(c) if members are authorized to perform the reserved act referred to in section 4, Item 6, respecting the prescribing of drugs or vaccines by members, including

(i) specifying the qualifications and other requirements that members must have or meet,

(ii) designating the drugs or vaccines or categories of drugs or vaccines that members may prescribe,

(iii) specifying the circumstances in which members may prescribe each drug or vaccine;

(d) if members are authorized to perform the reserved act referred to in section 4, Item 9, respecting the administering of drugs or vaccines by members, including

(i) specifying the qualifications and other requirements that members must have or meet,

(ii) designating the drugs or vaccines or categories of drugs or vaccines that members may administer,

(iii) specifying the circumstances in which members may administer each drug or vaccine;

(e) respecting

- (i) who may perform reserved acts under clause 5(1)(c) with the consent of a member and under his or her supervision,
 - (ii) how members must supervise those persons,
 - (iii) governing the performance of reserved acts by those who are being supervised;
- (f) if members are permitted to delegate reserved acts or perform delegated reserved acts, respecting the delegation of a reserved act by a member or to a member, including to a member of another regulated health profession, or any other person providing health care who is competent to perform that act, and governing the performance of delegated reserved acts;

Registration

- (g) respecting the establishment, content and maintenance of registers, including specifying additional information to be kept in a register for the purpose of clause 28(1)(h) or 28(2)(g), and designating what information contained in a register must be made available to the public for the purpose of clause 28(3)(c);
- (h) establishing classes of regulated members and regulated associate members, and imposing conditions on each class of regulated members or regulated associate members;
- (i) respecting registration under Part 4, including establishing the qualifications, experience and other requirements to be met by applicants for registration in each class of regulated members or regulated associate members, and for the reinstatement of the registration;
- (j) respecting the issuance, cancellation and renewal of certificates of practice, including the qualifications, experience and other requirements to be met by members of each class;
- (k) respecting specialities in the regulated health profession, including
- (i) defining specialities as a class of regulated members or regulated associate members,
 - (ii) providing for specialities to be indicated on a member's registration and certificate of practice,
 - (iii) establishing the qualifications, experience or other requirements to be met by members for each speciality,
 - (iv) governing the use of prescribed terms, titles or designations by members indicating a speciality in the profession;
- (l) respecting the display of a certificate of practice;
- (m) specifying persons to whom notice must be given of the cancellation of registration or a certificate of practice;
- (n) respecting professional liability insurance or coverage, or other liability protection, for members and health profession corporations;
- (o) prohibiting a person from representing or holding out that he or she is a member of the college or is entitled to engage in the practice regulated by the college unless he or she is a member of the college;

Business Arrangements

- (p) restricting the persons or classes of persons with whom members or classes of members may practise in association;
- (q) restricting the persons or classes of persons to and from whom a member or class of members may make or receive referrals;
- (r) describing additional circumstances that constitute practise in association;
- (s) respecting the establishment, content and maintenance of the record of health profession corporations under section 73, including specifying additional information to be kept in a record for the purpose of clause 73(3)(f), and designating what additional information contained in the record must be made available to the public for the purpose of clause 73(4)(b);
- (t) respecting the issuance, expiry and renewal of permits under Part 5, including requirements that must be met before a permit may be issued or renewed;
- (u) respecting conditions that may be imposed on permits issued under Part 5;
- (v) governing the names of health profession corporations;
- (w) respecting any matter the council considers necessary or advisable for the purpose of Part 5;

Title Restriction

(x) if its members are permitted by section 78 to use one or more of the titles "doctor", "surgeon" or "physician", governing the use of the title or titles or a variation or abbreviation or an equivalent in another language, including authorizing their use by members or classes of members;

(y) governing the use of titles (other than "doctor", "surgeon" or "physician") and designations and terms, and initials or a variation or abbreviation of them or an equivalent in another language, by members in respect of their practice, including authorizing their use by certain classes of members, and governing and prohibiting their use by other persons in the course of providing health care;

(z) respecting the use of the terms "registered" and "licensed", or a variation or abbreviation of either of them, or an equivalent in another language, by members or classes of members;

Continuing Competency

(aa) respecting continuing competency programs;

Professional Conduct

(bb) permitting the chair of a complaints investigation committee or the registrar to perform the committee's responsibilities under subsection 96(1) or (2);

(cc) specifying persons to whom notice of a suspension or conditions must be given for the purpose of subsection 110(2);

(dd) specifying which column in the table of professional misconduct fines in Schedule 1 applies to the college for the purpose of clause 127(1)(b);

General Provisions

(ee) respecting the accreditation of facilities at which members perform or cause to be performed diagnostic or treatment services (other than those facilities to which section 183 applies or that are exempt from the application of that section or those facilities accredited by the College of Dentists of Manitoba), governing the operation of those accredited facilities, and prohibiting the use of those facilities by members or health profession corporations;

(ff) exempting a class of regulated associate members from the application of any provision of this Act.

