

CHAPTER 18

An Act Respecting Respiratory Therapists

Assented to June 19, 2009

WHEREAS The New Brunswick Association of Respiratory Therapists Inc. prays that it be enacted as hereinafter set forth;

AND WHEREAS it is desirable, in the interests of the public and the members of The New Brunswick Association of Respiratory Therapists Inc. to continue The New Brunswick Association of Respiratory Therapists Inc. as a body corporate for the purpose of advancing and maintaining the standard of respiratory therapy in the Province, for governing and regulating respiratory therapy services provided to the public and providing for the welfare of members of the public and members of The New Brunswick Association of Respiratory Therapists Inc.;

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

PART I INTERPRETATION

- 1 This Act may be cited as the *Respiratory Therapy Act*.
- 2 The following definitions apply in this Act, unless the context otherwise requires.

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

“Association” means the New Brunswick Association of Respiratory Therapists continued by section 3. (*Association*)

“Board” means the Board of directors of the Association constituted under section 4. (*conseil*)

“corporations register” means the register kept under paragraph 10(1)(d). (*registre des corporations*)

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

“Executive Director” means the person holding the office of Executive Director under subsection 9(2). (*directeur général*)

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

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

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

“incapacity” means a physical or mental condition or disorder, suffered by a member, of such nature and extent that it is desirable in the interests of the public or the member that the member no longer be permitted to practise as a respiratory therapist or that the member's practice as a respiratory therapist be suspended or subjected to conditions, limitations or restrictions. (*incapacité*)

“incompetence” means acts or omissions on the part of a member, in the member's practice, that demonstrate a lack of knowledge, skill or judgment, or disregard for the interests of the recipient of the member's services of such a nature and to such an extent as to render the member unfit to carry on the practice of a respiratory therapist or to carry on the practice without conditions, limitations or restrictions. (*incompétence*)

“licence” means a licence to practise respiratory therapy issued under this Act. (*permis*)

“member” means a respiratory therapist and a person whose name is entered in the temporary register, specialists register or in any of the rosters established and maintained pursuant to the Act, by-laws and rules. (*membre*)

“Minister” means the Minister of Health and includes any person designated by the Minister to act on the Minister's behalf. (*ministre*)

“prescribed” means prescribed by by-laws or rules made under the Act by the Board. (*prescrit*) (*réglementaire*)

“professional corporation” means a corporation the name of which is entered in the corporations register. (*corporation professionnelle*)

“professional misconduct” means the acts or omissions specified in this Act as constituting professional misconduct and includes:

(a) a member having plead guilty to or been found guilty of an offence that, in the opinion of the Discipline Committee or Fitness to Practise Committee, is relevant to the member's suitability to practise;

(b) the governing body of a health profession in a jurisdiction other than New Brunswick having found that a member committed an act of professional misconduct that would, in the opinion of the Discipline Committee or the Fitness to Practise Committee, constitute professional misconduct under this Act, the by-laws or the rules;

(c) digression from established or recognized professional standards or rules of practice of the profession;

(d) an act of professional misconduct as defined in the by-laws;

(e) violation or failure to comply with this Act, the by-laws or the rules;

(f) violation or failure to comply with a term, condition or limitation imposed on the member's licence or certificate of registration;

(g) failure to submit to an examination ordered by the Complaints Committee, the Discipline Committee or the Fitness to Practise Committee;

(h) sexual abuse of a patient; or

(i) failure to file a report pursuant to section 39. (*inconduite professionnelle*)

“register” means the register established under this Act. (*registre*)

“Registrar” means the Registrar of the Association appointed under subsection 9(1). (*registraire*)

“registration” means the entry of the name of a person in a register. (*inscription*)

“respiratory therapist” means a person whose name is entered in the register kept under paragraph 10(1)(a). (*thérapeute respiratoire*)

“respiratory therapy” and “practice of respiratory therapy” mean the scientific application of knowledge, techniques and procedures respecting the human cardio-pulmonary system performed by a respiratory therapist or in collaboration with physicians and other health professionals for the assessment, diagnosis, treatment, and promotion of the well-being of patients and those with respiratory and associated disorders, including in accordance with physicians orders and established protocols,

(a) the administration of drugs and other therapeutic agents;

(b) the performance and management of ventilation with or without mechanical devices; or

(c) procurement of arterial and capillary blood samples for blood gas analysis. (*thérapie respiratoire*) (*exercice de la thérapie respiratoire*)

“respiratory therapy education programs” means programs approved by the Board that qualify an individual for registration as a respiratory therapist. (*programmes de formation en thérapie respiratoire*)

“rosters” means the rosters kept pursuant to paragraph 10(1)(c). (*tableaux*)

“specialist” means a respiratory therapist whose name is entered in the specialists register and who is the holder of a specialists registration certificate issued pursuant to the Act, by-laws or rules. (*spécialiste*)

“specialists register” means the register kept pursuant to paragraph 10(1)(e). (*registre des spécialistes*)

“temporary register” means the register kept pursuant to paragraph 10(1)(b). (*registre provisoire*)

PART II

THE ASSOCIATION

3 The New Brunswick Association of Respiratory Therapists Inc., a body corporate incorporated by Letters Patent dated March 31, 1983, issued pursuant to the *Companies Act*, chapter C-13 of the Revised Statutes, 1973, is hereby continued as a body corporate and politic without share capital under the name “New Brunswick Association of Respiratory Therapists” and subject to this Act has the capacity, rights, powers and privileges of a natural person.

4(1) A Board of the Association consisting of not less than three and not more than fifteen directors shall be responsible for the administration of the Act and shall control, govern and manage, or supervise the control, government and management of the business and affairs of the Association and all aspects of the practice of respiratory therapy.

4(2) The number of directors, their respective terms of office, the manner of their appointment or election and their qualifications shall be established and governed by the by-laws of the Association and such by-laws may provide for alternate directors, for the filling of vacancies and for the appointment of additional directors.

4(3) One director, when the total number of directors does not exceed eight, or two directors, when the total number of directors exceeds eight, shall be appointed by the Minister to represent the public and no such director may be a member of the Association.

4(4) The members of the Board and the officers of the Association in office on the coming into force of this Act shall continue in office until their successors are elected or appointed as the case may be.

5(1) Unless the Act or by-laws otherwise provide, the Board may by resolution make, amend or repeal by-laws regulating the business or affairs of the Association and the practice of respiratory therapy and without restricting the generality of the foregoing,

(a) governing and regulating

(i) the admission, suspension, expulsion, removal, discipline and reinstatement of members, the conditions precedent to membership in the Association, and

(ii) the registration, licensing and renewal, suspension, cancellation, and reinstatement of registration and licensing of respiratory therapists and professional corporations, including the imposition of limitations, restrictions and conditions on any registration or licence issued under the Act;

(b) developing, establishing, adopting, maintaining and administering rules of professional conduct and the standards of fitness, moral character and conduct of members, students and professional corporations;

