

Medical Act

CHAPTER 38 OF THE ACTS OF 2011

as amended by

2014, c. 32, ss. 143-145



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Published by Authority of the Speaker of the House of Assembly
Halifax

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CHAPTER 38 OF THE ACTS OF 2011
amended 2014, c. 32, ss. 143-145

**An Act Respecting
the Practice of Medicine**

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Short title

1 This Act may be cited as the *Medical Act*. 2011, c. 38, s. 1.

Interpretation

2 In this Act,

(a) “capacity” means the medical, physical, mental or emotional status of an applicant or member that impacts that person’s ability to practise in a competent manner;

(b) “certificate of professional conduct” means a certificate from a medical regulatory body setting out

(i) an applicant’s registration and licensing history, including any conditions or restrictions affecting the applicant’s practice,

(ii) any outstanding allegations or previous findings of incapacity or disciplinary matters, and

(iii) such other matters as determined by the medical regulatory body issuing the certificate;

(c) “College” means the College of Physicians and Surgeons of Nova Scotia;

(d) “competence” means the ability to integrate and apply the knowledge, skills, attitude and judgement required to practise safely, ethically and professionally in a designated role and practice setting;

(e) “complaint” means any report or allegation in writing and signed by a person regarding the conduct, actions, competence, or capacity, of a member or former member, professional corporation or the employees thereof, or any similar complaint, report or allegation initiated by the Registrar or referred pursuant to this Act or the regulations;

(f) “conduct unbecoming” means conduct outside the practice of medicine that tends to bring discredit upon the medical profession;

(g) “continuing professional development program” means a program authorized by the Council that promotes the maintenance and enhancement of the continuing competence of medical practitioners throughout their careers;

(h) “Council” means the Council of the College;

(i) “Court” means the Supreme Court of Nova Scotia;

(j) “disciplinary matter” means any matter involving allegations or findings of professional misconduct, conduct unbecoming a medical practitioner or incompetence;

(k) *repealed, 2014, c. 32, s. 143.*

(l) “former Act” means Chapter 10 of the Acts of 1995-96, the *Medical Act*;

(la) “health authority” has the same meaning as in the *Health Authorities Act*;

(m) “health profession” means a health profession regulated by an Act of the Province;

(n) “hearing committee” means a hearing committee appointed pursuant to this Act;

- (o) “Hearing Pool” means the Hearing Pool appointed pursuant to this Act;
- (p) “hospital” means a hospital as defined in the *Hospitals Act*;
- (q) “incapacity” means the status whereby a member suffers or suffered from a medical, physical, mental or emotional condition, disorder or addiction that renders or rendered the member unable to practise with competence, or that may endanger or have endangered the health or safety of individuals;
- (r) “incompetence” means the lack of competence in the respondent’s care of an individual or delivery of medical services that, having regard to all the circumstances, rendered the respondent unsafe to practise at the time of such care of the individual or delivery of medical services or that renders the respondent unsafe to continue in practice without remedial assistance;
- (s) “individual” means a patient, group of patients, community or population who is the recipient of a medical practitioner’s services;
- (t) “individual scope of practice” means the procedures, actions, processes and practices for which the member has received education or training and is competent;
- (u) “investigation committee” means an investigation committee appointed pursuant to this Act;
- (v) “Investigation Pool” means the Investigation Pool appointed pursuant to this Act;
- (w) “investigator” means a person designated by the Registrar or an investigation committee to conduct or supervise an investigation into a complaint;
- (x) “judge” means a judge of the Court;
- (y) “licence” means a valid and subsisting licence issued pursuant to this Act and in accordance with the regulations;
- (z) “licensing sanction” means
- (i) the imposition of conditions or restrictions on a licence by an investigation committee or a hearing committee, or their equivalents from another jurisdiction,
 - (ii) a consensual reprimand ordered by an investigation committee or its equivalent from another jurisdiction,
 - (iii) a reprimand issued by a hearing committee or its equivalent from another jurisdiction,
 - (iv) a suspension of a licence by an investigation committee or a hearing committee or their equivalent from another jurisdiction, or
 - (v) a revocation of registration or licence by a hearing committee or its equivalent from another jurisdiction;
- (aa) “mediation” means any form of alternative dispute resolution;

(ab) “medical practitioner” means a person who holds a licence issued pursuant to this Act or the regulations entitling such person to engage in the practice of medicine, but does not include a student member;

(ac) “member”, unless the context otherwise requires, means a person who is registered on a register;

(ad) “party”, unless the context otherwise requires, means the College and the respondent;

(ae) “practice assessment program” means a program approved by the Council to achieve the objectives as set out in Section 64;

(af) “practice of medicine” means the practices and procedures usually performed by a medical practitioner and includes

(i) the art and science of the assessment, diagnosis or treatment of an individual,

(ii) the related promotion of health and prevention of illness, and

(iii) such other practices and procedures as taught in universities or schools approved by the Council for licensing purposes under this Act and regulations;

(ag) “profession”, unless the context otherwise requires, means the profession of medicine;

(ah) “professional conduct committee” means an investigation committee or a hearing committee;

(ai) “professional conduct process” means the processes described in Sections 30 to 63 and the related provisions of the regulations;

(aj) “professional misconduct” includes such conduct or acts in the practice of medicine that, having regard to all the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional and that, without limiting the generality of the foregoing, may include breaches of

(i) the Code of Ethics approved by the Council,

(ii) the accepted standards of the practice of medicine, and

(iii) this Act, the regulations and policies approved by the Council;

(ak) “public representative” means a person who is

(i) not at present or formerly a physician,

(ii) able and willing to serve impartially, in the public interest, and

(iii) appointed by the Council pursuant to the regulations;

(al) “register” means one or more of the categories of registers as set out in the regulations, as the context requires;

(am) “registered” means a person’s name has been recorded on a register in accordance with the regulations;

(an) “Registrar” means the person holding the office of Registrar pursuant to this Act;

(ao) “Registration Committee” means the committee appointed by the Council that deals with the registration and licensing of members, student members and applicants for registration and licensing;

(ap) “respondent” means a person who is the subject of a complaint;

(aq) “student member” means a person whose name is on the list of undergraduate medical-education students pursuant to the regulations. 2011, c. 38, s. 2; 2014, c. 32, s. 143.

Interpretation of medical practitioner

3 The words “duly qualified medical practitioner”, “duly qualified practitioner”, “legally qualified medical practitioner”, “legally qualified physician”, “physician” or any like words or expressions implying a person recognized by law as a medical practitioner or member of the medical profession in the Province, when used in any regulation, rule, order or by-law made pursuant to an Act of the Legislature enacted or made before, at or after the coming into force of this Act, or when used in any public document, includes a person registered on a register pursuant to the regulations, and who holds a licence entitling such person to engage in the practice of medicine. 2011, c. 38, s. 3.

COLLEGE OF PHYSICIANS AND SURGEONS OF NOVA SCOTIA

College continued

4 (1) The College continued by the former Act is continued by this Act.