Regulations for College of Physicians and Surgeons

221(2) In addition to the powers listed in subsection (1), the council of the College of Physicians and Surgeons of Manitoba may make regulations exempting a facility or class of facilities from the application of section 183.

Regulations for College of Pharmacists

221(3) In addition to the powers listed in subsection (1), the council of the College of Pharmacists of Manitoba may make regulations

(a) if members are authorized to perform the reserved acts referred to in section 4, Item 6 and Item 8, specifying measures to address situations in which a member sells a drug or vaccine that he or she has authority to prescribe;

(b) respecting the licensing of pharmacies, including creating separate categories of licences, prescribing the qualifications, requirements and scope of operation for each category, and governing the renewal and reinstatement of licences;

(c) respecting the establishment, content and maintenance of the register of licensed pharmacies, including specifying additional information to be kept in the register for the purpose of clause 190(1)(e), and designating what information contained in a register must be made available to the public for the purpose of clause 190(2)(c);

(d) respecting pharmacy technicians, including establishing the qualifications, experience and other requirements that must be held by a pharmacy technician;

(e) prescribing information required to be recorded on a prescription or a drug container label;

(f) specifying a person or class of persons to whom information must be given under clause 134.1(b), as set out in subsection 208(30) of this Act;

(g) establishing qualifications or requirements for pharmacy managers under clause 192(3)(b);

(h) establishing

- (i) requirements regarding the number and nature of the names under which a pharmacy may operate,
 - (ii) requirements for filing a separate licence application for a separate facility that is part of a pharmacy operation for the purpose of section 193;
- (i) establishing owners' obligations for the operation of pharmacies under clause 201(d);
- (j) prescribing the circumstances in which a change in the ownership or control of a licensed pharmacy must be reported under clause 204(a);
- (k) requiring owners to carry liability insurance and governing the coverage required to be carried;
- (l) respecting the offering or providing of gifts, rebates, bonuses or inducements while engaging in the practice of pharmacy;
- (m) governing the use of titles (other than "doctor", "surgeon" or "physician") and designations, or a variation or abbreviation of those titles or designations or an equivalent in another language, by owners and retail or wholesale businesses, and prohibiting their use by other persons or businesses.

Scope of regulations

221(4) A regulation may be general or particular in its application and may apply to one or more classes of members.

Incorporation by reference

221(5) A regulation may incorporate by reference, in whole or in part, any code, standard, guideline or drug schedule, and it may incorporate it as amended from time to time, and subject to any changes that the council considers necessary.

Labour mobility

221(6) In making a regulation, the council must ensure that the regulation complies with the obligations under Chapter 7 (Labour Mobility) of the Agreement on Internal Trade.

College regulates more than one health profession

221(7) If a college regulates more than one regulated health profession, a regulation may apply to one or more of those professions.

Consultation

221(8) Before making a regulation, the council must

- (a) provide a copy of the proposed regulation, for review and comment, to
 - (i) the members of the college,
 - (ii) the minister, and
 - (iii) any other person the council considers necessary; and
- (b) consider the comments received.

Approval of regulations

221(9) A regulation does not come into force until it is approved by the Lieutenant Governor in Council.

Regulation required by minister

221(10) If minister considers it to be in the public interest, he or she may require a council to make, amend or repeal a regulation made by a council under this section.

L.G. in C. may make regulation

221(11) If the council does not comply with a requirement under subsection (10) within 90 days, the Lieutenant Governor in Council may make, amend or repeal the regulation.

