

Professional incompetence

26 Professional incompetence is a question of fact, but the display by a member of a lack of knowledge, skill or judgment, or a disregard for the welfare of a member of the public served by the profession of a nature or to an extent that demonstrates that the member is unfit to:

- (a) continue in the practice of that member's profession; or
- (b) provide one or more services ordinarily provided as a part of the practice of that member's profession;

is professional incompetence within the meaning of this Act.

1997, c.D-4.1, s.26.

Professional misconduct

27 Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, is professional misconduct within the meaning of this Act if:

- (a) it is harmful to the best interests of the public or the members of the association;
- (b) it tends to harm the standing of the member's profession;
- (c) it is a breach of this Act or the bylaws of that member's association; or
- (d) it is a failure to comply with an order of the professional conduct committee, discipline committee or council of that member's association.

1997, c.D-4.1, s.27.

Professional conduct committee

28(1) Each association shall establish a professional conduct committee consisting of at least three persons appointed by the council, the majority of whom are to be practising members of that association.

(2) Discipline committee members are not eligible to serve on the professional conduct committee.

1997, c.D-4.1, s.28.

Investigation

29(1) Where the professional conduct committee is requested by its council to consider a complaint or is in receipt of a written complaint alleging that a member is guilty of professional misconduct or professional incompetence, the committee shall:

- (a) review the complaint; and
- (b) investigate the complaint by taking any steps it considers necessary, including summoning before it the member whose conduct is the subject of the complaint or assessing the member's competence.

(2) On completion of its investigation, the professional conduct committee shall make a written report to the discipline committee recommending:

- (a) that the discipline committee hear and determine the formal complaint set out in the written report; or
- (b) that no further action be taken with respect to the matter under investigation because:
 - (i) the matter has been resolved, with the consent of the complainant and the member who is the subject of the investigation; or

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(ii) in the opinion of the professional conduct committee no further action is warranted on the facts of the case.

(3) The formal complaint set out in a written report made pursuant to clause (2)(a) may relate to any matter disclosed in the complaint received pursuant to subsection (1) or any other matter that comes to the attention of the professional conduct committee during the course of an investigation conducted pursuant to subsection (1) that appears to constitute professional misconduct or professional incompetence.

(4) A report signed by a majority of the professional conduct committee is the decision of that committee.

(5) The professional conduct committee shall provide, or cause the registrar to provide, a copy of a written report made pursuant to subsection (2) to:

- (a) the council;
- (b) the person, if any, who made the complaint; and
- (c) the member whose conduct is the subject of the complaint.

1997, c.D-4.1, s.29.

Search and seizure

30(1) In this section, “**judge**” means a judge of the Provincial Court of Saskatchewan.

(2) Every member and every person who keeps any member’s records or other property shall comply with the demand of a person designated by that member’s council to produce any of a member’s records or other property that the person designated by the council reasonably believes are required for the purposes of an investigation pursuant to this Act.

(3) On an *ex parte* application by an association, a judge may make an order described in subsection (4) where the judge is satisfied by the sworn evidence of a person designated by the council that the person believes, on reasonable grounds, that:

- (a) the member whose records or other property have been demanded pursuant to subsection (2), or a person who keeps records or other property of that member, has:
 - (i) refused to comply with a demand pursuant to subsection (2); or
 - (ii) failed to comply with a demand pursuant to subsection (2) within a reasonable time following the demand; and
- (b) the records or other property that are the subject of a demand pursuant to subsection (2):
 - (i) are required for the purposes of an investigation pursuant to this Act; and
 - (ii) are likely to be found in a specified place.

(4) An order pursuant to subsection (3) authorizes the person named in the order, together with any peace officer that the person may call on for assistance, to enter at any reasonable time the place named in the order and every part of the place named in the order and of the premises connected with that place to:

- (a) examine the place and connected premises; and
- (b) search for, seize and take possession of the member's records and other property demanded pursuant to subsection (2).

(5) A judge may make an order described in subsection (4) notwithstanding that the demand referred to in clause (3)(a) has not been made if the judge is satisfied by the sworn evidence of a person designated by the council that the person believes, on reasonable grounds, that the order is necessary to prevent the removal or destruction of evidence.