- (c) respecting and regulating professional liability insurance for members and professional corporations including requirements of such insurance for all or certain classes or categories of members and professional corporations whether such insurance is provided by or through the Association or otherwise;
- (d) fix the method of setting annual and other fees and provide for the collection thereof;
- (e) establish the time for, and manner of, the election or appointment and the number of the members of the Board;
- (f) fix and regulate the time, place, calling and conduct of annual and special general meetings of the members of the Association and meetings of the Board;
- (g) provide for the organization of regional or other divisions of the Association;
- (h) prescribe the terms of office of members of the Board and the manner in which the vacancies on the Board may be filled;
- (i) govern the acquisition, management, disposal, and conduct of the property and affairs of the Association;
- (j) provide for the appointment, removal, functions, duties and remuneration of agents, officers and employees for the Association, and the security, if any, to be given by them to the Association;
- (k) establish such standing committees, if any, as the Board may deem necessary to carry out the business of the Association;
- (l) generally, facilitate all such matters as may be deemed by the Board to be necessary or desirable for the practice of respiratory therapy and the administration of the Association;
- (m) develop, establish and maintain standards of professional ethics among its members;
- (n) promote the professional welfare of the members of the Association;
- (o) create one or more classes of membership and prescribe the rights, privileges and obligations of the members of each class;
- (p) develop, establish and maintain standards for the practice of respiratory therapy;
- (q) develop, establish and maintain standards for respiratory therapy education consistent with the changing needs of society;
- (r) define by education, experience or otherwise general or specialized areas of respiratory therapy practice;
- (s) prescribe standards of continuing respiratory therapy education for all persons registered under this Act;

- (t) prescribe limitations on the right to practise; and
- (u) requiring any member, licensee or holder of a certificate of registration to have as a condition of registration professional liability insurance and prescribing the amounts of such insurance.

5(2) By-laws relating to

- (a) admission of members and the conditions precedent of membership in the Association described in subparagraph (1)(a)(i); and
- (b) matters described in paragraphs (1)(b), (c), (p), (q), (r), (s) and (t);

shall not be effective or be acted upon until confirmed by the Minister.

5(3) The Board shall at least thirty days before the next meeting of the members of the Association submit all by-laws or amendments or repeal of any by-law made under subsection (1) to the members of the Association and the members may, at that meeting by ordinary resolution, confirm, reject or amend the by-laws, amendment or repeal thereof.

5(4) A by-law, or an amendment or a repeal of a by-law made by the Board under paragraph (1)(f), (g), (h) or (i) is effective from the date of the resolution of the Board until it is confirmed, confirmed as amended or rejected by the members under subsection (3) or until it ceases to be effective under subsection (5) and, where the by-law is confirmed or confirmed as amended, it continues in effect in the form in which it was so confirmed.

5(5) Where a by-law or an amendment or a repeal thereof is rejected by the members or where the Board does not submit the by-law, amendment or repeal to the members as required under subsection (3), the by-law, amendment or repeal ceases to be effective and no subsequent resolution by the Board to make, amend or repeal a by-law having substantially the same purpose or effect is effective until it is confirmed or confirmed as amended by the members.

5(6) No act done, or right acquired, under any by-law to which subsection (4) applies is prejudicially affected by the subsequent rejection or variation of that by-law at a general meeting of the Association.

5(7) A member entitled to vote at an annual meeting of the Association may make a proposal to make, amend or repeal a by-law.

5(8) A member making a proposal pursuant to subsection (7) shall send the written proposal to the Board of the Association at least sixty days before the date of the next annual meeting.

5(9) Upon receiving the proposal from a member to enact, amend or repeal a by-law, the Board shall cause the proposal to be published in the agenda for the next general meeting of the Association which agenda shall be distributed to the members in accordance with the by-laws of the Association, but where there is not sufficient time before the next general meeting of the Association to distribute the proposal in accordance with the provisions of the by-laws of the Association then the proposal shall be contained in the agenda for the next following general

meeting and shall be distributed to the members in accordance with the by-laws of the Association prior to the next following general meeting of the Association.

6(1) Unless the Act or by-laws otherwise provide, the Board may by resolution make any rules not contrary to the by-laws regulating any of the aspects, subjects or matters of the business or affairs of the Association as may be governed by by-law and any such rule shall be valid, binding and effective from the date of the resolution of the Board until amended or repealed by an ordinary resolution at an annual, or special or general meeting of the Association called for the purpose of considering the same.

6(2) Any amendment or repeal of a rule by the Board shall be made by a rule.

7 No act or thing done in reliance on, or right acquired under or pursuant to, a by-law or rule that is subsequently repealed or amended shall be prejudicially affected by such repeal or amendment.

8 All the by-laws and rules of the Association or the Board shall be available for inspection by any person at the head office of the Association at all reasonable times during business hours, free of charge.

PART III REGISTRATION AND MEMBERSHIP

9(1) The Board shall appoint a Registrar of the Association who shall hold office during the pleasure of the Board.

9(2) The Board may appoint an Executive Director who shall hold office during the pleasure of the Board.

9(3) The Executive Director shall at all times be subject to the directions of the Board.

9(4) The offices of Registrar and Executive Director may both be held by one person at the same time.

9(5) There may be an executive committee of the Board composed of members of the Board, that, between meetings of the Board or at such other times as may be prescribed, may carry out any of the duties and exercise any of the powers and privileges of the Board and the executive committee shall carry out such other duties as may be assigned to it from time to time by the Board, the by-laws or the rules.

9(6) The number of members of the executive committee, their respective terms of office, the manner of their appointment or election and their qualifications shall be established and governed by the by-laws, provided that one member of the executive committee, when the total number of executive committee members does not exceed eight, or two members, when the total number exceeds eight, shall be directors appointed by the Minister under subsection 4(3).

10(1) The Registrar shall keep or cause to be kept:

- (a) a register in which shall be entered the name and address of every person who has met the qualifications for registration as a respiratory therapist pursuant to this Act, the by-laws and the rules and is thereby entitled to engage in the practice of respiratory therapy;
- (b) a temporary register in which shall be entered for such period of time as the by-laws or rules prescribe the name and address of every person who has completed a respiratory therapy education program at an approved school of respiratory therapy and who is eligible for registration as a respiratory therapist upon the completion of the requirements for registration established by the by-laws and rules;
- (c) rosters of members in which shall be entered the name and address of every person who is entitled to membership in any category of membership established by the by-laws, other than persons whose names are entered in the register or the temporary register;
- (d) a corporations register in which shall be entered the name and address of every professional corporation permitted to carry on the practice of respiratory therapy under the Act, the by-laws or the rules, and the names and addresses of the officers and directors of such corporations; and
- (e) a specialists register in which shall be entered the name, address, qualifications and specialty of every respiratory therapist who is entitled to be registered in the specialists register under the Act, by-laws or rules.

10(2) The register may be divided into such parts as may be prescribed in which shall be entered the names of persons qualified pursuant to the by-laws and rules for such classifications and levels of registration, membership or practice as may be prescribed.

10(3) Every person who qualifies for registration under the provisions of the by-laws and rules may, upon payment of the prescribed fee, have his or her name entered in the register or appropriate part thereof and in the appropriate roster upon producing to the Registrar satisfactory evidence of his or her qualifications.

10(4) An applicant who is refused registration or the entry of his or her name in the appropriate roster by the Registrar may, by written notice, appeal that decision to the Board of directors which shall consider the appeal within thirty days of the receipt of the notice and upon making its decision shall forthwith report that decision in writing to the applicant.

10(5) No person shall be denied membership in the Association because of the race, nationality, religion, colour, sex, marital status, physical handicap, age, source of income, family status, political belief, the use of either of the two official languages of New Brunswick, ethnic or national origin of that person.

11(1) No respiratory therapist shall engage in the private practice of respiratory therapy without first providing the Registrar with proof of valid professional liability insurance in the minimum amount required by the by-laws and providing proof of renewal of such insurance each year thereafter.