COUNCIL BY-LAWS

By-laws made by council

222(1) A council may make by-laws, not inconsistent with this Act,

Governance

- (a) for the government of the college and the management and conduct of its affairs;
- (b) prescribing the number of council members, officers of the college and ex officio council members;
- (c) respecting the nomination and election or appointment of council members and officers of the college, and governing the procedures for filling vacancies on the council of members other than public representatives appointed by the minister;
- (d) providing for the division of the province into districts and prescribing the number of council members to be elected from each district;
- (e) respecting the appointment and revocation of ex officio members of the council;
- (f) governing the establishment, operation and proceedings of committees, the appointment and revocation of members and acting members of those committees, and the procedures for filling vacancies on those committees;
- (g) setting remuneration, fees and expenses payable to council members, officers of the college and members of committees established by or under this Act for attending to the college's business;
- (h) providing for the remuneration of the registrar and employees of the college, and prescribing their duties and functions;
- (i) respecting the qualifications of the registrar, including whether the registrar must be a member of the college, and providing for the term of office of the registrar;
- (j) providing for the appointment of an individual as an acting registrar, who has all the powers, duties, and functions of the registrar under this Act when the registrar is absent or unable to act or when there is a vacancy in the office of the registrar;
- (k) respecting the qualifications of a deputy registrar and an assistant registrar, including whether he or she must be a member of the college, and providing for the term of office of the deputy registrar and assistant registrar;
- (l) respecting the calling and conduct of meetings of members of the college and of the council;
- (m) governing the number of members that constitutes a quorum at meetings of the membership of the college;
- (n) respecting the holding of a vote on any matter relating to the college, including voting by mail or any other method;
- (o) prescribing forms for use under this Act;

Registration

- (p) appointing the members of a board of assessors, prescribing the term of office, and specifying the duties and functions, of the board members;
- (q) prescribing the fees payable by members and applicants for registration, and the fees payable for certificates of practice and health profession corporation permits, or the manner of determining those fees, which may be different for different classes of memberships;
- (r) respecting the rights and privileges of college membership, and classes of college membership;
- (s) authorizing the college to confer honorary memberships;

Business Arrangements

- (t) prescribing the form and manner in which a health profession corporation must notify the registrar of a change in its voting shareholders, the other shareholders, directors or officers, and the time period for doing so;

Code of Ethics

- (u) respecting the adoption of a code of ethics;

Professional Conduct

(v) respecting procedural rules for the inquiry committee.

By-law powers for College of Pharmacists of Manitoba

222(2) In addition to the by-law powers listed in subsection (1), the council of the College of Pharmacists of Manitoba may make by-laws, not inconsistent with this Act,

- (a) prescribing the fees payable by owners and by applicants for pharmacy licences, or the manner of determining those fees, which may be different for different categories of licences;
- (b) respecting information to be provided in an application for a pharmacy licence;
- (c) prescribing the duration of a pharmacy licence.

By-law powers for College of Dentists of Manitoba

222(3) In addition to the by-law powers listed in subsection (1), the council of the College of Dentists of Manitoba may make by-laws, not inconsistent with this Act,

- (a) providing for the establishment, development and operation of dental clinics;
- (b) providing for the funding of dental clinics by the college;
- (c) respecting the accreditation of facilities (other than those facilities to which section 183 applies or that are exempted from the application of that section) at which members may perform or cause to be performed diagnostic or treatment services, and governing the operation of those facilities, or prohibiting the use of them by members or dental corporations.

College regulates more than one health profession

222(4) If a college regulates more than one health profession, a by-law may apply to one or more of those regulated health professions.

Consultation with members

222(5) Before making a by-law, the council must

- (a) provide a copy of the proposed by-law to members for their review and comment; and
- (b) review and consider the comments received.

Period of effectiveness

222(6) A by-law — other than a by-law made under clause (1)(q) or (2)(a) — is effective only until the next general or special meeting of the college, and ceases to have effect immediately after the meeting, unless it is confirmed or varied by a majority of the members of the college entitled to vote who are present and voting at the meeting.

Amendments and repeal of by-laws

222(7) After notice is given in accordance with the by-laws, a by-law — other than a by-law made under clause (1)(q) or (2)(a) — may be amended or repealed by a majority of the members of the college entitled to vote

- (a) who are present and voting at a general meeting; or
- (b) who are voting in a mail vote or other method of voting conducted in accordance with the by-laws.

By-laws available to the public

222(8) The council must make the by-laws available to the public.

PART 17

TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AND CONDITIONAL AMENDMENTS

TRANSITIONAL PROVISIONS

Definitions

223(1) The following definitions apply in this Part.