(2) The College has perpetual succession and a common seal, with power to acquire, hold, lease, mortgage and otherwise dispose of real and personal property, and may sue and be sued. 2011, c. 38, s. 4.

Purpose and duties of College

5 In order to

(a) serve and protect the public interest in the practice of medicine; and

(b) subject to clause (a), preserve the integrity of the medical profession and maintain the confidence of the public and the profession in the ability of the College to regulate the practice of medicine,

the College shall

(c) regulate the practice of medicine and govern its members through

(i) the registration, licensing, professional conduct and other processes set out in this Act and the regulations,

(ii) the approval and promotion of a code of ethics,

- (iii) the establishment and promotion of standards for the practice of medicine, and
- (iv) the establishment and promotion of a continuing professional development program; and
- (d) do such other lawful acts and things as are incidental to the attainment of the purpose and objects of the College. 2011, c. 38, s. 5.

Annual meeting

6 There shall be an annual meeting of the College at such time and place as the Council determines. 2011, c. 38, s. 6.

COUNCIL**Council established**

7 There shall be a Council of the College to be constituted as provided in Section 9. 2011, c. 38, s. 7.

Purpose and authority of Council

8 (1) The Council governs the College and may take any action consistent with this Act and the regulations as it considers necessary for the promotion, protection, interest or welfare of the College, including

- (a) the setting of fees payable by applicants and members;
- (b) approving the process for establishing, revising and monitoring its annual budget;
- (c) submitting to each annual general meeting of the College an audited financial statement of the College's operations for the past fiscal year;
- (d) appointing an auditor for the College;
- (e) approving of proposed changes to this Act, the regulations and the by-laws; and
- (f) establishing processes to permit others to engage in designated aspects of the practice of medicine, including provisions for supervision or other forms of accountability.

(2) The processes referenced in clause (1)(f) include a requirement for consultation with any affected health profession and any affected medical practitioners.

(3) In addition to any other power conferred by this or any other Act, the Council may do such things as it considers appropriate to advance the objects of the College in accordance with Section 5 and, without limiting the generality of the foregoing, may

- (a) purchase, take in, lease, exchange, hire, construct and otherwise acquire and hold, sell, mortgage, hypothecate, lease out or otherwise deal with any real or personal property;

(b) draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, warrants and other negotiable and transferable instruments;

(c) engage such agents and employees as it, from time to time, deems expedient;

(d) expend the moneys of the College in the advancement of its objects and the interests of the medical profession in such manner as it deems expedient;

(e) establish and maintain such offices and agencies as it deems expedient;

(f) invest and deal with any moneys and funds of the College that are not immediately required, in such manner as it deems expedient;

(g) improve, manage, develop, exchange, dispose of, turn to account or otherwise deal with the real or personal property of the College;

(h) borrow money for the use of the College on its credit, limit or increase the amount to be borrowed, issue bonds, debentures, debenture stock and other securities on the credit of the College and pledge or sell such securities for such sums or at such prices as may be deemed expedient;

(i) develop and promote policies and guidelines for the practice of medicine;

(j) do such things as are incidental or necessary to the exercise of these powers.

(4) The Council may take any action consistent with this Act by resolution passed by Council. 2011, c. 38, s. 8.

Members of Council

9 (1) The Council consists of

(a) at least one third of public representatives appointed pursuant to the regulations;

(b) the Dean of the medical school of Dalhousie University or the Dean's delegate as set out in the by-laws; and

(c) such number of medical practitioners as set out in the by-laws, including at least five medical practitioners in addition to the Dean of the medical school of Dalhousie University or the Dean's delegate.

(2) Members of the Council under clause (c) shall be elected or appointed to office in such manner as set out in the by-laws.

(3) The terms of office for members of the Council are as set out in the by-laws.

(4) Notwithstanding subsection (1), the persons who, immediately before the coming into force of this Act, make up the Council pursuant to the former Act constitute the Council until the election or appointment of members pursuant to this Act. 2011, c. 38, s. 9.

Power to administer College

10 The Council shall, subject to this Act, govern, control and administer the affairs of the College and, without limiting the generality of the foregoing, may make by-laws

- (a) providing for the management of the College;
- (b) providing for the holding of meetings of the College or the Council, and the conduct of such meetings;
- (c) fixing the time and place for regular meetings of the Council, determining by whom meetings may be called, regulating the conduct of meetings, providing for special meetings and regulating the notice required in respect of meetings;
- (d) providing for the appointment of such committees, in addition to committees appointed pursuant to this Act or the regulations, as the Council may deem expedient;
- (e) respecting the composition, powers and duties of committees appointed in accordance with clause (d), and providing for the holding and conduct of meetings of such committees;
- (f) respecting the quorum for meetings of the Council and committees if quorum requirements are not otherwise set out in this Act or regulations;
- (g) respecting the powers, duties and qualifications of the officers of the College;
- (h) prescribing the seal of the College;
- (i) providing for the execution of documents by the College;
- (j) prescribing the number of members of the Council;
- (k) governing elections and appointments of members of the Council, other than public representatives;
- (l) prescribing a Code of Ethics;
- (m) prescribing standards of practice;
- (n) respecting the interjurisdictional practice of telemedicine, including requirements for practice and processes for dealing with complaints;
- (o) regulating, controlling and prohibiting the use of terms, titles or designations by members, or groups or associations of members, in respect of their practice;
- (p) prescribing the records and accounts to be kept by members with respect to their practice, and providing for the production, inspection and examination of such records and accounts. 2011, c. 38, s. 10.

Council regulations

11 (1) With the approval of the Governor in Council, the Council may make regulations

- (a) respecting registration and licensing;
- (b) respecting the powers, authority and processes of the Registrar, the Registration Committee and the Registration Appeal Committee relevant to registration and licensing matters;
- (c) prescribing the different registers and categories of licences;
- (d) respecting the information required to be kept on the registers and with respect to each category of licence;
- (e) respecting the review and appeal processes arising from registration and licensing decisions;
- (f) respecting the imposition of terms or conditions on a member's registration or licence;
- (g) respecting the renewal of licences;
- (h) prescribing a requirement for members to participate in a continuing professional development program;
- (i) respecting the investigation of complaints;
- (j) respecting the holding of hearings concerning complaints;
- (k) respecting all matters associated with the professional conduct processes of the College, including settlement agreements;
- (l) respecting the powers, authority and processes of the Registrar, an investigator, an investigation committee and a hearing committee relevant to the professional conduct process;
- (m) providing for the audits of members' practices;
- (n) respecting the reporting and publication of decisions in disciplinary matters and in matters concerning incapacity;
- (o) regulating the compounding, dispensing, sale of drugs and sale of appliances by members;
- (p) providing that the licence of a member be suspended without notice or investigation upon contravention of any regulation that requires the member to pay a fee, file a document or do any other act by a specified or ascertainable date, and providing for the reinstatement of a licence so suspended;
- (q) prescribing the powers, authority and processes of a reinstatement committee;
- (r) respecting the processes regarding reinstatement;
- (s) respecting the process to appoint a custodian of patient records of a member or former member when it is in the public interest to do so, and providing authority to

- (i) direct persons to seize, remove and take into possession patient records,
- (ii) enter premises for purposes of recovering patient records,
- (iii) directing owners of premises or persons in possession of premises or any depository of patient records to deal with, hold, deliver or dispose of patient records as required,
- (iv) authorize custodians to take all such necessary action as needed to ensure the patient records are dealt with in the public interest, and
- (v) provide an immunity from liability for any custodian acting in accordance with such regulations in good faith;
- (t) prescribing legislation for the purposes of subclause 68(1)(a)(iii);
- (u) respecting a process for the appointment of public representatives to the Council;
- (v) defining any word or expression used but not defined in this Act;
- (w) further defining or re-defining any word or expression defined in this Act;
- (x) respecting and governing such other subjects, matters and things as may be required to give effect to the objects of the College and this Act.

