

C.C.S.M. c. R115

The Registered Respiratory Therapists Act

Table of Contents

Regulations

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

PART I
INTERPRETATION

Definitions

1(1) In this Act

"**association**" means The Manitoba Association of Registered Respiratory Therapists; (« Association »)

"**board**" means the board of directors of the Association; (« conseil d'administration »)

"**council**" means the advisory council established under section 50; (« Conseil »)

"**executive director**" means the Executive Director of the association appointed under this Act; (« directeur général »)

"**member**" unless the context otherwise indicates means a person whose name is entered in the register; (« membre »)

"**minister**" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of health services in Manitoba; (« ministre »)

"**practice of respiratory therapy**" means, subject to subsection (2), the carrying on for hire, gain, or hope of reward, either directly or indirectly, the medically supervised and co-ordinated practice of respiratory therapy; (« exercice de la thérapie respiratoire »)

"**register**" means the register established under this Act; (« registre »)

"**registered respiratory therapist**" means a person whose name is entered in the register and in one of the rosters referred to in this Act; (« thérapeute respiratoire » "thérapeute respiratoire inscrit")

"**registrar**" means the Registrar of the association appointed under this Act; (« registraire »)

"**respiratory therapy**" means the medically supervised and co-ordinated scientific application of techniques and procedures to assist a physician in the safe and effective diagnosis, treatment, and promotion of the well being of patients with respiratory and associated disorders; (« thérapie respiratoire »)

"**respiratory therapy education programs**" means programs approved by the board that qualify an individual for registration as a registered respiratory therapist; (« programmes d'enseignement de thérapie respiratoire »)

"**roster**" means any one of the rosters established under this Act. (« liste »)

Further definition of respiratory therapy

1(2) Without restricting the generality of the definitions of "practice of respiratory therapy" and "respiratory therapy" a person shall be deemed to be practising respiratory therapy within the meaning of this Act who by advertisement, sign, or statement of any kind, written or oral, alleges or implies or states that he is, or holds himself out as being qualified, able or willing to assist any individual or individuals by way of medically supervised and co-ordinated treatment by medical gases, aerosols, oxygen, compressed air, or other therapeutic medical gas mixtures applied directly or indirectly to the airways, including

(a) the administration of drugs by the foregoing means; or

(b) the assistance of ventilation with or without mechanical devices; or

- (c) the provision of safe and effective application of equipment and techniques to patients; or
- (d) the evaluation of effectiveness of the foregoing procedures and techniques; or
- (e) the provision of sufficient expertise in the therapy to effectively evaluate equipment, to correct problems with equipment and provide stimulus to the development of new equipment to meet special needs; or
- (f) the performance of tests and measurements used as aids in the diagnosis or evaluation of the function of the cardio-pulmonary system; or
- (g) the performance of cardio-pulmonary resuscitation techniques; or
- (h) procurement of arterial and capillary blood samples for blood gas analysis.

Certain services not exclusive to respiratory therapy

1(3) The services and procedures mentioned in clauses (2)(a), (b), (c), (d), (f), (g) and (h) are not exclusive to respiratory therapy.

Incorporation continued

2 The Manitoba Association of Registered Respiratory Therapists is continued as a body corporate subject to the provisions of this Act and *The Corporations Act*, and has the capacity, rights, powers and privileges of a natural person.

PART II BOARD OF DIRECTORS

Board of directors

3(1) The affairs of the association shall be managed by a board of directors consisting of eight members, two of whom shall be lay persons appointed by the minister.

By-laws for the election and appointment of members of the board

3(2) The manner of the appointment or election of the members, other than the members appointed by the minister, shall be governed by the by-laws of the association.

Existing members to continue until replaced

3(3) 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.

Quorum

3(4) A majority of the board constitutes a quorum for the transaction of business.

By-laws

4(1) The board may make, amend and repeal by-laws not inconsistent with this or any other Act of the Legislature to

- (a) fix the method of setting the amounts of annual and other fees and provide for the collection thereof;
- (b) establish the time for, and manner of, the election or appointment and the number of members of the board;
- (c) 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;
- (d) provide for the organization of regional or other divisions of the association;
- (e) prescribe the terms of office of members of the board and the manner in which the vacancies on the board may be filled;
- (f) govern the acquisition, management, disposal, and conduct of the property and affairs of the association;
- (g) provide for the appointment, removal, functions, duties and remuneration of agents, officers and employees of the association, and the security, if any, to be given by them to the association;
- (h) establish such standing committees, if any, as the board may deem necessary to carry out the business of the association;
- (i) generally, facilitate all such matters as may be deemed by the board to be necessary or desirable for the administration of the association;

- (j) develop, establish and maintain standards of professional ethics among its members;
- (k) promote the professional welfare of the members of the association;
- (l) create one or more classes of membership and prescribe the rights, privileges and obligations of the members of each such class.

Members of the association

4(2) The members of the association comprise every person whose name is entered into the register or rolls of membership of the association and whose name has not been erased from the register or the rolls of membership of the association.