"association" means an association established or continued by a profession-specific Act. (« association » ou « ordre »)

"board" means a board established or continued by a profession-specific Act. (« conseil d'administration » ou « conseil »)

"college" means a college established or continued by a profession-specific Act. (« collègue » ou « ordre »)

"committee" means a committee established or continued by or under a profession-specific Act. (« comité »)

"council" means a council established or continued by a profession-specific Act. (« conseil »)

"profession-specific Act" means an Act listed in Schedule 2. (« loi particulière »)

"regulated health profession" means a health profession designated as a regulated health profession by a regulation under clause 8(a). (« profession de la santé réglementée »)

Transitional regulations

223(2) The Lieutenant Governor in Council may make regulations

(a) respecting anything required to deal with the transition to regulating health professions under this Act from regulating them under profession-specific Acts, including regulations respecting

(i) the transition to this Act of an association or college and its board or council, officers, boards and committees,

(ii) the continuance or transition of registration under a profession-specific Act to registration under this Act,

(iii) the continuance or transition to this Act of licences, certificates and permits issued under a profession-specific Act,

(iv) the continuance of complaints, investigations or proceedings commenced under a profession-specific Act, and the application of this Act, with necessary changes, to those complaints, investigation or proceedings,

(v) exempting classes of persons from the application of this Act or any provision of it during the period of transition,

(vi) specifying the date on which this Act is to apply to a regulated health profession,

(vii) the interpretation of any transitional provision of this Act;

(b) to remedy any difficulty, inconsistency or impossibility resulting from the transition to this Act from regulating health professions under profession-specific Acts.

Scope of regulations

223(3) A regulation may be general or particular in its application and may apply to one or more regulated health professions and one or more classes of members of a regulated health profession.

Purpose

224(1) The purpose of this section is to deal with the period of transition from regulating health professions under profession-specific Acts to regulating them under this Act. Certain provisions of this Act do not apply to a person who is regulated under a profession-specific Act that has not yet been repealed, as long as the person meets certain conditions.

Non-application: section 5 and subsection 81(1)

224(2) Section 5 (performance of reserved acts restricted) and subsection 81(1)(use of "registered" and "licensed") do not apply to a person who is authorized to practise a health profession under a profession-specific Act until such time as the profession-specific Act is repealed, as long as

(a) the person is practising the health profession under the authority of the applicable profession-specific Act; and

(b) the person meets all the practice requirements of the health profession, including compliance with the profession-specific Act, the regulations and by-laws made under that Act, and any terms and conditions imposed on the person's registration, licence, permit, approval, or other authorization to practise.

No effect on application or operation of profession-specific Act

224(3) For greater certainty, this section does not affect the application or operation of a profession-specific Act in respect of a person who is registered or licensed or holds a certificate or permit under that Act.

Non-application: subsection 78(1)

224(4) Subsection 78(1) (restricted use of "doctor", "surgeon" or "physician") does not apply to a licensed dentist or a dental corporation that meets the requirements set out in clauses (2)(a) and (b), until the day **The Dental Association Act** is repealed and subsection 78(3) comes into force.

Non-application: sections 55 and 72

225(1) Sections 55 and 72 do not apply to a member or health profession corporation until the day **The Medical Act** is repealed.

Non-application: section 79

225(2) Section 79 (holding out as a college) does not apply to an association or college that is continued or established by a profession-specific Act until the day that Act is repealed.

Does an existing college need to apply under Part 11 to be regulated under this Act?

225(3) For greater certainty, Part 11 (New Regulated Health Professions) does not apply to a college or association that is regulated under a profession-specific Act.

Transitional re Manitoba Dental Association

226 Until the day **The Dental Association Act** is repealed, clause 183(3)(e) of this Act is to be read as follows:

(e) respecting arrangements with other colleges or associations for accreditation of facilities at which members of those colleges or associations perform diagnostic or treatment procedures.

CONSEQUENTIAL AMENDMENTS

C.C.S.M. c. A80 amended

227(1) **The Anatomy Act** is amended by this section.

227(2) Subsection 3(2) is amended by striking out "licensed dentist" and substituting "practising dentist".

227(3) Clause 13(b) is amended by striking out "licensed dentist" and substituting "practising dentist".

C.C.S.M. c. A85 amended

228(1) **The Animal Diseases Act** is amended by this section.

228(2) Subsection 14(2) is amended by striking out "Notwithstanding anything contained in *The Pharmaceutical Act*, no person, other than a person registered under that Act, or *The Veterinary Medical Act*" and substituting "No person, other than a practising pharmacist under *The Regulated Health Professions Act* or an owner as defined in Part 15 of that Act or a person registered under *The Veterinary Medical Act*,".