(2) Before forwarding proposed regulations to the Governor in Council, the Council shall forward the proposed regulations to members in sufficient time to allow members to provide comments on the proposed regulations to the Council.

(3) A certificate purporting to be signed by the Registrar stating that a certain regulation of the College was, on a specified day or during a specified period, a duly enacted regulation of the College in full force and effect constitutes *prima facie* evidence in any court of that fact without proof that the person who signed it is the Registrar or that it is the Registrar's signature.

(4) The exercise by the Council of the authority contained in this Section is regulations within the meaning of the *Regulations Act*. 2011, c. 38, s. 11.

Registrar

12 (1) The Council shall appoint a Registrar of the College and the Council shall determine the term of office and the duties of the Registrar.

(2) The Registrar may delegate any functions assigned to the Registrar by this Act, the regulations or the by-laws.

(3) The Registrar is a non-voting member of the Council and all committees of the College except an investigation committee, a hearing committee, the Registration Appeal Committee and any other committees as determined by the Council. 2011, c. 38, s. 12.

REGISTRATION AND LICENSING

Keeping of registers

13 (1) The Council shall cause to be kept such registers as are required by the regulations, in which the names of those persons who qualify for registration according to this Act and the regulations are recorded.

(2) The registers must include the information required by the regulations.

(3) The Council shall also cause to be kept a record available to the public showing the information required by the regulations. 2011, c. 38, s. 13.

Registration Committee and Registration Appeal Committee

14 (1) The Council shall appoint a Registration Committee and a Registration Appeal Committee, the membership of each of which is as set out in the regulations.

(2) The Council shall appoint the Chair of the Registration Committee and the Chair of the Registration Appeal Committee.

(3) The Registrar, the Registration Committee and the Registration Appeal Committee shall perform such registration and licensing functions as are set out in this Act, the regulations and the by-laws.

(4) Subject to subsections (5) and (6) the Registrar, the Registration Committee and the Registration Appeal Committee have all the rights, powers and privileges of a commissioner appointed pursuant to the *Public Inquiries Act*.

(5) The Registrar and each person on the Registration Committee is authorized to sign documents on behalf of the Registration Committee issued under the authority of the *Public Inquiries Act*, only when the Chair of the Registration Committee has authorized the issuing of such documents.

(6) The Registrar and each person on the Registration Appeal Committee is authorized to sign documents on behalf of the Registration Appeal Committee issued pursuant to the authority of the *Public Inquiries Act*, only when the Chair of the Registration Appeal Committee has authorized the issuing of such documents. 2011, c. 38, s. 14.

Licences

15 (1) The categories of licences to be issued under each register are as set out in the regulations.

(2) The Council shall cause to be maintained a separate record for each category of licence as provided by the regulations.

(3) Notwithstanding any provision of this Act or the regulations, the name of every person who, at the coming into force of this Act, is registered pursuant to the former Act, shall be entered into the equivalent Register under this Act, but continues under any conditions or restrictions attached to the person's previous registration.

(4) Notwithstanding any provision of the Act or the regulations, a licence issued pursuant to the former Act continues as an equivalent licence under this Act until the expiration of the licence or until the licence is suspended or revoked.

(5) Every licence that was subject to any conditions or restrictions pursuant to the former Act continues to be subject to such conditions or restrictions pursuant to this Act. 2011, c. 38, s. 15.

Registrar's duties

16 (1) The Registrar shall register on a register every person who meets the criteria for registration as set out in the regulations.

(2) The Registrar shall issue a licence to a person who meets the criteria for such licence as set out in the regulations.

(3) The Registrar may impose conditions or restrictions on the licence of a member with the consent of the member if the Registrar considers such conditions or restrictions to be necessary in the interest of the public.

(4) Where the Registrar imposes conditions or restrictions with the consent of the member pursuant to subsection (3), the conditions or restrictions are not licensing sanctions.

(5) Conditions or restrictions may be imposed on the licence of a member without the consent of the member in such manner as set out in the regulations. 2011, c. 38, s. 16.

Licence renewal

17 The Registrar shall renew a licence when the holder of the licence meets the criteria for renewal as set out in the regulations. 2011, c. 38, s. 17.

Certificate of professional conduct required

18 A member of the College, who practises medicine outside the Province shall provide the Registrar with a certificate of professional conduct from the other jurisdictions where the member practised, at such time intervals as directed by the Council. 2011, c. 38, s. 18.

Notice of review processes

19 Where an applicant

- (a) has been refused registration;
- (b) has been refused a licence; or
- (c) has terms and conditions imposed without the consent of the applicant,

the Registrar shall advise the applicant of the review processes set out in the regulations. 2011, c. 38, s. 19.

Surrender of licence and cessation of membership

20 (1) The licence of a medical practitioner may only be surrendered by the medical practitioner after notice in writing to the Registrar and with the Registrar's consent.

(2) Where a person ceases to be a member for any reason or to be registered or licensed for any reason, the person remains subject to the jurisdiction of the College in respect of any disciplinary matter or allegation of incapacity. 2011, c. 38, s. 20.

Offences with respect to practice of medicine

21 (1) A person licensed pursuant to this Act who practises medicine in violation of any condition or restriction contained in the person's licence commits an offence.

(2) A medical practitioner shall not engage in the practice of medicine that is

- (a) outside that medical practitioner's individual scope of practice;
- (b) contrary to the terms of the licence issued to the medical practitioner;
- (c) contrary to any conditions or restrictions imposed on the medical practitioner;
- (d) contrary to ethical or practice standards or other requirements imposed by law; or
- (e) contrary to the Act, the regulations or the by-laws.

(3) No person shall engage in the practice of medicine unless

- (a) that person is currently registered and licensed with the College; or
- (b) that person is otherwise authorized to engage in the practice of medicine pursuant to this Act or the regulations. 2011, c. 38, s. 21.