Non members of The Canadian Society of Respiratory Therapists

4(3) A person who is not a member of The Canadian Society of Respiratory Therapists may apply for membership in the association if that person

- (a) submits an application in writing to the board for a licence under this Act;
- (b) is a person of good moral character;
- (c) is a graduate of a training program in respiratory therapy approved by the board and has successfully completed all requirements of training as prescribed by the board;
- (d) has paid the prescribed fee;

and upon successfully completing the foregoing, may be admitted to membership in the association upon the board determining that such applicant's qualifications are equal to or better than those of members of The Canadian Society of Respiratory Therapists.

Submission of by-law to members

4(4) The board shall at least 30 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.

By-law not effective until confirmed

4(5) A by-law made pursuant to clauses 4(1)(a), (b), (c), (d), (e), (j), (k) or (l) is not effective until confirmed at a meeting of the members pursuant to subsection (4).

Period of effectiveness of certain by-laws

4(6) A by-law, or an amendment or a repeal of a by-law made by the board under clause 4(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 (4) or until it ceases to be effective under subsection (7) and, where the by-law is confirmed or confirmed as amended, it continues in effect in the form in which it was so confirmed.

Effect of rejected by-law

4(7) 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 (4), 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.

Effect of acts done under rejected by-law

4(8) No act done, or right acquired, under any by-law to which subsection (6) applies is prejudicially affected by the subsequent rejection or variation of that by-law at a general meeting of the association.

Member may propose by-laws

4(9) A member entitled to vote at an annual meeting of the association may make a proposal to make, amend or repeal a by-law.

Proposals for by-laws to be sent to board

4(10) A member making a proposal pursuant to subsection (9) hereof shall send the proposal to the board at the office of the association.

Distribution of proposal

4(11) 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 membership 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 meeting and shall be distributed to the membership in accordance with the by-laws of the association prior to the next following general meeting of the association.

Regulations

5(1) Subject to approval by the Lieutenant Governor in Council, the board may make regulations to

- (a) regulate the admission, registration, renewal of registration, suspension, expulsion and reinstatement of members and prescribe the conditions precedent to membership of persons applying therefor;
- (b) prescribe the conditions precedent for the entry of members' names on the rosters referred to in subsection 10(2);
- (c) develop, establish and maintain standards for the practice of respiratory therapy;
- (d) develop, establish and maintain standards for respiratory therapy education consistent with the changing needs of society;
- (e) define by education, experience or otherwise, general or specialized areas of respiratory therapy practice;
- (f) prescribe standards of mandatory continuing respiratory therapy education for all persons registered under this Act;
- (g) prescribe limitations on the right to practise.

Prior submission of regulation to members

5(2) Before submitting a regulation to the Lieutenant Governor in Council, the board shall submit the regulation together with the recommendations of the advisory council in respect of the regulation, if any, to the members of the association at least 30 days before a meeting of the members and the members at that meeting may, by ordinary resolution confirm, reject or amend the regulation.

5(3) Repealed, S.M. 2008, c. 42, s. 84.

R.S.M. 1987 Corr.; S.M. 2001, c. 38, s. 6; S.M. 2008, c. 42, s. 84.

Right to administer respiratory therapy

6(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; or
- (c) any person from practising respiratory therapy.

Certain practices not prohibited

6(2) Nothing in this Act or in the by-laws of the association prohibits a person who is duly licensed and qualified from practising

- (a) medicine or surgery within the meaning of *The Medical Act*; or
- (b) dentistry within the meaning of *The Dental Association Act*; or
- (c) chiropractic within the meaning *The Chiropractic Act*; or
- (d) podiatry within the meaning of *The Podiatrists Act*; or
- (e) professional engineering or professional geoscience within the meaning of *The Engineering and Geoscientific Professions Act*; or
- (f) naturopathy within the meaning of *The Naturopathic Act*; or
- (g) optometry within the meaning of *The Optometry Act*; or
- (h) occupational therapy within the meaning of *The Occupational Therapists Act*; or
- (i) as a pharmacist or licensed pharmacist within the meaning of *The Pharmaceutical Act*; or
- (j) physiotherapy within the meaning of *The Physiotherapists Act*; or
- (k) nursing within the meaning of *The Registered Nurses Act*, *The Registered Psychiatric Nurses Act*, or *The Licensed Practical Nurses Act*.

Limitation of right to practise

- 7 Nothing in this Act or in the by-laws of the association authorizes any person
- (a) to prescribe drugs for use internally or externally; or
 - (b) to direct or prescribe the use of anaesthetics.

Contagious or infectious disease

8 Every licensee under this Act who has reason to believe that a person being treated by him has any contagious or infectious disease, or any other disease dangerous to public health, shall immediately notify the attending medical practitioner.

Executive director and registrar appointed

9 The board shall appoint an executive director and registrar of the association who shall hold office during the pleasure of the board.

PART III MEMBERSHIP

Register

10(1) The board shall cause to be kept a register and shall enter therein the name of every person registered according to this Act.

