

Proposed Umbrella Health Professions Legislation:

**THE REGULATED HEALTH
PROFESSIONS ACT**

January 2009

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Letter from the Minister of Health

I am pleased to release this consultation document, which proposes that Manitoba's many health profession statutes be replaced by one umbrella act. We want this legislation to be clear, workable and effective in regulating health professions in the public interest.

Currently in Manitoba, there are 22 health professions with self-governing legislation. These organizations play an important and vital role in ensuring patient safety and accountability for their professions.

There are 21 different acts that regulate these 22 health professions. We believe that the proposed legislation will provide consistency in the powers and duties that government delegates to regulatory bodies, while strengthening patient safety, transparency and accountability to the public. It will also establish a clear process for other health practitioner groups to apply for designation as a regulated health profession.

The consultation document is being released to provide regulatory bodies, employers, professional associations, educational institutions and the public an opportunity to comment on the proposed legislation. This document will be the focus of broad consultations with stakeholders before recommendations are finalized for consideration by the Legislature.

A number of the draft proposals in this paper have been developed by Manitoba Health and Healthy Living and Manitoba Justice, in partnership with the regulated health professions in Manitoba. I would like to acknowledge the invaluable support and assistance of the regulated health professions during the development of this proposed legislation.

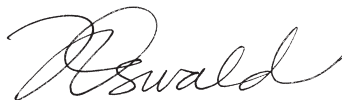
Please submit any comments you may have by **Friday, February 27, 2009** to:

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You may also provide feedback electronically at the following e-mail address: hprri@gov.mb.ca

I look forward to receiving your comments on this important piece of proposed legislation.

Sincerely,



Theresa Oswald
Minister of Health



Part I. Introduction

Current Manitoba Health Professions Legislative Structure

In Manitoba, 21 individual acts regulate 22 self-governing health professions (Appendix A). The professions regulate their members through:

- qualification standards, such as education and experience;
- standards of practice;
- a license or registration process; and
- a complaints and discipline process.

Health Professions Regulatory Reform Initiative

Legislation for each health profession has the same purpose – to protect the public. However, they are not consistent with one another in how they achieve public protection. Many of the acts are also in need of modernization.

The issue of professional regulation has been the subject of many reviews and reports here and in other jurisdictions. Umbrella health profession legislation has been recommended in many provincial reports, including the 1978 Cherniak Report, the 1980s departmental review of professional legislation and the Manitoba Law Reform Commission 1993 discussion paper, *The Future of Occupational Regulation in Manitoba* and the 1994 *Regulating Professions and Occupations Report*.

In 2006, Manitoba Health (the “department”) decided to develop a common legislative framework that would deal with these issues, to better protect the public and serve health professionals. This led to the Health Professions Regulatory Reform Initiative (HPRRI). Regulated health professions were invited to participate in this process, to renew and strengthen health professions legislation. This consultation led to the development of the proposed master list of reserved acts and the complaints and discipline process.

The department also commissioned a review of health profession legislation in Ontario, Alberta, British Columbia and Quebec as well as in the United Kingdom, Australia and New Zealand. The final report was received in January 2007. The review found that:

- All jurisdictions have recently reviewed - or are in the process of reviewing - the regulation of health professionals.
- Public protection is the purpose of health professional regulation in all of the jurisdictions examined.
- Many jurisdictions require public representation at all stages of the health profession regulation process, including registration, education, fitness to practice and discipline. This provides a safeguard so that the concerns of the profession do not outweigh the public interest. It also encourages greater transparency in the regulatory system.
- Many jurisdictions have adopted a common legislative framework for regulating all health professions.

This consultation paper includes:

- the results of consultations with the regulated health professions;
- policy principles and the common, integrated approach used in Alberta, British Columbia, Ontario and Quebec;
- best practices from the United Kingdom, Australia and New Zealand as described in the 2007 report.

Objectives of Reform

Changing the way we regulate health professions is an important step forward. We believe that the new legislation will:

- consolidate individual statutes under a single umbrella act to ensure consistency;
- allow professions to continue to be self-regulating;

- continue to place the interests of patients and the public at the centre of the regulatory process;
- offer more effective protection for the public by regulating actions or clinical procedures that may present a risk of harm if performed by someone who is not adequately trained;
- strengthen accountability between the regulatory bodies and the government;
- establish a process to review requests for self-governing legislation;
- update legislative provisions that are continued in the new umbrella legislation;
- remove barriers to interdisciplinary practice; and
- foster greater confidence in the provincial health care delivery system.

Proposed Legislation

The health profession organizations would continue to be responsible for the regulation of their members through self-regulating colleges as delegated by government.

The proposed legislative framework includes:

- one umbrella statute with consistent legislative provisions for governance, registration, complaints, discipline, appeals, public representation, regulation and by-law making powers which apply to all regulated health professions (*Box 1*);
- flexible administrative, complaint and discipline processes that meet minimum consistent standards but also accommodate differences in regulatory body membership size and volume of complaints;
- non-exclusive scope of practice statements;
- regulating only those activities that pose a threat or possible harm to the public, known as a “reserved act approach”;
- specific regulations for each health profession, made by the Lieutenant Governor-in-Council, which will include scope of practice

statements, reserved acts designated to a regulated health profession and other profession-specific matters. (*Box 2*);

- regulations made by each council of a regulated health profession (regulations will require approval by the Lieutenant Governor-in-Council) (*Box 3*); and
- by-laws made by each council of a regulated health profession (*Box 4*).

Diagram of the Proposed Legislative Framework

Box 1

The Regulated Health Professions Act

Box 2

Regulated Health Profession Specific Regulations Made by Lieutenant Governor-in-Council (Part 14)

Box 3

Regulations Made by Specific Regulated Health Profession Councils and Approved by Lieutenant Governor-in-Council (Part 14)

Box 4

By-Laws Made by Specific Regulated Health Profession Councils (Part 14)

Manitoba’s 21 separate acts will be phased-out as the health profession is brought under the umbrella legislation. Governing councils will retain their existing functions and continue to maintain their own offices and administration.

Overview of Key Provisions

Professional self-governance will continue under the proposed legislation. Each profession will have a college, regulations, code of ethics and standards to govern its members.

The following provides a summary of other key measures in the proposed legislation that would improve public protection, enhance accountability and remove barriers to interdisciplinary practice.

- **“Reserved Act Approach”**

Actions or clinical procedures that may present a demonstrable risk of harm to the public will be regulated. Many of the reserved acts can be performed by more than one profession, so collaborative care will be encouraged. These acts and procedures will be restricted to specified practitioners, so unregulated practitioners will only be able to provide them if authorized under the legislation, e.g., under delegation from a regulated health profession. Unregulated practitioners will be able to provide services that do not include reserved acts. This model will help improve patient safety.

- **Governance Model**

There are a large number of inconsistencies between existing statutes for health professions, including variations in the regulatory body’s mandate and requirements for public representation on council. The umbrella legislation will:

- establish a clear mandate for all health profession regulatory bodies (to be known as “colleges”) to protect the public interest and separate professional advocacy from regulatory activities;
- require that one-third of the members of a college council be public representatives to advocate for the public interest;
- require that all colleges’ websites include specific information to improve public information disclosure and be consistent with *The Fair Registration Practices in Regulated Professions Act*.

- **Registration**

The legislation will establish consistent registration provisions for all regulated health professions. Many of the provisions are similar to those in more recent legislation. It will also include appeal provisions for applicants who are refused registration. This is consistent with *The Fair Registration Practices in Regulated Professions Act*.

- **Professional Conduct**

The legislation will improve consistency in the complaints and discipline process. Flexibility has been built in to address differences in regulatory body membership size and the volume of complaints.

The proposed provisions incorporate principles of fairness and due process across all professions. The effectiveness of the complaints and disciplines process will be improved for those professions who are currently regulated under older statutes.

- **Standards of Practice, Code of Ethics and Other Duties of Colleges**

Some regulatory bodies regulate standards of practice, adopt codes of ethics and establish continuing competency standards. All health professions colleges will be required to do so under the proposed legislation. All colleges will also be able to undertake practice audits.

All regulated health professionals will be required to report another member who is suffering from a physical or mental condition or disorder that affects his or her ability to practice. Employers will also be required to report misconduct or incapacity. There will be exemption from liability for such disclosures.

- **Advisory Council**

An independent advisory council will be established to provide advice to the Minister of Health on regulatory matters such as the regulation of new professions and the designation of reserved acts. This advice will be required during and after the implementation of the act.

- **New Regulated Health Professions**

Professions often approach government requesting self-regulation. No formal process currently exists to address proposals for new professional regulation, so this is an important change. The legislation sets out how unregulated professions apply to be regulated.

- **Ministerial Powers**

In cases where regulatory bodies encounter problems in carrying out their regulatory activities, the government currently has no statutory authority to mediate or initiate action to protect the public. New ministerial powers are proposed to address this issue. Umbrella health professions legislation in other jurisdictions have similar provisions.

- **Business Arrangements**

A recent report from the Competition Bureau Canada found that some business structure restrictions have the potential to significantly reduce the benefits of competition. New provisions regarding “practice in association” have been included in the draft legislation to minimize any barriers that prevent practitioners from working together - including members of different professions.

The right to professional incorporation will extend to all regulated health professionals, with the same restrictions that currently apply to physicians and dentists. Professionals will be required to remain accountable to the public and their regulatory bodies.

Professional incorporation is allowed for regulated health professionals in many other Canadian jurisdictions. These changes are intended to improve Manitoba’s competitiveness when recruiting and retaining health professionals.

- **Regulation and By-Law Making Powers**

College councils will retain their regulation and by-law making powers, similar to those included in current health profession legislation.

Regulatory bodies will be required to consult with their membership on proposed regulations, but membership approval is not required. All regulations that deal with the public interest will still require the approval of the Lieutenant Governor-in-Council.

Government will have regulatory power to designate health professions, designate

reserved acts to professions and establish exemptions to the reserved act restrictions.

Regulatory bodies will be required to consult with the Minister of Health and the Minister of Advanced Education and Literacy before a council approves or removes an approval from a health profession program of study.

The effective transfer of important powers from the government to a self-governing profession requires clear lines of accountability to the government and to the public.

Government will be able to make, amend or repeal regulations, where it is deemed in the public interest. This authority would exclude regulations concerning clinical practice standards. Similar provisions exist in Quebec, Alberta, Ontario and British Columbia.

- **General**

Practitioner Profiles – *The Medical Act* currently sets out authority for the College of Physicians and Surgeons of Manitoba to establish physician profiles. The proposed legislation will extend the authority to establish practitioner profiles to all regulated health professions.

Annual Report – All regulated health professions will be required to submit an annual report to the Minister of Health.

Public Disclosure of Information – There will be provision for public disclosure of information on registrants and disciplinary decisions.

Other Legislative Provisions

This consultation document does not include everything that will appear in the final legislation. *The Regulated Health Professions Act* will include provisions that are specific to certain regulated health professions, for example, provisions dealing with the licensing and operation of pharmacies.

Provisions required for regulated health professions to meet the requirements of the Labour Mobility Chapter of the Agreement on Internal Trade are under development but are not included in the consultation document.

Part II. The Regulated Health Professions Act

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The Proposed Umbrella Legislation: “THE REGULATED HEALTH PROFESSIONS ACT”

PART 1 INTERPRETATION

This Part is concerned with definitions of terms used in the Act.

Definitions

1(1) The following definitions apply in this Act.

“**abbreviation**” in respect of a title, includes an abbreviation of a variation of the title.

“**advisory council**” means the Health Professions Advisory Council established under subsection 138(1).

“**by-laws**” means the by-laws made by a council in respect of the regulated health profession.

“**college**” means the college of a regulated health profession.

“**committee**” means a committee appointed by a council pursuant to section 20.

“**council**” means the council of a college.

“**court**” means the Court of Queen’s Bench.

“**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 or device or equipment or another item pursuant to a prescription.

“**health profession**” means a profession in which a person exercises skill or judgment in providing health care.

“**member**” means a regulated member and regulated associate member, except where it is otherwise stated or when it refers to a member of a council or committee.

“**minister**” means the minister appointed by the Lieutenant Governor in Council to administer this Act.

“**public representative**” means a person who is not and has never been a member of any regulated health profession and who is appointed under subsection 13(2) or 13(3) as a public representative.