Certain acts prohibited

22 (1) Except as provided in this Act and the regulations, no person, other than a medical practitioner shall

- (a) publicly or privately, for hire, gain or hope of reward, practise or offer to practise medicine;
- (b) hold himself or herself out in any way to be entitled to practise medicine; or
- (c) assume any title or description implying or designed to lead the public to believe that that person is entitled to practise medicine including the titles "physician", "surgeon", "medical practi-

tioner”, “medical specialist”, “surgical specialist” and “doctor” or any derivation thereof.

(2) Notwithstanding subsection (1), no person shall use the title “medical doctor” unless that person

(a) is a medical practitioner; and

(b) holds a doctor of medicine degree from a medical school approved by the Council for this purpose.

(3) Notwithstanding subsection (1), no person shall use the title “Doctor of Osteopathy” or abbreviations or derivations thereof or the title “Osteopathic Physician” unless that person

(a) is a medical practitioner; and

(b) holds an osteopathic medical degree from a school approved by the Council for this purpose.

(4) Notwithstanding subsection (1), no person shall use the title “MD” unless that person holds a doctor of medicine degree from a medical school approved by Council for this purpose.

(5) For greater certainty, this Section does not affect the right of

(a) a dentist, duly licensed to practise dentistry in the Province, to append the title “doctor” or “dental surgeon” to the dentist’s name;

(b) a veterinary surgeon, registered under the *Veterinary Medical Act*, to append the title “doctor” or “veterinary surgeon” to the veterinary surgeon’s name;

(c) any other health professional, authorized to use the title “doctor” pursuant to an Act of the Province, to append the title “doctor” to the professional’s name; or

(d) a holder of an academic degree that bestows the title “doctor” not related to the practice of medicine to append the title “doctor” to the holder’s name.

(6) For greater certainty, this Section does not affect the right of a person to use any title authorized by an Act of the Province. 2011, c. 38, s. 22.

Furnishing false information or withholding information

23 No person shall furnish false information or withhold information in any application pursuant to this Act, or in any statement required to be furnished pursuant to this Act or the regulations. 2011, c. 38, s. 23.

Medical students and post-graduate trainees

24 (1) No person enrolled as a student in any medical education program shall engage in the practice of medicine in the Province unless registered in the relevant register as set out in the regulations.

(2) No person enrolled as a post-graduate trainee in any medical education program shall engage in the practice of medicine in the Province unless registered in the relevant register and issued the relevant licence as set out in the regulations. 2011, c. 38, s. 24.

Prosecution

25 (1) A person who violates this Act or the regulations is guilty of an offence, and the *Summary Proceedings Act* applies in addition to any penalty otherwise provided for in this Act or the regulations.

(2) All fines and penalties payable under this provision as a result of a prosecution by or on behalf of the College belong to the College.

(3) An information to be laid pursuant to the *Summary Proceedings Act* may be laid by the Registrar of the College or any member of the College authorized by the Council, with the consent of the Minister of Health and Wellness.

(4) In a prosecution for practising without a licence, the onus to prove that the person has the right to practise medicine, or that the person comes within any of the exemptions provided by this Act, is on the person accused.

(5) Where a violation of this Act or the regulations by a person or employer continues for more than one day, the offender is guilty of a separate offence for each day that the violation continues.

(6) For the purpose of this Act or the regulations, proof of the performance by a non-member of one act in the practice of medicine is sufficient to establish that a person has engaged in the practice of medicine. 2011, c. 38, s. 25.

Injunction

26 (1) In the event of a threatened or continuing violation of this Act or the regulations, the College may apply to a judge for an injunction to restrain the person from continuing or committing the violation and, where the judge deems it to be just, the judge may grant such an injunction.

(2) A judge may, on application, grant an interim injunction pending the hearing of an application for an injunction pursuant to subsection (1) if the judge is satisfied that there is reason to believe that a person is likely to commit or is continuing to commit a violation of this Act or the regulations.

(3) A judge may make such orders as to costs as the judge considers appropriate in any proceedings pursuant to this Section. 2011, c. 38, s. 26.

EXEMPTIONS

Activities exempt from Act

27 Nothing in this Act applies to or prevents

(a) the attendance upon a patient residing in this Province in the vicinity of the boundary between this Province and the Province of New Brunswick by a physician resident and duly registered in the Province of New Brunswick whose practice is normally near that boundary and who

does not have within this Province an office or place of business wherein to meet patients or to receive calls;

(b) subject to the by-laws, a physician or surgeon entitled to practise medicine in any other province of Canada or another country from consulting in the Province with a medical practitioner who holds a licence;

(c) the domestic administration of family remedies;

(d) the practice of the religious tenets or general beliefs of any religious organization;

(e) the furnishing of first aid or emergency assistance in the case of emergency, if such aid or assistance is given without hire, gain or hope of reward;

(f) the manufacture, fitting or selling of artificial limbs or similar appliances;

(g) the practice of any health profession authorized pursuant to an Act of the Province, by a health professional authorized by such Act and practising within the authorized scope of practice of that person's profession and individual scope of practice, if such person does not describe their practice as "the practice of medicine"; or

(h) the performance of particular acts of the practice of medicine by another health professional if such acts are authorized by a process approved by the Council. 2011, c. 38, s. 27.

Application of Pharmacy Act limited

28 Except where prohibited by the regulations, but notwithstanding anything contained in the *Pharmacy Act*, a medical practitioner may dispense, compound or administer drugs or medicines in the course of the person's practice of medicine, and may make reasonable charges for any services rendered or goods supplied in doing so. 2011, c. 38, s. 28.

Application of Dental Act limited

29 Nothing contained in the *Dental Act* prohibits medical practitioners from doing, in the course of administering medical aid or treatment, anything for which registration is required pursuant to that Act or from doing anything in an emergency to relieve pain or suffering of a person, or making reasonable charges therefor. 2011, c. 38, s. 29.

PROFESSIONAL CONDUCT

Professional conduct process

30 (1) In accordance with the objects of the College, the professional conduct process must seek to address issues of incapacity and the disciplinary matters of professional misconduct, conduct unbecoming and incompetence by investigating such matters on the Registrar's initiative or on the complaints of others, and, where appropriate, disposing of matters in accordance with the regulations.

(2) A member has a duty to co-operate with the College in the conduct of its professional conduct processes. 2011, c. 38, s. 30.

Investigation Pool

31 (1) The Council shall appoint an Investigation Pool composed of such number of medical practitioners and public representatives as determined by the Council.

(2) The Council shall appoint a Chair and a Vice-chair of the Investigation Pool.

(3) The Vice-chair shall act as chair in the absence of the Chair.

(4) Whenever for any reason neither the Chair nor the Vice-chair is available, the Council may appoint a member of the Investigation Pool to act as chair of the Pool. 2011, c. 38, s. 31.

Investigation committee

32 (1) The Chair of the Investigation Pool shall, from time to time, appoint an investigation committee of at least three persons from the Investigation Pool, at least one of whom must be a public representative, to act as an investigation committee for the purpose of the professional conduct process.