228(3) Subsection 14(5) is amended

(a) in the section heading, by striking out "*The Pharmaceutical Act*" and substituting "*The Regulated Health Professions Act*"; and

(b) by striking out "the provisions of *The Pharmaceutical Act* and the regulations made thereunder" and substituting "Part 15 of *The Regulated Health Professions Act* and the regulations made in respect of that Part".

228(4) Clause 19(u) is amended by striking out "*The Pharmaceutical Act*" and substituting "Part 15 of *The Regulated Health Professions Act*".

C.C.S.M. c. C50 amended

229 Clause 5(2)(a) of **The Change of Name Act** is amended by striking out "certified" and substituting "qualified".

C.C.S.M. c. C280 amended

230 Subsection 63(1) of **The Court of Queen's Bench Act** is amended by striking out "licensed or" and substituting "licensed, certified or".

C.C.S.M. c. D35 amended

231(1) **The Denturists Act** is amended by this section.

231(2) Section 1 is amended

(a) by replacing the definition "dentist" with the following:

"dentist" means a practising dentist as defined in *The Interpretation Act*; (« dentiste »)

(b) by replacing the definition "medical practitioner" with the following:

"medical practitioner" means a duly qualified medical practitioner as defined in *The Interpretation Act*; (« médecin »)

231(3) Clause 15(1)(a) is amended by striking out "the provisions of *The Dental Association Act*" and substituting "*The Regulated Health Professions Act* and its regulations".

231(4) Section 17 is repealed.

C.C.S.M. c. D104 amended

232(1) **The Drivers and Vehicles Act** is amended by this section.

232(2) Subsection 1(1) is amended

(a) by replacing the definition "duly qualified medical practitioner" with the following:

"duly qualified medical practitioner" means a physician who holds a valid certificate of practice issued by the College of Physicians and Surgeons of Manitoba under *The Regulated Health Professions Act*. (« médecin »)

(b) by replacing the definition "optometrist" with the following:

"optometrist" means an individual who holds a valid certificate of practice issued by the College of Optometrists of Manitoba under *The Regulated Health Professions Act*. (« optométriste »)

C.C.S.M. c. E150 amended

233(1) **The Manitoba Evidence Act** is amended by this section.

233(2) Subsection 9(1) is amended in the definition "committee" by replacing clause (b) with the following:

(b) the standards committee, and any of its subcommittees, established under Part 14 of *The Regulated Health Professions Act*;

233(3) Subsection 50(1) is amended by striking out "licensed" and substituting "licensed or certified".

C.C.S.M. c. F12 amended

234 The Schedule to **The Fair Registration Practices in Regulated Professions Act** is amended by replacing Items 11 to 20 with the following:

11. College of Denturists of Manitoba
12. College of Optometrists of Manitoba
13. College of Respiratory Therapists of Manitoba
14. College of Chiropractors of Manitoba
15. College of Dentists of Manitoba
16. College of Naturopathic Doctors of Manitoba
17. College of Pharmacists of Manitoba
18. College of Audiologists and Speech Language Pathologists of Manitoba
19. College of Opticians of Manitoba
20. College of Psychologists of Manitoba

C.C.S.M. c. F52 amended

235(1) **The Fatality Inquiries Act** is amended by this section.

235(2) Subsection 1(1) is amended by replacing the definition "duly qualified medical practitioner" with the following:

"duly qualified medical practitioner" means a physician who holds a valid certificate of practice issued by the College of Physicians and Surgeons of Manitoba under *The Regulated Health Professions Act*; (« médecin »)

235(3) Subsection 2(3) is amended by striking out "the licence" and substituting "the certificate of practice".

C.C.S.M. c. H35 amended

236(1) **The Health Services Insurance Act** is amended by this section.

236(2) Section 71 is amended in the part before clause (a) by striking out "licensed dentists" and substituting "practising dentists".

236(3) Section 72 is amended

(a) in clause (a), by striking out "The Manitoba Chiropractors Association" and substituting "the College of Chiropractors of Manitoba";

(b) in clause (b), by striking out "the Manitoba Association of Optometrists" and substituting "the College of Optometrists of Manitoba"; and

(c) in clause (c), by striking out "The Manitoba Dental Association" and substituting "the College of Dentists and Dental Assistants of Manitoba".

236(4) Clause 113(1)(r) is amended by striking out "licensed dentists" and substituting "practising dentists".