“**register**” means a register of a regulated health profession established under this Act.

“**regulated associate member**” means, in respect of a regulated health profession, an individual whose name is entered in the register of regulated associate members established by the council for the college of that profession pursuant to clause 27(b).

The definition of “regulated associate member” is to be read in conjunction with the definition of “regulated member”. In most cases, a regulated associate member would not hold full membership in a college.

“**regulated health profession**” means a health profession designated by regulation as a regulated health profession pursuant to clause 8(1)(a).

“**regulated member**” means, in respect of a regulated health profession, an individual whose name is entered in the register of regulated members established by the council for the college of that profession pursuant to clause 27(a).

“**reserved act**” means a reserved act referred to in section 4.

Included references

1(2) In this Act,

- (a) a reference to “**this Act**” includes the regulations under this Act; and
- (b) a reference to conditions includes restrictions and limitations.

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

“contact lens” includes a lens or mold designed or offered for use in orthokeratology or corneal refractive therapy.

“dental appliance” means an appliance or device that is designed or offered 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 or offered for protection against injury during sporting activities.

“diagnosis” means the identification, through scientific knowledge and skillful methodology, of a disease, disorder, injury or condition.

“dispense” means

- (a) in respect of a dental appliance, to fabricate or alter;
- (b) in respect of a drug, 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;
- (d) in respect of a wearable hearing instrument, to select, prepare, alter, sell or offer to sell.

“drug” means the substances and mixtures of substances listed in Schedules 1, 2 and 3 of the Manual for Canada’s National Drug Scheduling System published by the National Association of Pharmacy Regulatory Authorities, as amended from time to time.

“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;

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- (b) in respect of a dental appliance, to perform any intra-oral procedure, including the making of impressions, related to dispensing; and
 - (c) in respect of a wearable hearing instrument, to adapt or verify, using sound field testing or real ear measurements.

“prescribe” 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 a named individual; and
- (b) in respect of a drug, to issue a prescription for it.

“prescription” means a direction to dispense a stated amount of a drug specified in the direction for the person named in the direction.

“substance” includes air and water, but does not include a drug or vaccine.

“verify” means, in respect of a vision appliance, to verify objectively to the authorization.

“vision appliance” means an appliance or device that is designed or offered 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.

“wearable hearing instrument” means

- (a) an appliance; or
- (b) a device;

wearable on the head or body and designed or offered for a hearing condition, including any ear molds or parts or accessories for the appliance or device, except batteries or cords.

WHAT IS A RESERVED ACT?

This is new. It is a key provision. It sets out a list of 21 acts and procedures used when providing health care (known as reserved acts) that may only be performed by regulated health professionals. Specific activities that fall within the list of reserved acts in the legislation will be set out in profession specific regulations along with any relevant conditions, restrictions and limitations. The proposed model is similar to the current health profession regulatory model in Ontario, Alberta and British Columbia. See attached example regulation.

Question: Are there any other activities used in the course of providing health care which should be included in the reserved act list? If so, what?

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.

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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 surfaces of the teeth, including the scaling of teeth.
 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 or parenteral instillation, or
 - (f) using a hyperbaric chamber.
 6. Prescribing a drug.
 7. Compounding a drug.
 8. Dispensing or selling a drug.
 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,

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- (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) that is prescribed by regulation,
 - (g) any other form of energy that is prescribed by regulation.
11. In relation to a therapeutic diet that is administered enterally or parenterally,
- (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 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.

HOW IS THE PERFORMANCE OF A RESERVED ACT RESTRICTED?

A person must be a member of regulated health profession to lawfully perform a reserved act when providing health care. Individual profession regulations will list the acts or categories of acts, if any, which are delegated to each profession.

A list of exemptions to the restrictions on the performance of reserved acts is set out.

Delegation from a regulated health professional to another competent person will be allowed. Acts may be delegated to members of the same regulated profession, members of another regulated health profession or other persons providing health care. Regulatory bodies can make regulations setting out the conditions for delegations.

Subsections 5(2) and 5(3) allow for exemption by regulation for persons who are not members of a regulated health profession but who are competent to perform the activity, e.g., to allow certified radiological technologists to take x-rays. 5(3) allows activities such as tattooing to be exempted from the reserved act approach.

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 permitted to perform the reserved act under a regulation made by the member's college pursuant to this Act;
- (d) the person is authorized to perform it by another Act; 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) 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;
 - (d) treating a person by prayer or spiritual means in accordance with the tenets of the religion of the person giving the treatment;
 - (e) treating an aboriginal person or member of an aboriginal community in accordance with traditional healing services that are provided by an aboriginal healer;
 - (f) treating a member of his or her own household, and the act is a reserved act set out in section 4, item 1, 4, 5, 9 or 11; or
 - (g) 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.

Exception re counselling

5(4) An act by a person is not a contravention of subsection (1) if the person is providing counselling about emotional, social, educational or spiritual matters as long as he or she is not performing a reserved act.

Supervision

5(5) 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(6) 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.

CAN A RESERVED ACT BE DELEGATED?

Delegation of a reserved act

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

- (a) a member of the same regulated health profession;
- (b) a member of a different regulated health profession; or
- (c) any other person providing health care;

but only in accordance with the regulations respecting delegation that govern the member's profession.

Performance of a delegated reserved act

6(2) A member of a regulated health profession to whom a reserved act is delegated may only perform the reserved act in accordance with the regulations respecting delegation that govern the member's profession.

Council must make regulations

6(3) A council must make regulations respecting the delegation of reserved acts if it wishes to permit its members to act or perform under subsection (1) or (2).

WHAT HAPPENS IF THERE IS A 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 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

This Part deals with the manner of designating a regulated health profession. It also contains governance provisions similar to those provisions in some current health profession legislation and extends these provisions to all regulated health professions.

DESIGNATION

Designation of health profession

8(1) The Lieutenant Governor in Council may, by regulation,

- (a) designate a health profession as a regulated health profession for the purposes of this Act;
- (b) in respect of a regulated health profession, do one of the following:
 - (i) continue an existing association or college as the college for that profession,
 - (ii) establish the college for that profession,
 - (iii) establish the college for that profession and any other regulated health profession,
 - (iv) establish that an existing college, which regulates another health profession, is also the college for that profession;
- (c) prescribe the name of the college of a regulated health profession;
- (d) prescribe the scope of practice of a regulated health profession;
- (e) respecting any other matter necessary or advisable for the establishment or continuance of a college.

Two or more health professions

8(2) If the Lieutenant Governor makes a regulation under subclause (1)(b)(iii) or (iv), the regulations or by-laws of the college may be applied to

- (a) each regulated health profession separately; or
- (b) two or more of the regulated health professions jointly.

COLLEGE

Some of the current regulatory bodies are known as associations. All regulatory bodies will be known as colleges. This will allow the public to identify the regulatory body from the professional interest association.

College is a corporation

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

Powers

9(2) In pursuing its objects and carrying out its 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 objects and govern its members in a manner that serves and protects the public interest.

Objects of college

10(2) A college has the following objects:

- (a) to regulate the practice of the health profession and govern the members in accordance with this Act, the regulations and the by-laws;
- (b) to develop, establish and maintain standards of academic or technical achievement and qualification required for registration as a member;
- (c) to develop, establish, monitor and enforce standards of practice to enhance the quality of practice by members;
- (d) to develop, establish and maintain a continuing competency program for members to promote high standards of knowledge and skill;
- (e) to develop, establish and maintain programs to promote the ability of members to respond to changes in practice environments, advances in technology and other emerging issues;
- (f) to develop, establish and maintain programs to inform individuals about the health profession, and assist them in exercising their rights under this Act, the regulations and the by-laws, including the code of ethics;
- (g) to promote and enhance relations between a college and its members, other regulated health profession colleges, key stakeholders, and the public;
- (h) to promote inter-professional collaboration with other regulated health profession colleges;
- (i) to administer the college's affairs and perform other duties through the exercise of powers conferred by this Act, the regulations and the by-laws.

Some current acts include the proposed subsections 10(1) and (2) and some do not. The overriding duty of all colleges is to serve and protect the public interest.

College may not set professional fees

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

This is a new provision. It will require regulatory bodies to cease activities related to setting or negotiating fees.

Membership

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

COUNCIL

Council

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

Council to manage affairs

12(2) The council must

- (a) manage and conduct the business and affairs of the college; and
- (b) exercise the college's rights, powers and privileges 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) The Lieutenant Governor in Council may, by regulation, provide that the composition of a council is to consist of certain specified persons in addition to the members of the college or public representatives referred to in subsection (1).

By-laws for election and appointment of council members

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

The requirement in recent health professions legislation for 1/3 of the council members to be public members is extended to all regulated health professions. This requirement is consistent with the Manitoba Law Reform Commission's recommendations.

Options for the selection and appointment of public representatives are established. The proposal enables the Minister to:

- **appoint all public representatives; or**
- **allow regulatory bodies to appoint one or more of the public representatives.**

Subsection 13(4) will allow other professionals (e.g., those with educational expertise or members of other professions where scopes of practice overlap) to be appointed to governing councils. Such appointments may serve as a mechanism for the educational sector to be more aware of the regulatory bodies' expectations regarding the competencies new practitioners are required to have when they enter the workforce.

Term of office

14(1) No term of a council member who is elected or appointed may exceed three years.

Multiple terms

14(2) A person may be a council member for more than one term. But no person may be a member for more than nine 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 reappointed or a successor is elected or appointed.

Vacancy

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

Remuneration

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

Officers

17 Council members must elect from among themselves the officers of the college that are specified in the by-laws, in the manner and for the terms specified in the by-laws.

Oath of office

18(1) A person elected or appointed as a council member must take and sign, by oath or solemn affirmation, a prescribed oath of office, within 45 days after the date of election or the effective date of the appointment, and provide a copy of it to the registrar.

This provision requires that newly elected or appointed council members sign an oath stating they will be guided by the public interest in the performance of their duties as council members.

Who may administer the oath

18(2) The oath of office must be taken before a commissioner of oaths or the registrar.

Effect of failure to take oath

18(3) If the person does not comply with the requirements under this section, the person may not attend any council meetings until the person does comply.

Term of oath contravened

18(4) If the council is satisfied that a member has contravened a term of the oath of office, the council may, by resolution passed by at least 2/3 of the council members voting on the resolution, reprimand, suspend or remove the member, after reasonable notice has been given to him or her.

Effect of suspension

18(5) If a person is suspended from the council under subsection (4), the person may not act as a member of the council unless the suspension is lifted.

Effect of removal

18(6) If a person is removed from the board under subsection (4), the person ceases to be a council member and the office to which that person was elected or affirmed is vacant.

Public representatives may only serve on one council

19 A person may not serve as a public representative on more than one council or committee at any one time.

COMMITTEES AND REGISTRAR

Some but not all Manitoba statutes refer to delegation of powers and duties. Statute-based powers and duties cannot be delegated unless specifically provided for in the statute granting the powers. Sections 21 and 22 set out what can and cannot be delegated.

Committees

20(1) A council

- (a) must appoint a complaints investigation committee and an inquiry committee; and

(b) may appoint any other committees that it considers necessary.

Additional committee re public representative

20(2) If the minister permits a council to appoint public representatives pursuant to subsection 13(3), the council must establish an appointments committee for the purpose of recruiting and selecting public representatives to serve on the council and committees.

Council delegation

21(1) A council may delegate any of its powers and duties to one or more persons or committees, except the power to make regulations or by-laws or to adopt standards of practice or a code of ethics.

Conditions

21(2) A council may impose conditions on a delegation under subsection (1).

Deemed reference to delegate

21(3) Any reference in this Act or any other enactment to a council is deemed to be a reference to a delegate under this section.

Person, committee delegation

22(1) Subject to the by-laws, a person or committee to whom a power or duty is given under this Act, the regulations or the by-laws may delegate the power or duty to one or more other persons or committees.

Conditions

22(2) A person or committee making a delegation under subsection (1) may impose conditions on the delegation.

Limits on delegation

22(3) Despite subsection (1), an investigator, a complaints investigation committee, an inquiry committee, or a panel of a complaints investigation committee or an inquiry committee may not delegate its powers and duties with respect to a review or appeal under Part 8 (Professional Conduct).

Deemed reference to delegate

22(4) Any reference in this Act or any other enactment to a council is deemed to be also a reference to a delegate of the person or committee under this section.

