

Health Professions Act Handbook

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Alberta 

Health Professions Act Handbook

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Health Professions Act

Introduction

This document simplifies and summarizes the *Health Professions Act* for the benefit of employers, public members, regulated health professionals, Albertans and others.

This document is intended to act as a guide to the provisions and principles within the *Health Professions Act*; however, it is not a substitute for the *Health Professions Act* and it is not intended to act as a legal reference. Readers are encouraged to review the *Health Professions Act* directly and to consult with legal counsel where deemed necessary.

Overview

The *Health Professions Act* came into force in 2001.

The Act is the legislative framework through which regulatory colleges partner with government to create accountability mechanisms in our health system. Currently, there are 28 regulatory colleges established under the Act.

One additional profession, acupuncturists, are regulated under the *Health Disciplines Act* (1988).

Through this system, nearly 100,000 regulated health professionals are held accountable for their practice.

Purpose

The Act delegates professional self-governance to regulatory colleges and establishes standard processes for registration, continuing competency, complaints and discipline.

The Act also provides for professional standards of practice and codes of ethics.

Through these processes, the Act ensures that health professionals maintain high standards of competency, safety and ethics, and provide Albertans with safe, high quality care.

The Act also eliminates exclusive scopes of practice and, instead, allows for expanded scopes of practice so that professions can adapt to technological changes, consumer demands and practice advances.

In addition, it is used to restrict the performance of high-risk health services (restricted activities) to appropriately regulated individuals.

Significance

Regulatory colleges are partners with government in creating confidence in the health system by promoting the practice excellence and accountability of regulated health professionals who provide care to Albertans.

This collaboration with regulatory colleges is vital to develop and maintain confidence in the delivery of health care.

This Act is the vehicle through which government and health professionals collaborate to ensure there is strong accountability and the care these professionals provide each day is competent and complies with their standards of practice and code of ethics.

Structure

The *Health Professions Act* consists of 10 parts:

- Common provisions (parts one to nine)
- Specific provisions (part ten), which include Schedules 1 to 28

Common provisions apply to all colleges and include:

- Roles and responsibilities of colleges
- Governance requirements
- Common provisions for registration, continuing competence and discipline

Specific provisions and schedules apply to individual colleges and include the:

- College name
- Titles protected by the profession
- Practice statement
- Other provisions such as accreditation, business rules of the profession

Health Professional Regulatory Colleges

Role

Regulatory colleges are delegated the authority to govern a profession.

Each regulatory college governs one or more professions.

A regulatory college's job is to protect the public from unsafe practice and hold members of the profession accountable for the care they provide.

Colleges ensure that Albertans are provided with safe, high quality care by professionals who adhere to the highest standards and ethical conduct.

The *Health Professions Act* places significant responsibilities on each health professional college to:

- carry out its activities and govern its regulated members in a manner that protects and serves the public interest;
- provide direction to and regulate the practice of the regulated profession by its regulated members;
- establish, maintain and enforce entry level and continuing competence (knowledge, skills, attitudes and judgment required to provide health professional services) and standards of practice,
- establish, maintain and enforce a code of ethics,
- approve programs of study and education courses for the purpose of registration requirements; and
- perform other duties and functions by the exercise of the powers confirmed by the *Health Professions Act*.

Colleges may not set, provide guidelines or negotiate professional fees on behalf of some or all of their members, unless the Minister grants specific approval. Colleges may not be a certified bargaining agent as defined in the Labour Relations Code.

The *Health Professions Act* requires a clear separation of a profession's regulatory responsibilities and functions that protect the public, from fee and salary negotiations that are directed at the economic or social well-being of members of the profession.

Authority

The *Health Professions Act* sets out the powers, duties and responsibilities of each college, its officers, regulated members, and others with respect to professional legislation.

Each profession's Schedule under the *Health Professions Act* and Regulation describes how the college addresses the unique requirements of its profession, authorities and responsibilities. These may include requirements for registration and practice permits, continuing competency programs, and authority for providing restricted activities. Regulations must be approved by the Lieutenant Governor in Council.

- Bylaws determine the framework and scope of the colleges' activities and how they conduct their business on a day-to-day basis. Bylaws are established by the council of the college and specify procedural matters such as the election of council, the appointment of committees and tribunals, quorum, rules of order, fees and notices. Bylaws do not require provincial government approval.
- Codes of Ethics and/or Standards of Practice provide practitioners with a set of guidelines and principles by which they must govern their behaviour. A college must provide for review and comment a copy of its proposals to its regulated members, the Minister of Health, and "any other persons the council considers necessary." Codes of Ethics and Standards of Practice do not require government approval. Colleges are obligated, however, to consider the comments and feedback provided by the Minister and others.
- Standards of Practice provide general direction for the provision of professional services, and are established by the council of each college.
- Policies describe the way the college interprets and implements the *Health Professions Act*, regulation and bylaws. Policies are established by the council and guide their decisions and those of college staff.

College Positions and Committees

Council: The council is the governing body of the college. Its role is to manage and conduct the college's activities on behalf of its members. The council acts in a governance capacity (establishing the mission, vision and values), makes regulations and bylaws, establishes registration and practice permit fees, appoints individuals, and hears appeals of registration decisions, practice permit renewals, and hearing decisions. The council is also responsible for developing Standards of Practice and Codes of Ethics.

President: The president is elected by the members (or may be appointed by council) to lead the college and preside over all general meetings of the college and council.

Registrar: The registrar performs duties required by the *Health Professions Act*, as well as those delegated by the council, such as receiving applications for registration, issuing and cancelling practice permits, providing written requests to individuals under the *Health Professions Act's* mandatory registration provisions, and disseminating information.

Registration Committee: A registration committee reviews applications for registration and reinstatement.

Competence Committee: A competence committee

- makes recommendations to the council on continuing competence requirements and assessments of those requirements; and
- if authorized by the regulations, provides for practice visits as part of the continuing competence program and conducts practice visits of regulated members.

Complaints Director: The complaints director receives and investigates complaints of unprofessional conduct and determines whether the complaint should be dismissed or referred to the Alternative Complaint Resolution process or to a hearing.

Complaint Review Committee: The complaint review committee reviews and ratifies settlements under the alternative resolution section of the *Health Professions Act*, and reviews the dismissal of a complaint under the professional conduct section when requested by a complainant.

Hearing Tribunal: A hearing tribunal is established when a complaint of unprofessional conduct with respect to a member is referred for a hearing. The tribunal may recommend that conditions be imposed on an investigated person's practice permit, or that the practice permit be suspended or cancelled.

