

The Act:

Part 1: Definitions

Part One of the Act is a section on definitions. The major changes in this section are that the Association of Physiotherapists of Manitoba now becomes the College of Physiotherapists of Manitoba, and the former Board now becomes a Council. Our former "lay members" now become public representatives, which reflects the new terminology of the day.

Part 2: Practice of Physiotherapy

The description of the practice of physiotherapy has become broader and reflects the unique aspects of physiotherapy practice which differentiates physiotherapy from other professions. The clause reads:

The practice of physiotherapy is the assessment and treatment of the body by physical or mechanical means for the purpose of restoring, maintaining, or promoting physical function, mobility or health, or to relieve pain.

The clause that follows this description provides further definition of included practices. This list is not meant to be all inclusive and certain practices have been added for clarity.

The clause reads in part:

A physiotherapist may plan, administer and evaluate a physiotherapy program that includes, but is not limited to, education, ergonomics and interventions such as exercise, massage, articular and soft tissue mobilizations and manipulations, acupuncture, hydrotherapy, tracheal suctioning, and the use of radiant, mechanical and electrical energy.

It should be noted that in neither our former or new legislation, do either of these sections provide physiotherapists with an exclusive scope of practice. There are a number of other professions who practice these treatment modalities. In essence, these two sections legally permit physiotherapists to practice in these areas.

Other clauses in this part address the issue of representation as a physiotherapist and use of title. Therefore, those other professionals who may be practicing shared techniques, modalities etc. are legally forbidden to call themselves physiotherapists or give the impression that they are physiotherapists or physical therapists or that they are practicing physiotherapy. The new legislation lends clarity to the use of both titles "physiotherapist" and "physical therapist". In the former legislation, the word "physiotherapist" was protected and only by implication, the word "physical therapist".

In the former legislation, it was in this section where reference to "assessment in consultation with the patient's physician" and "the planning, administration and evaluation of remedial treatment programs...in communication with the patient's physician" were found. In the new legislation, all references to communication, consultation and physicians have been removed. This will allow patients to have total direct access to physiotherapy services according to the new legislation. Please note, that in some work settings, employer or other policy may be in place which still requires a physician's referral. Most hospitals still have by-laws in place that requires the physiotherapist to have a physician's referral before treatment can be commenced. Some third party payers also require a physician's referral.

Even though direct access now exists, the Council advises members to continue to communicate and consult with physicians on the care of their patients. The original purpose for the communication and consultation clauses was to ensure that physiotherapists were provided with full information on the patient's medical condition. The need to have this information continues to exist and it will now be the physiotherapist's responsibility to seek this information. In effect, the new legislation places more responsibility on the physiotherapist.

Part 3: College of Physiotherapists of Manitoba

This section provides for the College to legally replace the Association and states that the mandate of the College is to serve and protect the public interest. The number of Council members' increases to at least nine members and the number of public representative's increase to at least 1/3 of the members of council. In the past, the Board was composed of 8 members, two of whom were lay members. The Minister of Health appointed one lay member while the other was a Board appointment. The new legislation is less specific on who makes the appointments and this is a topic of current discussion for the new Council. The Council's committee structure will change from the Board's committee structure. There are fewer standing committees specified in the new legislation, although the Council can form other standing committees, as it considers necessary.

Part 4: Registration

There will be some changes to the structure and/or names of the Registers (formerly called the "Rosters"). Certain information on members will be available publicly, including conditions imposed on a registration, every cancellation or suspension of registration and the results of disciplinary proceedings in which a panel has made a finding. The results of every disciplinary proceeding completed within the past six years at which a physiotherapist's registration was cancelled, suspended, or the physiotherapist was required to pay a fine or attend to be censured (a new process) will be available to the public. A Board of Assessors (which essentially replaces our former Registration and Membership Committee and Advisory Council) will be appointed by the Council to approve applications for registration. Certain conditions for approving registration are specified within this section. One of the major changes is that the Board of Assessors will approve an applicant for registration if the graduate of a physiotherapy education program approved by Council has passed any examinations that the Council may require. In the Regulations, this required examination is the Physiotherapy Competency Examination (PCE). The Board of Assessors can also deny an application for registration and this section provides for an appeal process. There is now a section on cancellation of a member's registration, which can occur if a person's registration has been obtained by means of a false or fraudulent representation or declaration. This could apply to the declaration signed by new applicants or renewing members on the back of the renewal or application forms, which states that the information provided on the forms, is true. Registration can also be cancelled if a member has been convicted of an offence that is relevant to his/her suitability to practice physiotherapy. In future renewal forms, you will see a section that asks whether you have had a criminal conviction over the past year.

Part 5: Complaints

There are major changes to the complaints process with the new legislation.

One third of the members of the Complaints Committee must be public representatives. A complaint can be lodged against a member and be investigated up to five years after the physiotherapist is no longer a College member.