(2) The Chair of the Investigation Pool may sit on an investigation committee and, in such case, shall act as the chair of the investigation committee.

(3) Where the Chair of the Investigation Pool is not appointed to an investigation committee, the Chair of the Investigation Pool shall appoint a chair of the investigation committee.

(4) A majority of the members of an investigation committee constitutes a quorum of the investigation committee, regardless of whether the persons are members or public representatives.

(5) Failure of one or more members of an investigation committee to receive any notice of a meeting does not invalidate the proceedings at the meeting and nothing precludes the members from waiving notice of meetings.

(6) All decisions of an investigation committee require the vote of a majority of the members of the committee present.

(7) Where a proceeding is commenced before an investigation committee and the term of office of any person sitting on the committee expires, the Chair of the Investigation Pool may extend the term of office of such person until the proceeding is concluded. 2011, c. 38, s. 32.

Powers of investigation committee, etc.

33 (1) Subject to subsection (2), an investigation committee, the Registrar, an investigator and each member of an investigation committee have all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*, with the exception of the powers of contempt, arrest and imprisonment.

(2) The Registrar, an investigator and each member of an investigation committee may only exercise any of the powers and privileges pursuant to subsection (1) if authorized by the chair of the investigation committee. 2011, c. 38, s. 33.

Functions, meetings and proceedings of investigation committee

34 (1) An investigation committee shall perform such functions as set out in this Act and in the regulations.

(2) An investigation committee may set its own procedure for meetings and proceedings. 2011, c. 38, s. 34.

Investigation committee retains jurisdiction

35 An investigation committee retains jurisdiction over a matter until such time as a hearing commences before a hearing committee or the matter is resolved in accordance with this Act and regulations. 2011, c. 38, s. 35.

Initiation or withdrawal of complaint

- 36 (1)** A complaint may be initiated by
- (a) the Registrar;
 - (b) a committee of the College; or
 - (c) any other person.

(2) Where the Registrar and the complainant agree, a complaint may be withdrawn. 2011, c. 38, s. 36.

Investigators

37 The Registrar or an investigation committee may appoint such investigators as may be required to assist in the investigation of any complaint. 2011, c. 38, s. 37.

Duties and powers of investigator

38 (1) An investigator shall conduct the functions set out in this Act and regulations and has, in the discharge of the functions, all other powers of an investigator conferred by this Act and the regulations.

- (2) An investigator may
- (a) on the production of proof of the investigator's appointment;
 - (b) with the approval of the chair of the investigation committee; and
 - (c) where there are reasonable and probable grounds to believe there is evidence relevant to the investigation at the member's place of practice,

enter at any reasonable time the place of practice of a member to examine the place of practice and any equipment, book, account, report, record or thing found there that is relevant to the investigation.

(3) No person shall obstruct an investigator or withhold or conceal from an investigator or destroy anything that is relevant to the investigation.

(4) This Section applies notwithstanding any provision of any Act relating to the confidentiality of health records, except subsection 60(2) of the *Evidence Act*. 2011, c. 38, s. 38.

Warrants

39 (1) A justice of the peace may, on the application of an investigator authorized by the chair of the investigation committee made without notice, issue a warrant authorizing an investigator to enter and search a place and examine any document or thing specified in the warrant if the justice of the peace is satisfied that the investigator has been properly appointed and that there are reasonable and probable grounds established upon oath for believing that

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

(b) there is something relevant to the investigation at that place.

(2) A warrant may be executed only between eight o'clock in the morning and eight o'clock in the evening unless the warrant specifies otherwise.

(3) An application for a warrant to enter a dwelling must specifically indicate that the application relates to a dwelling.

(4) An investigator entering and searching a place under the authority of a warrant may be assisted by other persons and may enter a place by force.

(5) An investigator entering and searching a place under the authority of a warrant shall, on request, produce identification to any person at the place. 2011, c. 38, s. 39.

Evidence may be copied or removed

40 (1) An investigator may, at the College's expense, copy a document or photograph an object that an investigator may examine under subsection 38(2) or under the authority of a warrant issued under subsection 39(1).

(2) An investigator may remove the document or object if

(a) it is not practicable to copy or photograph it in the place where it is examined; or

(b) a copy or photograph of it is not sufficient for the purpose of the investigation.

(3) Where it is practicable to copy a document or photograph an object that has been removed, the investigator shall

(a) where it was removed under clause (2)(a), return the document or object within a reasonable time; or

(b) where it was removed under clause (2)(b), provide the person who was in possession of the document or object with a copy or photograph of it within a reasonable time.

(4) A copy of a document or a photograph of an object certified by an investigator to be a true copy or image must be received in evidence in any proceeding to the same extent and has the same evidentiary value as the document or object itself. 2011, c. 38, s. 40.

Reasonable steps required

41 In exercising any authority granted to the investigator under Sections 38 to 40, the investigator shall take all reasonable steps to

- (a) protect patients' confidential information;
- (b) protect patients' clinical needs; and
- (c) consider the legal and operational requirements under which health institutions and members of health professions practice. 2011, c. 38, s. 41.

Notification of intention to enter

42 Where an investigator intends to enter the place of practice of a member and the place of practice is operated by or under the jurisdiction of a health authority, the investigator shall make reasonable efforts to notify the administrator of the health authority of the intention to enter the place of practice of a member. 2011, c. 38, s. 42; 2014, c. 32, s. 144.

Complaint process

43 (1) Upon receipt of a complaint by or the initiation of a complaint by the Registrar, the complaint must proceed in accordance with the process set out in the regulations.

(2) Where a complaint is forwarded to an investigation committee for disposition, the committee shall give its decision in writing and shall send a copy of the decision, by registered mail or personal service, to the respondent and the complainant and may send some or all of the decision to such other persons as the committee determines.

(3) With respect to any decision made by an investigation committee, the committee may impose a publication ban on such portions of its decision as deemed necessary by the committee. 2011, c. 38, s. 43.

Respondent's rights

44 (1) In a proceeding before an investigation committee, a respondent has the right to be represented by legal counsel at the respondent's cost.

(2) Before the disposition of a matter by an investigation committee, a respondent has the right to

- (a) receipt of
 - (i) disclosure of the complaint,

- (ii) notice of any other matters that are under investigation,
 - (iii) such other information as natural justice requires, and
 - (iv) such other information as determined by the Registrar; and
- (b) a reasonable opportunity to present a response and make submissions. 2011, c. 38, s. 44.

Interim suspension, conditions or restrictions

45 (1) Notwithstanding any provision of this Act or the regulations, where there are reasonable and probable grounds to believe that

- (a) a member is exposing or is likely to expose the public, patients, the medical profession or the member to harm or injury; and
- (b) intervention is required prior to the disposition of the matter by the investigation committee or hearing committee,

an investigation committee may direct the Registrar to

- (c) suspend a licence to practise;
- (d) impose restrictions or conditions on a respondent's licence to practise; or
- (e) where a person does not hold a current licence, suspend the ability of the person to obtain a licence,

pending or following the completion of an investigation and lasting until the suspension, restrictions or conditions are lifted, superseded or annulled by the investigation committee or a hearing committee.