236(5) Section 119 is amended in the definition "laboratory"

(a) in clause (d), by striking out "dentist, as defined in *The Dental Association Act*" and substituting "practising dentist"; and

(b) in clause (e), by striking out "chiropractor, as defined in *The Chiropractic Act*" and substituting "practising chiropractor under *The Regulated Health Professions Act*".

C.C.S.M. c. H120 amended

237(1) **The Hospitals Act** is amended by this section.

237(2) Section 1 is amended in the definition "in-patient" by striking out "licensed dentist" and substituting "practising dentist".

237(3) Clause 29(1)(y) is amended by striking out "registered dentists" and substituting "practising dentists".

C.C.S.M. c. 180 amended

238(1) **The Interpretation Act** is amended by this section.

238(2) The Schedule of Definitions is amended

(a) by repealing the definition "licensed dentist";

(b) by replacing the definition "'physician" or "duly qualified medical practitioner"' with the following:

"physician" or "duly qualified medical practitioner" or a similar expression indicating legal recognition of an individual as a member of the medical profession means a physician who holds a valid certificate of practice issued by the College of Physicians and Surgeons of Manitoba under *The Regulated Health Professions Act*; (« médecin »)

(c) by adding the following definition:

"practising dentist" means a dentist who holds a valid certificate of practice issued by the College of Dentists of Manitoba under *The Regulated Health Professions Act*; (« dentiste en exercice »)

C.C.S.M. c. M95 amended

239(1) **The Manitoba Medical Association Dues Act** is amended by this section.

239(2) Subsection 2(1) is amended by striking out "licenced under *The Medical Act*" and substituting "who hold a valid certificate of practice issued by the College of Physicians and Surgeons of Manitoba under *The Regulated Health Professions Act*".

239(3) Clause 2(2)(a) is amended by striking out "in the educational register under *The Medical Act*" and substituting "on the educational register of the medical profession established under *The Regulated Health Professions Act*".

239(4) Clause 2(2)(b) is amended by striking out "*The Medical Act* who is issued a resident's licence" and substituting "*The Regulated Health Professions Act* who is issued a certificate of practice for a resident".

239(5) Section 5 is amended

(a) by striking out "becomes licensed under *The Medical Act*" and substituting "is issued a certificate of practice under *The Regulated Health Professions Act*"; and

(b) by striking out "being licensed" and substituting "being issued that certificate".

C.C.S.M. c. M110 amended

240(1) **The Mental Health Act** is amended by this section.

240(2) Section 1 is amended

(a) by replacing the definition "physician" with the following:

"physician", except in section 69, means a physician who holds a valid certificate of practice issued by the College of Physicians and Surgeons of Manitoba under *The Regulated Health Professions Act*; (« médecin »)

(b) in the definition "psychiatrist", by striking out "under *The Medical Act* who" and substituting "and certified to practise under *The Regulated Health Professions Act* and who".

240(3) Subsection 36(5) is amended by striking out "under *The Medical Act*" and substituting "under *The Regulated Health Professions Act*".

C.C.S.M. c. O60 amended

241(1) **The Opticians Act** is amended by this section.

241(2) Section 1 is amended in clause (a) of the definition "optician" by striking out "the holders of certificates of registration under *The Optometry Act*" and substituting "practising optometrists under *The Regulated Health Professions Act*".

241(3) Sections 17 and 24 are amended by striking out "the holder of a certificate of registration under *The Optometry Act*" and substituting "a practising optometrist under *The Regulated Health Professions Act*".

C.C.S.M. c. O70 amended

242 Section 20 of **The Optometry Act** is amended by striking out "*The Opticians Act*" and substituting "*The Regulated Health Professions Act*".

C.C.S.M. c. P33.5 amended

243(1) **The Personal Health Information Act** is amended by this section.

243(2) Subsection 1(1) of the English version is amended in the definition "health care", in the part after clause (c), by adding "appliance," after "drug,".

243(3) Subsection 27(2) is amended by striking out "*The Pharmaceutical Act*" and substituting "Part 15 of *The Regulated Health Professions Act*".

C.C.S.M. c. P34 amended

244(1) **The Personal Investigations Act** is amended by this section.

244(2) Section 1 is amended in the definition "medical information"

(a) by striking out "licensed physicians, medical practitioners" and substituting "duly qualified medical practitioners"; and

(b) by striking out "qualified".

C.C.S.M. c. P60 amended

245(1) **The Pharmaceutical Act** is amended by this section.

245(2) Section 1 is amended in the definition "medical practitioner" by striking out "licensed" and substituting "licensed or certified".