Hearings Director: The hearings director establishes the hearing tribunal or a complaint review committee, and coordinates scheduling, production of notices and records. The hearings director may not chair or participate in a hearing, review or appeal. The complaints director and hearings director positions may not be held by the same person.

Colleges may combine certain of the above functions. For example, the registrar and complaints director may be the same person. Registration and competence functions may be combined into one committee.

The hearings director and complaints director are always different people. There would be a conflict of interest if the person who investigated a complaint also picked the members of the hearing tribunal.

Colleges may establish other relevant college positions including individuals responsible for continuing competency, and policy and practice standards.

Relevance to Employers

Employers are likely to contact or be contacted by

- the registrar (or his/her designate) to determine an employee's status as a regulated member;
- the complaints director in the event of a complaint of unprofessional conduct;
- other college officials conducting practice visits.

While college processes are largely standardized, they may differ somewhat depending upon the profession. Generally, the registrar or registrar's office is in the best position to address general queries or to refer a matter to an appropriate individual within the college.

Health Professions Act References

Sections 2 to 4 (College); Sections 5 to 8 (Council, President and Registrar); Section 18 (Panels) and Sections 19 to 21 (Delegation and Officials Directory).

Accountability of Colleges

Overview

Colleges must carry out their activities and govern their regulated members in a manner that protects and serves the public interest.

There are numerous mechanisms to ensure public input and accountability contained in the *Health Professions Act*, including:

- Public membership on college councils, complaint review committees, hearing tribunals, and appeals before the council.
 - All college councils include public members to ensure the public is represented and Albertans' views are taken into account.
 - Ensuring that 25 per cent of the college's council are public members means the public is well represented. Public members have full voting status so the public has significant input into the decisions of the profession.
- Preparation of an Annual Report, and submission to the Minister.
- Publication of an Officials Directory
- Public availability of selected information on the college Register.
- Involvement of the Ombudsman.

Annual Reports

All colleges are legislatively required to submit annual reports of their activities each year.

Annual reports are submitted to the Minister and contain information such as:

- Complaints and their disposition, including the number of complaints alleging sexual abuse or sexual misconduct, and, the number of findings of unprofessional conduct based in whole or in part on sexual abuse or sexual misconduct
- Registration
- Continuing Competence Programs
- Committees and tribunals established under the *Health Professions Act*
- Audited financial information

The Minister must table each college's annual report in the Provincial Legislature.

The Minister may require colleges to produce reports in addition to the annual report to ensure requirements of the *Health Professions Act* are met.

Officials Directory

The *Health Professions Act* requires that each college maintain a current directory that contains the names of and how to contact the following individuals and/or their delegates:

- The complaints director
- the hearings director
- the registrar
- the president and
- the council members.

This information must be available to the public during regular business hours and be provided to the Minister.

Ombudsman

The *Health Professions Act* provides that "Any person may make a complaint with respect to anything under this Act in accordance with the Ombudsman Act." In practice, this involves an opportunity to address concerns about college processes and outcomes, most often dealing with investigations and discipline.

The Office of the Ombudsman is a complaint mechanism of last resort. The Ombudsman cannot be involved until all formal and informal appeals within the college have been completed by the individual who has a complaint about the fairness of the process or the outcome.

The Ombudsman cannot change a decision, as he/she has only the power of recommendation. The Ombudsman may make public any matter deemed to be of public interest.

The Ombudsman reviews complaints about actions taken by a college under the *Health Professions Act* when formal appeal processes have been exhausted. The Ombudsman may make recommendations to the college, but does not act as an appeal body for disciplinary decisions. Should a matter be appealed to the Courts, the Ombudsman will decline involvement until the matter is completed.

The Ombudsman may request a college to rehear any matter and reconsider any decision or recommendations made. If the Ombudsman makes such a request, the *Health Professions Act* permits the college or any of its officers to comply with the recommendation, even though the time limits for the action have expired.

Considerations for Employers

In practice, the Ombudsman deals with college process issues and will not normally be involved in employment matters.

Health Professions Act References

Sections 3 (college's role), 4 (Annual Report), 5 (Council Established), 21 (Officials Directory), 127 (Complaints to Ombudsman) and numerous references throughout the legislation.

Regulations

Regulations are made by the council of a college, in consultation with Alberta Health. The development of regulations involves extensive consultation with stakeholders.

Regulations most often refer to:

- The requirements for registration and practice permits including education, experience, completion of examinations, recognition of professionals from other jurisdictions, professional liability insurance, evidence of Canadian citizenship or ability to work and study in Canada, and "good character and reputation"
- Categories of members.
- The restricted activities a regulated member or category of regulated members may provide and the applicable conditions.
- Who may perform restricted activities with the consent of and under the supervision of a regulated member, and how regulated members must supervise these persons (this includes supervision of students and unregulated workers).
- Continuing competence programs and practice visits.
- Access to and disclosure of information.
 - Reinstatement of members whose registration and/or practice permits have been cancelled. Regulations must be approved by the provincial government before they come into force.

Bylaws

Colleges develop bylaws in order to undertake their responsibilities on a day-to-day basis under the *Health Professions Act*.

Bylaws most often refer to:

- The college governance structures and processes, and the management and conduct of its council, committees, tribunals, and other organizational entities.
- Benefit programs and educational incentives.
- The publication and distribution of information.
- The development of and adoption of Codes of Ethics and Standards of Practice.

Bylaws must be approved by the college according to the process outlined in its bylaws.

Registration as a Health Professional

Applying for Registration

The *Health Professions Act* sets out the basic process and requirements for registration, but the detailed requirements that must be met for registration in each profession are included in that profession's regulation.

Most regulated health care practitioners will apply once to become registered. They will regularly apply for a new or renewed practice permit, according to the time period set out in the profession's regulation or bylaw. The most common period is one year.

The *Health Professions Act* provides for three ways in which an individual may become registered as a member of a health profession:

1. By meeting the formal requirements set out in the regulation. This is the standard route for practitioners who are educated in a profession and apply for registration. The regulation specifies academic preparation, necessary practicum/work experience, and attainment of certain competency standards, including any examination requirements;
2. By meeting the requirements of another jurisdiction, that is recognized by the college as having substantially similar practice requirements and competencies to those in Alberta. These jurisdictions would be recognized by the council of the college. It is through this process that a college might implement a mutual recognition agreement (under the Agreement on Internal Trade). Recognition of other jurisdictions is not, however, limited to Canada.

Jurisdiction recognition is intended to expedite the registration process. The absence of this recognition does not mean that practitioners in another jurisdiction cannot be registered; they may be assessed on an individual basis by the registrar or registration committee.

3. By having individual qualifications and experience deemed substantially equivalent to the competencies required for registration. The individual must demonstrate his/her competence to the satisfaction of the registrar or registration committee, through an assessment of prior education and experience, and may involve additional examinations, as authorized in the college's regulation.