(2) The member must receive, forthwith, in writing, a notice with reasons of a decision made pursuant to subsection (1).

(3) Upon receipt of the notice, the member may request, in writing within thirty days, an opportunity to meet with the investigation committee.

- (4)** Upon receipt of the request, the investigation committee
- (a) within ten business days of receipt of the request, shall provide an opportunity for the member to meet with the committee; and
 - (b) after meeting with the member, may confirm, vary or terminate the suspension or imposition of restrictions or conditions.

- (5)** At the meeting, the member has the right to
- (a) be represented by legal counsel at the member's own expense;
 - (b) disclosure of the complaint, any written report of an investigator provided to the committee and any other document produced or received by the committee; and

(c) a reasonable opportunity to present a response and make submissions.

(6) Where an investigation committee issues an interim suspension or imposes conditions or restrictions on a respondent's licence to practise, the Committee shall

(a) provide a copy of the decision to the complainant and the respondent and determine whether any aspects of the committee's decision is to be provided to other individuals, other regulating bodies, any past, present or intended employer of the respondent, any health authority or the public; and

(b) proceed in as timely a manner as possible to conclude its investigation and make a decision respecting the further disposition of the matter. 2011, c. 38, s. 45; 2014, c. 32, s. 145.

Confidentiality with respect to complaints

46 (1) All complaints received or under investigation, all information gathered in the course of the professional conduct process and all proceedings and decisions of an investigation committee and a hearing committee that are not open to or available to others in accordance with this Act or the regulations must be kept confidential by any persons who possess such information.

(2) Notwithstanding subsection (1), where it is consistent with the objects of the College

(a) and where an investigation committee or a hearing committee has reasonable grounds to believe that a member has committed, is committing or is about to commit a criminal offence, the committee may direct the Registrar to disclose to law enforcement authorities such limited information as is necessary to alert the authorities to the suspected activity;

(b) the Registrar, an investigation committee or a hearing committee may authorize the release of specific information to a specific person;

(c) the Registrar may disclose information gathered in the course of the professional conduct process to an extra-provincial regulatory body when it is relevant to membership or an application for membership in the extra-provincial regulatory body, but not, without the member's consent, information relating to a matter that has been resolved in favour of the member; and

(d) the Registrar may disclose information with respect to a complaint for purposes of administration of this Act or to comply with the objects of the College. 2011, c. 38, s. 46.

Hearing Pool

47 (1) The Council shall appoint a Hearing Pool composed of such number of medical practitioners and public representatives as determined by the Council.

- Pool. (2) No member of the Council may be a member of the Hearing Pool.
- (3) The Council shall appoint a Chair and a Vice-chair of the Hearing Pool.
- (4) The Vice-chair shall act as chair in the absence of the Chair.
- (5) Whenever for any reason neither the Chair nor the Vice-chair is available, the Council may appoint a member of the Hearing Pool to act as chair of the Hearing Pool. 2011, c. 38, s. 47.

Hearing committee

48 (1) The Chair of the Hearing Pool shall, from time to time, appoint a hearing committee of at least five persons from the Hearing Pool, at least one of whom must be a public representative and a majority of whom must be medical practitioners, to act as a hearing committee for purpose of the professional conduct process.

(2) The Chair of the Hearing Pool may sit on a hearing committee and, in such case, shall act as the chair of the hearing committee.

(3) Where the Chair or Vice-chair of the Hearing Pool is not appointed to a hearing committee, the Chair of the Hearing Pool shall appoint a chair for the hearing committee.

(4) A majority of the members of a hearing committee constitutes a quorum of the hearing committee, regardless of whether such persons are members or public representatives.

(5) No member of the Hearing Pool may be a member of an investigation committee.

(6) Failure of one or more members of a hearing committee to receive any notice of a meeting does not invalidate the proceedings at the meeting, and nothing precludes the members from waiving notice of meetings.

(7) All decisions of a hearing committee require the vote of a majority of the members of the committee present.

(8) Where a proceeding is commenced before a hearing committee and the term of office of any person sitting on the committee expires, that person remains part of the committee until the proceeding is concluded. 2011, c. 38, s. 48.

Notice of hearing

49 (1) Where an investigation committee refers a matter to a hearing committee, the Registrar shall, at the earliest opportunity from the date of the referral, fix a date, time and place for holding a hearing to commence not later than ninety days from the date of the referral, or such later date as the respondent and the College may agree or the Hearing Committee may order following an opportunity for submissions from both parties as to such date.

(2) A notice of hearing, containing such information as required by the regulations, must be forwarded by the Registrar to the respondent at least thirty days before the hearing.

(3) At least thirty days prior to the hearing, the complainant must be provided information respecting the date, time and place for the hearing. 2011, c. 38, s. 49.

Deemed service

50 At any stage of the professional conduct process, any document required to be served on or provided to a respondent or any other individual is deemed to be served or provided if

- (a) the intended recipient or the intended recipient's counsel acknowledges receipt of the document;
- (b) a registered mail receipt is provided from Canada Post;
- (c) an affidavit of service on the respondent is provided; or
- (d) the College provides evidence satisfactory to the investigation committee or the hearing committee, as applicable, that all reasonable efforts to effect service have been exhausted. 2011, c. 38, s. 50.

Settlement agreement

51 Where an investigation committee refers a matter to a hearing committee, the College may, before the commencement of a hearing by the hearing committee, enter into a settlement agreement with the respondent, to be dealt with in accordance with the regulations. 2011, c. 38, s. 51.

Powers of hearing committee, etc.

52 (1) Subject to subsection (2), a hearing committee, the Registrar and each member of a hearing committee has all the rights, powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*, with the exception of the powers of contempt, arrest and imprisonment.

(2) The Registrar and each member of a hearing committee may only exercise any of the powers and privileges pursuant to subsection (1) if authorized by the chair of the committee. 2011, c. 38, s. 52.

Hearing committee proceeding

53 (1) A proceeding held by a hearing committee shall be conducted in accordance with the regulations and otherwise as the hearing committee deems fit.

(2) In a proceeding before a hearing committee, the parties have the right to

- (a) natural justice;
- (b) be represented by legal counsel at the parties' own expense;
- (c) present evidence and make submissions, including the right to cross-examine witnesses;

- (d) know all the evidence considered by the committee; and
- (e) receive written reasons for a decision within a reasonable time.

(3) Evidence is not admissible before a hearing committee unless the opposing party has been given, at least ten days before a hearing,

- (a) in the case of written or documentary evidence, an opportunity to examine the evidence;
- (b) in the case of evidence of an expert, a copy of the expert's written report or, where there is no written report, a written summary of the evidence; and
- (c) in the case of evidence of any other witness, the identity of the witness.

(4) Notwithstanding subsection (3), a hearing committee may, in its discretion, allow the introduction of evidence that is otherwise inadmissible by reason of subsection (3) and may make directions it considers necessary to ensure that a party is not prejudiced.