Registrar and staff

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

<p>Whether the registrar must be a member is intended to be dealt with in by-laws and by-law making power with respect to the registrar's qualifications has been included.</p>
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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 and any delegate;
- (b) the officers of the council and any delegates; and
- (c) the registrar and any delegate.

Public information

24(2) Upon request, the information under subsection (1) must

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

This new provision requires regulatory bodies to establish an officials' directory and to make it available to the public.

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 special meeting of the membership of the college must be held when the council considers it advisable.

Special meeting on written request

25(3) Upon receiving a written request signed by at least 5% of the regulated members of a college entitled to vote, the council must hold a special meeting 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) The college must

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

This provision requires open council meetings. It is included to increase openness and accountability.

Quorum

26 A majority of the council members, one of whom must be a public representative, constitute a quorum.

PART 4 REGISTRATION AND CERTIFICATE OF PRACTICE

The registration provisions are similar to those in recent health profession legislation. They set out:

- **the registers which a college must maintain; the information to be included in the registers and access to the information on the registers. (This will increase transparency by extending the requirement for public access to information on registers for all regulated health professions);**
- **the application process for registration;**
- **the qualifications which practitioners must meet to be registered; appeal processes for cases in which the application is not approved (Appeal provisions will be extended to all regulated health professions and are consistent with *The Fair Registration Practices in Regulated Professions Act*);**
- **requirement for practitioners to hold a certificate of practice;**
- **registration in the event of a public health emergency.**

REGISTERS

Registers established by council

27 A council

- (a) must establish, in accordance with the regulations, a register of regulated members for one or more classes of members who provide the health care of the regulated health profession; and
- (b) may establish a register of regulated associate members for each class of regulated associate members, if any, provided for in the regulations.

Registrar to maintain registers

28 The registrar must maintain the registers in accordance with this Act and the regulations.

Register of regulated members

29(1) The register of regulated members must contain

- (a) each member's name, business address and business telephone number and, if applicable, the name of each health profession corporation of which the member is a shareholder;
- (b) the conditions imposed, if any, on each member's certificate of registration or certificate of practice;
- (c) a notation of each member who is authorized to provide a reserved act not normally provided by members of that college;
- (d) a notation of each member who is not authorized to provide a reserved act that is normally provided by members of that college;
- (e) a notation, including the result, of every disciplinary proceeding in which a panel has made a finding under subsection 115(2); and
- (f) information that the regulations specify as information to be kept in the register.

Register of regulated associate members

29(2) The register of regulated associate members must contain

- (a) each associate member's name, business address and business telephone number;
- (b) the conditions imposed, if any, on each associate member's certificate of registration or certificate of practice;
- (c) a notation of each associate member who is authorized to provide a reserved act not normally provided by associate members of that college;
- (d) a notation of each associate member who is not authorized to provide a reserved act that is normally provided by associate members of that college;
- (e) a notation, including the result, of every disciplinary proceeding in which a panel has made a finding under subsection 115(2); and
- (f) information that the regulations specify as information to be kept in the register.

Access to information

29(3) During normal business hours, a person may obtain the following information contained in a register:

- (a) the information described in clauses (1)(a) to (d) and (2)(a) to (d);
- (b) the information described in clauses (1)(e) or (2)(e) relating to a suspension that is in effect;
- (c) the results of every disciplinary proceeding completed within six years before the register was prepared or last updated
 - (i) in which a certificate of registration or certificate of practice of a member was cancelled or suspended or had conditions imposed on it, or
 - (ii) in which a member was required to pay a fine or attend to be censured;
- (d) information designated as public in the regulations.

Honourary membership

30 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 practice the health profession nor to have his or her name entered on a register.

This is a new provision for most health professions.

Corporations are not members

31 A corporation, including a health professional corporation, may not be registered as a member.

APPLYING FOR REGISTRATION

Who may consider and decide registration applications

32 A council must either

- (a) direct the registrar to consider and decide on applications for registration under section 33 or 34; or
- (b) appoint a board of assessors, in accordance with the by-laws, to consider and decide on applications for registration under section 33 or 34.

Registration of regulated members

33(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 for cause 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 by a regulatory authority governing the practice of the regulated health profession in which the applicant seeks membership or a similar health profession in Canada or elsewhere;
- (e) pays the fees provided for in the college's by-laws; and
- (f) meets any other requirements set out in the regulations.

Conditions

33(2) An approval may be made subject to any conditions that the registrar or board of assessors considers advisable.

Registration: regulated associate member

34 An application for registration as a regulated associate member must be considered by the college in accordance with its regulations.

Application for registration not approved

35 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 its decision; and
- (b) advise the applicant of the right to appeal its decision to the council.

Entry in the register

36 The registrar must enter into the appropriate register

- (a) the name of a person whose application for registration is approved; and
- (b) the information required by subsection 29(1) or 29(2).

Error in the register

37 The council may direct the registrar to correct or remove any entry made in error in a register.

CERTIFICATE OF REGISTRATION

Certificate of registration

38(1) Upon entering the individual's name in a register, the registrar must issue a certificate of registration to him or her.

Information to be shown on certificate of registration

38(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 issued;
 - (f) a statement that the certificate of registration is issued pursuant to the Act;
 - (g) any conditions imposed on the person's membership;
 - (h) a statement that this certificate does not entitle the person to practise the health profession.

Certificate of registration does not expire

38(3) A certificate of registration does not expire unless it is cancelled.

Certificate of registration may be amended

38(4) If any of the information listed in clauses (2)(a), (b), (c) or (g) changes, the registrar may amend the certificate of registration and issue a replacement certificate.

An applicant will receive a one-time certificate of registration but will also require a certificate of practice – see s.41 and 42. A certificate of practice is similar to what is currently referred to as either a licence or in some cases a certificate of registration.

APPEALS

Appeal to council

39(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.

Notice

39(2) An 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 35. The notice must specify the reasons for the appeal.

Hearing

39(3) On 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 a written notice of the date, time and place of the hearing.

Right to appear

39(4) An applicant who appeals a decision is entitled to make representations to the council at the hearing.

Counsel

39(5) An applicant who appeals a decision is entitled to appear at the hearing with or without counsel.

Participation by member of board of assessors

39(6) A member of the board of assessors who is also a member of the council may participate in the hearing but must not vote on a decision under this section.

Decision by council

39(7) The council must decide the appeal within 90 days after the hearing and may make any decision the registrar or board of assessors could have made.

Notice of decision of appeal

39(8) Within 30 days after deciding the appeal, the council must give the applicant written notice of its decision and reasons for the decision.

Appeal to court

40(1) A person whose application for registration is refused by the council, or whose application is approved subject to conditions, may appeal the decision to the court by filing a notice of appeal within 30 days after receiving notice of the council's decision under subsection 39(8).

Powers of court on appeal

40(2) On hearing an appeal, the court may

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

These provisions extend consistent appeal provisions regarding registration to all regulated health professions and are consistent with *The Fair Registration Practices in Regulated Professions Act*.

CERTIFICATE OF PRACTICE

The right to practise is indicated by a certificate of practice.

Certificate of practice — regulated members

41(1) The registrar must issue a certificate of practice to an individual whose name is entered in the register of regulated members, upon payment of the practising fees provided for in the by-laws, 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 college's regulations or by-laws;
- (c) the member provides evidence of having the amount and type of professional liability insurance, if any, required by the college's regulations;
- (d) the member provides the registrar with any other information that the regulations require to be provided;
- (e) the member meets any other requirements set out in the regulations.

For example, this could refer to the requirement to enter practice within a specified period of time after obtaining a certificate to practice.

Information to be shown on certificate of practice

41(2) A certificate of practice under this section must include

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

Certificate of practice — regulated associate members

42(1) The registrar must issue a certificate of practice to an individual whose name is entered in any register of regulated associate members established by the college — if that class of regulated associate members is entitled to practise — upon payment of the practising fees provided for in the by-laws, 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 college's regulations or by-laws;
- (c) the associate member provides evidence of having the amount and type of professional liability insurance, if any, required by the college's regulations;
- (d) the associate member provides the registrar with any other information that the regulations require to be provided;
- (e) the associate member meets any other requirements set out in the regulations.

Information to be shown on certificate of practice

42(2) 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 membership;
- (c) the name of the college that is issuing the certificate and the date issued;
- (d) a statement that the certificate of practice is issued pursuant to the Act;
- (e) any conditions imposed on the regulated associate member's practice;
- (f) the expiry date of the certificate.

Producing certificate of practice

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

Displaying certificate of practice

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

Renewal

45(1) A certificate of practice may be renewed upon application to the registrar by a member who

- (a) meets the requirements set out in the college's regulations and by-laws; and
- (b) pays the renewal fee required by the council.

Certificate of practice continues

45(2) A certificate of practice continues in force if an application for renewal has been received by the registrar but a decision on the application has not been made.

Suspension and cancellation

45(3) If the requirements under subsection (1) are not met by the date provided for in the by-laws, the certificate is suspended. And the registrar may cancel the certificate of practice in accordance with the regulations.

Appeals

46(1) A person whose application for a certificate of practice — or for renewal of a certificate of practice — is not approved, or is approved subject to conditions, may appeal the decision.

Sections 39 and 40

46(2) Sections 39 and 40 apply, with the necessary changes, to an appeal under this section.

CANCELLATION

Cancelled if false representation made

47(1) If a registrar is satisfied on reasonable grounds that a person's certificate of registration or certificate of practice or both have been obtained by means of a false representation,

- (a) the registrar must report the matter to the council; and
- (b) the council may direct the registrar to cancel the person's certificate of registration or certificate of practice or both.

The registrar must then cancel one or both certificates and give the person written notice of the fact.

Cancelled if conviction

47(2) The council may direct the registrar to cancel a person's certificate of registration or practice or both if the person has been convicted of an offence that is relevant to his or her suitability to practise. The registrar must then cancel the certificate or certificates and give the person written notice of the fact.

Notifying others re cancellation

47(3) In addition to notifying the person under subsection (1) or (2), the registrar must also give written notice of the cancellation to

- (a) the person's employer, if any;
- (b) any other persons specified in the regulations; and
- (c) members of the public, if it is in the public interest to do so.

Submissions

47(4) Before acting under subsection (1), (2) or (3), the council must first notify the person about the actions it is intending to take and give the person an opportunity to make a submission.

Appeal

47(5) A person whose certificate of registration or certificate of practice or both are cancelled under this section may appeal the cancellation to the court, in which case section 40 applies with the necessary changes.

Surrender

47(6) When a person's certificate of registration or certificate of practice is cancelled, the person must promptly surrender the certificate to the registrar.

Reinstatement

48 The council may, on application by a person whose certificate of registration or certificate of practice has been cancelled under section 47, direct the registrar to reinstate the person's certificate, subject to any conditions that the council may impose, and may order the person to pay any costs arising from the imposition of such conditions.

PUBLIC HEALTH EMERGENCY

Registration: public health emergency

49(1) Despite any other provisions in this Act, the registrar or board of assessors may waive any requirements for registration or practice under this Act to allow a person who is authorized to practise that health profession in another jurisdiction in Canada or the United States to practice that profession in the province during an emergency, if the minister gives the college written notice that

- (a) a serious and immediate threat to public health exists or may exist in all or part of the province; and
- (b) he or she has determined, after consulting with public health officials and any other persons that the minister considers advisable, that the services of a member of that regulated health profession from outside the province are required to assist in dealing with the threat.

Emergency need not be declared

49(2) The registrar or board of assessors may exercise its authority under subsection (1) even if no emergency has been declared under an enactment of Manitoba or Canada.

Certificate of practice

49(3) If necessary to carry out the intent of this section, the registrar may issue, or the board of assessors may authorize the registrar to issue, a certificate of practice to a person allowed to practice under subsection (1), on such conditions as the registrar or board may determine.

Regulations Act does not apply

49(4) *The Regulations Act* does not apply to action taken by the minister under this section.

<p>The provisions regarding registration in the event of a public health emergency currently exist in all regulated health profession statutes.</p>
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PART 5 BUSINESS ARRANGEMENTS

Definitions

50 The following definitions apply in this Part.

“**health profession corporation**” means a corporation holding a valid permit.

“**permit**” means a document issued by the registrar under subsection 52(1) certifying that the corporation named in the document is authorized to provide the services of the regulated health profession specified in the document, for the period specified in the document.