While colleges may use external assessment agencies such as a national organization or a private agency to evaluate qualifications, colleges have the ultimate decision about

whether an applicant is qualified for registration. Colleges cannot delegate or sub-delegate this responsibility to another organization.

In addition to the general registration process established in the *Health Professions Act, An Act to Protect Patients* introduced new requirements for all applicants for registration to provide:

- A criminal record check;
- Evidence of whether the applicant is an investigated person in Alberta or another jurisdiction;
- Any information required by the registrar respecting whether any conduct of the applicant has previously constituted unprofessional conduct,
- Evidence of whether the applicant has ever had conditions imposed on their practice permit; and,
- Evidence as to whether there has ever been a judgment in a civil action regarding the applicant's practice as a health professional.

These amendments supported the existing practices of regulatory colleges to require applicants for registration (and renewals of practice permits) to provide evidence of good character and reputation. In accordance with the regulations, providing evidence of good character and reputation most often involves a declaration that the individual:

- Has provided complete and accurate information.
- Has not been disciplined by another profession or in another jurisdiction.
- Has not been charged with or convicted of a criminal offence. (Note that the Protection for Persons in Care Act requires new employees in most health care facilities and agencies to undergo criminal record checks during the recruitment and selection process).

Generally, being disciplined or having been convicted of a criminal offence does not preclude registration. The registrar and/or registration committee will deal with each application on a case-by-case basis.

Most colleges require, as part of their regulation, that members have professional liability insurance.

Relevance to Employers

The *Health Professions Act* requires that individuals who have met the qualifications for registration in a health profession and are providing the services of that profession to the public, or supervising or teaching the practice of the profession, must register with the applicable college.

Employers involved in recruitment and selection will need to be mindful of colleges' timeframes for processing applications for registrations.

If the practitioner's registration status is unclear, the letter of offer of employment or contract should specify that being registered in good standing with the practitioner's college is a prerequisite for employment or contract work. This stipulation should be monitored through a "bring forward" system to ensure appropriate follow-up.

If in doubt, employers are encouraged to confirm a prospective employee or contractor's registration status by contacting the registrar of the applicable professional college.

Employing or contracting with practitioners who should be but are not properly registered (or do not have current practice permits) is unlawful under the *Health Professions Act*, and may present significant liability concerns.

Employers should ensure on an ongoing basis that all employees and contractors have current registration and practice permits.

Employers may continue to set standards exceeding those required by a health practitioner's college. That is, job descriptions and performance expectations recognize each health professional's legal obligations, but often require additional skills, competencies and training.

Health Professions Act References

Sections 28 to 32 (Applying for Registration)

College Registers

Required Registers

A college must maintain a register of its members who provide professional services.

Most colleges currently under the *Health Professions Act* have registers divided into categories such as:

- General: members who meet all registration requirements, may use the college's protected titles, and, if applicable, are authorized to perform restricted activities.
- Temporary or provisional: practitioners who are in the process of fully meeting the requirements of registration, most often after completing their formal academic education. These individuals may, for example, be completing practical training requirements, awaiting the opportunity to write the provincial and/or national examination, or awaiting examination results.
Temporary registration allows graduates to practice under the supervision of a regulated member on the General Register for a specified period (most often for several months and generally not more than one year). The college's supervision requirement is designed to provide mentorship and practical advice until the temporary registrant is fully registered on the General Register.
- Courtesy: practitioners from other jurisdictions, who are practicing in Alberta on a short-term basis, and for a specific time and purpose (for example, for several months to teach a course).

Colleges may also establish voluntary registers under their bylaws for non-regulated members.

Register Information

For each regulated member, college registers must include the following information:

- The full name of the member.
- The member's unique registration number.
- Whether the member's registration is restricted to a period of time and, if so the period of time.
- Any conditions imposed on the member's practice permit.
- The status of the member's practice permit, including whether it is suspended or cancelled (the member's name remains on the register regardless).

- The member's practice specialization recognized by the college.

Additional information may be included in the register as specified by each college's regulation. The regulation will also specify whether this additional information is available to the public.

Restricted activities that are normally provided by all members of a profession are not listed in a college's register or on a practitioner's practice permit.

College registers will identify if a practitioner is authorized to provide a restricted activity not normally provided by members of the profession, or if the practitioner is limited from providing restricted activities normally provided by members of the profession.

Accessing Information on the Register

Any member of the public may request information about a named individual on the register during regular business hours, and it must be provided by the college.

In addition, amendments made through *An Act to Protect Patients* require colleges to establish and maintain a website that includes information respecting each regulated member. This information must be made available to the public at no charge.

Considerations for Employers

Employers should formally review their employees and contractors' registration status on a regular basis. (See Practice Permits: Considerations for Employers).

Human resource directives, policies and procedures should mandate annual confirmation that employees and contractors' practice permits are current and placed on their human resources' file.

This is a prudent action from an employer's risk management perspective, and complements the obligation of each college to notify a practitioner's employer in the event of suspension or cancellation.

During the recruitment and selection process, employers are encouraged to contact the prospective employee or contractor's college to determine if the applicant is in good standing, if there are any restrictions on his/her practice permit, and whether there have been any complaints about the regulated member.

Additionally, each regulated member's registration status should be reviewed when they transfer to a new worksite or position.

Employers may be able to access aggregated information from Alberta Health for similar workforce planning and related purposes. Among the uses of this information are employee recruitment, selection and retention, collective bargaining and forecasting.

Health Professions Act References

Notices and Information (Section 119)

College Website (Section 135.92)

Mandatory Registration

Overview

Under the *Health Professions Act*, health professionals who meet the requirements for registration must be registered with their regulatory college if they intend to provide the services described in section 46 of the Act. These services include:

- providing professional services directly to the public (Note that each regulated profession has a Schedule to the *Health Professions Act* which describes the profession's common practices: "In their practice, [regulated practitioners] do one or more of the following...";
- teaching the practice of a regulated profession to regulated members and students of the regulated profession; and
- supervising regulated members who provide professional services to the public.

Relevance to Employers

The *Health Professions Act* prohibits persons from knowingly employing a person who is required to be registered under the *Health Professions Act* and is not registered, unless the person is authorized to provide the services under other health professional legislation.

If an employer is aware of an individual who meets the above criteria but is not registered, it is their responsibility to report this information to the applicable college.

If the registrar of the applicable college learns of a person who the registrar believes may be required to be registered and is not, then the registrar may send the person a request to apply for registration. Should the person decide not to apply, the college may seek an injunction prohibiting the person from providing the services.