The Complaints Committee will attempt to informally resolve a complaint if possible. If not, the committee can appoint an investigator to conduct an investigation. Upon completion of his/her investigation, the investigator will report his or her findings to the Complaints Committee. Upon review of the report, the Complaints Committee has a number of avenues. The complaint can be forwarded to the Inquiry Committee (equivalent to the old Discipline Committee), or not be directed to Inquiry. The Committee can accept the voluntary surrender of a member's registration. If no other action is to be taken against the member, the Complaints Committee can recommend "censure". The member must appear before at least one member of the Complaints Committee for censure and will have a record with the College. The member's name may be published.

The Complaints Committee can also refer the matter to mediation if the Committee decides that the complaint is strictly a matter of concern between the complainant and the member. The Committee can also enter into an agreement with the member for one or more of the following: assessing the member's capacity or fitness to practice, counselling or treatment of the member, monitoring or supervising the member's practice, the member's completing a specified course of studies by way of remedial training, placing conditions on the member's right to practice physiotherapy. The Committee may also order the member to pay all or part of the costs incurred by the college in monitoring compliance with conditions imposed on the member's right to practice physiotherapy. If a member is censured, costs may be assessed against the member. A member's registration can be suspended if there is perceived to be a serious risk to the public while an investigation is underway. During the course of the investigation, if the Complaints Committee comes upon information respecting possible criminal activity on the part of a member, the Complaints Committee may disclose this information to a law enforcement authority.

Inquiry Committee

When a matter is referred to the Inquiry Committee (formerly the Discipline Committee), a panel composed of at least three members, including 1/3 public representatives will be established. A hearing must be called within 120 days of the matter being referred to Inquiry. The Registrar may issue a public notice of the hearing but the notice must not include the name of the investigated member. The panel may investigate and hear any other matter concerning the conduct of the investigated member that arises in the course of the proceedings. A hearing shall be open to the public but there will be no reporting in the media of anything that would identify the investigated member unless and until the panel makes a finding. A member may request a private hearing under certain conditions.

The Inquiry panel can find that the member is:

- A. guilty of professional misconduct
- B. has contravened the Act, the Regulations, the By-laws or the Code of Ethics of the College
- C. has been found guilty of an offence that is relevant to the member's suitability to practice
- D. has displayed a lack of knowledge or a lack of skill or judgment in the practice of physiotherapy
- E. has demonstrated an incapacity or unfitness to practice physiotherapy
- F. is suffering from an ailment that might, if the member continues to practice, constitute a danger to the public
- G. is guilty of conduct unbecoming a member.

The Panel may issue one or more of the following orders:

- A. reprimand the member
- B. suspend the member's certificate of registration for a stated period
- C. suspend the member's certificate of registration until he/she has completed a specified course of studies or supervised practice or both
- D. accept, in place of a suspension of the certificate of registration, the member's undertaking to limit his/her practice
- E. impose conditions on the member's entitlement to practice physiotherapy including conditions to practice under supervision, or to permit periodic inspections of his/her practice, or permit periodic audits of records, or report on specified matters that the panel may determine or not to engage in sole practice. The panel may also require the member to prove that a disability or addiction can be or has been overcome, and may suspend the member's certificate of registration until then. The panel may also direct the member to waive, reduce or repay money paid to the member that in the opinion of the panel was unjustified for any reason. The panel may also cancel the member's certificate of registration indefinitely. Costs and fines may also be assessed against the member. An appeal process is also specified in the Act.

Part 6: Regulations, By-Laws and Code of Ethics

This section of the Act specifies what matters the Council can make Regulations and By-laws about and that the Council can adopt a code of ethics once the resolution is passed at a general meeting. One difference between the old and new regulations is that the Council can now make regulations respecting continuing competence programs. Under the former system, members were obligated to undertake voluntary continuing education. Another difference is that members are now required to carry professional liability insurance. The regulations must be approved by a majority of the members of the College and also by the Lieutenant Governor in Council (effectively the Cabinet). The Bylaws concentrate on the administrative issues of the College including setting fees, calling meetings, voting etc. The Bylaws may be amended or repealed by a majority of the membership.

Part 7: General Provisions

This section of the Act provides for the appointment of Practice Auditors who may review the operation of a physiotherapy practice and report his/her findings to the Registrar. A Practice Auditor may enter the office of a member at reasonable times and without a warrant and require the member to produce records that the Auditor considers reasonable. The Auditor may inspect the premises and remove records, substances or things for examination. The purpose of the Practice Audits is to improve physiotherapy practice and is not meant to be a punitive action. The Advisory Committee on Physiotherapy Practice is currently working on Practice Audits. The

Committee is reviewing the CPA accreditation process, the Quebec inspection program and the Alberta practice review process to determine where the College should be heading with respect to Practice Audits. More information will be forthcoming to the membership as the process unfolds.

This section of the Act also contains some administrative issues as well as a section about the duty of members and employers to report other physiotherapists. CPM members have a duty to report other physiotherapists who are believed to be suffering from a physical or mental condition or disorder of a nature or to an extent that the member is unfit to continue to practice or that the member's practice should be restricted. Employers have a responsibility to ensure that the physiotherapist they hire is registered under the Act for the duration of the period of employment. Also, a person who employs a physiotherapist and later terminates the physiotherapist's employment for misconduct, incompetence or incapacity is required to immediately report the termination to Council and give the physiotherapist a copy of the report.