Rosters

10(2) In addition to the register the board shall cause to be kept

- (a) a roster of active practising members;
- (b) a roster of associate members; and
- (c) a roster of members holding conditional certificates issued under provisions of this Act;

and shall enter the names of persons recorded in the register in the appropriate roster.

Entry of names in register

10(3) Every person who qualified for registration under the provisions of a regulation made pursuant to section 5 may, upon payment of the prescribed fee, have his name entered in the register and in the appropriate roster upon producing to the registrar satisfactory evidence of his qualifications.

Appeal upon refusal of registration

10(4) An applicant refused registration or the entry of his 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 30 days of the receipt of the notice and upon making its decision shall forthwith report that decision in writing to the applicant.

10(5) Repealed, S.M. 2002, c. 24, s. 51.

S.M. 2002, c. 24, s. 51.

Registration if emergency

10.1(1) Despite anything in this Act or the regulations, the board may waive any requirements for registration under this Act and the regulations to allow a person who is authorized to practise respiratory therapy in another jurisdiction in Canada or the United States to practise respiratory therapy in the province during an emergency, if the minister gives the board written notice that

- (a) a public health emergency exists in all or part of the province; and
- (b) he or she has determined, after consulting with public health officials and any other persons that the minister considers advisable, that the services of a respiratory therapist from outside the province are required to assist in dealing with the emergency.

Emergency need not be declared

10.1(2) The board may exercise its authority under subsection (1) even if no emergency has been declared under an enactment of Manitoba or Canada.

Certificate of membership

10.1(3) If necessary to carry out the intent of this section, the board may authorize the registrar to issue a certificate of membership to a person allowed to practise under subsection (1), on such terms and conditions as the board may determine.

S.M. 2005, c. 39, s. 79.

Unauthorized practice

11(1) No person shall practise as a registered respiratory therapist or hold himself out for employment as a registered respiratory therapist unless his name is entered in the register and in one of the rosters; and a person so registered may practise or hold himself out as a registered respiratory therapist only to such extent as is authorized by this Act.

Recovery of fees prohibited

11(2) No person shall bring an action in any court to collect fees, compensation or other remuneration, for services performed as a registered respiratory therapist, unless he is registered under this Act.

Inspection of register

12 The register shall be open to inspection by any person at the head office of the association 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.

Effect of registration

13(1) Any person whose name is inscribed in the roster of active practising members is entitled to practise as a registered respiratory therapist in Manitoba and, subject to any restrictions imposed by the by-laws of the association, or the regulations, is entitled to hold himself out as a registered respiratory therapist.

Associate members not entitled to practise

13(2) A person whose name is entered in the roster of associate members shall not practise as a registered respiratory therapist or hold himself out as a registered respiratory therapist, or take or use the designation "registered respiratory therapist" or the initials "RRT" or the abbreviation "Reg. R.T.", or "Lic. R.T." either alone or in combination with other words, letters or description to imply that he is entitled to practise as a registered respiratory therapist.

Practise by holders of conditional certificates

14 A person whose name is entered in the roster of persons holding conditional certificates may hold himself out as a registered respiratory therapist in Manitoba and may practise in Manitoba as a registered respiratory therapist subject to the conditions and limitations set by the board under the provisions of this Act, which conditions and limitations shall be entered in the conditional roster in conjunction with the name of the person who is subject to them.

Prima facie evidence

15 A statement certified under the hand of an officer of the association respecting the registration of a person is admissible in evidence as prima facie proof that the person therein specified is registered under this Act and is prima facie proof of any conditions or limitations set out in the certificate as applicable to that person.

Associate members

16 Every person who has the qualifications and complies with the requirements of the by-laws of the association for registration as an associate member of the association shall be entered in the roster of associate members.

Persons temporarily in Manitoba

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

Conditional registration

18 Where the board, pursuant to the provisions of this Act, has limited the right of a person to practise or hold himself out as a registered respiratory therapist by imposition of conditions, the name of that person shall be entered in the roster of persons holding conditional certificates together with particulars of all conditions imposed on the person.

Removal of names from register

19(1) The board 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; or
- (b) where the name has been incorrectly entered; or
- (c) where notification is received of the member's death; or
- (d) where the registration of the member has been revoked.

Notification to member

19(2) Where the name of a member is struck 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 name has been struck from the register.

Restoration of names to register

19(3) Subject to subsection (4), 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.

Restoring names to register on terms

19(4) 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 (3), the board may by resolution direct that the name be restored subject to such terms and conditions as the board may prescribe.

Employers responsibility

20 Every person, other than a patient, who employs a person as a registered respiratory therapist and every agency or registry that procures employment for a person as a registered respiratory therapist

- (a) shall ensure that the person at the time of employment is the holder of an appropriate certificate of membership issued under this Act; and
- (b) where the person's employment is terminated because of professional misconduct, incompetence or incapacity of the person, shall forthwith report the matter to the board and provide a copy of the report to the person.