Health Professions Act References

Sections 46 to 49 and individual profession-specific Schedules 1 to 28 of the *Health Professions Act*.

Students

Overview

Under the mandatory registration provisions of the *Health Professions Act*, all health professionals who meet the requirements for registration must be registered with their regulatory college to provide professional services to the public.

While students may practice in a regulated health profession and perform restricted activities, they are generally not registered as regulated members. They are considered to be under the control of their educational institution. (In the case of the medical profession, though, undergraduate and post-graduate students are registered as regulated members).

When students, like other unregulated practitioners, perform restricted activities, they do so under the supervision of regulated members and are authorized by the supervisor's regulation.

College Regulations specify how members of the college are to supervise students (and unregulated workers) in the performance of restricted activities. These regulations must identify who can provide restricted activities under supervision, and the nature of that supervision.

While students are not normally regulated, they can use the name of the profession in combination with the title "student" while undertaking activities within the program.

Relevance to Employers

Employers need to continue to ensure that students employed to provide health services are appropriately authorized or supervised when performing restricted activities.

To perform restricted activities as part of their training, students must be enrolled in a program approved by the appropriate college. They must have the consent of and be under the supervision of a regulated member.

While there is some variation between professional regulations, the supervising member must generally be on site and available to consult with and assist when the restricted activity is being performed.

The degree of orientation, supervision, mentoring and sequencing of performance appraisals generally varies according to the student's level of educational preparation and demonstrated skills and competencies.

Health Professions Act References

Sections 40 (Applying for a Practice Permit), 46 (Mandatory Registration) and 128 (Title Protection)

Unregulated Health Providers

Overview

There are a significant number of unregulated health providers in health care and other employment settings. Examples of unregulated health providers include Health Care Aides, Massage Therapists, Personal Care Attendants, Nursing Attendants, Orderlies, Physical Therapist Aides/Assistants and Occupational Therapist Aides/Assistants.

Students of most professions may be considered a special subset of unregulated health providers.

The *Health Professions Act* does not prohibit unregulated health providers from performing health services that are not restricted activities, even though these activities may be within the scope of practice of regulated health professionals.

Restricted Activities

In their regulations, health professional colleges identify the unregulated practitioners that may perform restricted activities under the supervision of regulated members.

These regulations will also identify the restricted activities that may be performed and the nature of the supervision that must be provided.

Unregulated health providers may only provide restricted activities if they are assisting or working under appropriate supervision, with the consent of an authorized, regulated professional, and are authorized by their supervisor's regulation.

Unregulated practitioners may also provide restricted activities if they are authorized to do so through Ministerial regulations.

Considerations for Employers

Employers need to ensure that their unregulated workers are not in contravention of the *Health Professions Act* or the Government Organization Act.

Employers (and particularly managers and supervisors) must ensure that unregulated health providers who perform restricted activities possess the required competencies and skills, and that quality of care and potential liability concerns are effectively addressed.

Health Professions Act References

Schedule 7.1 of the Government Organization Act.

Guidance and Oversight

Code of Ethics and Standards of Practice

The *Health Professions Act* requires that a college must "establish, maintain and enforce a Code of Ethics and Standards of Practice." They provide practitioners with a set of guidelines and principles to govern their professional behaviour and the provision of services.

Under section 133.1, a college must develop and propose standards of practice

- a) setting out who is considered to be a patient for the purposes of the college's regulated members,
- b) respecting when a sexual relationship may occur between a regulated member or a former member and a patient, and
- c) respecting when a person who is a spouse of or in an adult interdependent relationship with a regulated member may also be a patient.

A college must provide for review and comment a copy of its proposed Code of Ethics and/or Standards of Practice to its regulated members, the Minister of Health, and "any other persons the council considers necessary." The Minister of Health will similarly consult with stakeholders, including employers, prior to providing comments to the college.

Policies and Procedures

College policies and procedures are approved by the council and, in some instances by the responsible committee or tribunal.

College policies further interpret and implement the requirements of the act, regulation and bylaws.

Considerations for Employers

Non-compliance with a college's regulations, bylaws and/or Code of Ethics and Standards of Practice may result in the college initiating disciplinary action against its regulated member (for example, for "unprofessional conduct"). This may have implications for an employee or contractor's status with an employer.

Health Professions Act References

Part 8 (Section 131 to 135)

Restricted Activities

Overview

Restricted activities are regulated health services that by law can only be performed by individuals who are authorized to perform them.

Restricted activities are listed in Schedule 7.1 of the Government Organization Act. Restricted activities include procedures such as but not limited to, surgery, assisting in childbirth, performing injections, prescribing medication, entering into one or more body cavities, and setting fractures.

Professions do not own or have exclusive rights to perform restricted activities. Practitioners must be authorized by statute, regulation or Ministerial Order.

Members of several different professions may be authorized to perform the same restricted activity.

Unrestricted activities

The Schedule of Restricted Activities in the Government Organization Act also recognizes certain activities that are not restricted: activities of daily living, counselling and the drawing of venous blood.

"Activities of daily living" refers to activities that individuals normally perform on their own behalf to maintain their health and well-being, and include:

- Routine and invasive self-care activities, including but not restricted to the removal of slivers and the cleaning of wounds, and
- Specifically taught procedures, which generally result in predictable and stable responses, such as in home care and continuing care settings. These include catheterization, maintenance of drainage tubes, and administration of drugs by injection (such as insulin);

Actions performed in the course of dealing with an emergency to comfort or stabilize a person who is ill, injured, or unconscious because of an accident or other emergency, and provided without hope or expectation of compensation or reward.. This is consistent with the provisions of the Emergency Medical Aid Act.

Criteria for Why Certain Activities are Restricted

There are certain criteria that determine whether an activity is restricted, including:

- Level of risk: to an individual's physical or psychological health.
- Practitioner competency: including judgment, knowledge and skills required for initiating or providing specialized and complex services.
- Public interest: balancing the need to ensure the public's health and safety with the need for flexibility in the scope and practice of regulated and unregulated health practitioners.
- Other safeguards: such as legislation, employer standards, outcome measures, and civil and criminal litigation.
- Clarity: definitions of restricted activities must be clearly understandable to the public and regulatory bodies
- Consistency of application: across the province, employment settings and professions.

Restricted activities are specific health services that may be performed by a number of regulated health practitioners, and are not linked to any particular health profession. Although professions are regulated by the *Health Professions Act*, restricted activities are found in the *Government Organization Act*.

Section 7.1 of the *Government Organization Act* identifies activities involving risk to patients/clients/consumers and labels them as restricted activities. It then sets out provisions for individuals to be authorized to perform these activities.