“**record of health profession corporations**” means the record established under section 63.

“**voting share**”, in relation to a health profession corporation, means a share of its capital stock that entitles the holder to vote in any election of directors of the corporation.

“**voting shareholder**”, in relation to a health profession corporation, means 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.

HEALTH PROFESSION CORPORATIONS

The proposed legislation extends the right of professional incorporation to all regulated health professionals. It includes appropriate measures, safeguards and conditions to ensure public safety and effective regulation by professional regulatory bodies. Professionals will be required to remain accountable to both the public and their regulatory bodies for their actions.
Provisions:

- **set out the permitted shareholders;**
- **restrict the business that a corporation can conduct to professional services and any related activities;**
- **give authority to regulatory bodies to register the corporations and regulate the name of the corporation;**
- **require regulatory bodies to maintain a record of health profession corporations which includes specified information and make this information available to the public.**

Authority of health profession corporation to practice

51(1) One or more members of the same regulated health profession may establish a health profession corporation for the purposes of carrying on the practice of their health profession

(a) under the corporation’s own name; or

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

How health profession corporation to practise

51(2) A health profession corporation may practise only through members who are authorized under this Act to practise the same regulated health profession in Manitoba.

Prohibition on other corporations

51(3) No corporation, other than a health profession corporation, shall carry on the practice of a regulated health profession.

Permit for health profession corporation

52(1) Subject to subsection (4), a registrar must issue a permit or a renewal of a permit to a corporation that wishes to carry out 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 or initials used to describe the regulated health profession followed by the word “corporation” and is approved by the registrar in accordance with the by-laws;
- (c) each voting share of the corporation is legally and beneficially owned by
 - (i) a 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 member;
- (f) the president of the corporation is a member;
- (g) each person through whom the corporation will be carrying on the practice of the health profession is a member;
- (h) the corporation has filed an application, in the form prescribed by the council, and paid the fee required by the council, for the permit or its renewal; and
- (i) all other requirements prescribed by the council for the issuance or renewal of the permit have been satisfied.

Validity

52(2) Unless it is cancelled, surrendered or under a suspension, a permit issued under subsection (1) is valid for the period specified in the permit.

Validity during consideration of renewal application

52(3) A permit continues in force if an application for renewal has been received by the registrar but a decision on the application has not been made.

Refusal to issue or renew permit

52(4) The registrar

- (a) must refuse to issue a permit to, or to 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 to 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 corporation whose permit has been cancelled or surrendered.

Notice of refusal

52(5) If the registrar refuses to issue or renew a permit under subsection (4), the registrar must notify the corporation in writing of his or her decision and the reasons for the decision.

Appeal to council

52(6) A corporation that is refused a permit or renewal of a permit under subsection (4) may appeal the registrar's decision to the council, which may confirm or vary the decision of the registrar.

Notice

52(7) An appeal under subsection (6) is to be made by filing with the council, within 30 days after the corporation receives notice of the registrar's decision, a written notice of appeal setting out the facts and the reasons for the appeal.

Business without permit prohibited

53(1) A corporation whose name includes terms or initials used to describe the regulated health profession that the member or members are permitted to practice followed by the word "corporation" must not carry on any business in Manitoba unless it holds a valid permit.

Restriction on business of health profession corporation

53(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 services directly associated with the practice of the regulated health profession carried on by it.

Interpretation of business restriction

53(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

53(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).

Conflict in duties

54 If there is a conflict between a member's duty to a patient, the college or the public and the member's duty to a health profession corporation as a director or officer of the corporation, the duty to the patient, the college or the public prevails.

Application of the Act, etc.

55(1) This Act, the regulations, by-laws, standards of practice, code of ethics and practice directions apply to a member despite any relationship he or she may have with a health profession corporation.

Obligations to clients not diminished

55(2) The fiduciary and ethical obligations of a member, and the obligations of a 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 corporation on whose behalf the health care is provided and to its directors, officers and shareholders.

Liability of members

55(3) The liability of a 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

55(4) A person is jointly and severally liable with a health profession corporation, or a corporation acting in contravention of subsection 51(3), for all professional liability claims made against the corporation in respect of errors or omissions that were made or occurred while the person was a voting shareholder of the corporation.

Investigation of member practising through corporation

55(5) If the conduct of a member through whom a health profession corporation was practising the regulated health profession at the time the conduct occurred is the subject of a complaint, investigation or inquiry

- (a) any power of inspection, investigation or inquiry that may be exercised in respect of the member or the member's records may be exercised in respect of the corporation or its records; and
- (b) the corporation is jointly and severally liable with the member for all fines and costs the member is ordered to pay.

Member's conditions apply to corporation

55(6) Any condition imposed on the certificate of registration or practice of a member practising a regulated health profession through a health profession corporation apply to the permit of the corporation in relation to the practice of that health profession through that member.

Suspension or cancellation of permit

56(1) Subject to subsections (2) and (3), a health profession corporation's permit may be cancelled or suspended by the council if

- (a) the corporation ceases to meet any of the requirements of eligibility for a permit set out or referred to in subsection 52(1);
- (b) the corporation contravenes any provision of this Act, the regulations, the by-laws of the college or any condition on the corporation's permit; or
- (c) a 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 certificate of registration or practice is cancelled, surrendered or suspended.

Limitation

56(2) A health profession corporation's permit must not be cancelled or suspended by reason only of the fact that

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- (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 through any other 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 fact that the certificate of registration or practice of a member has been suspended, unless
 - (i) the member remains a director or officer of the corporation more than 14 days after the commencement of the suspension, or
 - (ii) the corporation is not providing health care through any other member;
- (d) the fact that the certificate of registration or practice of a member has been surrendered or cancelled, unless
 - (i) the member remains a director or officer of the corporation 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 member.

Surrender of permit

56(3) When a health profession corporation's permit is cancelled, it must promptly surrender the permit to the registrar.

Alternatives to cancellation or suspension

57 Instead of suspending or cancelling the permit of a health profession corporation, the council may take any other action it considers appropriate, including one or more of the following:

- (a) reprimand the corporation or one or more directors or voting shareholders of the corporation;
- (b) impose conditions on the permit;
- (c) impose a fine on the corporation, payable to the college, in an amount not exceeding \$10,000.

Appeal to court

58(1) A health profession corporation

- (a) whose application for, or renewal of, a permit is not approved;
- (b) whose permit is suspended or cancelled;
- (c) whose permit has been subjected to conditions under clause 57(b);
- (d) upon whom a fine is imposed under clause 57(c);

may appeal the decision 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

58(2) On hearing an appeal, the court may

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

Notice of changes

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

Voting agreements void

60(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 member is void.

Unanimous shareholders' agreements void

60(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 member or a health profession corporation.

Holding out as a health profession corporation

61(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.

61(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.

College powers

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

RECORD OF HEALTH PROFESSION CORPORATIONS

Record of health profession corporations

63(1) A council must establish, in accordance with the regulations, a record of health profession corporations.

Registrar to maintain record

63(2) A registrar must maintain the record of health profession corporations in accordance with this Act.

Contents of record

63(3) The record of health profession corporations must contain

- (a) the name of each health profession corporation;
- (b) the name of each member who is a shareholder of a health profession corporation;

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- (c) the name of the college that is issuing the permit and the date issued;
 - (d) a statement that the permit is issued pursuant to the Act;
 - (e) information that the regulations specify as information to be kept in the record.

Access to information

63(4) During normal business hours, a person may obtain the following information contained in the record:

- (a) the information described in clauses (3)(a), (b) and (c);
- (b) the information designated as public in the regulations.

CONDUCTING A PRACTICE

Advertising

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

Definition

65(1) In this section, “**practice in association**” means a practice conducted in co-operation with another person where one or more of the following occur:

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

Practice in association

65(2) Unless restricted by the regulations, a member may

- (a) practise in association with another member or with a member of any other college; and
- (b) refer patients to and receive referrals from another member of any college or any other person.

These provisions are new. Any restrictions regarding professionals working together must be set out in regulations which require approval by government.

Ethical and confidential obligations to patients

66 The ethical and confidential obligations of a member to a person receiving health care from the member,

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- (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.

Professionals practising in association will remain accountable to both the public and their regulatory bodies for their actions.

PART 6

TITLE RESTRICTION AND OTHER PROHIBITIONS

Title restriction: member of college

67 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”

68(1) No person shall use the title “doctor”, “surgeon”, “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 enactment.

Exception for academic or educational designations

68(2) This section does not prohibit a person from using an academic or educational designation that the person is entitled to use.

College of Physicians and Surgeons

68(3) 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

68(4) 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 or an equivalent in another language, but only in conjunction with the word “dentist” or “dental” or the words “of dentistry” or “dental surgery”.

College of Chiropractors

68(5) A member of the College of Chiropractors of Manitoba may, as authorized by the regulations, use the title “doctor” or a variation or abbreviation or an equivalent in another language if the word “Chiropractor” or “Chiropractic” is used immediately before or after the member’s name.

College of Naturopaths

68(6) A member of the College of Naturopaths of Manitoba may, as authorized by the regulations, use the title “doctor” or a variation or abbreviation or an equivalent in another language, but only if the word “Naturopathy” or “Naturopath” is used immediately before or after the member’s name.

College of Optometrists

68(7) A member of the College of Optometry of Manitoba may, as authorized by the regulations, use the title “doctor” or a variation or abbreviation 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 Podiatrists

68(8) A member of the College of Podiatry of Manitoba may, as authorized by the regulations, use the title “doctor” or a variation or abbreviation or an equivalent in another language, but only if the word “Podiatry” or “Podiatrist” is used immediately before or after the member’s name.

Those colleges whose members are allowed to use the term “Doctor” are set out in the Act. These provisions are based on the current ability to use this term. There is an exception to allow the term to be used for academic or educational purposes.

Question: In the future there may be other professional groups which use the title of “doctor”. Should the title of “doctor” be dealt with in the profession-specific regulations rather than in the Act?

Holding out as a college

69 No corporation, other person or entity — other than a college — shall

- (a) represent or hold out, expressly or by implication, that it is a body that regulates, under statutory authority, individuals who provide health care;
- (b) use any sign, display, title or advertisement implying that it is a body that regulates, under statutory authority, individuals who provide health care; or
- (c) use the term “college” in a manner that states or implies that the corporation or person is a college regulated under this Act.

This will not affect the use of the term “college” by recognized educational institutions.

Holding out as a college officer or employee

70 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, individuals who provide health care.

Use of “registered”, “licensed”

71(1) No person who is providing health care shall use the term “registered” or “licensed” in association with or as part of the title describing their 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

71(2) Subject to section 67 and despite subsection (1), a person may use the term “registered” or “licensed” as part of a title describing their work if

- (a) the person is a member of an organization or class of organizations specified by regulation; or

Health care providers who are not members of a regulated health profession who currently use the terms “registered” or “licenced” may apply to be specified by regulation.

- (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 profession and, in using the title, indicates
 - (i) that he or she is currently authorized to practise the profession in the other jurisdiction, and
 - (ii) the name of the other jurisdiction.

Injunction

72 A college or person may apply to the court for an interim or permanent injunction to restrain a person from using “registered” or “licensed” as part of a title describing their work if

- (a) the person is not a member of a college that provides that type of health care; or
- (b) does not meet the requirements set out in clause 71(2)(a) or (b).

Making false representation to obtain certificates

73(1) No person shall make a representation, knowing it to be false,

- (a) for the purpose of having a certificate of registration issued;

(b) for the purpose of having a certificate of practice issued or renewed; or

(c) for the purpose of having a health profession corporation permit issued or renewed.

Assisting the making of false representation

73(2) No person shall knowingly assist a person in making a representation that contravenes subsection (1).

Not qualified to be registered

74 No person shall apply or continue to be registered if that person knows that he or she is not qualified to be registered as a member.

PART 7

STANDARDS OF PRACTICE AND CODE OF ETHICS

Standards of practice

75(1) A college must, by regulation, establish standards of practice to enhance the quality of practice of its members.

Incorporation by reference

75(2) A regulation referred to in 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 it may incorporate it as amended from time to time and with any necessary changes.

Third party external document

75(3) A document adopted by reference under subsection (2) must be a document created by a recognized body and must not be a document created by the college.