Offence by member

21(1) Any person whose name is entered in the roster of persons holding conditional certificates who fails to comply with the conditions imposed on him as recorded in the roster is guilty of an offence.

Offence by employer

21(2) Any person who employs a registered respiratory therapist whose name is entered in the roster of persons holding conditional certificates and who causes or knowingly permits that respiratory therapist to violate or fail to observe the conditions imposed on the registered respiratory therapist as recorded in the roster is guilty of an offence.

Membership certificate

22 The board shall cause a certificate of membership to be issued each year to every person whose name is entered in the rosters and the certificate shall state the date upon which it expires, the type of membership and any conditions or limitations imposed on the person to whom the certificate is issued.

Fraudulent misrepresentation

23 Any person who obtains, or attempts to obtain, registration as a member of the association or a certificate of membership by making a false or fraudulent misrepresentation or declaration, either orally or in writing, and any person who knowingly assists in the making of such a misrepresentation or

declaration, is guilty of an offence.

PART IV COMPLAINTS COMMITTEE

Establishment of complaints committee

- 24(1) The board shall appoint a complaints committee comprised of
- (a) three members of the association; and
 - (b) two lay members, one of whom shall be appointed by the minister and the second member shall be appointed by the board.

Chairman

- 24(2) The board shall appoint one of the members appointed under clause (1)(a) to be the chairman of the complaints committee.

Term of office

- 24(3) The members of the complaints committee shall hold office for such term as may be fixed by the board.

Filling of vacancy

- 24(4) Where for any reason a vacancy occurs on the complaints committee, the board shall fill the vacancy for the unexpired term in accordance with subsection (1).

Informal resolution of complaint

- 25 The complaints committee shall receive and review complaints brought against any member and where the committee considers it appropriate it shall attempt to informally resolve the matter.

Reference to investigation chairman

- 26 Where a complainant does not accept the informal resolution of the complaints committee, the matter shall be referred to the investigation chairman.

Rules and terms of office

- 27 The board shall establish rules of procedure and terms of office for the complaints committee.

PART V INVESTIGATION CHAIRMAN

Appointment of investigation chairman

- 28 The board shall appoint from among the directors an investigation chairman.

Reference to investigation chairman

- 29 Where the complaints committee is advised that a member
- (a) after he has become a member has been convicted of an indictable offence; or
 - (b) is guilty of professional misconduct or conduct unbecoming a member, whether in a professional capacity or otherwise; or
 - (c) has demonstrated incapacity or unfitness to practise respiratory therapy or is suffering from an ailment which might, if he continues to practise, constitute a danger to the public;
- the committee shall refer the matter to the investigation chairman.

Preliminary investigation

- 30 Upon referral from the complaints committee, the investigation chairman shall direct that a preliminary investigation into the matter be held by the executive director or registrar or by such other person as the investigation chairman sees fit.

Production of books, documents, etc.

- 31 Where, pursuant to section 30, a person is directed to carry out a preliminary investigation, that person may require the member who is the subject of the investigation and any other member
- (a) to produce such books, records, registers, papers and other documents in the member's possession or control that are relevant to the investigation; and

(b) to attend at such time and place as may be required by the person.

Ex parte court order for production of documents

32 The investigation chairman for and in the name of the association may summarily apply ex parte to a judge of the Court of Queen's Bench for an order directing the member concerned or any other member or person to produce to the person or persons conducting such preliminary investigation any records, books, registers, papers and other documents or things in his possession or under his control, where the member or other person has failed to produce same when required under this Part, or where the judge is of the opinion that the issue of such an order is just and appropriate in the circumstances.

Investigation of further matters

33 The person making a preliminary investigation into a matter concerning the conduct or capability or fitness to practise respiratory therapy of a member, may investigate any other matter concerning the conduct or capability or fitness to practise respiratory therapy of the member that arises in the course of the investigation.

Action by person conducting preliminary investigation

34 The person conducting a preliminary investigation shall report his findings in writing to the investigation chairman who upon receipt of the report shall either

(a) direct that no further action be taken; or

(b) direct that the matter be dealt with and proceed to an inquiry pursuant to section 39;

and in writing sent by registered or certified mail or by personal service, notify the complainant and the member who was the subject of the investigation of the decision taken.

Appeal to discipline committee

35 Where the decision taken by the investigation chairman is to direct that no further action be taken with respect to a complaint, the complainant may not later than 15 days after the receipt of a notice to that effect appeal that decision to the discipline committee by filing a notice of appeal with the executive director or the registrar sent by registered or certified mail or served personally.

Suspension of member

36 Notwithstanding any other provision herein, the investigation chairman may, at his discretion, direct the registrar to suspend a member from practice pending the completion of the preliminary investigation and thereupon the member is suspended from practice until the suspension is lifted, superseded, or annulled by the board or the Court of Queen's Bench.

PART VI DISCIPLINE COMMITTEE

Composition of discipline committee

37(1) The board shall establish a discipline committee comprised of

(a) a person as recommended by the minister; and

(b) three individuals whose names are entered in the roster of active practising members;

of whom three shall constitute a quorum.