245(3) Clause 2(2)(f) is amended by striking out "The Midwifery Act" and substituting "The Regulated Health Professions Act".

245(4) Clause 2(2)(g) is amended by striking out "The Registered Nurses Act" and substituting "The Regulated Health Professions Act".

C.C.S.M. c. P93 amended

246 Subsection 3(3) of **The Podiatrists Act** is amended by striking out "a physician within the meaning of *The Medical Act*" and substituting "a member of the College of Physicians and Surgeons of Manitoba who holds a certificate of practice issued by the College under *The Regulated Health Professions Act*".

C.C.S.M. c. P215 amended

247(1) **The Manitoba Public Insurance Corporation Act** is amended by this section.

247(2) Section 51 is amended

(a) by striking out "chiropractor as defined in *The Chiropractic Act*;" and substituting "practising chiropractor under *The Regulated Health Professions Act*,"; and

(b) by striking out "dentist as defined in *The Dental Association Act*," and substituting "practising dentist".

C.C.S.M. c. R115 amended

248 Clause 50(2)(a) of **The Registered Respiratory Therapists Act** is amended by striking out "duly licensed to practise in Manitoba and".

C.C.S.M. c. S110 amended

249 Section 1 of **The Shops Regulation Act** is amended in the definition "'pharmacist" and "pharmacy"' by striking out "in *The Pharmaceutical Act*" and substituting "by or under *The Regulated Health Professions Act*".

C.C.S.M. c. V60 amended

250(1) **The Vital Statistics Act** is amended by this section.

250(2) Section 1 is amended by replacing the definition "duly qualified medical practitioner" with the following:

"**duly qualified medical practitioner**" means a physician who holds a valid certificate of practice issued by the College of Physicians and Surgeons of Manitoba under *The Regulated Health Professions Act*; (« médecin »)

C.C.S.M. c. W210 amended

251(1) **The Workplace Safety and Health Act** is amended by this section.

251(2) Section 1 is amended in the definition "occupational health nurse" by striking out "registered nurse as defined by *The Registered Nurses Act*" and substituting "practising registered nurse under *The Regulated Health Professions Act*".

251(3) Subsection 45.1(5) is amended in clause (c) of the definition "medical workplace" by striking out "a registered dentist's office" and substituting "a practising dentist's office".

C.C.S.M. c. Y50 amended

252(1) **The Youth Drug Stabilization (Support for Parents) Act** is amended by this section.

252(2) Section 1 is amended in the definition "addictions specialist"

(a) by replacing clause (b) with the following:

(b) a practising psychologist under *The Regulated Health Professions Act*;

(b) by replacing clause (c) with the following:

(c) a practising registered nurse under *The Regulated Health Professions Act*;

(c) by replacing clause (d) with the following:

(d) a practising registered psychiatric nurse under *The Regulated Health Professions Act*;

Consequential amendment, S.M. 2001, c. 36 (unproclaimed)

253 The definition "podiatrist" in section 1 of the English version of **The Pharmaceutical Act**, as enacted by S.M. 2001, c. 36, clause 67(2)(b), is amended by adding "or certified" after "licenced".

CONDITIONAL AMENDMENTS

C.C.S.M. c. D35

254(1) If **The Denturists Act** is repealed before both **The Medical Act** and **The Dental Association Act** are repealed, then section 231 of this Act is repealed on the day that **The Denturists Act** is repealed.

254(2) If **The Denturists Act** is repealed before the day **The Medical Act** is repealed, then clause 231(2)(b) of this Act is repealed on the day that **The Denturists Act** is repealed.

254(3) If **The Denturists Act** is repealed before the day **The Dental Association Act** is repealed, then clause 231(2)(a) and subsections 231(3) and (4) of this Act are repealed on the day that **The Denturists Act** is repealed.

C.C.S.M. c. O60

255 If **The Opticians Act** is repealed before the day **The Optometry Act** is repealed, then section 241 of this Act is repealed on the day **The Opticians Act** is repealed.

C.C.S.M. c. O70

256 If **The Optometry Act** is repealed before the day **The Opticians Act** is repealed, then section 242 of this Act is repealed on the day **The Optometry Act** is repealed.

C.C.S.M. c. P60

257(1) If **The Pharmaceutical Act** is repealed before both **The Medical Act** and **The Registered Nurses Act** are repealed, then section 245 of this Act is repealed on the day **The Pharmaceutical Act** is repealed.