Copies to be made available

75(4) A copy of every code, standard or guideline adopted by reference under subsection (2) is to be made available for public inspection during normal business hours in the college's office and is to be accessible on or through the college's website.

Code of ethics

76(1) A college must, by resolution passed at an annual general meeting of members, adopt a code of ethics governing the conduct of members.

Incorporation by reference

76(2) A code of ethics may incorporate by reference, in whole or in part, any code, standard or other document, and it may incorporate it as amended from time to time.

Amendment or repeal of code of ethics

76(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 a college

- (a) present and voting at a general meeting of members or special meeting; or
- (b) voting in a mail vote or other method of voting conducted in accordance with the by-laws.

Copies to be made available

76(4) A copy of the code of ethics is to be made available for public inspection during normal business hours in the college's office and is to be accessible on or through the college's website.

The requirement to make copies of every code, standard or guideline available for public inspection is new.

Member must comply with Act, standards of practice, code of ethics, by-laws, etc.

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

PART 8 PROFESSIONAL CONDUCT

This Part deals with the handling of complaints about a regulated health professional and sets out the disciplinary process. Existing provisions in recent regulatory acts are the basis for this Part. Each of the committees or panels to be established under this Part must have the minimum 1/3 public representation.

WHAT DEFINITIONS APPLY IN THIS PART?

Definitions

78 The following definitions apply in this Part.

“conduct” includes an omission.

“external regulatory body” means a body with statutory authority to license or regulate health professionals in a jurisdiction other than Manitoba.

“investigated member” means a member or former member who is the subject of a complaint referred to the complaints investigation committee under section 83.

“member” includes a person of a class specified in the regulations as being subject to this Part.

“public representative” means a person on a roster established under section 79 who, in respect of a particular regulated health profession, has not practised that profession.

HOW IS THE ROSTER OF PUBLIC REPRESENTATIVES MADE ?

Roster of public representatives

79(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

79(2) If the minister considers it desirable, a separate roster may be established for one or more health professions.

Council may nominate persons for roster

79(3) A council may nominate persons to be named to a roster under this section by providing the names of its nominees to the minister. But the minister is not required to name any nominee to a roster.

WHAT IS A COMPLAINTS INVESTIGATION COMMITTEE?

Appointing a complaints investigation committee

80(1) A council must appoint a complaints investigation committee.

Role of the committee

80(2) The complaints investigation committee is responsible for investigating complaints and, where it considers it appropriate, attempting to resolve them informally.

Members

81(1) The complaints investigation committee is to consist of

- (a) a member of the college who is appointed as chair;

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- (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

81(2) The complaints investigation committee may sit in panels of three or more committee members.

Public representatives

81(3) At least 1/3 of the members of a panel must be public representatives.

Chair to select panel

81(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.

Quorum

81(5) A quorum for a panel is three members, one of whom must be a public representative.

Decision of panel

81(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.

HOW DO I MAKE A COMPLAINT?

Complaint about a member's conduct

82(1) Any person may make a complaint about a member's conduct.

How to complain

82(2) A complaint must be made in writing to the registrar.

Complaint against former member

82(3) 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.

Deemed complaint

82(4) Information that is treated as a complaint under section 84 (registrar aware of professional misconduct) is deemed to be a complaint.

HOW IS A COMPLAINT DEALT WITH?

Notice to complainant

83(1) Within 30 days after receiving a complaint, the registrar must notify the complainant of the action taken with respect to it.

Actions

- 83(2)** The registrar may, 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 satisfied that it is trivial or vexatious or that there is insufficient or no evidence of conduct about which a finding could be made under subsection 115(2).

If registrar aware of professional misconduct

84 Even if a complaint is not made under section 82, but subject to subsection 82(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 115(2) the registrar may treat the information as a complaint and refer it to the complaints investigation committee under clause 83(2)(b).

Notice to complainant of dismissal

85(1) If the registrar dismisses a complaint, the registrar must notify the complainant of the right to have the dismissal reviewed by the complaints investigation committee under this section.

Complainant may apply for review

85(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

85(3) The registrar must refer the application to the complaints investigation committee.

Decision of committee

85(4) After reviewing a decision to dismiss the complaint, the complaints investigation committee must

- (a) confirm the dismissal if it is satisfied that the complaint is trivial or vexatious or that there is insufficient or no evidence of conduct about which a finding could be made under subsection 115(2); or
- (b) reverse the dismissal and
 - (i) try to resolve the complaint informally under section 86, or
 - (ii) appoint an investigator under subsection 87(1).

Hearing not required

85(5) 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.

WHAT IS THE ROLE OF THE COMPLAINTS INVESTIGATION COMMITTEE?

Informal resolution

86 Upon the referral of a complaint to the complaints investigation committee, the committee may try to resolve it informally if the committee considers informal resolution to be appropriate.

Appointment of an investigator

87(1) If a complaint cannot be resolved informally, the complaints investigation committee must appoint an investigator to investigate it.

Investigation generally

87(2) The complaints investigation committee may also appoint an investigator for any complaint whenever it considers it appropriate to do so.

Who can be an investigator?

87(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

87(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

88(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

88(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 IS THE SCOPE OF AN INVESTIGATION?

Investigation scope

89(1) An investigator must investigate a complaint.

Related matters

89(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

89(3) An investigator may engage legal counsel and employ any other experts that the investigator considers necessary.

WHAT POWERS DOES AN INVESTIGATOR HAVE?

Powers of an investigator

90(1) During an investigation, an investigator may

- (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 or materials used by the investigated member;
- (d) require the investigated member to respond to the complaint in writing;
- (e) require any person to answer any relevant questions, which may include directing the person to answer the questions under oath;
- (f) require any person to give to the investigator any document, substance or thing relevant to the investigation that the person possesses or that is under his or her control.

Computers, photographs and copies

90(2) 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 place or premises to make copies of any document related to the investigated member's practice.

Removal

90(3) An investigator may remove any documents, substances or things 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.

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

Failure to produce records or answer questions

91(1) The college may apply to the court for an order

- (a) directing any person to produce to the investigator any documents, substances or things relevant to the investigation in the person's possession or under his or her control;
- (b) directing any person to attend before the investigator to answer any relevant questions under oath that the investigator may have relating to the investigation.

Warrant to enter and investigate

91(2) 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 90; 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 90, or
 - (ii) if an investigator were to be refused entry to any premises or place to carry out an investigation under section 90, 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 90.

Application without notice

91(3) An order or warrant under this section may be issued upon application without notice.

Failure to produce documents, etc. is professional misconduct

91(4) Failure by an investigated member or any other member or former member to

- (a) produce to an investigator any documents, substances or things in his or her possession or under his or her control;

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- (b) give an investigator access to any premises or place under his or her control; or
 - (c) answer any relevant questions under oath that the investigator may have relating to the investigation;

is deemed to be professional misconduct.

WHEN DOES THE INVESTIGATOR MAKE A REPORT?

Investigator's report to the committee

92(1) After completing an investigation, the investigator must report his or her findings to the complaints investigation committee.

Investigating other member

92(2) 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 information should be investigated further, the committee must refer the matter to the registrar for consideration under subsection 83(2) (registrar actions).

WHAT DECISIONS CAN THE COMMITTEE MAKE?

Decision of complaints investigation committee

93(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 member and he or she agrees to accept the censure, and
 - (ii) the committee has decided that no action is to be taken against the 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) assessing the member's capacity or fitness to practise the regulated health profession,
 - (ii) counselling or treatment of the member,
 - (iii) monitoring or supervision of the member's practice,
 - (iv) the member's completing a specified course of studies by way of remedial training,
 - (v) placing conditions on the member's right to practise the regulated health profession, which may include the conditions relating to reinstatement set out in section 97;

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- (g) take any other action it considers appropriate that is not inconsistent with or contrary to this Act, the regulations or the by-laws.

Hearing not required

93(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

93(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.

WHAT HAPPENS IF MEDIATION DOESN'T WORK?

If mediation unsuccessful

94 If a complaint has been referred for mediation under section 93 but cannot be resolved, the matter must be referred back to the complaints investigation committee, which may make any other decision under section 93 that it considers appropriate.

WHAT HAPPENS IF THE MEMBER IS CENSURED?

Member may attend in person to be censured

95(1) The complaints investigation committee may require an investigated member who is censured under section 93 to appear in person before the committee to be censured.

Publication of censure

95(2) The complaints investigation committee may publish the fact that an investigated member has been censured. Publication may include the member's name and a description of the circumstances that led to the censure.

Order for costs

95(3) 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 MEMBER VOLUNTARILY SURRENDERS HIS OR HER REGISTRATION?

Voluntary surrender of registration

96(1) If the complaints investigation committee accepts the voluntary surrender of an investigated member's registration or certificate of practice under section 93, it may direct the 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) obtain counselling or 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

96(2) The complaints investigation committee may direct the investigated member to pay

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- (a) 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.

Publication of voluntary surrender

96(3) The complaints investigation committee may publish the fact that the investigated member has voluntarily surrendered his or her registration or certificate of practice. Publication may include the member's name and a description of the circumstances that led to the voluntary surrender.

HOW CAN A MEMBER BE REINSTATED AFTER A VOLUNTARY SURRENDER?

Conditions on reinstatement

97 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.

WHO BEARS THE COSTS IF CONDITIONS ARE IMPOSED ON A MEMBER'S RIGHT TO PRACTISE?

Costs if conditions placed on right to practise

98 If the complaints investigation committee accepts an undertaking from an investigated member for conditions on the member's right to practise under section 93, 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

99(1) The complainant may appeal to the council any decision made by the complaints investigation committee under clause 93(1)(b), (f) or (g).

How to appeal

99(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 93(3).

Appointing an appeal panel

99(3) Upon receiving a notice of appeal, the chair of the council must

- (a) appoint an appeal panel consisting of not more than three members of the council, one of whom is a public representative; and
- (b) appoint a member of the panel as chair.

Non-council members may be appointed

99(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 one of the panellists must be a public representative.

Exclusion from appeal panel

99(5) No person may be selected for 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

99(6) A decision or action of an appeal panel is a decision or action of the council.

Power on appeal

100(1) On an appeal, the panel must do one or more of the following:

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

Notice of decision

100(2) The council must give the investigated member and the complainant a written notice of the appeal panel's decision and the reasons for it.

Hearing not required

100(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 A MEMBER BE SUSPENDED BEFORE A DECISION IS MADE?

Suspension pending decision

101(1) Despite any other provision of this Act, the complaints investigation committee may direct the registrar to suspend or place conditions on the member's registration or certificate of practice pending the outcome of proceedings under this Part, but only if it considers it necessary to protect the public from exposure to serious risk.

Notice of suspension or conditions

101(2) Upon receiving a direction under subsection (1), the registrar must give a written notice of the

suspension or conditions to the member and, where applicable, to the member's employer or other person specified in the regulations.

Appeal of suspension or conditions

101(3) A member whose registration or certificate of practice is suspended or has conditions placed on it under subsection (1) may, by notice in writing to the registrar, appeal the suspension or imposition of conditions to the council.

Hearing by council

101(4) The council must hold a hearing within 30 days after receiving the notice of appeal from the registrar.

Right to appear and be represented

101(5) The college and the 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

101(6) On an appeal under this section, the council must decide whether the suspension or conditions of practice 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

101(7) The 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 of practice pending the outcome of proceedings under this Part.

Application served on the registrar

101(8) The application must be served on the registrar.

CAN A REFERRAL BE MADE TO THE INQUIRY COMMITTEE IF AN UNDERTAKING IS BREACHED?

Referral to inquiry committee if undertaking is breached

102 If the investigated member fails to comply with an undertaking given under section 93, the complaints investigation committee may refer the conduct or complaint that was the subject of the investigation to the inquiry committee.

WHAT HAPPENS IF THE COMMITTEE DISCOVERS POSSIBLE CRIMINAL ACTIVITY DURING AN INVESTIGATION?

Information may be disclosed to law enforcement

103 Despite any other provision of this Act, if information about possible criminal activity by a member is obtained during an investigation under this Part, the complaints investigation committee may disclose the information to a law enforcement agency.

WHAT IS AN INQUIRY COMMITTEE?

Appointing an inquiry committee

104(1) A council must appoint an inquiry committee that is to sit in panels in accordance with section 105.

Role of the committee

104(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

105(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

105(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.