Association's representation at inquiries

37(2) The association's solicitor may participate in an inquiry before the discipline committee but shall not vote thereat or have participated in the investigation of the matter before the committee.

Member of discipline committee not to investigate matter

37(3) A person who is a member of the discipline committee shall not participate in or carry out any investigation of any matter that will be referred to that discipline committee for consideration.

Complainant's appeal

38 Upon receipt of a notice of appeal by a complainant pursuant to section 35, the discipline committee shall consider the matter, the recommendation of the complaints committee and the report on the preliminary investigation and shall

(a) direct that no further action be taken; or

(b) direct that the matter be dealt with and proceed to an inquiry pursuant to section 39.

Fixing the date of inquiry

39(1) Where the investigation chairman directs that an inquiry be held into the conduct of a member or where the discipline committee decides to hold an inquiry into the conduct of a member, the discipline committee shall within 30 days from the date of the direction or decision fix a date, time and place for the holding of the inquiry which shall commence no later than 60 days from the date of the direction or decision.

Service of notice

39(2) Upon fixing the date, time and place of the holding of an inquiry under subsection (1) the discipline committee shall serve written notice thereof either personally upon the member who is the subject of the inquiry or send a copy of the notice either by registered or certified mail, postage prepaid, to the member at least 30 days prior to the date so fixed, exclusive of weekends and holidays, at his post office address as shown in the roster of the association.

Effective date of service

39(3) Notice sent by post in accordance with subsection (2) shall be deemed to have been served on the date when it was posted.

Proof of service

39(4) Proof of service of the notice may be by affidavit or statutory declaration.

Hearings to be held in Winnipeg

39(5) All hearings of the discipline committee shall be held in The City of Winnipeg unless otherwise directed by the board.

Hearings to be private

39(6) All hearings of the discipline committee shall be held in private unless the person whose conduct is the subject of the inquiry applies to the board for a public hearing and the board is satisfied that none of the parties to the hearing would be prejudiced by the holding of a public hearing, but where the board determines that there may be prejudice to any parties to the hearing it shall give written reasons therefor.

Hearing in absentia

39(7) Where the person whose conduct is the subject of inquiry does not attend, and has not provided a reasonable excuse for his failure to attend, the discipline committee upon proof of service of the notice in accordance with this section, may proceed with the inquiry in his absence and, without further notice to him, take such action as it is authorized to take under this Act.

Right to counsel

39(8) The person whose conduct is the subject of any inquiry is entitled to be represented by counsel or agent and the person or his counsel or agent has the right to examine all documents and records used in the inquiry, prior to the date of the inquiry.

Adjournment

39(9) Hearings under this section may be adjourned from time to time.

Evidence under oath

39(10) The testimony of witnesses at the hearing shall be taken under oath and there shall be a full right to cross-examine all witnesses and to call evidence in defence and reply.

Administration of oath

39(11) Any oath required to be administered pursuant to subsection (10) may be administered by any member of the discipline committee.

Service of subpoenas

39(12) The discipline committee holding the inquiry, or any party to the inquiry, may obtain, on praecipe from the Court of Queen's Bench and serve subpoenas for the attendance of witnesses and production of books, documents and things at the inquiry.

Witness allowance

39(13) Witnesses at an inquiry under this section are entitled to the same allowance as witnesses attending upon a trial of an action in the Court of Queen's Bench.

Certified copies of convictions as evidence thereof

39(14) For the purposes of an inquiry under this section a certified copy from the convicting court of the conviction of a person for any crime or offence under the *Criminal Code* (Canada) or under any other statute is conclusive evidence that the person has committed the crime or offence stated therein, unless it is shown that the conviction has been quashed or set aside.

Evidence by affidavit or viva voce

39(15) Evidence may be adduced before the discipline committee holding the hearing or inquiry either by affidavit or viva voce or both, as the discipline committee may determine; but the name of a member shall not be removed from the register on affidavit evidence alone.

Evidence to be recorded

39(16) All evidence submitted to the discipline committee shall be reduced to writing, taken down in shorthand or mechanically recorded.

Preservation of evidence

39(17) All evidence presented to the discipline committee, together with all reports, orders or other papers on which the discipline committee acted, shall be preserved for a period of five years from the date of the presentation of the evidence or filing of other documents with the discipline committee.

Rules of procedure

39(18) A discipline committee for the purpose of holding an inquiry may, subject to approval of the board, prescribe its own rules of procedure.

S.M. 2008, c. 42, s. 84.

Suspension of members

40(1) Notwithstanding any provision herein, where an inquiry into the conduct of a member is directed under this Act, the discipline committee may suspend that member from practice, pending the disposition of the inquiry; and thereupon the member is suspended from practice until the suspension is lifted, superseded, or annulled by the board or the Court of Queen's Bench.

Notice of suspension

40(2) The registrar shall cause a notice of the suspension to be served forthwith upon the member after the suspension.

