

## REGISTRATION AND LICENSING DIRECTION

Current and updated as of: November 13, 2014

### 3.22 Criminal Convictions

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#### **Purpose:**

The following policy relates to the requirements regarding criminal record checks and to outline the Board of Assessor's discretion with regard to the results. The policy is designed to protect the public and reflect professionalism.

#### **Definitions:**

In the following paragraphs of this policy, unless the context otherwise requires, the term "Applicant" shall mean applicants of the following categories:

- (a) Applicants for registration as a physiotherapist;
- (b) Applicants for registration as a practicing physiotherapist or renewal thereof;
- (c) Applicants for registration on the inactive register or renewal thereof;
- (d) Applicants for registration as an examination candidate;
- (e) Applicants for registration as a student or renewal thereof.

#### **Policy:**

In accordance with the *Physiotherapists Regulation*, a current criminal record check (within 6 months of date of application of registration) must be submitted by the following categories of Applicants:

- (a) Applicants for registration as a practicing physiotherapist;
- (b) Applicants for registration on the inactive register; and
- (c) Applicants for registration as an examination candidate.

Criminal record checks should be obtained from all countries that you resided in during the six months prior to submitting an application for registration.

**Disclosure obligations:**

Applicants must disclose the following information about themselves and their practice of physiotherapy or any other health profession whether in Manitoba or in another jurisdiction.

- (a) a conviction for an offence under
  - (i) the *Criminal Code* (Canada), the *Controlled Drugs and Substances Act* (Canada) or the *Food and Drugs Act* (Canada); or
  - (ii) A criminal or penal statute of a jurisdiction outside Canada that is, or may be, relevant to his or her suitability to practice.

**Where a Criminal Record is disclosed**

1. Where the College becomes aware that an applicant has a criminal conviction, the Registrar shall:
  - a. Report the matter to the Board of Assessors; and
  - b. Require the Applicant to provide a current criminal records check (if not already provided) and supply sufficient legal documentation of the criminal conviction including:
    - (i) Type of conviction;
    - (ii) Date of conviction;
    - (iii) Date of offence;
    - (iv) Age at the time of offence;
    - (v) Specific nature of offence and description of circumstances of the offence; and
    - (vi) Sentence imposed.
2. The Applicant may be asked to provide the following additional information:
  - (a) Documentary evidence of rehabilitation efforts;
  - (b) Documentation with respect to the grant of any pardon, record suspension, or purging or expungement of the criminal record; and
3. The information provided or otherwise obtained shall be assessed according to the following factors:
  - (a) The nature of the offence. For example:
    - (i) Did the offence occur when the Applicant was in a position of trust;
    - (ii) Does the offence demonstrate dishonest behavior; and
    - (iii) Does the offence demonstrate behaviors that would be considered professional misconduct, conduct unbecoming or other breach of *The Physiotherapists Act* or the Code of Ethics?
  - (b) The number and frequency of offences.

- (c) The penalty imposed and whether that penalty has been satisfied.
- (d) Whether the applicable behavior poses a threat to patient safety or to an employer's ability to operate safely and efficiently. For example:
  - (i) Convictions related to sexual assault, violence or use of a weapon may cause the Applicant to be ineligible for registration (e.g. physical or sexual abuse, sexual assault, armed robbery, etc.);
  - (ii) Convictions related to honesty and integrity may cast doubt on character and ethical conduct (e.g. fraud, theft, repeated shoplifting etc.);
  - (iii) convictions related to drugs and alcohol may indicate a health problem or an ethical concern (e.g. trafficking, repeated impaired driving convictions, etc.); and
  - (iv) Multiple convictions may suggest a pattern of conduct.
- (e) The circumstances of a conviction or particulars of the offence, atonement or other applicable information. For example:
  - (i) How old was the Applicant when the offence occurred;
  - (ii) What was the situation of the Applicant at the time of the offence; and
  - (iii) Were there any extenuating circumstances?
- (f) Demonstration of successful efforts made at rehabilitation and other factors which eliminate or reduce the likelihood of recurrence. For example:
  - (i) How much time has elapsed between the conviction; and
  - (ii) What has the Applicant done during that period of time?
- (g) Accomplishments of the Applicant since the applicable incident(s). For example:
  - (i) Has the Applicant shown any tendency to repeat criminal behaviour; and
  - (ii) Has the Applicant shown a firm intention to rehabilitate himself/herself; and
  - (iii) Has the Applicant applied for and received a pardon, record suspension, or purging or expungement of criminal record.
- (h) Whether there is any connection between the conviction and physiotherapy practice?