11(2) No person shall practise as a respiratory therapist or hold himself or herself out for employment as a respiratory therapist unless his or her name is entered in the register or temporary register and a person so registered may practise or hold himself or herself out as a respiratory therapist only to such extent as is authorized by this Act, the by-laws and rules.

11(3) No person shall bring an action in any court to collect fees, compensation or other remuneration, for services performed as a respiratory therapist, unless registered under this Act.

12 The register shall be open to inspection by any person at the office of the Registrar at all reasonable times during regular business hours free of charge; but any officer or employee of the Association may refuse such access to the register if there is reasonable cause to believe that the applicant seeks the access merely for commercial purposes.

13(1) Any person whose name is inscribed in the register as an active practising member or in the temporary register is entitled to practise as a respiratory therapist in New Brunswick subject to any restrictions imposed by the by-laws or rules, and is entitled to hold himself or herself out as a respiratory therapist.

13(2) Subject to subsection 30(2), a person whose name is not entered in the register or temporary register shall not practise as a respiratory therapist or hold himself or herself out as a respiratory therapist in the Province, or take or use the designation “respiratory therapist”, “registered respiratory therapist” or the initials “RRT” or “RT” or the abbreviation “Reg. R.T.”, or “Lic. R.T.” or other initials or designations, either alone or in combination with other words, letters or description, that imply he or she is entitled to practise as a respiratory therapist.

14 A statement certified under the hand of an officer of the Association respecting the registration status of a person is admissible in evidence as *prima facie* proof of the facts therein specified respecting the registration status of that person under this Act and is *prima facie* proof of any conditions or limitations set out in the statement, if any, as applicable to that person.

15 Nothing herein prohibits the practice of respiratory therapy in New Brunswick or the recovery of fees or compensation for professional services rendered as a respiratory therapist by a person registered in another country, state, territory or province and whose engagement requires him or her to accompany and care for a patient temporarily residing in New Brunswick during the period of the engagement, if that person does not represent or hold himself or herself out as a person registered under the provisions of this Act.

16(1) The Registrar shall cause the name of a member to be removed from the register:

- (a) at the request or with the written consent of the member;
- (b) where the name has been incorrectly entered;
- (c) where notification is received of the member's death;
- (d) where the registration of the member has been revoked or suspended; or
- (e) when a person no longer meets the requirements for continued registration.

16(2) The Registrar shall remove or cause the removal of the name of any person from the register, the temporary register, the specialists register, the corporations register or one or more of the rosters, who fails to meet or maintain the qualifications and standards for entry in such register or roster.

16(3) The registration of a respiratory therapist shall terminate and cease to have effect when the respiratory therapist's name is removed from the register.

16(4) Where the name of a member is removed from the register, the Registrar shall forthwith, by registered or certified mail addressed to the latest address shown on the register, notify the member that his or her name has been removed from the register.

16(5) Subject to subsection (6), the Board on such grounds as it deems sufficient may cause the name of a person removed from the register to be restored thereto either without fee or upon payment to the Association of

(a) a sum not exceeding the fees or other sums in arrears and owing by the person to the Association; and

(b) such additional sum as may be prescribed by the by-laws of the Association.

16(6) Where the name of a person who has been suspended or whose registration has been revoked is to be restored to the register under subsection (5), the Board may by resolution direct that the name be restored subject to such terms and conditions as the Board may prescribe.

17(1) The Registrar shall cause a certificate of membership or registration or renewal thereof to be issued annually or at such other times as may be prescribed to every person whose name is entered in the register, temporary register, or rosters, and a licence to professional corporations, and persons registered in the specialists register, and the certificate or licence shall state the date upon which it expires, the type of membership, registration or licence and any conditions or limitations imposed on the person to whom the certificate or licence is issued.

17(2) Every person, other than a client or any person acting on behalf of a client without expectation or hope of monetary compensation, who engages a person as a respiratory therapist and every agency or registry that procures employment or work for a person as a respiratory therapist

(a) shall ensure at the time of engagement and at least once each year thereafter if such engagement is continuing, that the person is the holder of a current registration or licence under the Act and is not engaged to perform duties and functions contrary to any conditions, limitations or restrictions imposed on the person's registration or licence or contrary to any conditions, limitations or restrictions imposed on the registration or licence of any professional corporation on behalf of which that person performs services; and

(b) where a person's engagement as a respiratory therapist is terminated because of dishonesty, incompetence or incapacity, shall forthwith report the matter to the Association and provide a copy of the report to the person whose engagement is terminated.

17(3) Every member, licensee or holder of a certificate of registration who offers or provides to the public, services that are within the practice of respiratory therapy shall comply with the requirements of the by-laws and rules relating to professional liability insurance.

PART IV

PROFESSIONAL CORPORATIONS

18(1) No corporation shall be entitled to have its name entered in a register or roster other than the corporations register.

18(2) No professional corporation shall be entitled to vote at any meeting of the Association.

18(3) All the provisions of the Act, by-laws and rules applicable to a member apply with all necessary modifications to a professional corporation unless otherwise expressly provided.

18(4) The Board may make by-laws

(a) prescribing the types of names, designations or titles by which

(i) a professional corporation,

(ii) a partnership of two or more professional corporations, or

(iii) a partnership of one or more professional corporations and one or more respiratory therapists,

may be known, and

(b) regulating the practice of respiratory therapy by professional corporations and requiring the filing of such reports, information and returns the Board considers necessary.

19(1) The articles of incorporation, articles of continuance or other constating documents of each professional corporation shall not prevent the corporation from

(a) engaging in every phase and aspect of rendering the same respiratory therapy services to the public that a respiratory therapist is authorized to render; and

(b) having the capacity and exercising the rights, powers and privileges of a natural person as may be necessary or incidental or ancillary to the rendering of respiratory therapy services including without restricting the foregoing, the power

(i) to purchase, lease or otherwise acquire and to own, mortgage, pledge, sell, assign, transfer or otherwise dispose of, and to invest in, deal in or with, real or personal property;

(ii) to contract debts and borrow money, issue and sell or pledge bonds, debentures, notes and other evidences of indebtedness and execute such mortgages, transfers of corporate property and other instruments to secure the payment of corporate indebtedness as required; and

(iii) to enter into partnership, consolidate or merge with or purchase the assets of another corporation or individual rendering the same type of professional services.

19(2) The legal and beneficial ownership of a majority of the issued shares of a professional corporation shall be vested in one or more members and shall entitle such member or members to elect all of the directors of the professional corporation.

19(3) The legal and beneficial ownership of all issued shares of a professional corporation other than those referred to in subsection (2) shall be vested in the persons prescribed.

19(4) No member who is a shareholder of a professional corporation shall enter into a voting trust agreement, proxy or any other type of agreement vesting in a person who is not a member the authority to exercise the voting rights attached to any or all of the member's shares, and every shareholder who does so commits an offence.

19(5) The practice of respiratory therapy on behalf of a professional corporation shall be carried on by respiratory therapists.

19(6) For the purposes of subsection (5), the practice of a respiratory therapist shall be deemed not to be carried on by clerks, secretaries, assistants and other persons employed by the corporation to perform services that are not usually and ordinarily considered by law, custom or practice to be services that may be performed only by a respiratory therapist.

19(7) A licence issued to a professional corporation may be revoked, or its renewal withheld, by the Registrar where any of the conditions specified in subsections (1), (2), (3), (4) or (5) no longer exist.