Method of giving notice of suspension

40(3) A notice served under this section may be sent to the member by registered mail or certified mail, postage prepaid, addressed to the member at his address appearing in the records of the association, and shall be deemed to have been served on the third day after the day on which it is postmarked.

Proof of service of notice of suspension

40(4) Proof of the service of the notice shall be made by affidavit or statutory declaration.

Disciplinary action against member

41(1) Where after an inquiry the discipline committee finds a member to have been guilty of professional misconduct, conduct unbecoming a member, or to have demonstrated incapacity or unfitness to practise respiratory therapy or to be suffering from an ailment that might if the member continues to practise respiratory therapy constitute a danger to the public, the discipline committee may by resolution

- (a) cause the name of that member to be erased from the register and from any roster; or
- (b) suspend the member for a period not in excess of two years; or
- (c) reprimand the member; or
- (d) permit the member to practise upon such terms and conditions as it may deem appropriate.

Decision to be in the form of an order

41(2) The decision of the discipline committee shall in every instance be embodied in a formal order of the discipline committee which order shall be served on the person whose conduct is the

subject of inquiry and upon the complainant by registered or certified mail, postage prepaid, or during a mail strike or reasonable anticipation thereof by personal service.

Costs

41(3) The discipline committee may award costs against any member of the association and the board upon request may reimburse any member of the association for costs incurred through disciplinary action which, in the discretion of the board, is considered unwarranted.

PART VII APPEALS

Appeal to board of directors

42(1) Any person who considers himself aggrieved by an order or decision of the investigation chairman or discipline committee may appeal the order or decision to the board by filing a written notice of appeal at the office of the association either in person or by registered or certified mail not later than 30 days from the date of the order or decision.

Grounds of appeal

42(2) Any notice of appeal given under the provisions of this section shall set forth the grounds of appeal and shall state the relief asked.

Record of proceedings

42(3) Where an appeal is made under subsection (1), the executive director shall obtain a transcript of the evidence given before the discipline committee and the exhibits filed with the discipline committee, and the transcript of evidence and the exhibits so obtained constitute the record of the proceedings before the discipline committee.

Action by executive director on appeal

42(4) On receiving a copy of the resolutions and order of the discipline committee and the record of the proceedings, the executive director shall

- (a) serve on the member concerned and the complainant or their counsel or agent a notice informing them
 - (i) of the time and place at which the appeal will be considered by the board,
 - (ii) that they may appear before the board at the appeal in person or by counsel or agent; and
- (b) furnish each board member with a copy of the resolutions and order of the discipline committee together with a copy of the record of proceedings.

Suspension pending appeal

43(1) Notwithstanding an appeal under section 42, the discipline committee may suspend the registration of the member concerned until the time that the board makes its decision on the appeal.

Application to court to remove suspension

43(2) A person whose registration has been suspended under subsection (1) or under section 36 or under section 41 may by filing an originating notice with the Court of Queen's Bench apply for an order removing the suspension pending the determination of the matter under consideration or appeal.

Service of notice of motion on discipline committee

43(3) A person who applies for an order under subsection (2) shall within seven days after the date of filing of the notice of motion under that subsection, serve a copy thereof upon the chairman or vice-chairman of the discipline committee.

Time for hearing of application

43(4) An application made under subsection (2) shall be heard not earlier than seven days after the date of service on the chairman or vice-chairman of the discipline committee.

Court may remove suspension

43(5) Upon hearing an application made under this section, the court may, subject to any conditions that it considers proper, remove the suspension pending the determination of the matter under consideration or appeal.

Proceedings before board

44(1) The board shall at a meeting held for that purpose consider the decision of the discipline committee and shall hear any representations that the member concerned and the complainant or their counsel or agent wish to make respecting the findings and order of the discipline committee and the record of proceedings.

Certain persons precluded from hearing appeal

44(2) The investigating chairman and any board member who was a member of the discipline committee that considered a matter appealed from shall not participate in or vote at an appeal before the board.

Association's representation at appeals

44(3) The association's solicitor may participate in an appeal before the board but shall not vote thereat or have participated in the investigation of the matter before the board.

Action by board on appeal

- 44(4) The board may
- (a) grant adjournments of the proceedings or reserve the determination of the matters before them for a future meeting of the board;
 - (b) upon granting special leave for that purpose, receive further evidence in the same manner and subject to the same rules and procedures and with the same powers as are provided in Part VI with respect to hearings before the discipline committee;
 - (c) draw inferences of fact and make any determination or finding that, in their opinion, ought to have been made by the discipline committee.

Disposition of appeal by board

- 44(5) The board shall, within 30 days from the date of the conclusion of all proceedings before them on appeal
- (a) make any finding that in its opinion ought to have been made; or
 - (b) vary the order of the discipline committee; or
 - (c) quash or confirm the finding or order of the discipline committee; or
 - (d) confirm or vary any order of the discipline committee as to costs or make a new order as to costs; or
 - (e) refer the matter back to the discipline committee for further consideration.