(5) With respect to any decision issued by a hearing committee, or with respect to any aspect of the hearing committee's process pursuant to this Act or the regulations, the committee may impose a publication ban on such portions of its proceedings or decisions as deemed necessary by the committee.

(6) In any proceeding held by a hearing committee, a member is a compellable witness. 2011, c. 38, s. 53.

Decision of hearing committee

54 (1) Where a hearing committee finds professional misconduct, conduct unbecoming, incompetence or incapacity, the committee shall dispose of the matter in accordance with the regulations.

(2) Where a hearing committee has revoked the registration of a member, the committee shall determine whether or when the member may apply for reinstatement, which cannot be earlier than two years from the date of the committee's decision. 2011, c. 38, s. 54.

Record and disclosure of decisions

55 (1) Subject to any publication bans in existence, where a licensing sanction has been made by an investigation committee or a hearing committee, the Registrar shall

- (a) make such entries on the records of the College and on the licence of the member as set out in the regulations;
- (b) publish such information on the website of the College and in official publications of the College as set out in the regulations;
- (c) notify other licensing bodies as set out in the regulations; and

(d) provide such information to individuals or the public as set out in the regulations.

(2) Where a hearing committee dismisses a matter, it shall disclose its decision in such manner as it determines. 2011, c. 38, s. 55.

Restoration of licence

56 (1) Where the period of suspension of a member has expired, the conditions imposed on the member have been satisfied or the restrictions imposed on the member have been removed, the Registrar shall restore the licence to practise to the member in the form it existed before the imposition of the suspension, conditions or restrictions if the member otherwise meets the criteria for the issuing of such licence but, where the licence has expired, the member must meet all criteria for the issuing of the licence before a new licence is issued.

(2) Where action has been taken pursuant to subsection (1), the Registrar shall

(a) make the appropriate entries in the records of the College;

(b) where registering bodies in other Canadian jurisdictions had previously been informed of the suspension, conditions or restrictions, notify such registering bodies of the lifting of such suspension, conditions or restrictions; and

(c) notify such other persons as directed by the committee that initially imposed the suspension, conditions or restrictions. 2011, c. 38, s. 56.

Assistance retained

57 (1) For the purpose of the execution of their duties under this Act, the College or any committee of the College may retain such legal or other assistance as the College or the committee may think necessary or proper.

(2) Where authorized by this Act or the regulations, the costs of such assistance may be included, in whole or in part, as costs ordered by the committee. 2011, c. 38, s. 57.

Appeals

58 (1) A party may appeal on an error of law from the findings of a hearing committee to the Nova Scotia Court of Appeal.

(2) The notice of appeal must be filed at the Nova Scotia Court of Appeal and served upon the other party not later than thirty days after service of the decision of the hearing committee.

(3) The record on appeal from the findings of the hearing committee consists of a copy of the transcript of the proceedings, the decision of the committee and the evidence before the committee certified by the chair of the committee.

(4) The *Civil Procedure Rules*, governing appeals from the Supreme Court of Nova Scotia to the Nova Scotia Court of Appeal, that are not inconsistent with this Act, apply *mutatis mutandis* to appeals to the Court of Appeal pursuant to this Section.

(5) Where a matter is appealed to the Nova Scotia Court of Appeal pursuant to this Section, the decision of the hearing committee takes effect immediately unless the Court of Appeal grants a stay of any order made pursuant to this Act where, in its discretion, it deems fit. 2011, c. 38, s. 58.

Reinstatement committee

59 (1) Upon receipt of an application for reinstatement following revocation of a licence, the Council shall appoint a reinstatement committee, composed of not less than three members of the Registration Committee, at least one of whom must be a public representative.

(2) The Council shall appoint the chair of the reinstatement committee.

(3) A quorum of the reinstatement committee consists of a majority of the members of the Committee, regardless of whether such members are members or public representatives. 2011, c. 38, s. 59.

Application for reinstatement

60 (1) The reinstatement committee shall, in the circumstances set out in this Act and the regulations, review applications for reinstatement of registration and licence and perform such other duties as set out in this Act and the regulations.

(2) Applications for reinstatement must proceed in accordance with the regulations.

(3) Where a member's licence has been reinstated pursuant to this Section, the reinstatement committee, in its discretion, shall determine whether publication of the reinstatement is required in the interest of the public. 2011, c. 38, s. 60.

Powers of reinstatement committee, etc.

61 A reinstatement committee, and each member of a reinstatement committee has all the powers conferred by this Act and the regulations in the discharge of its functions as well as the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*, with the exception of the powers of contempt, arrest and imprisonment. 2011, c. 38, s. 61.

Applicant's rights

62 In a proceeding before a reinstatement committee, a member has the right to

- (a) be represented by legal counsel at the member's expense;
- (b) disclosure of any information to be provided to the Committee; and

(c) a reasonable opportunity to present a response and make submissions. 2011, c. 38, s. 62.

Evidence for reinstatement committee proceeding

63 (1) Evidence is not admissible before a reinstatement committee unless, at least ten days before the hearing, the opposing party has been given

(a) in the case of written or documentary evidence, an opportunity to examine the evidence;

(b) in the case of evidence of an expert, a copy of the expert's written report or, where there is no written report, a written summary of the evidence; and

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

(2) Notwithstanding subsection (1), the reinstatement committee may, in its discretion, allow the introduction of evidence that is otherwise inadmissible under subsection (1) and may make directions it considers necessary to ensure that a party is not prejudiced. 2011, c. 38, s. 63.

PRACTICE ASSESSMENT

Practice assessment program

64 (1) The Council shall approve a practice assessment program with the objectives of

(a) promoting a culture of continuous quality improvement within the profession; and

(b) enhancing the competence of individual members by linking their practice assessment to their professional development.

(2) The Council shall determine the manner in which members are selected to participate in a practice assessment program, and the frequency of participation in such process.

(3) Every member selected to participate in a practice assessment program has a duty to fully comply with all requirements of the program.

(4) Where a member has not complied with the requirements of the practice assessment program,

(a) the Registrar may lay a complaint against that member; and

(b) the member's licence is not eligible for renewal.

(5) Written documents gathered or prepared as part of the practice assessment program may not be used for any purpose other than the practice assessment program.

(6) Notwithstanding subsection (5), where there are reasonable grounds to believe that a member who is the subject of a practice assessment is engaged in professional misconduct or conduct unbecoming or is incompetent or

incapacitated, the practice assessment must be terminated, the member must be advised and the matter must be referred to the College to be dealt with as a complaint.

(7) A person referring a complaint under subsection (6) may only disclose such limited information as is necessary to allow the commencement of an investigation. 2011, c. 38, s. 64.