Each regulated profession has a Schedule under the *Health Professions Act*. The restricted activities conducted by members of a health professional college must be seen within the context of their "practice statements" contained in the applicable Schedule.

Authorization

Restricted activities may be performed by a person who is a member of a college under the *Health Professions Act* and is authorized by the college's regulations to perform the activity.

Restricted activities may also be performed by a person

- Who is working under the supervision of a regulated health professional, in accordance with regulations made by the professional's college.
- Who is authorized to perform a restricted activity under other health professional legislation..

- Who is not a regulated health professional, but is authorized in regulation or Ministerial Order to perform the restricted activity.

Competence

Professionals normally demonstrate initial competence by completing an approved program of studies.

Even though they may be authorized to perform a restricted activity, members are always constrained by their own level of expertise. An example of the wording in a regulation is:

"Despite any of the authorizations to provide restricted activities, regulated members must restrict themselves in performing restricted activities to those activities that the member is competent to perform, as well as to those appropriate to the member's area of practice and the procedures being performed."

Considerations for Employers

Proclamation of the *Health Professions Act* on December 31, 2001 resulted in the provisions for restricted activities coming into effect.

If a person is performing a restricted activity and not authorized to do so, then he/she is committing an offence under Schedule 7.1 of the Government Organization Act.

Employers who require any person to perform a restricted activity when the person is not authorized to do so are also committing an offence.

College regulations deal with how members of the profession may supervise students or other individuals performing restricted activities under supervision.

Employers should ensure that employees, contractors and students are appropriately authorized or supervised when performing restricted activities. This requirement remains in place even if a workplace is experiencing staffing shortages, vacation coverage or other challenges.

There is considerable variation among professions in terms of whether all or some members are authorized to provide a restricted activity. The specific categories of practitioners in each profession authorized to provide certain restricted activities would be noted in each college's regulation.

Unregulated workers may provide restricted activities under supervision, provided this is authorized by the supervisor's regulations. These regulations must identify who can provide restricted activities under supervision, and the nature of that supervision.

Health Professions Act References

Sections 46 to 49 (Mandatory Registration); Section 131 (1) (d) (Regulations authorizing performance of restricted activities and supervision of unregulated practitioners)

Protection of Titles

Overview

The *Health Professions Act* protects certain titles for the purpose of transparency and public accountability, within the context of the provision of health services. This makes it easier for the public to identify regulated health professionals, and if necessary to contact their regulatory colleges.

Each Schedule to the *Health Professions Act* lists the titles that have been reserved for the exclusive use of the health profession. College regulations address how these titles are used within the profession.

The legislation also protects the following titles for professions regulated by the *Health Professions Act*:

- "College": Under the *Health Professions Act*, each profession governed by a regulatory body is called a "college." Only organizations recognized under the *Health Professions Act* can use this designation. Other organizations or associations of health professionals may not use the term "college" to imply that they are colleges under the *Health Professions Act*. This prohibition does not extend to academic institutions (e.g. Mount Royal College).
- "Regulated/Registered/Licensed": within a health care context, only practitioners registered with a college under the *Health Professions Act* can call themselves regulated or registered, and then only in accordance with their individual college regulations (e.g. Registered Dietitian or Licensed Practical Nurse).
- "Doctor", "Surgeon", "Pathologist", "Oncologist", within a health care context, consistent with the *Health Professions Act* or one of its regulations.
- "Nurse": can only be used by registered nurses, licensed practical nurses and registered psychiatric nurses.

Considerations for Employers

Employers may assign numerous job titles to a particular professional group, possibly due to historical and/or collective bargaining considerations.

Yet, employers need to be mindful of the *Health Professions Act* requirements for protected titles when assigning job titles. A job title cannot be a protected title unless the job title relates only to those who are regulated members with the particular college.

For example, a position entitled "Dietitian" in an employer's job description or a collective agreement must only be assigned to regulated members of the College of Dietitians.

In some circumstances, after a particular professional group is regulated under the *Health Professions Act*, affected job titles may need to be amended. This may have human resources and collective agreement implications.

Health Professions Act References

Part 7 - Title Protection

Section 2 of each of schedules 1 to 28 for profession – specific titles.

Access to Information and Confidentiality

While the *Health Professions Act* provides for the confidentiality of certain information and mandates the release of other information, there are no overriding provisions for confidentiality within the act.

Health professional colleges are not subject to the Freedom of Information and Protection of Privacy Act. Health professional colleges are not public bodies under the Freedom of Information and Protection of Privacy Act or custodians under the Health Information Act.

The *Health Professions Act* provides considerable direction to colleges, regulated members and members of the public (including employers) about accessing, disclosing and ensuring the confidentiality of information. This includes college website information, registration and practice permit information, information about investigative and disciplinary processes, and continuing competence information. Specific offences and penalties are provided for in the *Health Professions Act* to address inappropriate disclosure of information.

The provisions of the Health Information Act apply to custodians (for example, health authorities) when they are disclosing health information to health professional colleges. Custodians have the authority to disclose identifiable diagnostic, treatment and care information to health professional bodies without consent for an investigation, discipline proceeding, practice review or inspection.

A custodian can make this disclosure only if the custodian has complied with an enactment that authorizes or requires the disclosure. The health professional body must agree in writing not to disclose the information further (except as authorized by an enactment), and to destroy the information at the earliest opportunity.

College Websites

The *Health Professions Act* requires that colleges establish and maintain a website available to the public.

A college's website must include items such as:

- The college's annual report
- The college's regulations, bylaws, standards of practice, and code of ethics

- Information regarding its regulated members, specifically:
 - The full name of the member;
 - Whether the member's registration is restricted to a period of time and, if so, the period of time;
 - The status of the member's practice permit, including whether it is suspended or cancelled. Where a member's practice permit has been cancelled or suspended as a result of unprofessional conduct involving sexual abuse or sexual misconduct, this must be specifically noted;
 - The member's practice specialization recognized by the college;
 - Whether the member is authorized to provide a restricted activity not normally provided by regulated members of the college;
 - Whether the member is not authorized to provide a restricted activity that is normally provided by regulated members of the college;
 - Any conditions placed on a member's practice permit as a result of a decision of unprofessional conduct involving sexual misconduct.
- A copy of any decision made regarding unprofessional conduct of a member involving sexual abuse or sexual misconduct, including any orders made.

A College may choose to publish additional information on its website.

Information that must be released

Register information:

A member of the public, upon request, must be provided with information by a college about the:

- Full name of the member.
- The member's unique registration number.
- Whether the member's registration is restricted to a period of time.
- Any conditions on the member's practice permit.
- The status of the member's practice permit, including whether it is suspended or cancelled.
- The member's practice specialization.
- Whether the member is authorized to provide a restricted activity not normally provided by regulated members of the college.
- Whether the member is not authorized to provide a restricted activity that is normally provided by regulated members of a college.