Costs on appeal

44(6) The board may make any award as to the costs of an appeal that it considers appropriate.

Appeal to Court of Queen's Bench

45(1) Any person whose registration has been revoked or suspended or whose registration has been continued subject to conditions imposed by the discipline committee or the board and any person who has been refused admission to the association or the entry of his name on a roster may appeal from the decision of the discipline committee or the board including any order as to costs to a judge of the Court of Queen's Bench at any time within 30 days of the date of the order or decision appealed against, or within such further time as a judge of the Court of Queen's Bench may allow.

Order of judge

45(2) The judge hearing the appeal may make such order or give such direction as to the cancellation or suspension of the registration or as to the conditions imposed upon the continuation of the registration or as to the refusal of admission and as to the costs of the appeal as to him seems just.

Documents to be filed by appellant

45(3) Subject to subsection (4), the appellant shall file, together with and at the same time as the Notice of Appeal, a certificate signed by an officer of the association stating that at least two copies of a transcript of evidence have been ordered unless the judge otherwise orders.

Absence of recorded evidence

45(4) Where the evidence at the hearing or inquiry was not reduced to writing or otherwise mechanically recorded, or where it was so recorded but a transcript thereof cannot be obtained, the appeal before the judge of the Court of Queen's Bench shall be a trial de novo.

Failure to file transcript of evidence

45(5) If a transcript of evidence at the hearing is obtainable and the appellant has not filed the two copies thereof with the court within 30 days of the date of the filing of the Notice of Appeal, the appeal shall be abandoned.

PART VIII MISCELLANEOUS

Exemption from civil liability

46 The association, or the board or the discipline committee or any member of the association or the board or the committee is not liable for any loss or damage suffered by any person as a result of anything done by it or them in good faith in the administration of this Act or by-laws made thereunder.

Publication of suspensions and revocations

47 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.

Retention of counsel by board

48 The board or the discipline committee may for the purpose of the execution of their duties under this Act or the by-laws, employ at the expense of the association, such legal or other assistance as the board or discipline committee may think necessary or proper.

Reporting by members

49(1) Every member or associate member who believes a registered 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 no longer be permitted to practise as a registered respiratory therapist or that his practice be restricted, shall disclose to an officer of the association the name of such registered respiratory therapist together with particulars of the condition or disorder and any failure by a member or associate member to comply with this subsection shall be deemed to be professional misconduct.

Non-application to confidential information

49(2) Subsection (1) does not apply to information obtained by a member which is confidential by reason of a respiratory therapist-client relationship.

Exemption from liability for disclosure

49(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.

PART IX ADVISORY COUNCIL

Advisory council

50(1) There shall be an advisory council to review and make recommendations to the board on matters pertaining to respiratory therapy education programs.

Composition of council

50(2) The following persons shall be members of the council.

- (a) a physician duly licensed to practise in Manitoba and appointed by the Faculty of Medicine of the University of Manitoba;
- (b) one person nominated by the minister;
- (c) three persons appointed by the board.

Chairman

50(3) The board shall appoint one of the members appointed under clause 50(2)(c) as chairman of the council.

Failure to nominate or appoint persons to council

50(4) Where a person or group of persons is required under subsection (2) to nominate or appoint

a member of council fails to make the nomination or appointment for at least three months after he or they are notified to make the nomination, those members already nominated or appointed shall nominate or appoint the required number of persons to the council.

Term of office of council members

50(5) Every member of council, unless he sooner resigns, dies or for any other reason ceases to be a member of council, shall hold office for a term of two years and thereafter until his successor is appointed.

Filling of vacancies

50(6) Where for any reason there occurs a vacancy on council, the remaining members of council shall fill the vacancy for the unexpired portion of the term of the vacancy.

Limitation of terms on council

50(7) No person shall serve as a member of council for more than two consecutive terms.

Vice-chairman elected

50(8) The council may elect a vice-chairman from amongst its members.

Quorum

50(9) Three members of the council shall constitute a quorum for the transaction of business, and a simple majority of those present at any properly constituted meeting shall govern.

Meetings

50(10) Meetings of the council shall be held at the call of the chairman, vice-chairman or any three members thereof and each member of the council shall be given at least seven days written notice of the meetings.

Functions of council

51(1) The council shall advise and make such recommendations to the board as will enable the board to

- (a) prescribe basic standards, (including standards of curricular and preadmission standards), and make regulations for respiratory therapy education programs governing such matters as, in the opinion of the council, require to be regulated for the purpose of securing an effective educational program for students of respiratory therapy;
- (b) make those standards and regulations known to all interested persons, agencies and institutions upon request;
- (c) provide for verification, by means of visits or otherwise, that those standards are being met and those regulations observed.

Further functions of the council

51(2) The council shall advise and make such recommendations to the board as will enable the board, subject to subsections 52(1) and (2) to

- (a) approve respiratory therapy education programs which consistently meet those standards and observe those regulations referred to in clause (1)(a);
- (b) withhold or withdraw approval of respiratory therapy education programs that do not consistently meet those standards and observe those regulations referred to in clause (1)(a);
- (c) approve, conditionally approve, or withhold approval of new respiratory therapy education programs, or changes in existing respiratory therapy education programs, in accordance with the standards and the regulations referred to in clause (1)(a).