19(8) Where a professional corporation ceases to fulfil any condition specified in subsections (2), (3) or (4) by reason only of

- (a) the death of a member of the Association,
- (b) the striking off or other removal, from the register or any roster, of the name of a member, or
- (c) the suspension or revocation of the licence of a member,

the professional corporation has one hundred and eighty days or such longer period as the Board may permit from the date of the death, striking off, removal, suspension or revocation, as the case may be, in which to fulfil the condition, failing which the Registrar shall revoke the licence of the professional corporation.

20 A corporation to which a licence is issued may practise respiratory therapy in its own name, subject to any conditions, restrictions or limitations as may be prescribed or as set out in its licence.

21 The relationship of a member to a professional corporation, whether as a shareholder, director, officer or employee, does not affect, modify or diminish the application of the provisions of the Act, by-laws or rules to the member.

22 Nothing contained in the Act, by-laws or rules respecting professional corporations shall affect, modify or limit any ethical obligation of a respiratory therapist.

PART V

OFFENCES AND ENFORCEMENT

23(1) Except as provided in the Act, by-laws or rules, no person other than a person whose name is entered in the register or the temporary register shall

(a) publicly or privately, whether or not for hire, gain or hope of reward hold himself or herself out in any way as being a respiratory therapist or as being entitled to practise as a respiratory therapist;

(b) assume or use any title, name, designation, initials or description, including those referred to in the Act, that could lead the public to believe that person is a member of the Association or a respiratory therapist; or

(c) practise as a respiratory therapist.

23(2) Any person authorized to practise as a respiratory therapist or hold himself or herself out as a respiratory therapist or specialist under the provisions of the Act who practises as a respiratory therapist in violation of any condition, limitation or restriction imposed upon the person's registration or membership or who fails to inform his or her employer of any such condition, limitation or restriction commits an offence.

24 Any professional corporation that breaches or permits the breach of any condition, limitation or restriction imposed upon its registration or licence commits an offence and an officer, director, agent or shareholder who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and liable to the punishment provided for the offence, whether or not the professional corporation has been prosecuted or convicted.

25 Any person who knowingly furnishes false or misleading information in or in respect of any application made under the Act, by-laws or rules or in any statement or return required to be furnished under the Act, by-laws or rules, commits an offence.

26(1) A person who violates any provision of the Act commits an offence and is liable on summary conviction to a fine not less than

(a) \$1,000 for a first offence;

(b) \$5,000 for a second offence; or

(c) \$10,000 for a third or subsequent offence

or to imprisonment for a term not exceeding six months, or both; and upon failure to pay a fine imposed under paragraph (a), (b) or (c), to imprisonment for a term of not more than six months.

26(2) All fees, fines and penalties payable under the Act shall be paid to the Association and belong to the Association.

26(3) Any information to be laid under the Act may be laid by the Registrar of the Association or any member of the Association authorized by the Board.

26(4) The Board may institute and carry on or authorize any person to institute or carry on the prosecution of any offence under the Act.

27 Where a member or former member or an applicant for registration does or attempts to do anything contrary to the provisions of the Act, by-laws or rules, the doing of such thing may be restrained by an injunction of the Court at the instance of the Board acting in the name of the Association.

28 Where any person other than a person described in section 27 does or attempts to do anything contrary to the provisions of the Act, the doing of such thing may be restrained by an injunction of the Court at the instance of the Board acting in the name of the Association.

29(1) No prosecution for an offence under the Act shall be commenced after the expiration of one year from the date of the last act that is part of the alleged offence.

29(2) Where a violation of any provision of the Act continues for more than one day, the offender is guilty of a separate offence for each day that the violation continues.

29(3) For the purposes of the Act, proof of the performance of one act in the practice of respiratory therapy on one occasion is sufficient to establish that a person has engaged in the practice of respiratory therapy.

30(1) The provisions of this Act do not prevent:

- (a) any person from giving necessary respiratory therapy in case of urgent need; or
- (b) the domestic administration of family remedies.

30(2) Nothing in this Act prohibits or prevents:

- (a) the practice of medicine by a person authorized to carry on such practice under the *Medical Act*;
- (b) the practice of dentistry by a person authorized to carry on such practice under the *New Brunswick Dental Act, 1985*;
- (c) the carrying on of the occupation of biomedical engineering, including the maintenance of medical equipment by a person trained and qualified to carry on such occupation;

- (d) the practice of engineering technology by a person authorized to carry on such practice under the *Engineering Technology Act*;
- (e) the practice of occupational therapy by a person authorized to carry on such practice under the *Occupational Therapy Act*;
- (f) the practice of pharmacy by a person authorized to carry on such practice under the *Pharmacy Act*;
- (g) the practice of physiotherapy by a person authorized to carry on such practice under the *Physiotherapy Act*;
- (h) the practice of nursing or the practice of a nurse practitioner by a person authorized to carry on such practice under the *Nurses Act*;
- (i) the practice of cardiology technology by a person authorized to carry on such practice under the *Cardiology Technologists Act*;
- (j) the practice of paramedicine and paramedic practice by a person authorized to carry on such practice under the *Paramedic Act*;
- (k) the practice of medical laboratory technology by a person authorized to carry on such practice under the *Medical Laboratory Technology Act*; or
- (l) the practice of speech-language pathology or audiology by a person authorized to carry on such practice under the *Speech-Language Pathology and Audiology Act*.

PART VI

DISCIPLINE AND FITNESS TO PRACTISE

31(1) In this Part “complaint” means any complaint, report or allegation in writing and signed by the complainant regarding the conduct, actions, competence, character, fitness, health or ability of a member and a request referred to in subsection (2) and “member” includes former member, and any person whose name is or was entered in any register or roster of the Association.

31(2) In the absence of a complaint, if the Registrar or the Board has reason to believe that the conduct or actions of a member may constitute professional misconduct, incompetence or incapacity, the Registrar or the Board may request the Complaints Committee to investigate the member.

31(3) Upon receiving a complaint referred by the Registrar or a request from the Registrar or the Board, the Complaints Committee shall investigate the matter raised by the complaint or in the request.

32 For all purposes under this Act the complaint referred to in and to be dealt with in accordance with the Discipline and Fitness to Practise provisions of the Act, by-laws and rules is the original

complaint defined in subsection 31(1) and there shall be no requirement that any person prepare any summary of the complaint or any charges with respect to such complaint.

33(1) The Board shall cause an investigation to be carried out by the Complaints Committee of every complaint received, if the complaint in substance alleges that a member

(a) has been guilty of

(i) professional misconduct;

(ii) conduct unbecoming a member including any conduct that might adversely affect the standing or good name of the profession or the Association;

(iii) incompetence;

(iv) conduct demonstrating that the member is unfit or incapable to practise as a respiratory therapist;

(v) any conduct in breach of the provisions of the Act, by-laws or rules;

(vi) dishonesty; or

(vii) any habit rendering the member unfit or incapable of carrying on the practice of a respiratory therapist; or

(b) is suffering from any ailment or condition rendering the member unfit or incapable of carrying on the practice of a respiratory therapist.

33(2) All complaints against a member received by the Association or the Board shall be delivered forthwith by the Registrar to the chairperson of the Complaints Committee and a copy of the same shall immediately be forwarded to the member.

33(3) The Board shall maintain a standing committee known as the Complaints Committee, which in this section and section 34 is referred to as the "Committee".

33(4) The Committee shall be composed of one or more respiratory therapists, and at least one person who is not a member shall be appointed to represent the public by the Board and none of the Committee members shall be a director of the Association or a member of the Discipline Committee or Fitness to Practise Committee.