LIMITATIONS OF ACTIONS

Effect of voluntarily rendering service

65 Where

- (a) a member of the College; or
- (b) a physician or surgeon entitled to practise medicine in the Province, or any other province of Canada or country,

voluntarily renders first aid or emergency treatment without the expectation of monetary compensation to a person outside of a hospital or doctor's office, or in any other place not having proper and necessary medical facilities, that member, physician, surgeon, or person is not liable for the death of such person, or damages alleged to have been sustained by such person by reason of an act or omission in the rendering of such first aid or emergency treatment unless it is established that such injuries were or such death was caused by conduct on the part of such member, physician, surgeon or person that would constitute negligence if committed by a person of ordinary experience, learning or skill. 2011, c. 38, s. 65.

Immunity from liability

66 (1) No action for damages lies against the College, the Registrar, an officer or employee of the College, an assessor in the Practice Assessment Program, a member of a committee or subcommittee of the College, a member of the Council or a committee of the Council, a member of the College, an investigator or any agent acting on their behalf

- (a) for any act or failure to act, or any proceeding initiated or taken, in good faith under this Act, or in carrying out their duties or obligations as an officer, employee or member under this Act; or
- (b) for any decision, order, or resolution made or enforced in good faith under this Act.

(2) No action lies against any person for the disclosure of any information or any document or anything therein pursuant to this Act unless such disclosure is made with malice.

(3) No action for damages lies against any person for making a complaint to the College about a member if the complaint is made in good faith.

(4) Without limiting the generality of subsection (2), no action for damages lies against a member or other person for disclosing any books, records, papers and other documents in their possession or control when done pursuant to this Act. 2011, c. 38, s. 66.

PRIVILEGE

Confidentiality with respect to proceedings, reports and decisions

67 (1) In this Section,

(a) “legal proceeding” means any civil proceeding, discovery, inquiry, proceeding before a tribunal, board or commission or arbitration, in which evidence may be sought or given, and includes a public inquiry or an action or proceeding for the imposition of punishment by fine, penalty or imprisonment for the violation of a provincial enactment, but does not include any proceeding or hearing conducted pursuant to this Act or the regulations;

(b) “witness” includes every person who, in the course of a legal proceeding, is examined for discovery or is cross-examined upon an affidavit made by that person, answers any interrogatories or makes an affidavit as to documents or is called upon to answer any question or produce any document, whether under oath or not;

(c) “report” includes any document, statement, electronic record, minute, note, correspondence or memorandum created or received by a person, committee, panel or agent of the College for the purpose of any investigative, hearing, registration, licensing, audit, continuing professional development, review or appeal processes, or practice assessment program of the College but, where the witness is a complainant, does not include an original document prepared by the complainant and, where the witness is a member, does not include an original document prepared by the member.

(2) A witness in any legal proceeding, whether a party to the proceeding or not, shall not

(a) answer any question as to any proceedings of the College, its employees or agents, or persons who are members of committees established or authorized under the Act; or

(b) produce any report.

(3) Reports are not admissible in a legal proceeding.

(4) Subsections (2) and (3) do not apply

(a) with respect to a report, if the report has been made available to the public by the College; or

(b) if the written consent of the member involved in the college proceeding, the witness and all persons whose interests might be affected by the disclosure has been obtained and a court or administrative tribunal of competent jurisdiction authorizes the witness to answer the question or produce the report.

(5) Unless otherwise determined by a court of competent jurisdiction, a decision of an investigation committee or a hearing committee is not admissible in a legal proceeding other than in an appeal or a review pursuant to this Act.
2011, c. 38, s. 67.

DUTY TO REPORT

Reporting required

68 (1) Notwithstanding anything contained in this Act or the regulations, where

(a) a person has been charged with, pleaded guilty to, been convicted or found to be guilty of any offence in or outside of Canada that is inconsistent with the proper professional behaviour of a member, including a conviction under

- (i) the *Criminal Code* (Canada);[,]
- (ii) the *Controlled Drug and Substances Act* (Canada);[,]
- (iii) such other legislation as prescribed in the regulations,

unless a pardon has been issued;

(b) a person has been found guilty of a disciplinary matter in another jurisdiction;

(c) a person has been found to lack capacity to practise medicine in another jurisdiction;

(d) a person has had a licensing sanction imposed by another jurisdiction;

(e) a person is the subject of an investigation or disciplinary process in any jurisdiction;

(f) a person's hospital privileges have been revoked, withdrawn, suspended, varied, or not renewed as a result of the person's conduct, competence or capacity, apart from administrative suspensions; or

(g) there are reasonable grounds to believe a person has provided inaccurate or incorrect information in an application for registration or for a licence or a renewal of a licence,

and such person is a member or applies for registration or a licence or the renewal of a licence, the Registrar, by such notice as the Registrar prescribes, may require the person to attend before the Registrar to fully disclose the facts and circumstances of the matters referred to in clauses (a) to (g).

(2) For the purpose of subsection (1), a certificate of conviction of a member is conclusive evidence that the member has committed the offence stated therein, unless it is proven that the conviction has been quashed or set aside.

(3) When a person holding a licence to practise meets the criteria pursuant to subsection (1), such person shall immediately report the matter to the Registrar.

(4) Where a medical practitioner has hospital privileges revoked, withdrawn, suspended, varied or not renewed as a result of the member's conduct, competence or capacity, apart from administrative suspensions, the administrator of

that hospital shall report such matter, including the reasons for the hospital's actions, to the Registrar.

(5) Where a medical practitioner resigns hospital privileges after the medical practitioner has been advised by the hospital that the hospital has concerns regarding the practitioner's competence, negligence, conduct or capacity, the administrator of that hospital shall report such matter to the Registrar immediately.

(6) Where a member is employed, and the member resigns or has been terminated from such employment for reasons involving the member's conduct, competence or capacity the employer shall immediately report such matter, as well as the reasons, to the Registrar.

(7) Where the Registrar receives information under subsection (1), (4), (5) or (6), the Registrar shall consider whether to file a complaint.

(8) No action for damages or other relief lies against any person or entity for any report made pursuant to subsections (4), (5) or (6) if such report was made in good faith. 2011, c. 38, s. 68.

TRANSITION

Complaint or matter pending under former Act

69 (1) A complaint made pursuant to the former Act must be processed in accordance with this Act as nearly as circumstances permit.

(2) Upon the coming into force of this Act, where a hearing is not commenced, any matter pending before a hearing committee that may be dealt with under processes established pursuant to this Act or the regulations may, by agreement of the College and the respondent, be dealt with in accordance with this Act and the regulations as nearly as circumstances permit. 2011, c. 38, s. 69.

GENERAL

Appointment of members necessary for quorum

70 Whenever for any reason a quorum of members of any committee is not available for a meeting or hearing, the Council may, for the purpose of such meeting or hearing, appoint to the committee such additional members as are needed for a quorum. 2011, c. 38, s. 70.

Former Act repealed

71 **The former Act is repealed.** 2011, c. 38, s. 71.

Effective date

72 This Act comes into force on such day as the Governor in Council orders and declares by proclamation. 2011, c. 38, s. 72.

Proclaimed	-	December 22, 2014
In force	-	January 1, 2015