(6) Where a member's records or other property are produced pursuant to subsection (2) or seized pursuant to an order made pursuant to subsection (3), the person designated by that member's council to whom the records or other property were produced or who seized the records or other property or a professional conduct committee member may:

- (a) make or cause to be made one or more copies of the records or other property produced or seized and return the originals to the person who produced them or from whom they were seized; or
- (b) retain any of the member's records or other property and dispose of them in accordance with the directions of the chairperson of the discipline committee.

(7) Every entry and search pursuant to this section is to be made during normal business hours unless the judge who issues the order authorizes the entry and search at another time.

(8) A copy or extract of a member's records or other property certified by a person mentioned in subsection (6) who made the copy or extract is admissible in evidence in any action, proceeding or prosecution as proof, in the absence of evidence to the contrary, of the original record or property and its contents without proof of the signature or capacity of the person purporting to have signed the record.

1997, c.D-4.1, s.30.

Suspension

31(1) Where the professional conduct committee is of the opinion that, on the basis of the allegations or the nature of the case, the member's licence should be suspended or the member should be prohibited from performing any procedure or authorized practice pending the outcome of the investigation or hearing, the professional conduct committee may, with the prior approval of its council, apply to a judge of the court for an order:

- (a) suspending the licence of a member whose conduct is the subject of an investigation pursuant to subsection 29(1) or against whom a formal complaint has been made pursuant to subsection 29(2); or
- (b) temporarily prohibiting a member described in clause (a) from performing any specified procedure or authorized practice.

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- (2) An order of suspension or prohibition is not to extend past the earliest of: (a) 90 days from the date of the order;
- (b) the date of a report of the professional conduct committee made pursuant to clause 29(2)(b);
- (c) where the discipline committee finds that a member is not guilty of professional misconduct or professional incompetence, the day of its decision; and
- (d) where the discipline committee finds that a member is guilty of professional misconduct or professional incompetence, the day that an order is made pursuant to section 34.
- (3) The professional conduct committee may apply to the court for an extension of an order of suspension or prohibition made pursuant to subsection (1).

1997, c.D-4.1, s.31.

Discipline committee

- 32(1)** Each association shall establish a discipline committee consisting of at least three persons appointed by its council.
- (2) A majority of the discipline committee members are to be practising members. (3) One of the discipline committee members is to be one of the councillors appointed pursuant to subsection 9(1).
- (4) Professional conduct committee members are not eligible to be discipline committee members.
- (5) Subject to this Act and the bylaws, the discipline committee may make rules regulating its business and proceedings.

1997, c.D-4.1, s.32.

Discipline hearing

- 33(1)** Where a report of the professional conduct committee recommends that the discipline committee hear and determine a formal complaint, the registrar shall, at least 14 days before the date the discipline committee is to sit:
- (a) send a copy of the formal complaint to the member whose conduct is the subject of the hearing; and
- (b) serve notice on the member whose conduct is the subject of the hearing of the date, time and place of the hearing.
- (2) The professional conduct committee shall prosecute or direct the prosecution of the complaint, but professional conduct committee members shall not participate in any other manner in the hearing of the complaint except as witnesses when required.
- (3) The discipline committee shall hear the complaint and shall determine whether or not the member is guilty of professional misconduct or professional incompetence, notwithstanding that the determination of a question of fact may be involved, and the discipline committee need not refer any question to a court for adjudication.
- (4) The discipline committee may accept any evidence that it considers appropriate and is not bound by rules of law concerning evidence.
- (5) The discipline committee may employ, at the expense of the association, any legal or other assistance that it considers necessary, and the member whose conduct is the

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subject of the hearing may be represented by counsel at the member's own expense.

(6) The testimony of witnesses is to be under oath or affirmation administered by the chairperson of the discipline committee.

(7) At a hearing by the discipline committee, there is to be full right: (a) to examine, cross-examine and re-examine all witnesses; and (b) to present evidence in defence and reply.