### **Guidelines for the Board of Assessors**

- 1) In making any decision in accordance with the aforesaid factors analysis, the Board of Assessors shall consider the following guidelines:
  - (a) If more than five (5) years have passed since the penalty was satisfied for the conviction, or if the matter was a summary conviction offence or a pardon, record suspension, or purging or expungement of criminal record was granted, the Board of Assessors shall require the Applicant to sign a Statutory Declaration, in the form attached as Schedule "A" hereto, indicating that he or she has fully and completely described the background and the disposition of the matter. If satisfied, the Board of Assessors shall accept the applicable application for registration or accept such registration conditionally.

- (b) If the matter was an indictable offence involving narcotics, breach of trust, or for which more than a two (2) year penitentiary sentence was imposed, and the said offence occurred within five (5) years of the application for registration, the Board of Assessors shall decline the application for registration.
- (c) If the matter is other than those described above, or if the Board of Assessors, having applied the aforesaid factors analysis, considers it advisable, the Registrar (at the direction of the Board of Assessors) shall undertake further investigations. Such further investigations may include, without limitation, obtaining court records to confirm that the Applicant's description of events is accurate and complete. A Statutory Declaration, in the form attached as Schedule "A" hereto, shall also be obtained from the Applicant. Upon completion of the Registrar's investigations, the matter shall be referred again to the Board of Assessors. The Board of Assessors shall review the matter and apply its discretion to either accept or decline the application for registration or accept such registration conditionally.

### **Outstanding Court Conditions**

- 1) When information is received which indicates an Applicant has a criminal conviction(s) and the conditions of the court have not been met, the application will be delayed until acceptable evidence is submitted indicating the court conditions have been satisfied.



**STATUTORY DECLARATION**

TO: The College of Physiotherapists of Manitoba (the “College”)

RE: Application for registration as a physiotherapist or examination candidate with the College

I, \_\_\_\_\_, solemnly declare that:

1. I have applied to the College for registration;
2. I understand that, pursuant to s. 7(9) of the *Physiotherapists Regulation*, Regulation 204/2001, I must disclose to the College information about a conviction for an offence under:
  - (a) the *Criminal Code* (Canada), the *Controlled Drugs and Substances Act* (Canada), or the *Food and Drugs Act* (Canada), or
  - (b) a criminal or penal statute of a jurisdiction outside Canada that is, or may be, relevant to my suitability to practise.
3. On the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, I was convicted of the following offence:  
\_\_\_\_\_
4. I have provided a full and complete description of all material aspects of the background and the disposition of the matter relating to the aforesaid criminal conviction to the College.
5. I understand that my registration may be cancelled pursuant to s. 15(1) of *The Physiotherapists Act*, C.C.S.M. c. P65 if I provide a false or fraudulent representation to the College.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of the “Canada Evidence Act.”

DECLARED before me at the \_\_\_\_\_ of )  
 \_\_\_\_\_, in the Province of )  
 Manitoba, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ )  
 \_\_\_\_\_ )  
 A Commissioner of Oaths or Notary Public ) Signature of Applicant  
 in and for the Province of Manitoba. )  
 \_\_\_\_\_ )  
 My Commission Expires: \_\_\_\_\_ )