Operation of respiratory therapy education programs subject to approval of the minister

52(1) No person shall, alone or in concert with others, establish, maintain, conduct or participate directly or indirectly, other than as an employee, in the ownership or operation of a respiratory therapy education program without the authority and consent in writing of the minister.

Minister may withdraw consent for certain programs

52(2) The minister may refuse or withdraw his authority and consent for the establishment or continuance of any respiratory therapy education program whenever he has reasonable grounds to believe that the standards and regulations are not being, or have not been, adequately complied with.

Prior programs deemed to be continued

52(3) All respiratory therapy education programs existing prior to the coming into force of this Act shall be deemed to have been approved by the board under this Act until the approval is withdrawn.

Annual report by council

53 The council shall prepare and submit a report to the board annually, at least two months prior to the date fixed for the annual general meeting of the association and the report shall summarize the activities of the council during the immediately preceding 12 months and shall contain such other information and recommendations, if any, as the council may think desirable.

PART X GENERAL

Offence

54(1) Any person who disobeys or contravenes, or refuses, neglects, omits or fails to observe a provision of this Act for which no other penalty is provided, other than the provisions of subsection 49(1), is guilty of an offence and is liable on summary conviction, to a fine of not more than \$500. or to imprisonment for a term not exceeding six months, or to both.

Any person may be a prosecutor of offence

54(2) Any person may be prosecutor or complainant in the prosecution of an offence under this Act and the government may pay to the prosecutor such portion of any fine recovered as it considers just and expedient towards the costs of the prosecution.

Limitation on prosecution

54(3) No prosecution under this Act shall be commenced after the expiration of one year from the date of the alleged offence.

Stay of proceedings

54(4) Where the association is the prosecutor of an offence under this Act it may, upon an order signed by the president of the association and having the seal of the association affixed thereto, apply for a stay of proceedings in any prosecution.

Single act of unauthorized practice

54(5) In any prosecution under this Act it is sufficient to prove that the accused has done or committed a single act of unauthorized practice, or has committed on one occasion any of the acts prohibited by this Act.

S.M. 1998, c. 32, s. 16.

Conflict with *The Corporations Act*

55 Where a provision of this Act or of any by-law passed pursuant to this Act is inconsistent with or repugnant to any provision of *The Corporations Act* the provision of this Act or of the by-law passed pursuant to this Act supersedes and prevails over the provisions of *The Corporations Act*.

Confidentiality of information

56(1) Subject to section 57, every person employed, appointed or retained for the purpose of administering this Act, and every member of the board or a committee of the board, shall preserve secrecy about all information that comes to his or her knowledge in the course of his or her duties, and shall not communicate any information to any other person, except

- (a) to the extent the information is available to the public, or is required to be disclosed, under this Act;
- (b) in connection with the administration of this Act, including, but not limited to, the registration of members, complaints about members, allegations of members' incapacity, unfitness, incompetence or acts of professional misconduct, or the governing of the profession;
- (c) to a body that governs the practice of a health profession pursuant to an Act of the Legislature, to the extent the information is required for that body to carry out its mandate under the Act; or
- (d) to a body that governs the practice of respiratory therapy in a jurisdiction other than Manitoba.

Offence

56(2) A person who contravenes subsection (1) is guilty of an offence and is liable, on summary

conviction, to a fine of not more than \$50,000.

S.M. 1998, c. 32, s. 16; S.M. 2005, c. 39, s. 80.

Registrar to collect information

57(1) In addition to any other information maintained in administering this Act, the registrar must collect and record each member's

- (a) date of birth;
- (b) sex; and
- (c) education or training, as required for registration and renewal of registration.

Member to provide information

57(2) A member must provide the registrar with the information required under subsection (1), in the form and at the time set by the registrar.

Minister may require information

57(3) The minister may request in writing that the registrar provide information on members — including personal information — contained in the register or collected under subsection (1), to establish and maintain an electronic registry of health service providers to be used for the following purposes:

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

Registrar to provide information to minister

57(4) The registrar must provide the minister with the information — including personal information — requested under subsection (3), in the form and at the time set by the minister after consulting with the registrar.

Minister may disclose information

57(5) Despite any other provision of this Act or any provision of another Act or a regulation, the minister may

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

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

Authorized entities

57(6) The following entities are authorized to receive information — in non-identifying form — under subsection (5):

- (a) a regional health authority established or continued under *The Regional Health Authorities Act*;
- (b) Regional Health Authorities of Manitoba, Inc.;
- (c) CancerCare Manitoba;
- (d) The Manitoba Centre for Health Policy;
- (e) a government or organization with which the Government of Manitoba has entered into an agreement to share information for the purposes stated in subsection (3).

S.M. 2005, c. 39, s. 81.