33(5) The quorum, number of Committee members, their terms of office, qualifications and the manner of their appointment shall be established and governed by the by-laws and the by-laws may regulate the procedures, functions and operations of the Committee and may permit the establishment of panels of the Committee to act for and to carry out and exercise all the duties and powers of the Committee.

33(6) The Board shall appoint one of the members of the Committee who shall be a respiratory therapist to be the chairperson of the Committee.

33(7) The Board shall advise the Minister of the name of the lay representative appointed under subsection (4).

33(8) The Committee shall

- (a) consider and investigate all complaints delivered to it, and
- (b) perform such other duties as may be assigned to it by the Board, the by-laws or rules.

33(9) The Committee shall consider all evidence and in this section the term “evidence” includes but is not necessarily limited to documents, information and oral submissions which may be presented to the Committee.

33(10) The Committee may engage such persons it considers necessary including legal counsel to assist it in the consideration and investigation of complaints and shall, subject to the by-laws and rules, determine its own rules of procedure.

33(11) The Committee may, at any time following the receipt of a complaint, subject to such restrictions and procedures as may be prescribed, attempt to informally mediate and resolve a complaint.

33(12) Any member against whom a complaint has been made shall be entitled to

- (a) prompt notice that a complaint has been received by the Committee or that the Board has caused an investigation to be commenced by the Committee and a copy of the complaint;
- (b) copies of all reports, documents and evidence presented to the Committee in writing concerning the complaint, other than privileged documents; and
- (c) at least fourteen days' notice of the first meeting of the Committee called to consider the complaint, which notice shall be accompanied by copies of all reports, documents and evidence in writing concerning the complaint, other than privileged documents, then in the possession of the Committee, and the opportunity after such notice to submit to the Committee in writing any explanation, evidence, documents or representation the member may wish to make concerning the complaint or investigation.

33(13) Where the Committee has reasonable grounds to believe that a member who is the subject of an investigation is incapacitated, the Committee may require the member to submit to physical or mental examinations or both by one or more qualified persons selected by the Committee and, subject to subsection (16), may make an order directing the Registrar to suspend the member's certificate of registration until the member submits to the examinations.

33(14) Where the Committee has reasonable grounds to believe that a member who is the subject of an investigation is incompetent, the Committee may require the member to submit to such examinations as the Committee may require in order to determine whether the member has adequate skill and knowledge to practise respiratory therapy and, subject to subsection (16), may make an order directing the Registrar to suspend the member's registration until the member submits to the examinations.

33(15) Subject to the by-laws, if the Committee in its absolute discretion at any time after the receipt of a complaint considers it necessary or advisable, it may without hearing require any professional corporation to submit to an examination of its practice, business, books and records by such person or persons as the Committee may designate and if the professional corporation fails to submit to such examination the Committee may without further notice suspend the professional corporation's registration and licence until it does so.

33(16) No order shall be made by the Committee under subsection (13) or (14) with respect to a member unless the member has been given

(a) notice of the intention of the Committee to make the order, and

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

33(17) Any person who conducts an examination under this section shall prepare and sign an examination report containing his or her findings and the facts on which they are based and shall deliver the report to the Committee.

33(18) The Committee shall forthwith deliver a copy of the examination report to the member who is the subject of the investigation.

33(19) A report prepared and signed by a person referred to in subsection (17) is admissible as evidence at a hearing without proof of its making or of the person's signature if the party introducing the report gives the other party a copy of the report at least ten days before the hearing.

33(20) The Committee, at any time after requiring a member to submit to examinations under this section, may refer the matter of the member's alleged incapacity or incompetence to the Discipline Committee or the Fitness to Practise Committee.

33(21) A member who fails to submit to an examination under subsection (13) or (14) commits an act of professional misconduct.

33(22) After the completion of an investigation of a complaint and after considering the submission of the member and considering or making a reasonable attempt to consider all documents and information it considers relevant to the matter, the Committee may

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

(b) refer allegations of professional misconduct, incompetence or incapacity, to the Discipline Committee or the Fitness to Practise Committee,

(c) caution the member, or

(d) take such other action as it considers appropriate in the circumstances that is not inconsistent with this Act or the by-laws.

33(23) The Committee shall prepare a summary of its findings and its decision in writing and shall send a copy to the member and the complainant, if any, by registered or certified mail, or by courier.

33(24) Nothing in this section requires that examinations ordered under subsections (13) and (14) be carried out before the Committee acts under subsection (22).

34(1) Where the Committee refers a complaint to the Discipline Committee or Fitness to Practise Committee or where the Committee considers the action necessary to protect the public pending the conduct and completion of proceedings before the Committee in respect of a member, the Committee may, subject to subsection (2), make an interim order

(a) directing the Registrar to impose specified conditions, limitations and restrictions upon the member's registration, or

(b) directing the Registrar to suspend the member's registration.

34(2) No order shall be made by the Committee under subsection (1) unless the member has been given

(a) notice of the Committee's intention to make the order, and

(b) at least ten days to make representations to the Committee in respect of the matter after receiving the notice.

34(3) Where the Committee takes action under subsection (1), the Committee shall notify the member of its decision and the reasons for the decision in writing.

34(4) An order under subsection (1) continues in force until the matter is disposed of by the Discipline Committee or the Fitness to Practise Committee, unless the order is stayed pursuant to an application under subsection (5).

34(5) A member against whom action is taken under subsection (1) may apply to the Court for an order staying the action of the Committee.

34(6) If an order is made under subsection (1) by the Committee in relation to a complaint referred to the Discipline Committee or the Fitness to Practise Committee, the Association and the Discipline Committee or the Fitness to Practise Committee shall act expeditiously in relation to the complaint.

35(1) The Board shall maintain two standing committees known as the Discipline Committee and the Fitness to Practise Committee, which in this section shall be referred to as the "Committee."

35(2) Each Committee shall be composed of respiratory therapists and at least one person who is not a member shall be appointed to represent the public by the Board and none of the Committee members shall be a director of the Association.

35(3) The quorum, number of Committee members, their terms of office, qualifications and the manner of their appointment shall be established and governed by the by-laws and the by-laws may regulate the powers, procedures, functions and operations of the Committee, may permit the establishment of panels of the Committee to act for and to carry out and exercise all the duties and powers of the Committee and may provide that members of each Committee may be members of both Committees.

35(4) The Board shall appoint one of the members of each Committee who shall be a respiratory therapist to be the chairperson of the Committee.

35(5) The Board shall advise the Minister of the name of the lay representative appointed under subsection (2).

35(6) Each Committee shall conduct its proceedings in accordance with its own rules of procedure and may do all things and engage such persons including legal counsel it deems necessary to provide for the hearing and consideration of any complaint and in no case is the Committee bound to follow the technical rules of evidence or procedure applicable in judicial proceedings.

35(7) Each Committee shall

(a) hold a hearing respecting the allegations of professional misconduct, incompetence or incapacity of a member that have been referred to it by the Complaints Committee;

(b) commence a hearing not later than sixty days after the date on which the last member of the Committee panel is appointed, unless the parties otherwise agree;

(c) where the Committee, in its discretion considers it appropriate, attempt to informally mediate and resolve a complaint; and

(d) perform such other duties as may be assigned to it by the Board, the by-laws or rules.