Members of the panel

105(3) A panel is to consist of three or more committee members, at least 1/3 of whom must be public representatives.

Who may not sit on panel

105(4) A person who has taken part in the review or investigation of what is to be the subject matter of the hearing may not be selected for the panel.

If member unable to continue

105(5) If a member of the 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

105(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?

A hearing is a legal proceeding and the rights of both the complainant and the investigated member are protected.

Hearing

106(1) When a panel is selected, it must hold a hearing.

Date of hearing

106(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.

Notice of hearing

106(3) At least 30 days before the hearing begins, the registrar must prepare and give written notice to the investigated member and the complainant of the date, time and place of the hearing, and must identify in general terms the complaint or matter about which the hearing will be held.

Public notice of hearing

106(4) 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.

WHAT PROCEDURES ARE FOLLOWED AT THE HEARING?

Procedure

107(1) Subject to any procedural rules established for the inquiry committee in the by-laws of the college, the inquiry committee may determine its own practice and procedure.

Rules of evidence do not apply

107(2) A panel is not bound by the rules of evidence that apply to judicial proceedings.

Right to appear and be represented

107(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

107(4) The chair of the panel may adjourn the hearing from time to time.

Hearing in absence of investigated member

108 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 member or his or her agent; and
- (b) act, decide or report on the matter being heard in the same way as if the member were in attendance.

HOW ARE WITNESSES AND EVIDENCE HANDLED AT THE HEARING?

Witnesses

109(1) Any person, including the complainant and the investigated member, who in the opinion of the panel has knowledge of the subject matter of the hearing is a compellable witness in a proceeding before the panel.

Oral and affidavit evidence

109(2) Evidence may be given at a proceeding before a panel either orally or by affidavit or by both, but a member's registration or certificate of practice cannot be suspended or cancelled on affidavit evidence alone.

Oral evidence

109(3) The oral evidence of a witnesses 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

109(4) The registrar and any member of the panel may administer oaths for the purpose of an investigation or hearing under this Part.

Notice to attend and produce documents

109(5) The registrar may issue a notice requiring a witness to attend and give evidence at a hearing and to produce documents. Such a notice may be issued at the request of the college or the investigated member or his or her counsel or agent.

Witness fees

109(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

109(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

109(8) The registrar may apply to the court for an order for the examination of a witness outside Manitoba. In that event, the Queen's Bench Rules apply to the obtaining of such an order.

Prior notice of evidence

110(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

110(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

111 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 enough time to prepare a response.

Proof of conviction

112 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 under any Act or regulation is conclusive evidence that the person has committed the offence, unless it has been shown that the conviction has been quashed or set aside.

IS THE HEARING OPEN TO THE PUBLIC?

Hearing open to public

113(1) A hearing must be open to the public unless the panel orders otherwise under this section.

Request for private hearing

113(2) The investigated member or the college may request that the hearing or any part of it be held in private.

When private hearing may be held

113(3) When a request is made under subsection (2), or when the panel itself believes that the hearing or part of it should be held in private, the panel may make an order excluding the public from the hearing or any part of it or directing that the member, the complainant or any witness be identified only by initials, 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 (in the interest of any person affected or in the public interest) 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 excluding the public to be available

113(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 of identifying information

114 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 115(2).

WHAT DECISIONS CAN THE PANEL MAKE?

Decision of the panel

115(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

115(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 the regulations, or the by-laws, standards of practice, code of ethics or a practice direction of the college;
- (c) has been found guilty of an offence that is relevant to the member's suitability to practise;

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- (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 member continues to practise;
 - (g) is suffering from an ailment, an emotional disturbance or an addiction that impairs his or her ability to practise the regulated health profession; or
 - (h) is guilty of conduct unbecoming a member;

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

Deemed professional misconduct

116(1) A member is deemed to have been found guilty of professional misconduct by a panel under clause 115(2)(a) if the member

- (a) is convicted of an indictable criminal 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.

Member may make submissions before order made

116(2) Before a panel makes an order under section 117 against a member deemed guilty of professional misconduct under subsection (1), it must give the member an opportunity to make submissions to the panel about any aspect of the matter.

Form of submissions

116(3) A submission under subsection (2) may be written or oral and may be made by counsel acting on behalf of the member.

Orders of panel

117(1) If the panel makes a finding under subsection 115(2), including a deemed finding under subsection 116(1), respecting an investigated member, it may make an order to do one or more of the following:

- (a) reprimand the member;
- (b) suspend the member's registration or certificate of practice for a stated period;
- (c) suspend the member's registration or certificate of practice until he or she has completed
 - (i) a specified course of studies,
 - (ii) supervised practical experience under a restricted certificate of practice issued for that purpose, or
 - (iii) the requirements of both subclauses (a)(i) and (b)(ii);

to the satisfaction of a person or committee specified by the panel;

- (d) suspend the member's registration or certificate of practice until he or she satisfies a person or committee specified by the panel that a disability or addiction can be or has been overcome;

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- (e) accept, in place of a suspension under clause (b), (c) or (d), the member's undertaking to limit his or her practice;
 - (f) impose conditions on the 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 of his or her practice,
 - (iv) permit periodic audits of his or her records,
 - (v) report on specified matters to a person or committee specified by the panel,
 - (vi) not engage in sole practice;
 - (g) require the member to take counselling or treatment;
 - (h) direct the member to repay money that was paid to the member and was, in the panel's opinion, unjustified for any reason;
 - (i) cancel the member's registration or certificate of practice.

Panel may consider past censures and orders

117(2) To assist it in making an order under this section, the panel may be advised of any censure or order previously issued to the investigated member and the circumstances under which it was issued.

Ancillary orders

117(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 a complaint without an investigation.

Suspension or cancellation of registration or certificate of practice

117(4) If an investigated member's registration or certificate of practice is suspended or cancelled by an order made under subsection (1), the member must not practise the regulated health profession, or do anything else authorized by the registration or certificate of practice, during the suspension or cancellation.

Costs when conditions imposed

117(5) If the panel accepts an undertaking from the investigated member to limit his or her practice or imposes conditions on the 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

117(6) If the council is satisfied that an investigated member has contravened an order made under subsection (1), it may cancel or suspend the member's registration or certificate of practice without a further hearing.

WHAT COSTS AND FINES CAN THE PANEL IMPOSE?

Costs and fines

118(1) In addition to or instead of dealing with the investigated member's conduct under section 117, the panel may order the member to pay to the college, within the time 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 set out in the column of the professional misconduct fines table in the Schedule that is specified for the college by regulation for each finding of professional misconduct,
 - (ii) or 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

118(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) payments made 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

118(3) If an investigated member fails to pay a fine or costs ordered under subsection (1), or costs ordered under subsection 117(5), within the required time, the registrar may cancel the member's registration or certificate of practice until payment is made.

Filing of order

118(4) The college may file an order under subsection (1) in the court, and the order may be enforced in the same manner as a judgment of the court.

DOES THE PANEL MAKE A WRITTEN DECISION? WHO RECEIVES A COPY?

Written decision

119(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

119(2) The panel must forward the decision, any record of the proceedings and all exhibits and documents to the registrar.

Decision given to investigated member and complainant

119(3) Upon receiving the decision, the registrar must give a copy to the investigated member and the complainant.

Transcripts

119(4) The investigated member 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.

WHEN IS THE DECISION AVAILABLE TO THE PUBLIC?

Decision available to the public

120(1) Subject to subsection (2), the college must make a finding under subsection 115(2) and any order it has made under subsection 117 or 118, including the name of the investigated member, available to the public.

College may edit decision

120(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 the use of pseudonyms to describe the complainant or witnesses, and deletion of geographic references.

IS THERE A RIGHT TO APPEAL?

Appeal to Court of Appeal

121(1) On a question of law or jurisdiction, 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 115(1);
- (b) a finding made under subsection 115(2);
- (c) an order made under section 117 or 118.

How to appeal

121(2) An appeal must be commenced by filing a notice of appeal, and giving a copy of it to the registrar, within 30 days after the decision of the panel is given to the investigated member.

Appeal on the record

121(3) An appeal must be based on the record of the hearing before the panel and the decision of the panel, including the reasons for the decision.

Sealing part of the record

121(4) If part of the hearing was held in private, the college must ensure that the part of the record that relates to it is sealed.

Review of sealed record by Court

121(5) The part of the record that is sealed 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

122(1) Upon hearing the appeal, the Court of Appeal may

- (a) make any finding or order that in its opinion ought to have been made;

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- (b) quash, vary or confirm the decision of the panel or any part of it; or
 - (c) refer the matter back to a panel for further consideration in accordance with any direction of the Court.

Stay pending appeal

122(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 A MEMBER WHO IS DISCIPLINED BE REINSTATED?

Reinstatement

123 Upon the application of 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.

WHEN ARE EMPLOYERS AND OTHERS INFORMED ABOUT DISCIPLINE?

Notice to employers and others of discipline

124 If an investigated member's registration or certificate of practice is suspended or cancelled or any restrictions are imposed on a member's practice under this Part, the registrar must provide the information to

- (a) a person who engages the member to provide health care on a full-time or part-time basis including, without limitation,
 - (i) an employer,
 - (ii) a person who engages the member as a contractor,
 - (iii) a person who engages the member as 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 medical staff or professional staff;
- (c) 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
- (d) the external regulatory bodies in other provinces or territories.

PART 9 OTHER COLLEGE DUTIES AND RESPONSIBILITIES

CONTINUING COMPETENCY

Continuing competency program

125 A council must establish a continuing competency program to oversee 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 for ensuring competence; and
- (c) conducting practice audits in accordance with this Act.

The requirement to establish continuing competency programs which exists in some statutes is extended to all regulated health professions.

PRACTICE AUDITORS

Appointment of practice auditors

126(1) A council may appoint one or more practice auditors for the purposes of this Act.

Interpretation of “Act”

126(2) In this section, the term “Act” includes the following legal instruments made pursuant to this Act by the member’s college: a regulation, by-law, standard of practice, code of ethics and practice direction.

Audit or inspection

127 A practice auditor may

- (a) audit a member’s practice; or
- (b) inspect any premises at which a member practises;

and must report his or her findings to the registrar at the conclusion of each audit or inspection.

Audit for other professions

128 Upon a college receiving a written request by a body having statutory authority to govern

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

a practice auditor may conduct an audit or inspection of a practice, and share information resulting from the audit or inspection to the extent allowed under clause 133(2)(c) (confidentiality of information).

The Bill will contain audit and inspection powers for a practice similar to sections 90 and 91 of this document. You may also refer to section 57 of *The Dental Hygienists Act* for similar wording.

PRACTITIONER PROFILES

The Medical Act currently enables the College of Physicians and Surgeons of Manitoba to establish physician profiles. The ability to establish practitioner profiles is extended to all regulated health professions. This will provide increased public disclosure.

Practitioner profiles

129(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

129(2) In this section, “member” includes a person whose registration or certificate of practice is suspended.

Regulations

129(3) A council may, with the approval of the Lieutenant Governor in Council, 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 practice the regulated health profession and the date of graduation or the date that the educational requirements were attained,
 - (ii) if applicable to the regulated health profession and the member, the date of the completion of 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 by a certification, accreditation or external regulatory body or association specified in the regulations,
 - (vi) a description of any offence — that is reasonably related to the member’s competence or to the safe practice of the regulated health profession — of which the member has been found guilty, within the time period specified in the regulations, under the Criminal Code (Canada), the *Controlled Drugs and Substances Act* (Canada) or the *Food and Drugs Act* (Canada),
 - (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, 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;

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- (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 the council considers necessary or advisable about practitioner profiles.

Verification of information

129(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

129(5) At the request of a member, before a practitioner profile is made publicly available, the council must give the member an opportunity to review the profile and correct any factual inaccuracies.

Regulation required by the minister

130(1) The minister may require a council to make, amend or repeal a regulation about practitioner profiles under subsection 129(3).

L. G. in C. may make regulation

130(2) If the council does not comply with a requirement under subsection (1) within 90 days, the Lieutenant Governor in Council may make, amend or repeal the regulation.

ANNUAL REPORT

The requirement for colleges to submit annual reports to the minister is extended to all regulated health professions. This measure is to ensure consistent accountability requirements for all regulated health professions.

Annual report

131(1) A college must submit an annual report to the minister within four months after the end of each fiscal year.