257(2) If **The Pharmaceutical Act** is repealed before the day **The Medical Act** is repealed, then subsection 245(2) of this Act is repealed on the day **The Pharmaceutical Act** is repealed.

257(3) If **The Pharmaceutical Act** is repealed before the day **The Registered Nurses Act** is repealed, then subsection 245(4) of this Act is repealed on the day **The Pharmaceutical Act** is repealed.

C.C.S.M. c. P93

258 If **The Podiatrists Act** is repealed before the day **The Medical Act** is repealed, then section 246 of this Act is repealed on the day **The Podiatrists Act** is repealed.

C.C.S.M. c. R115

259 If **The Registered Respiratory Therapists Act** is repealed before the day **The Medical Act** is repealed, then section 248 of this Act is repealed on the day **The Registered Respiratory Therapists Act** is repealed.

Conditional amendment re *Pharmaceutical Act*, S.M. 2006, c. 37

260(1) If **The Pharmaceutical Act**, S.M. 2006, c. 37, comes into force before the profession of pharmacy is designated as a regulated health profession under clause 8(a) of this Act, then on the coming into force of **The Pharmaceutical Act**, S.M. 2006, c. 37,

(a) section 245 of this Act is replaced with the following:

C.C.S.M. c. P60, amended

245 Subsection 1(1) of **The Pharmaceutical Act** is amended in clause (a) of the definition "practitioner" by striking out "licensed" and substituting "licensed or certified".

(b) section 257 of this Act is replaced with the following:

C.C.S.M. c. P60

257 If *The Pharmaceutical Act* is repealed before both *The Medical Act* and *The Dental Association Act* are repealed, then section 245 of this Act is repealed on the day that *The Pharmaceutical Act* is repealed.

(c) Schedule 2 of this Act is amended by striking out "The Pharmaceutical Act, S.M. 1991-92, c. 28" and substituting "The Pharmaceutical Act, S.M. 2006, c. 37".

260(2) If *The Pharmaceutical Act*, S.M. 2006, c. 37, does not come into force before the profession of pharmacy is designated as a regulated health profession under clause 8(a), then it is repealed on the day that *The Pharmaceutical Act*, S.M. 1991-92, c. 28, is repealed.

PART 18

REPEAL, C.C.S.M. REFERENCE AND COMING INTO FORCE

Repeal

261 An Act or part of an Act set out in Schedule 2 is repealed on a day to be fixed by proclamation.

C.C.S.M. Reference

262 This Act may be referred to as chapter R117 of the *Continuing Consolidation of the Statutes of Manitoba*.

Coming into force

263 This Act comes into force on a day to be fixed by proclamation.

SCHEDULE 1

Professional Misconduct Fines Table

The following columns of maximum fines apply to proceedings under Part 8 (Professional Conduct):

	Column1	Column2	Column3
maximum fine for each finding of professional misconduct	\$1,000	\$5,000	\$10,000
maximum fine (aggregate amount) for all findings of professional misconduct arising out of a hearing	\$5,000	\$25,000	\$50,000

SCHEDULE 2

List of Profession-Specific Acts

The Chiropractic Act, R.S.M. 1987, c. C100

The Dental Association Act, R.S.M. 1987, c. D30

The Dental Hygienists Act, S.M. 2005, c. 51

The Denturists Act, R.S.M. 1987, c. D35

The Licensed Practical Nurses Act, S.M. 1999, c. 37

The Manitoba Speech and Hearing Association Act, R.S.M. 1990, c. 101

The Medical Act, R.S.M. 1987, c. M90

The Medical Laboratory Technologists Act, S.M. 2002, c. 12

The Midwifery Act, S.M. 1997, c. 9

The Naturopathic Act, R.S.M. 1987, c. N80

The Occupational Therapists Act, S.M. 2002, c. 17

The Opticians Act, R.S.M. 1987, c. O60, formerly The Ophthalmic Dispensers Act

The Optometry Act, R.S.M. 1987, c. O70

The Pharmaceutical Act, S.M. 1991-92, c. 28

The Physiotherapists Act, S.M. 1999, c. 30

The Podiatrists Act, S.M. 2001, c. 36

The Psychologists Registration Act, R.S.M. 1987, c. P190

The Registered Dietitians Act, S.M. 2002, c. 18

The Registered Nurses Act, S.M. 1999, c. 36

The Registered Psychiatric Nurses Act, S.M. 1999, c. 38

The Registered Respiratory Therapists Act, R.S.M. 1987, c. R115

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