Disciplinary Decisions and Records of Hearings

The public may examine the decision and record of a hearing, except for any part that was held in private. The record of that part of the hearing cannot be released to anyone who was not present when the hearing was held.

Information that cannot be released

Continuing Competence Program Information and Practice Visits

Information relating to a regulated member's participation in a continuing competence program and practice visits is confidential. Any person who has access to or comes into possession of this information may not use it except to carry out their duties under the *Health Professions Act*.

If a person releases or discloses information in contravention of the confidentiality provisions, the information may not be used in any proceedings under the *Health Professions Act*, in any arbitration, inquiry, legal action or Court proceeding.

A regulated member who is participating or has participated in a continuing competence program cannot be required to give evidence about their continuing competence program in a legal proceeding. The only exceptions are with respect to perjury or the giving of contradictory evidence, or where there are other proceedings under the *Health Professions Act*.

Alternative Complaint Resolution

With specific exceptions, information arising from ACR processes is confidential and not admissible in any proceedings under the *Health Professions Act* or other legislation:

- Without the written consent of the investigated person and the complainant; or
- In the case of written evidence, without the written consent of the person who prepared the written evidence, the investigated person and the complainant.

Length of Time Information is Available

While the *Health Professions Act* mandates that certain information be released to the public, colleges may make regulations specifying how long such information must be available.

The *Health Professions Act* specifies that decisions made regarding unprofessional conduct of a member involving sexual abuse or sexual misconduct, including any orders made, must be

published on the College's website. Generally, copies of these decisions must be published indefinitely, subject to other provisions in the *Health Professions Act*.

In addition, whether or not the information is to be released, colleges must keep, for at least 10 years:

- A copy of the ratified settlement and admissions of unprofessional conduct,
- Records of investigations and hearings, and
- Records of complete registration applications and reviews.

Considerations for Employers

Employers need to be mindful of confidentiality and disclosure requirements in their dealings with colleges and regulated members.

This is a complicated and developing area involving interaction between provincial and federal legislation. Employers are encouraged to seek legal counsel for clarification and advice.

Health Professions Act References

Sections 34 and 119 (Register Information); Section 125 (Continuing Competency and Practice Visits); Section 58 (Alternative Complaint Resolution); Section 66 (Investigations); Section 121 (Record Retention); Part 8.3 (College Website)

Please see also section 35 (4) of the Health Information Act, which is the key provision that affects health professional bodies.

Practice Permits

Overview

A practice permit is a document issued by a college indicating the regulated member's registration with the college is current and the regulated member is permitted to practice the profession, subject to any conditions on the permit.

Practice permits are generally issued yearly by each college, although different periods of registration are possible (for example, a courtesy practice permit might be issued for several months).

Practice permits must include the following information:

- The name of the college and that the permit is issued under the *Health Professions Act*.
- The member's name and registration number.
- The category of registration.
- Any conditions on the member's practice permit.
- The expiry date.

Some colleges may include a list of restricted activities on their members' practice permits.

Renewal, Suspension and Cancellation

A practice permit is renewed by each regulated member by completing an application form, submitting the required fees, and documenting compliance with the continuing competence program.

If a practitioner fails to apply for a practice permit by the date specified in the college's bylaws, the practitioner's practice permit will be suspended.

A member's practice permit may be suspended, cancelled or have conditions placed upon it through the continuing competence program, or as a result of college disciplinary processes. The *Health Professions Act* requires that the applicable college formally notify employers and other parties.

Conditions on a Practice Permit

Common conditions imposed on a case-by-case basis include, but are not limited to:

- Completing continuing competency requirements within a specific time period.
- Completing examinations, testing, assessment, practicums, work experience or counselling.
- Practicing under the supervision of another regulated member.
- Not engaging in solo practice.
- Limiting their practice to specific practice areas or settings.
- Reporting to the registrar or registration committee on specified matters at specified times.
- Limiting the duration of the practice permit.
- Using only specific titles.
- Not supervising students.

College Responsibilities when a Practice Permit is Suspended or Cancelled

If a practice permit is suspended or cancelled, it must be returned to the registrar. If conditions are imposed, the registrar must enter the conditions imposed on the regulated member's practice permit.

The registrar must also provide the information to:

- A person who employs the regulated member to provide professional services on a full-or part-time basis as a paid or unpaid employee, consultant, contractor or volunteer.
- A Regional Health Authority where the health professional provides services.
- A hospital if the regulated member is a member of the hospital's medical staff or professional staff.
- The Minister of Health or any organization that administers the payment of fees for the professional services the regulated member provides.
- Another health professional college if the registrar knows that the regulated member is also a member of the other college.
- Governing bodies of similar professions in other Canadian jurisdictions.

Subject to the college's bylaws, the college may publish or distribute the information to its members and/or the general public.

Reinstatement of Registration and a Practice Permit

When a practice permit is cancelled for failure to pay the renewal fee, the practitioner may have the practice permit reinstated by paying the required fee and any late penalties, as specified in the college's bylaws.

If a practice permit is suspended for failure to meet continuing competency requirements, the college will advise the member of what steps are necessary to have the permit reinstated.

If a practice permit is cancelled as a result of discipline, the practitioner may apply for reinstatement in accordance with the profession's regulations. Generally, these applications are permitted only after a considerable time period has elapsed. Members applying for reinstatement must demonstrate they can provide services in a safe and competent manner.

An Act to Protect Patients introduced new reinstatement requirements under the following circumstances:

- If a practice permit has been cancelled as a result of a decision of unprofessional conduct involving sexual abuse in Alberta, Canada or the United States, or as a result of a conviction under specific sections of the Criminal Code¹, the former regulated member cannot apply for a reinstatement of their practice permit and registration.
- If a practice permit has been cancelled as a result of a decision of unprofessional conduct involving sexual misconduct in Alberta, Canada or the United States, the former regulated member cannot apply for reinstatement of their registration and practice permit until at least 5 years have passed.

Relevance to Employers

The *Health Professions Act* requires that employers be notified by a college when a regulated member's practice permit is issued with conditions, suspended or cancelled. In the event of reinstatement, employers must also be notified.

¹ Sections 151, 152, 153, 153.1, 155, 162, 162.1, 163.1, 171.1, 172.1, 172.2, 173, 271, 272, 273, 286.1, 286.2 or 286.3.

The most common scenario for a regulated member's practice permit to be suspended is due to non-payment of college fees.

If a college places restrictions on a practitioner's practice permit, this may limit the ability of employers to recruit, retain and deploy the employee.

If a practice permit is suspended or cancelled, the member may not practice.