Contents of report

131(2) The report must include the following information for the year in which the report is submitted:

- (a) a description of the structure of the college, including any committees established by the council and their functions;
- (b) the names of the council members and committees and any delegates;
- (c) a copy of the by-laws or amendments to by-laws that were made;
- (d) the number of members by registration category;
- (e) the number of members who have 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;

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- (k) the methods used to assure the continuing competence of members;
 - (l) a financial report on the operation of the college;
 - (m) any other information the minister requires.

CONSULTATION WITH MINISTERS

Consultation with ministers re program of study

132 Before the council approves or removes an approval from a program of study in respect of the practice of the regulated health profession, the council must consult with the minister and the Minister of Advanced Education and Literacy and must consider the comments received from them.

COLLECTING AND SHARING INFORMATION

Definitions

133(1) The following definitions apply in this section and section 134.

“personal health information” means personal health information as defined in *The Personal Health Information Act*.

“personal information” means personal information as defined in *The Freedom of Information and Protection of Privacy Act*.

Confidentiality of information

133(2) Subject to section 134, every person employed, appointed or retained for the purpose of administering this Act, and every member of a council or a committee of a council, must preserve secrecy about all information that comes to his or her knowledge in the course of his or her duties, and must not communicate any information to any other person, except

- (a) to the extent the information is available to the public or is required to be disclosed under this Act;
- (b) in connection with the administration of this Act, including, but not limited to, registration, complaints, the governing of the profession, allegations of members’ incapacity, unfitness, incompetence or acts of professional misconduct;
- (c) to a body having statutory authority to govern
 - (i) a profession in Manitoba, or
 - (ii) the practice of the applicable health profession in any other jurisdiction;to the extent the information is required for that body to carry out its mandate;
- (d) to any ministry, agency, or department of the government of Canada or any other province or territory of Canada, dealing with health issues, to the extent that
 - (i) either
 - (A) the information is required for the protection of public health and safety, or
 - (B) the information is concerning the practice of health professions in any jurisdiction, and
 - (ii) the information does not disclose personal health information; or

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- (e) information specified in the regulations.

Non-identifying information

133(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) 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

134(1) In addition to any other information maintained in administering 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 health profession.

Member to provide information

134(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

134(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), to establish and maintain an electronic registry of health service providers to be used for the following purposes:

- (a) to validate the identity of a provider seeking access to a patient's personal health information maintained in electronic form;
- (b) to generate information for statistical purposes.

Registrar to provide information

134(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

134(5) Despite any provision of this Act or any provision of another Act or a regulation, the minister may

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

An entity must comply with any conditions imposed by the minister.

Authorized entity

134(6) The following entities are authorized to receive information under subsection (5):

- (a) a regional health authority established or continued under *The Regional Health Authorities Act*;
- (b) Regional Health Authorities of Manitoba, Inc.;

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- (c) CancerCare Manitoba;
 - (d) The Manitoba Centre for Health Policy;
 - (e) 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).

COLLEGE WEBSITE

College website

135(1) A college must have a website, and must include on its website the prescribed information.

Paper or electronic form

135(2) Upon request and, if required by the college, the payment of a reasonable fee, the college must provide the information required under subsection (1) in paper or electronic form.

New. This provision will increase access to information for the public and professionals.

DUTY OF MEMBERS TO REPORT

The requirement for members to report is extended to all regulated health professions.

Duty of members to report

136(1) A member who believes that another member of the same regulated health profession is suffering from a physical or mental condition or disorder of a nature or to an extent that the member is unfit to continue to practise or that the member's practice should be restricted, must inform the registrar of the member's college that belief and the reasons for it.

Exemption from liability for disclosure

136(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.

EMPLOYER'S RESPONSIBILITY

The responsibility for employers or others to ensure regulated health professionals are registered and to report to the college when any member's employment is terminated as a result of misconduct, incompetence or incapacity is extended to all regulated health professions.

Employer's responsibility to ensure registration

137(1) A person who employs another person to provide health care as a member of a regulated health profession must ensure that the member is registered under this Act during the period of employment.

Responsibility to report misconduct

137(2) When

- (a) a person who engages the member to provide health care on a full-time or part-time basis including, without limitation,
 - (i) an employer,
 - (ii) a person who engages the member as a contractor, and
 - (iii) a person who engages the member as consultant, or

(b) a hospital, if the member is a member of the hospital's medical staff or professional staff;

terminates the employment or engagement for misconduct, incompetence or incapacity, the person or hospital must promptly report the termination to the council of the member's college and give the member a copy of the report.

PART 10 HEALTH PROFESSIONS ADVISORY COUNCIL

These new provisions set out the composition and mandate of the Advisory Council.

Similar bodies exist in Ontario and Alberta. British Columbia recently amended its *Health Profession Act* to enable the establishment of advisory panels to provide advice and recommendations to the health minister on regulatory matters.

Subsection 138(2) specifies the Council will consist of between 3 to 7 members.

Q: Do you agree with the proposed composition of the advisory council and the council's proposed powers? If not, please suggest alternatives.

Advisory council established

138(1) The Health Professions Advisory Council is hereby established.

Composition of advisory council

138(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

138(3) The Lieutenant Governor in Council must designate one member of the advisory council to be the chairperson.

First members

138(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

139 A person cannot be appointed as a member of the advisory council if the person

- (a) is employed in the public service of Manitoba 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

140(1) The term of office of a member is three years.

Term of office: first members

140(2) Despite subsection (1), the term of office for a first member designated under subsection 138(4) is four years.

Appointment of successors

140(3) 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

140(4) A member whose term of office expires may be re-appointed for one further term of three years.

Vacancy

140(5) The advisory council may act despite a vacancy in its membership.

Advisory council duties

141(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 and provide the minister with advice related to this Act, including advice about

- (a) whether revisions should be made to the list of reserved acts;
- (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) the education, training, technical achievement, competencies, credentials and other substantive or procedural entry-to-practice requirements for health professions;
- (e) the continuing competency programs of colleges;
- (f) health human resource planning and management;
- (g) labour mobility of health professionals within Manitoba or between Manitoba and other provinces or foreign jurisdictions; and
- (h) any other matter related to this Act.

Terms of reference

141(2) The minister may establish terms of reference for the advisory council to follow in making inquiries or providing advice to the minister or conducting an investigation.

Advisory council to follow terms of reference

141(3) The advisory council must have regard to the terms of reference established under subsection (2).

Prohibited matters

141(4) The advisory council must not consider or otherwise become involved in any matter respecting

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

Function is advisory only

142 The function of the advisory council is advisory only.

Powers

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

- (a) consult, as it considers necessary or appropriate, with any person who, in the advisory council's opinion, has expertise or information relevant to the work of the advisory council;
- (b) receive submissions;
- (c) hold public meetings;
- (d) conduct or participate in research, studies or activities;

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- (e) engage, on a temporary basis or for a specific purpose, any person with technical or specialized knowledge of a matter relating to the work of the advisory council that the advisory council considers necessary or appropriate.

Meetings of the advisory council

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

Procedure

145 Subject to Part 11 and the terms of reference established under subsection 141(2), the advisory council may determine its own practice and procedure.

Member's remuneration and expenses

146 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

147 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

In 2004, the Department adopted criteria to provide a more transparent process to review requests for self-regulation.

Health profession groups seeking to be regulated must apply to the minister. Such groups must represent the majority of practitioners. The Minister may:

- **Direct the Health Profession Advisory Council to investigate whether the profession should be regulated. If so, criteria are set out which the Advisory Council may investigate.**
- **Refuse the application without investigation;**
- **Approve the application without an investigation – if it is in the public interest to do so.**

The Minister may investigate or direct the Advisory Council to investigate whether or not an unregulated health profession should be regulated.

APPLICATION

Applying to be a regulated health profession

148(1) If a group of persons representing a health profession seeks to be a regulated health profession, the group must apply to the minister for the health profession to be designated as a regulated health profession pursuant to clause 8(1)(a).

Application requirements

148(2) The application must be in the form and contain the information required by the minister, and must be accompanied by the prescribed application fee.

Group to represent majority of practitioners

148(3) An application under subsection (1) must be made by an organization that represents the majority of persons carrying on that health profession in Manitoba.

Investigation, refusal or approval

149 Upon receiving an application under section 148, the minister may

- (a) direct the advisory council to investigate whether the health profession should be regulated under this Act;
- (b) refuse the application without investigation; or
- (c) if in the public interest to do so, approve the application without investigation.

INVESTIGATION

Investigation by minister

150 In the absence of an application under section 148, 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.

Advisory council to investigate

151 When conducting an investigation, the advisory council may investigate as it considers necessary and may do one or more of the following:

- (a) ascertain whether a substantial proportion of the practitioners of the health profession are engaged in activities that are under the minister's jurisdiction;
- (b) ascertain whether the primary objective of the health care provided by the health profession is the prevention of disease or injury and the promotion and restoration of health;
- (c) evaluate the 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,
 - (iii) the invasiveness of the procedure or mode of treatment used by the practitioners;
- (d) evaluate the degree of supervision that a practitioner receives or is likely to receive with respect to the practice of the health profession;
- (e) consider whether there are more appropriate means to regulate the members of the health profession other than under this Act;
- (f) consider 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) ascertain what the qualifications and minimum standards of competence for persons applying to the practice of the health profession are, and how the continuing competence of practitioners is to be maintained;
- (h) ascertain what education programs are available with respect to the practice of the health profession and evaluate those programs;
- (i) ascertain the ability of the proposed college of the health profession to carry out its powers and duties under this Act or consider whether they could be carried out by an existing college;
- (j) consider 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;
- (k) consider other prescribed criteria, if any;
- (l) consider any other matter, at the minister's request.

Costs

152 Subject to the regulations, the minister may charge to the organization who made the application under section 148 part of the costs, including the administrative costs, incurred to conduct the investigation.

RECOMMENDATIONS

Recommendation to minister

153(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

153(2) If the recommendation is that the health profession be regulated under this Act, the advisory council may also make recommendations about

- (a) the college for the proposed regulated health profession, including whether an existing college may regulate the health profession;
- (b) a proposed scope of practice for the proposed regulated health profession;
- (c) a proposed 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 and title and initials for the proposed regulated health profession and its members; and
- (e) any other matter that is compatible with its recommendation that the health profession be regulated under this Act.

Recommendation to L. G. in C.

154 After the minister determines that it would be in the public interest that the health profession be regulated under this Act, the minister must recommend to the Lieutenant Governor in Council that the health profession be designated as a regulated health profession pursuant to clause 8(1)(a).

PART 12 MINISTERIAL POWERS

These new provisions establish authority for the Minister to appoint a person to inquire into the functioning of a college and to issue a directive to a council of a college, where it is deemed in the public interest, to address the issues that were the subject of the inquiry. These provisions will enhance accountability between the professions, and government and the public. They are consistent with provisions in other jurisdictions. The provisions do not provide authority for the Minister to inquire into any matter related to the practice of a specific member.

INQUIRY

Inquiry

155(1) In the public interest, the minister may appoint a person to inquire into and make recommendations about

- (a) any aspect of the administration or operation of a college; or
- (b) the state of practice of a regulated health profession in Manitoba, a geographic region or a facility.

Subject of inquiry

155(2) An inquiry under subsection (1) may include an inquiry into an exercise of a power or a performance of a duty, or the failure to exercise a power or perform a duty, under this Act, the regulations or the by-laws.

Evidence Act powers

155(3) A person appointed under subsection (1) has the powers and protections of a commissioner under Part V of *The Manitoba Evidence Act* when conducting an inquiry under this Act.

Terms of reference

155(4) A person appointed under subsection (1) must comply with any terms of reference the minister may establish concerning the conduct of an inquiry.

Expenses

155(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

156(1) Upon completion of an inquiry under section 155, the minister may issue a directive to the college about the inquiry if, in the minister's opinion,

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

Scope of directive

156(2) A directive under subsection (1) may

- (a) require the council to exercise the powers or perform its duties under this Act, the regulations

or the by-laws to address the issues that were the subject of the inquiry, including the making, amending or revoking of regulations or by-laws;

- (b) provide for the procedure to be followed by the council in developing, proposing, consulting on and reviewing a regulation or by-law; and
- (c) include a requirement that the council submit a written report to the minister, within the specified time, detailing the measures the council has taken to implement that directive.