35(8) Each Committee shall

(a) where a hearing is conducted, consider the complaint, hear the evidence, ascertain the facts and make a decision with respect to the merits of each complaint as to whether the member is guilty of a matter described in paragraph 33(1)(a) or is suffering from an ailment or condition described in paragraph 33(1)(b), in such manner as it deems fit;

(b) if the Committee in its absolute discretion at any time after the receipt of a complaint considers it necessary or advisable, require the member in respect of whom a complaint is made to submit to physical or mental health examinations by such qualified person or persons as the Committee may designate and if the member fails to submit to any such examination the Committee may without further notice suspend the member's registration and membership until the member does so;

(c) if the Committee in its absolute discretion at any time after the receipt of a complaint considers it necessary or advisable, require the member in respect of whom a complaint is

made to undergo such clinical or other examinations as the Committee may designate in order to determine whether the member has adequate skill and knowledge to practise respiratory therapy and if the member fails to undergo any such examination the Committee may without further notice suspend the member's registration and membership until the member does so; and

(d) if the Committee in its absolute discretion at any time after the receipt of a complaint considers it necessary or advisable, require any member to produce records and documents in the member's possession or custody or under the member's control or in the possession or custody or control of any corporation of which the member is a director, officer or shareholder, and if the member fails to produce such records and documents the Committee may suspend the member's registration and membership until the member does so, unless the member is prohibited by law from producing such records and documents.

35(9) After reviewing all of the evidence presented to it the Committee may as part of its decision with respect to the merits of any complaint

(a) order that the member's registration or membership be suspended for a specific period of time during which the member's name shall be removed from the register, the specialists register, the temporary register or any roster in which the member's name may be entered;

(b) order that the member's registration or membership be suspended for such time and pending the satisfaction and completion of such conditions as may be ordered by the Committee;

(c) order that the member's registration or membership be revoked and the member's name be removed from the register, the specialists register, the temporary register or any roster in which the member's name may be entered;

(d) where a member's registration is revoked, specify a period of time before which the member may not apply for reinstatement;

(e) order that conditions or limitations be imposed on the member's registration, membership or practice and so inform the member's employer, if any;

(f) issue a reprimand;

(g) dismiss the complaint;

(h) impose such fine as the Committee considers appropriate, not exceeding \$10,000 to be paid by the member to the Association for the use of the Association and such fine may be recovered by the Association by civil action for debt;

(i) order that the imposition of any penalty be suspended or postponed for such period of time and upon such terms and conditions as the Committee deems appropriate;

(j) make any one or more of the orders it may make under paragraphs (a) to (i) against any professional corporation of which the member is a director, officer or shareholder;

(k) order that the costs of any investigation, proceeding, hearing or appeal be paid by the member; or

(l) make such other order as it deems just, including without limitation, an order combining two or more of the orders set out in paragraphs (a) to (k).

35(10) Where a Committee makes an order under subsection (9), the Committee may, by order, do one or more of the following:

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

(b) direct the Registrar to enter into the records of the Association the result of the proceeding before the Committee and to make the result available to the public.

35(11) Notwithstanding any other provision in the Act, if at any time a member admits in writing any allegation in a complaint alleging a matter set out in subsection 33(1), and the member waives in writing the right to any other or further hearing or proceedings pursuant to this Part, the Committee may agree to cancel all hearings or proceedings and may

(a) agree to accept the member's resignation on such terms and conditions as the Committee may specify, or

(b) make any order, finding or decision that may be made pursuant to section 35 or 43.

35(12) Notwithstanding any other provision in this Act, if at any time the Committee deems it appropriate that a complaint be resolved by an alternate dispute resolution process, and the member is in agreement with the referral of the complaint to such process, the Committee may enter into an agreement with the member providing for the resolution of the complaint by an alternate dispute resolution process set out in the agreement which may provide that any order, finding or decision that may be made under this Act may be made as part of the dispute resolution.

35(13) Subject to subsection (14), a hearing is open to the public.

35(14) Each Committee may make an order that the public, in whole or in part, be excluded from a hearing or any part of it if the Committee is satisfied that

(a) financial or personal or other matters may be disclosed at the hearing of such a nature that the harm created by disclosure would outweigh the desirability of adhering to the principle that hearings be open to the public,

(b) a person involved in a criminal proceeding or in a civil suit or proceeding may be prejudiced, or

(c) the safety of a person may be jeopardized.

35(15) Where it thinks fit, the Committee may make orders it considers necessary to prevent the public disclosure of matters disclosed at a hearing, including orders prohibiting publication or broadcasting of those matters.

35(16) No order shall be made under subsection (15) that prevents the publication of anything that is contained in the register and available to the public.

35(17) Each Committee may make an order that the public be excluded from the part of the hearing dealing with a motion for an order under subsection (14).

35(18) Each Committee may make any order necessary to prevent the public disclosure of matters disclosed in the submission relating to any motion described in subsection (17), including prohibiting the publication or broadcasting of those matters.

35(19) Each Committee shall state, at the hearing, its reasons for any order made under this section and any such order and the reasons for it shall be made available to the public in writing.

35(20) Where the Committee makes an order under subsection (14), wholly or partly, because of the desirability of avoiding disclosure of matters in the interest of a person affected, the Committee

(a) shall allow the parties, the complainant and their legal and personal representatives to attend the hearing, and

(b) may allow such other persons as the panel considers appropriate to attend the hearing.

36(1) Upon the application of

(a) any party to a hearing by the Discipline Committee or the Fitness to Practise Committee,

(b) the chairperson of the Discipline Committee or the Fitness to Practise Committee, or

(c) counsel for the Association, the Discipline Committee or, the Fitness to Practise Committee,

and on payment of any fees prescribed, the Registrar may sign and issue writs of *subpoena ad testificandum* or *subpoena duces tecum* in prescribed form for the purpose of procuring and compelling the attendance and evidence of witnesses and the production of things relating to matters in question before the Discipline Committee or the Fitness to Practise Committee.

36(2) The proceedings and penalties in the case of disobedience to any writ of subpoena issued hereunder shall be the same as in the case of disobedience of a Summons to Witness in civil cases in the Court.

36(3) The testimony of witnesses shall be taken under oath or solemn affirmation which any member of the Discipline Committee or the Fitness to Practise Committee is authorized to administer.

36(4) For the purposes of a hearing, the members of the Discipline Committee and the Fitness to Practise Committee are conferred with the powers of a commissioner of oaths under the *Commissioners for Taking Affidavits Act*.

36(5) A Committee shall ensure that the oral evidence is recorded and copies of the transcript of the hearing are available to a party on the party's request and at that party's expense.

36(6) No member of a Committee shall communicate outside the hearing, in relation to the subject matter of the hearing, with a party or the party's representative unless the other party has been given notice of the subject matter of the communication and an opportunity to be present during the communication.

36(7) The burden of proof in all proceedings before the Discipline Committee or the Fitness to Practise Committee shall be the balance of probabilities.

37(1) In all proceedings before the Discipline Committee or the Fitness to Practise Committee, the member against whom a complaint has been made and the complainant

(a) may make a written or oral submission to the Committee before the calling of evidence and after the completion of evidence;

(b) shall receive a notice to the member against whom the allegations have been made describing the subject matter of the hearing and advise the member that the Committee may proceed with the hearing in his or her absence;

(c) may present evidence or make representations in either English or French;

(d) may be represented by legal counsel, at their expense,

(e) shall be entitled to a full right to examine, cross-examine and re-examine witnesses in accordance with the rules of procedure established by the Committee,

(f) shall be entitled to receive copies of all documents presented to the Committee in connection with the complaint unless such documents are privileged by law,

(g) shall be entitled to at least thirty days' written notice of the date of the first hearing of the Committee, and

(h) shall be entitled to receive a copy of the decision, the reasons for the decision and the penalty imposed, if any, in writing and a statement of the rights of the parties to appeal the decision to the Court.