Considerations for Employers

Employer human resource directives, policies and procedures dealing with recruitment and selection should require that prospective employees, contractors and volunteers provide evidence of current registration and a practice permit with their applicable college.

Employer human resources policies and procedures should ensure that regulated members are obliged to provide a copy of their updated practice permit on a regular basis. Since colleges vary in terms of their renewal period (usually yearly) and annual renewal date, a "bring forward" or similar reminder system is recommended. Additionally, employers may want to require continuing registration as a condition of employment.

Health Professions Act References

Sections 38 to 41 (Practice Permit Renewal), Section 45 (Reinstatement), Section 96.2 (Unprofessional Conduct in Another Jurisdiction), Section 47 (Mandatory Registration - Prohibition) and Section 118 (Assessing Incapacity)

Continuing Competency Programs

Overview

The *Health Professions Act* obligates all health professionals to view the maintenance of competence and the ability to apply advances in their profession as a lifelong process.

The *Health Professions Act* requires colleges to establish mandatory continuing competency programs in their regulations, and to link obtaining practice permits to participation in continuing competency programs.

The specifics of each college's continuing competence program are explained in its regulation.

Colleges' approaches to continuing competence differ, but usually include one or more of the following:

- Continuing education (a certain number of credits per year).
- Self-directed learning, self-assessment and evaluation, and the development of competence plans.
- Re-certification on a regular basis (for example, CPR).
- On-the-job experience ("practice hours").

Under the *Health Professions Act*, all information related to participation in a continuing competence program is confidential and may not be released except to carry out the activities within the program.

Relevance to Employers

If regulated health professionals fail to meet continuing competence requirements, their practice permits may be suspended or conditions may be placed on their practice permits. These conditions may include the requirement to provide services under the supervision of another regulated health practitioner.

Employers are not obliged to provide financial support for professional development opportunities or to pay for programs, although some may do so.

The fulfillment of continuing competence requirements may prove challenging to some practitioners in rural and remote areas. These practitioners may have difficulty accessing

activities in major urban centers. Many colleges have responded with innovative solutions such as remote access and online programs.

Health Professions Act References

Section 50 to 53 (Continuing Competence Programs)

Practice Visits

Overview

As part of their continuing competence programs, some colleges undertake practice visits of their members to ensure that continuing competence requirements are met.

Not all professions use practice visits. If a college is to complete practice visits, there must be provisions in their regulations.

Practice visits are most frequently used for professions whose members practice in their own offices as independent practitioners. Some professions, however, may use practice visits for practitioners working in hospitals, continuing care facilities, mental health and alcohol and drug abuse treatment facilities, correctional facilities and social service agencies.

A practice visit can be undertaken in a publicly funded facility, but only with the consent of the person who controls or operates the facility.

In conducting a practice visit, the competence committee may not enter a private dwelling or any part of a place designed to be used as a temporary or permanent private dwelling, without the consent of the occupant.

Components

A practice visit may involve all or some of the following:

- With proper notice, entering and inspecting the place where the regulated member provides professional services.
- Interviewing the regulated member about the professional services they provide.
- Observing the member providing services, if the person receiving the services consents.
- Interviewing or surveying patients, clients and colleagues.
- Reviewing documents and medical records.
- Assessing the safety and condition of equipment and technology.

Information relating to participation in a continuing competence program as a result of a practice visit is confidential.

Disclosure of this information is only permitted in limited circumstances. Use of this information in other types of legal proceedings is ordinarily prohibited by the *Health Professions Act*. Employers are encouraged to seek legal advice.

Relevance to employers

The extent of a practice visit will need to be arranged between the regulated member's supervisor/employer and the college prior to the visit occurring.

These arrangements will normally involve formal contact between the college and the member's supervisor/employer, and address relevant details and processes.

Health Professions Act References

Section 51 (Practice Visits).

Incapacity

Overview

The *Health Professions Act* defines a regulated member as being incapacitated if the individual is: "suffering from a physical, mental or emotional condition or disorder or an addiction to alcohol or drugs... or other chemicals that impairs the member's ability to provide professional services in a safe and competent manner."

Addressing Incapacity

If the complaints director has grounds to believe that a member is incapacitated, the complaints director may direct the member to submit to treatment and cease practice until the complaints director is satisfied that the member is no longer incapacitated.

The college's complaints director may deal with a regulated member who is potentially incapacitated, even if a formal complaint has not been made.

The complaints director may direct a potentially incapacitated member to submit to a physical and/or mental examination. Should the regulated member refuse to cooperate, the member may be subject to disciplinary action by the college.

Implications for Employers

Employers need to be aware the *Health Professions Act* allows a college to address incapacity without the stigma of professional discipline.

Health Professions Act References

Section 118 (Assessing Incapacity)

Complaints

Overview

The *Health Professions Act* defines complaints broadly:

- Complaints may come from any person (including an employer, a patient or client, or a regulated or unregulated health care provider). Complaints must be in writing and signed by the complainant, and deal with a regulated member or a former member.
- With respect to reports from employers if a practitioner is suspended, dismissed or resigns for reasons of unprofessional conduct, the *Health Professions Act* provides that: "If, because of (unprofessional) conduct that in the opinion of the employer of a regulated member is terminated or suspended or the regulated member resigns, the employer must give notice of that conduct to the complaints director." "Employment" includes being engaged to provide professional services on a full-time or part-time basis as a paid or unpaid employee, consultant, contractor or volunteer.
- If the complaints director directs a practitioner who appears to be incapacitated to undergo an assessment and the practitioner refuses, the complaints director may treat this refusal as a complaint.

The *Health Professions Act* sets out the approaches for addressing issues of professional conduct to protect the public from incompetent or unethical practitioners including:

- Provisions for handling complaints, with options to informally resolve complaints,
- Provisions for Alternative Complaint Resolution, and,
- Provisions for formal disciplinary hearings before a tribunal.

Unprofessional Conduct

Conduct that is determined to be "unskilled practice" and "professional or ethical misconduct" is included under the *Health Professions Act* as "unprofessional conduct":

Common examples include:

- Displaying a lack of knowledge or a lack of skill or judgment in the provision of professional services.
- Contravening the *Health Professions Act*, a code of ethics or standards of practice.

- Contravening other legislation that applies to the profession.
- Representing that a person was a regulated member in good standing, while the person's registration or practice permit was suspended or cancelled.
- Misrepresenting the conditions on a person's registration or practice permit.
- Failing or refusing to cooperate with the requirements of a continuing competence program, the instructions of the competence committee, or an individual undertaking a practice visit.
- Failing or refusing to comply with a ratified settlement or to undergo a mental and/or physical examination.
- Failing or refusing to cooperate with an investigator.
- "Conduct that harms the integrity of the profession."
- Conduct that constitutes sexual abuse or sexual misconduct towards a patient.