Matters not to be included in directive

156(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 the registration or discipline of a specific member.

Council must comply with directive

156(4) A council must comply with a directive issued to it under this section.

Regulations

156(5) If a directive under subsection (1) requires the council to make, amend or revoke a regulation and, despite subsection (4), it does not do so within 90 days, the Lieutenant Governor in Council may make, amend or revoke the regulation.

Limited authority

156(6) Subsection (5) does not give the Lieutenant Governor in Council authority to do anything that the council does not have the authority to do.

ORDERS

Order re administrator

157(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 a college for a prescribed 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, the regulations and the by-laws.

Support requested or required

157(2) The minister may exercise the power described in 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 pursuing its objects and carrying out its duties under section 10, or
 - (ii) it is in the public interest to provide support to the college for the pursuit of its objects and the carrying out of its duties under section 10.

Deemed to be carrying out duty of college

157(3) The carrying out 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

157(4) If, in the minister's opinion, the administrator is no longer required, the minister may terminate his or her appointment on such terms and conditions as the minister considers advisable.

PART 13 GENERAL PROVISIONS

Prosecution of offence

158(1) Any person may be a prosecutor or complainant 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

158(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.

Injunction

159 The court, on application by a college, may grant an injunction enjoining any person from doing any act that contravenes this Act, 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.

PART 14 REGULATIONS AND BY-LAWS

LIEUTENANT GOVERNOR IN COUNCIL REGULATIONS

Regulations made by L. G. in C.

160(1) The Lieutenant Governor in Council may make regulations

Reserved Acts

- (a) specifying the reserved act or acts that a member of a regulated health profession is authorized to perform;
- (b) further defining the word “diagnosis”;
- (c) specifying other uses for a form of energy for the purpose of section 4, Item 10(f);
- (d) specifying other forms of energy for the purpose of section 4, Item 10(g);
- (e) governing the performance of reserved acts by a person or class of persons exempted under clause 5(1)(e), and specifying the purposes for which, or the circumstances in which, the acts may be performed;
- (f) exempting a person or class of persons for the purpose of subsection 5(2);
- (g) for the purpose of clause 5(3)(a), exempting an activity or class of activities;

Governance

- (h) prescribing additional objects for a college;
- (i) specifying additional council members for the purpose of subsection 13(4);

Other College Duties and Responsibilities

- (j) specifying information that may be disclosed for the purpose of subsection 133(2) (confidentiality of information);
- (k) respecting the issuance and use of unique numeric or alphanumeric identifiers for the purpose of section 134 (registrar to collect information);

New Regulated Health Professions

- (l) prescribing criteria to be considered in determining whether it would be in the public interest that a health profession become a regulated health profession;
- (m) establishing a transitional council for a new regulated health profession;

General

- (n) governing or prohibiting the application of ultrasound, including any application of ultrasound to a fetus, for non-diagnostic imaging purposes;
- (o) defining any word or phrase used but not defined in this Act;

(p) respecting any other matter necessary or advisable to carry out the intent and purpose of this Act.

Scope of regulations

160(2) A regulation may be general or particular in its application and may apply to one or more regulated health professions.

Public consultation in regulation development

160(3) 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 (g) (reserved acts), the minister must provide an opportunity for public consultation regarding the proposed regulation or amendment.

Notifying colleges re regulation development

160(4) If the minister acts under subsection (3), 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 the minister

161(1) The minister may make regulations

Governance

(a) prescribing an oath of office for the purpose of subsection 18(1);

Title Restriction and Other Prohibitions

(b) specifying an organization or class of organizations for the purpose of clause 71(2)(a) (exception to use of "registered" or "licensed");

Other College Duties and Responsibilities

(c) prescribing information as information to be posted on a college website for the purpose of subsection 135(1);

New Regulated Health Professions

(d) prescribing fees, or the manner of determining fees, to be submitted with an application under subsection 148(2).

Scope of regulations

161(2) A regulation may be general or particular in its application and may apply to one or more regulated health professions.

COUNCIL REGULATIONS

Regulations made by council

162(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 the purposes for which, or the circumstances in which, each act may be performed;

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- (b) 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, and the performance of delegated reserved acts;
 - (c) 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, and
 - (iii) specifying circumstances in which members may order or receive those tests;
 - (d) if members are authorized to perform a reserved act referred to in section 4, item 6, respecting the prescribing of drugs by a member, including
 - (i) specifying the qualifications and other requirements that members must have or meet,
 - (ii) designating the drugs or categories of drugs that members may prescribe, and
 - (iii) specifying circumstances in which members may prescribe each drug.
 - (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, and
 - (ii) how members must supervise those persons;
 - (f) if members are authorized to perform a reserved act referred to in section 4, item 9, respecting the administering of drugs or vaccines by a member, including
 - (i) specifying the qualifications and other requirements that members must have or meet,
 - (ii) designating the drugs or categories of drugs that members may administer, and
 - (iii) specifying circumstances in which members may administer each drug or vaccine;

Registration

- (g) respecting the establishment, content and maintenance of registers under section 28 and, for the purpose of clause 29(1)(f) or 29(2)(f), designating information contained in a register that may be made public;
- (h) respecting registration under Part 4, including establishing the qualifications, experience and other requirements to be met by applicants for registration and for the reinstatement of registration;
- (i) respecting the issuance and renewal of certificates of practice under Part 4, including the qualifications, experience and other requirements to be met by applicants;
- (j) defining by education, experience or otherwise, general or specialized areas of practice for the regulated health profession;
- (k) respecting the cancellation and reinstatement of certificates of practice for the purpose of subsection 45(3);
- (l) respecting the display of a certificate of practice;

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- (m) specifying persons to whom notice must be given of the cancellation of certificates of registration or practice;
 - (n) requiring members or classes of members to carry professional liability insurance and governing the coverage required to be carried;

Business Arrangements

- (o) respecting the establishment, content and maintenance of the record of health profession corporations under section 63 and, for the purpose of clause 63(4)(b) designating information contained in the register that may be made public;
- (p) restricting the persons or class of persons with whom a member or class of members may practise in association;
- (q) restricting the persons or class of persons to and from whom a member or class of members may refer or receive referrals of patients;
- (r) describing additional forms of sharing or circumstances that constitute practice in association;

Title Restriction and Other Prohibitions

- (s) if its members are permitted by section 68 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;
- (t) governing the use of titles (other than “doctor”, “surgeon” or “physician”) and initials or a variation or abbreviation or an equivalent in another language by members, including authorizing their use by certain classes of members, and governing and prohibiting their use by other persons;
- (u) respecting the use of the terms “registered” and “licensed” by a member;
- (v) 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;

Professional Conduct

- (w) specifying a class of persons for the purpose of clause (a) of the definition “**member**” in section 78;
- (x) permitting the chair of a complaints investigation committee or the registrar to perform the committee’s responsibilities under subsection 87(1) or (2);
- (y) specifying persons to whom notice of a suspension or conditions must be given, for the purpose of subsection 101(2);
- (z) specifying which column in the professional misconduct fines table, set out in the Schedule, applies to the college for the purpose of clause 118(1)(b);
- (aa) specifying an organization to which information must be provided, for the purpose of clause 124(c);

Other College Duties and Responsibilities

- (bb) respecting continuing competence programs.

Scope of regulations

162(2) A regulation may be general or particular in its application and may apply to one or more regulated health professions.

Consulting with members

162(3) Before making a regulation under subsection (1), the council must

- (a) provide a copy of the proposed regulation to members for their review and comment; and
- (b) consider the comments received.

Approval of regulations

162(4) A regulation made under subsection (1) does not come into force until it is approved by the Lieutenant Governor in Council.

Regulation required by minister

162(5) In the public interest, the minister 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

162(6) If the council does not comply with a requirement under subsection (5) within 90 days, the Lieutenant Governor in Council may make, amend or repeal the regulation.

COUNCIL BY-LAWS

By-laws

163(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 appointment, 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 or 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;

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- (k) respecting the calling and conduct of meetings of members of the college and of the council;
 - (l) governing the number of members that constitutes a quorum at meetings of the membership of the college;
 - (m) respecting the holding of a vote on any matter relating to the college, including voting by mail or any other method;

Registration

- (n) appointing a board of assessors and prescribing the term of office and the duties and functions of the members of that board;
- (o) prescribing the fees payable by the members and by applicants for registration and for the certificate of practice or the manner of determining those fees;
- (p) respecting regulated members and classes of regulated members and their rights and privileges;
- (q) respecting regulated associate members and classes of regulated associate members and their rights and privileges;

Business Arrangements

- (r) respecting the issuance, expiry and renewal of permits under Part 5, including conditions that must be met before a permit may be issued or renewed;
- (s) respecting conditions that may be imposed on permits issued under Part 5;
- (t) governing names of health profession corporations;
- (u) prescribing the form and manner in which a health profession corporation must notify the registrar of a change in the voting shareholders, the other shareholders, the directors or the officers of the health profession corporation and the time period for doing so;
- (v) any matter the council considers necessary or advisable for the purposes of Part 5.

Consultation with members

163(2) Before making a by-law under subsection (1), 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

163(3) A by-law is effective only until the next general or special meeting of the college, and ceases to have effect unless it is confirmed or varied by a majority of the members present and voting at the meeting.

Amendments and repeal of by-laws

163(4) After notice is given in accordance with the by-laws, a by-law under subsection (1) may be amended or repealed by a majority of the voting members of the college

- (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.

By-laws available to the public

163(5) The council must make the college's by-laws available to the public.

SCHEDULE

Professional Misconduct Fines Table

The following columns of maximum fines apply to proceedings under Part 8 (Professional Conduct):

	Column 1	Column 2	Column 3
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

The council of a college will make a regulation specifying which column applies to the college for determining the maximum fines under clause 118(1)(b).

SAMPLE REGULATION DESIGNATING A REGULATED HEALTH PROFESSION

The Lieutenant Governor in Council may make a regulation designating a health profession as a regulated health profession and setting out the reserved acts that members of the profession are authorized to perform. Here is an example of a regulation based on the regulated health profession of dental hygiene.

Example of a health profession specific regulation

Designation

1 Dental hygiene is designated as a regulated health profession for the purposes of the Act.

Scope of practice

2(1) The scope of practice of dental hygiene is the promotion of oral health through oral health education and the assessment and treatment of the teeth and adjacent tissues using preventive or therapeutic means.

2(2) A member of the College of Dental Hygienists of Manitoba may practice dental hygiene.

Reserved acts

3 In the course of engaging in the practice of dental hygiene, a member is authorized, subject to any limitations or conditions imposed on his or her certificate of registration or certificate of practice, to perform the reserved act listed in Column 1 if performing the activity shown opposite in Column 2 but only to the extent specified in Column 2:

Column 1 Reserved act	Column 2 Activity
Item 3(a), (b) and (d): Performing a procedure on tissue (a) below the dermis, (b) below the surface of a mucous membrane, (d) on or below the surfaces of the teeth, including the scaling of teeth.	for the purpose of assessing or treating oral health conditions but not for the purpose of performing restorative procedures of a permanent nature
Item 4(c): Inserting or removing an instrument or a device, hand or finger beyond the pharynx	for oral soft tissue examinations

Restriction

4 Despite section 3, members must restrict themselves in performing reserved acts to those acts that they are competent to perform and to those that are appropriate to the member’s area of practice and the procedure being performed.

APPENDIX A

List of Current Self-Governing Health Profession Legislation

1. The Chiropractic Act (C100)
2. The Dental Association Act (D30)
3. The Dental Hygienists Act (D34)
4. The Denturists Act (D35)
5. The Registered Dietitians Act (R39)
6. The Medical Laboratory Technologists Act (M100)
7. The Licensed Practical Nurses Act (L125)
8. The Manitoba Speech and Hearing Association Act (Private Act - c.101)
9. The Medical Act (M90)
10. The Midwifery Act (M125)
11. The Naturopathic Act (N80)
12. The Occupational Therapists Act (O5)
13. The Opticians Act (O60)
14. The Optometry Act (O70)
15. The Pharmaceutical Act (P60)
16. The Physiotherapists Act (P65)
17. The Podiatrists Act (P93)
18. The Psychologists Registration Act (P190)
19. The Registered Nurses Act (R40)
20. The Registered Psychiatric Nurses Act (R45)
21. The Registered Respiratory Therapists Act (R115)