(8) On application and payment of the appropriate fee, the local registrar of the court at any judicial centre shall issue writs of *subpoena ad testificandum* or *subpoena duces tecum* to:

- (a) a member whose conduct is the subject of a hearing pursuant to this Act; (b) a professional conduct committee member;
- (c) a discipline committee member.

(9) Where a writ issued pursuant to subsection (8) is disobeyed, the proceedings and penalties are those applicable in civil cases in the court.

(10) Where the member whose conduct is the subject of the hearing fails to attend the hearing, the discipline committee, on proof of service of the notice mentioned in subsection (1), may proceed with the hearing in the member's absence.

(11) If, during the course of a hearing, the evidence shows that the member whose conduct is the subject of the hearing may be guilty of a charge different from or in addition to any charge specified in the formal complaint, the discipline committee shall notify the member of that fact.

(12) If the discipline committee proposes to amend, add to or substitute the charge in the formal complaint, the discipline committee shall adjourn the hearing for any period that the discipline committee considers sufficient to give the member an opportunity to prepare a defence to the amended formal complaint, unless the member consents to continue the hearing.

(13) The person, if any, who made the complaint pursuant to section 29:

- (a) is to be advised orally or in writing by the registrar of the date, time and place of the hearing; and
- (b) subject to subsection (15), is entitled to attend the hearing.

(14) Subject to subsection (15), the discipline committee shall conduct all hearings in public.

(15) The discipline committee may exclude members of the public and the person who made the complaint from any part of the hearing when the committee is of the opinion that evidence brought in the presence of the person or persons to be excluded will unduly violate the privacy of a person other than the member whose conduct is the subject of the hearing.

1997, c.D-4.1, s.33.

Disciplinary powers

34(1) Where a discipline committee finds a member guilty of professional misconduct or professional incompetence, it may make one or more of the following orders:

- (a) an order that the member be expelled from the association and that the

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- member's name be struck from the register;
- (b) an order that the member be suspended from the association for a specified period;
 - (c) an order that the member be suspended pending the satisfaction and completion of any conditions specified in the order;
 - (d) an order that the member may continue to practise only under conditions specified in the order, which may include, but are not restricted to, an order that the member:
 - (i) not do specified types of work;
 - (ii) successfully complete specified classes or courses of instruction; (iii) obtain medical treatment, counselling or both;
 - (e) an order reprimanding the member;
 - (f) any other order that the discipline committee considers just.
- (2) In addition to an order made pursuant to subsection (1), the discipline committee may order:
- (a) that the member pay to the association within a fixed period: (i) a fine in a specified amount not exceeding \$5,000; and
 - (ii) the costs of the investigation and hearing into the member's conduct and related costs, including the expenses of the professional conduct committee and the discipline committee and costs of legal services and witnesses; and
 - (b) where a member fails to make payment in accordance with an order pursuant to clause (a), that the member be suspended from the association.
- (3) In addition to an order made pursuant to subsection (1), the discipline committee may order the member to provide restitution for the cost of a faulty dental prosthesis, periodontal or orthodontal dental appliance, in the case of:
- (a) a dental technician; (b) a dentist; or
 - (c) a denturist.
- (4) The registrar shall send a copy of an order made pursuant to this section to the member whose conduct is the subject of the order and to the person, if any, who made the complaint.
- (5) Where a member is expelled or suspended, the registrar shall strike the name of the member from the register or indicate the suspension on the register, as the case may be.
- (6) Where a member is found guilty of professional misconduct or professional incompetence, the council may inform that member's employer of the order made against the member.
- (7) If a member is suspended or expelled from an association, that member's rights and privileges as a member are removed for the period during which the member is suspended or expelled.

Criminal conviction

35 The discipline committee may, by order, impose any penalty described in section 34 that to it seems just where:

- (a) the member has been convicted of an offence pursuant to the *Criminal Code*, the *Narcotic Control Act (Canada)* or the *Food and Drugs Act (Canada)*;
- (b) a report of the professional conduct committee is made to the discipline committee respecting the conviction mentioned in clause (a);
- (c) the discipline committee has given the member mentioned in clause (a) an opportunity to be heard; and
- (d) the discipline committee finds that the conduct of the member giving rise to the conviction mentioned in clause (a) constitutes professional misconduct.