37(2) The Committee may at any time permit a notice of hearing of allegations against a member to be amended to correct errors or omissions of a minor or clerical nature if it is of the opinion that it is just and equitable to do so and it may make any order it considers necessary to prevent prejudice to the member.

37(3) Subsection 29(1) does not apply to any proceeding under Part VI or Part VII of the Act.

37(4) Any person whose registration, right to practise or membership is revoked, suspended, subjected to conditions, limited or restricted shall without demand forthwith deliver to the Registrar any licence, certificate of membership or registration or validation seals issued under the Act to such person.

38(1) A member who sexually abuses a patient commits an act of professional misconduct.

38(2) Sexual abuse of a patient by a member means

- (a) sexual intercourse or other forms of physical sexual relations between the member and the patient,
- (b) touching, of a sexual nature, of the patient by the member, or
- (c) behaviour or remarks of a sexual nature by the member towards the patient.

38(3) For the purposes of subsection (2), “sexual nature” does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.

39(1) A member who, in the course of practising the profession, has reasonable grounds to believe that another health professional has sexually abused a patient or client and who fails to file a report in writing in accordance with subsection (4) with the governing body of the health professional twenty-one days after the circumstances occur that give rise to the reasonable grounds for the belief commits an act of professional misconduct.

39(2) A member is not required to file a report pursuant to subsection (1) if the member does not know the name of the health professional who would be the subject of the report.

39(3) If the reasonable grounds for filing a report pursuant to subsection (1) have been obtained from one of the member's patients or clients, the member shall use his or her best efforts to advise the client that the member is filing the report before doing so.

39(4) A report filed pursuant to subsection (1) shall contain the following information:

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

39(5) The name of a patient or client who may have been sexually abused shall not be included in a report unless the patient or client or, if the patient or client is incapable, the patient's or client's representative, consents in writing to the inclusion of the patient's or client's name.

39(6) Subsections 38(2) and 38(3) apply with the necessary modifications to sexual abuse of a patient or client by another health professional.

39(7) No action or other proceeding shall be taken against a member who in good faith files a report pursuant to subsection (1).

PART VII APPEALS

40(1) If,

(a) a complainant is dissatisfied with a decision of the Complaints Committee, the Discipline Committee, or the Fitness to Practise Committee or

(b) a member against whom a complaint has been made is dissatisfied with a decision of the Discipline Committee, or the Fitness to Practise Committee or

(c) an applicant for registration or reinstatement of registration is dissatisfied with a decision made by the person or body empowered by by-law to make such decision with respect to the application,

such person may appeal from the decision by a written notice of appeal to the Court within thirty days of the date on which notice of the decision is mailed to the last known address of such party, or within such further time not exceeding sixty days as may be allowed by the Court.

40(2) The notice of appeal shall set forth the grounds of appeal and the relief sought and shall be served upon the Registrar, the Clerk of the Court for the judicial district in which the deliberations of the Committee, person or body were held and upon any other party to the proceedings before the Committee, person or body.

41(1) In any appeal under the Act the Registrar shall obtain a transcript or such other record as exists of the evidence presented to the Committee, person or body from whom the appeal is taken and shall prepare and present to the Court a record on appeal consisting of the transcript or such other record as exists, all exhibits and the order or other document evidencing the decision being appealed.

41(2) The Registrar shall provide the appellant and any other person entitled by the by-laws to participate in the appeal with a copy of the record on appeal upon payment by the appellant or such other person of the costs and disbursements of producing such copy.

41(3) Members of the Complaints Committee, the Discipline Committee, the Fitness to Practise Committee or the Board are not compellable as witnesses to testify in relation to the basis on which a decision was reached, any aspect of the decision or the decision making process.

42(1) On appeal the Court may

(a) adjourn the proceedings or reserve the determination of the matters before it, and

(b) upon granting special leave, and only where it is shown that such evidence was not previously available, receive further evidence.

42(2) After reviewing the record on appeal and hearing the evidence or argument presented the Court may

(a) draw inferences of fact and make any finding, decision, determination or order that in its opinion ought to have been made;

(b) vary the decision appealed from;

(c) refer the matter to the Discipline Committee, the Fitness to Practise Committee or the person or body from whom the appeal is taken as the case may be for further consideration and decision;

(d) confirm the decision appealed from; or

(e) make such decision or order as it may deem appropriate.

42(3) The Rules of Court governing civil appeals to The Court of Appeal of New Brunswick which are not inconsistent with the Act shall apply with such changes as are necessary to appeals to the Court under this Part and the Association shall have standing to appear and participate in any appeals to the Court.

42(4) Notwithstanding that an appeal to the Court may have been instituted in respect of a decision or order, that decision or order shall continue to be valid and binding and no stay of proceedings may be granted prior to the hearing of the appeal.

PART VIII

GENERAL

43(1) The Complaints Committee, the Discipline Committee, the Fitness to Practise Committee or, on appeal, the Court, may order that the costs of any investigation, proceeding, hearing or appeal under the Act be paid, in whole or in part

(a) by the member against whom the complaint was made, except where the complaint is completely dismissed without any other decision or order adverse to that member; or

(b) by the complainant or person at whose request the complaint was made or an investigation was commenced where the Committee or Court is of the opinion that the complaint or investigation was unwarranted; and

may make it a condition of the registration and licence of any member or professional corporation that such costs be paid forthwith.

43(2) The costs payable under subsection (1) may be taxed by the Registrar of the Court as between solicitor and client on filing with the Registrar the order as to costs and on the payment

of any required fees, and judgment may be entered for such taxed costs in Form A of the Act with necessary modifications.

43(3) Before hearing an appeal the Court may order that security for costs be paid to the Association by the appellant in such amount and upon such terms as the Court may consider just.

43(4) For the purposes of the Act, “costs” includes

(a) all legal and other costs, expenses and disbursements incurred by the Association, the Complaints Committee, the Discipline Committee, the Fitness to Practise Committee, the Registrar or the Board in relation to an investigation, proceeding, hearing or appeal;

(b) honoraria and expenses paid to members of the Complaints Committee, Discipline Committee, the Fitness to Practise Committee, the Registrar or members of the Board in relation to an investigation, proceeding, hearing or appeal; and

(c) the legal costs, expenses and disbursements incurred by any party to an investigation, proceeding, hearing or appeal.

44(1) The Board and any committee of the Board or of the Association may conduct meetings by telephone or other communication facilities in the manner and on the terms and conditions established by the by-laws or rules and persons participating in a meeting by such means shall be deemed to be present in person at that meeting.

44(2) A resolution, report, recommendation, decision, finding or order of the Board or any committee of the Board or of the Association in writing signed by all directors or persons entitled to vote on such resolution, report, recommendation, decision, finding or order, or signed counterparts thereof, is as valid as if passed, enacted, determined or made at a meeting of the Board or such committee.

45 The Board may cause a notice of suspension or revocation or reinstatement of membership to be published in any newspaper, with or without stating the reasons for such suspension or revocation or reinstatement, as the Board in its absolute discretion decides.

46(1) The Registrar shall forthwith enter into the records of the Association:

(a) the result of every proceeding before the Discipline Committee or Fitness to Practise Committee that

(i) resulted in the suspension or revocation of registration; or

(ii) resulted in a direction under paragraph 35(10)(b); and

(b) where the findings or decision of the Discipline Committee or Fitness to Practise Committee that resulted in the suspension or revocation of registration or the direction are appealed, a notation that they are under appeal.

46(2) Where an appeal of the findings or decision of the Discipline Committee or Fitness to Practise Committee is finally disposed of, the notation referred to in paragraph (1)(b) shall be removed and the records adjusted accordingly.

46(3) For the purpose of paragraph (1)(a), “result”, when used in reference to a proceeding before a Discipline Committee or Fitness to Practise Committee, means the Committee's findings, and the penalty imposed and in the case of a finding of professional misconduct, a brief description of the nature of the professional misconduct.

46(4) The Registrar, upon payment of a reasonable fee, shall provide a copy of the information contained in the records referred to in subsection (1) to any person who inquires about a member or former member:

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

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

46(5) Notwithstanding subsection (4), the Registrar may provide, at the Association's expense, a written statement of the information contained in the records in place of a copy.

47 The Registrar shall submit a written report annually to the Board containing a summary of the complaints received during the preceding year by source and type of complaint and the disposition of such complaints.

48(1) The Association shall undertake measures for prevention of the sexual abuse of patients or clients by its members.

48(2) Such measures referred to in subsection (1) shall include:

(a) education of members about sexual abuse;

(b) guidelines for the conduct of members with clients or patients;

(c) providing information to the public respecting such guidelines; and

(d) informing the public as to the complaint procedures under this Act.

48(3) Measures referred to in subsection (2) may, where appropriate, be taken jointly with other organizations or Associations of health professionals.

48(4) The Association shall report to the Minister within two years after the commencement of this Act and within thirty days at any time thereafter on the request of the Minister, respecting the measures it is taking and has taken to prevent and deal with the sexual abuse of patients or clients by members of the Association.

48(5) The Association shall report annually to the Minister respecting any complaints received during the calendar year concerning sexual abuse of patients or clients by members or former members of the Association.

48(6) A report under subsection (5) shall be made within two months after the end of each calendar year and shall contain the following information:

(a) the number of complaints received during the calendar year for which the report is made and the date each complaint was received;

(b) with respect to each complaint received during the calendar year for which the report is made:

(i) a description of the complaint in general non-identifying terms,

(ii) the decision of the Complaints Committee with respect to the complaint and the date of the decision,

(iii) if complaints are referred to the Discipline Committee or Fitness to Practise Committee, the decision of the Committee and the penalty imposed, if any, and the date of the decision, and

(iv) whether an appeal was made from the decision of the Discipline Committee or Fitness to Practise Committee and the date and outcome of the appeal; and

(c) with respect to each complaint reported in a previous calendar year, a report on the status of the complaint in accordance with paragraph (b) if the proceedings initiated as a result of the complaint were not finally determined in the calendar year in which the complaint was first received.

49 No person shall commence any action or other proceeding for damages against the Association, the Board, or against a member, officer, employee, agent or appointee of the Association or a member of the Complaints Committee, Discipline Committee, Fitness to Practise Committee or any other committee of the Board or Association for an act done in good faith in the performance of a duty or the exercise of a power under this Act or a by-law or rule made under this Act or for neglect or default in the performance or exercise, in good faith, of the duty or power.

50 No action shall be brought against a member or former member or professional corporation for negligence or breach of contract or otherwise by reason of services requested, given or rendered, except within

(a) two years from the day when, in the matter complained of, such services terminated;

(b) two years after the person commencing the action knew or ought to have known the facts upon which the person alleges negligence or breach of contract; or

(c) where the person entitled to bring an action is, at the time the cause of action arises, a minor, a mental incompetent, or a person of unsound mind, one year from the date when such person becomes of full age, or of sound mind, or as the case may be,

whichever is longer.

51(1) Any notice or other document which is to be given to, filed with or served on the Association shall be sufficiently given, filed or served if it is delivered personally or sent by prepaid registered or certified mail to the Registrar.

51(2) Any notice or other document which is to be given to, sent to or served upon any person other than the Association shall be sufficiently given, sent or served if it is delivered personally or if it is sent by prepaid registered or certified mail to

(a) the last address of that person as reported to the Registrar; or

(b) the address for service endorsed upon the notice of intention to appeal.

52 Service by prepaid registered or certified mail shall be deemed to be effected five days after the date the notice or other document is deposited in the mail.

53 A statement purporting to be certified by the Registrar under the seal of the Association as a statement of information from the records kept by the Registrar in the course of the Registrar's duties is admissible in court or in any hearing under this Act as proof, in the absence of evidence to the contrary, of the information in it without proof of the Registrar's appointment or signature or the seal of the Association.

54(1) Every member who believes a respiratory therapist to be suffering from a physical or mental condition or disorder of a nature and extent making it desirable and in the interests of the public that he or she no longer be permitted to practise as a respiratory therapist or that his or her practice be restricted, shall disclose to the Registrar the name of such respiratory therapist together with particulars of the condition or disorder and any failure by a member to comply with this subsection shall be deemed to be professional misconduct.

54(2) Subsection (1) does not apply to information obtained by a member which is confidential by reason of a respiratory therapist-client relationship.

54(3) A person disclosing information under subsection (1) is not subject to any liability as a result thereof except where it is proved that such disclosure was made maliciously.

55 Except for the purposes of a prosecution under this Act, or in any court proceedings, or for the purpose of the administration and enforcement of this Act and the by-laws and rules, no person acting in an official or other capacity under this Act or the by-laws or rules shall:

(a) knowingly communicate or allow to be communicated any information obtained in the course of administering this Act or the by-laws or rules; or

(b) knowingly allow any other person to inspect or have access to, any document, file, correspondence or other record obtained in the course of administering this Act or the by-laws or rules.

PART IX

TRANSITIONAL

56 The name and address of every person who at the coming into force of this Act is a member in good standing of the Association pursuant to the by-laws shall be entered in the register.

57(1) Nothing in this Act shall affect the powers and duties, tenure of office or terms of remuneration of any director or officer of the Association or any committee appointed before the commencement of this Act, or anything done or suffered, or any right, title or interest acquired before the commencement of this Act, or any legal proceedings or remedy in respect of any such thing, right, title or interest.

57(2) Until repealed, altered or amended pursuant to this Act, any by-law, regulation or rule made or fees prescribed of the Association and in force at the commencement of this Act shall notwithstanding any conflict with this Act continue in force and have full effect as if made under this Act.

FORM A

IN THE COURT OF QUEEN'S BENCH

OF NEW BRUNSWICK

JUDGMENT

(The Discipline/Fitness to Practise Committee) having on the _____ day of _____ A.D. 20___, ordered that A.B. pay the costs of _____ on an investigation, proceeding or hearing of a complaint made by C.D. (or that C.D. pay the costs of _____ on an investigation, proceeding or hearing of a complaint made by the said C.D.); and

The costs including disbursements of (A.B. or C.D. or _____ as the case may be), having been taxed by the Registrar of The Court of Queen's Bench of New Brunswick on the day of _____, A.D. 20___; It is this day adjudged that A.B. or C.D. or _____ (as the case may be) recover from A.B. or C.D. the sum of \$ _____.

DATED this _____ day of _____, 20___.

Registrar,
The Court of Queen's
Bench of New Brunswick