1997, c.D-4.1, s.35.

Duty to report

36 Where a professional conduct committee in its investigation pursuant to section 29 or a discipline committee at the conclusion of its hearing pursuant to section 33 believes that the member whose conduct is the subject of the investigation or hearing may be guilty of a criminal offence, the committee may immediately discontinue its investigation or hearing, as the case may be, and shall make a report of its findings to:

- (a) the president of its association; and
- (b) the Deputy Minister of Justice.

Suspension

37 A judge of the court, on the application of a council, may direct that a member be suspended pending the disposition of the criminal charge where:

- (a) a criminal charge is laid against a member; and
- (b) the member has applied to the court for a stay of any disciplinary proceedings against the member.

1997, c.D-4.1, s.37.

Review by court

38(1) A member may appeal the decision or any order of the discipline committee to a judge of the court by serving the registrar with a notice of appeal and filing the notice with the local registrar within 30 days after the decision or order where:

- (a) the member has been found guilty of professional misconduct or professional incompetence by the discipline committee pursuant to section 33; or
- (b) the member is subject to an order of the discipline committee pursuant to section 34 or 35.

(2) An appellant shall set out the grounds of appeal in a notice of appeal mentioned in subsection (1).

(3) On receipt of a notice of appeal, the registrar shall file with the local registrar a true copy of:

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- (a) the formal complaint and notice served pursuant to section 33 or the report of the professional conduct committee pursuant to section 35;
 - (b) the transcript of the evidence presented to the discipline committee; (c) the exhibits received in evidence by the discipline committee; and
 - (d) the decision and order of the discipline committee.
- (4) The appellant or the appellant's solicitor or agent may obtain from the registrar a copy of the documents filed pursuant to subsection (3) on payment of the costs of producing them.
- (5) On hearing an appeal the judge may: (a) dismiss the appeal;
- (b) quash the finding of guilt;
 - (c) direct a new hearing or further inquiries by the discipline committee; (d) vary the order of the discipline committee; or
 - (e) substitute the judge's own decision for the decision appealed from.
- (6) The judge may make any order as to costs that the judge considers appropriate, including an order as to which party shall bear the cost of the transcripts and other material filed with the local registrar pursuant to subsection (3).

Effect of appeal

39 The commencement of an appeal pursuant to section 38 does not stay the effect of the decision or order appealed from, but on five days' notice to the registrar, the appellant may apply to the court for a stay of the decision or order pending the disposition of the appeal.

1997, c.D-4.1, s.39.

Court of Appeal

40 An association or a member who brings an appeal pursuant to section 38 may appeal a decision of a judge of the court on a question of law within 30 days after the decision to the Court of Appeal.

1997, c.D-4.1, s.40.

Reinstatement

41(1) A person who has been expelled as a member may apply to his or her former association's council for reinstatement.

(2) Subject to the bylaws, on receipt of an application pursuant to subsection (1), the council shall:

- (a) review the application; and
- (b) investigate the application by taking any steps it considers necessary. (3)

On the completion of its investigation, the council may:

- (a) where it is satisfied that the person's subsequent conduct and any other facts warrant reinstatement, order that the person be reinstated as a member on any terms

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and conditions that the council considers appropriate; or

- (b) by order, refuse to reinstate that person.
- (4) Where, on an application pursuant to subsection (1), the council refuses to reinstate the person as a member, the person, within 30 days after the date of the order, may appeal the order of the council to a judge of the court and the judge may allow or disallow the appeal.
- (5) On an appeal pursuant to subsection (4), the judge shall consider:
- (a) the proceedings before the council on the application for reinstatement; (b) the past record of the appellant as shown by the books and records of the association; and
 - (c) the evidence taken before the council and any committee that dealt with the expulsion and application for reinstatement and the report of that committee.
- (6) A person whose application for reinstatement is refused or whose appeal of a refusal is dismissed may make another application for reinstatement, based on new information, at any time.