Conduct Resulting in a Complaint

Having a regulatory college in place means Albertans have a way to hold a practitioner accountable for care that could be deemed unacceptable or outside the scope of the profession.

An Albertan can go directly to a regulatory college and file a complaint. The college can then investigate a practitioner and determine what, if any, remedial action is required.

If a regulatory college does not hold its practitioners accountable for inappropriate behaviour, both the reputation of the profession and public confidence in the profession are seriously undermined.

Complaints giving rise to a referral to a college commonly include, but are not limited to:

Addictions and Mental/Physical Health Issues

- Unmanaged substance abuse/addiction.
- Impaired mental and/or physical health.

Interpersonal and Communications Issues

- Failure to communicate appropriately.
- Incomplete or inaccurate documentation.
- "Inappropriate" behaviour.

Inappropriate Sexual Conduct towards a Patient

- Sexual misconduct, which is any incident or repeated incidents of objectionable or unwelcome conduct, behavior or remarks of a sexual nature by a regulated member towards a patient that the regulated member knows or ought reasonably to know will or would cause offence, humiliation or adversely affect the patient's health and well-being
- Sexual abuse of a patient, which is the threatened, attempted or actual conduct of a regulated member towards a patient that is of a sexual nature and includes any of the following:
 - Sexual intercourse between a regulated member and a patient;
 - Genital to genital, genital to anal, oral to genital, or oral to anal contact between a regulated member and a patient;
 - Masturbation of a regulated member by, or in the presence of, a patient;
 - Masturbation of a regulated member's patient by that regulated member;
 - Encouraging a patient to masturbate in the presence of that regulated member; and,
 - Touching of a sexual nature of a patient's genitals, anus, breasts or buttocks by a regulated member.

Practice Issues

- Inappropriate interventions.
- Poor clinical judgment or practice, including inadequate assessments.
- Practicing beyond the regulated member's level of "competency": particularly with respect to restricted activities.
- Medication errors (if applicable).
- Unethical behaviour, including the abandonment of responsibilities.
- Breach of trust and/or the confidentiality of patient records.
- Fraud, theft or misrepresentation.
- Physical, verbal or sexual abuse. This may give rise to a complaint under the Protection for Persons in Care Act for employees, contractors and volunteers in designated agencies and facilities. There may also be consequences in terms of the Criminal Code of Canada, employer policies and/or potentially civil legal actions.

Initiating a complaint as an Employer

The manager, clinical supervisor or colleague's decision to initiate a complaint is often a subjective judgment, yet there is a legislative obligation to report. Consultation with the applicable college at an early stage may be beneficial.

However, concerns about a regulated practitioner's actions or lack of actions that potentially place patients or clients at risk should be reported promptly to the college. Some considerations are:

- Is the professional providing safe care?
- Has the professional potentially breached the ethical and/or practice standards of the profession?
- Has the professional violated the employer's policies and procedures?
- Has there been a pattern of unacceptable behaviour? Is it likely to continue?
- Are the public, patients, clients, co-workers and others potentially at risk?
- Is there evidence of specific behaviours or incidents that support the employer's concerns?
- What have been the outcomes of the employer's attempts to remediate the employee's conduct?

An Act to Protect Patients introduced an amendment to the *Health Professions Act* requiring employers who have reasonable grounds to believe that the conduct of a regulated member constitutes unprofessional conduct based on behaviour that is sexual abuse or sexual misconduct, must as soon as possible, give notice of that conduct to the complaints director.

Alternative Complaint Resolution

Overview

The *Health Professions Act* recognizes that not all complaints need to result in a formal investigation, hearing and potentially discipline. Many issues can be addressed through a less formal and less adversarial process of alternative complaint resolution (ACR).

The *Health Professions Act* describes the basic requirements of the ACR process. Each college's regulation provides additional, specific details.

With ACR, the focus is on problem solving between the complainant and the professional, and not necessarily on assigning blame.

ACR can be initiated at any point after the receipt of a complaint, until the commencement of a hearing.

ACR (Division 2 Processes) cannot be used to resolve allegations of sexual misconduct towards or sexual abuse of a patient.

Process

The ACR process is conducted by one of the college's regulated members or a trained third party mediator.

The ACR process allows a complainant and the investigated member of a college to resolve a complaint or dispute where appropriate, without resorting to a disciplinary hearing.

Participation is voluntary and participants may exit at any point.

The investigated member may want to be accompanied by a representative and/or support person, including if applicable a union official.

The ACR process must involve the college, and the outcome must be seen to be in the "public interest" and ratified. The process is not simply a matter between a complainant and a regulated practitioner.

The college's Complaint Review Committee must review any resulting agreement and may:

- ratify the settlement.

- with the consent of the complainant and the investigated person, amend and then ratify the settlement.
- refuse to ratify the settlement.

Agreements reached through ACR are enforceable in the same way as a college's disciplinary order.

Depending upon the circumstances, if the ACR process does not result in a ratified settlement, the college may, depending on when the ACR process was initiated, dismiss the complaint, initiate a formal investigation, or proceed with a formal hearing.

Information within the ACR process is confidential. It does not become part of the formal disciplinary process.

A college must retain copies of all ratified settlements and may publish them in accordance with its bylaws. The college may, if authorized to do so by the settlement, reveal the name of the investigated person or complaint.

Decisions that affect the investigated person's practice permit (cancellation, suspension or conditions) must be communicated in a similar manner as those made through other processes under the *Health Professions Act*.

Considerations for Employers

Employers need to be aware that ACR may be an option to address certain complaints.

Health Professions Act References

Sections 58 to 60 (Alternative Complaint Resolution)

Discipline

Options for addressing all complaints include informal communication and attempts to resolve conflicts, obtaining expert assessments, Alternative Complaint Resolution, assessing a member's incapacity, and traditional investigations and hearings.

The *Health Professions Act* sets out the approaches for addressing issues of professional conduct to protect the public from incompetent or unethical practitioners including:

- Options to informally resolve complaints,
- Provisions for Alternative Complaint Resolution (e.g. mediation), and
- Provisions for formal disciplinary hearings before a tribunal.

The *Health Professions Act* sets out the processes to be followed when handling complaints and discipline. The principles of fairness, reasonableness and due process should prevail throughout.

Investigations

Complaint investigation

Section 55 of the *Health Professions Act* sets out the process for acting on a complaint. This process may lead to an investigation.

College policies and practice vary considerably. However, processes are generally consistent with the following:

- A college investigator may require any person to answer any relevant questions and may require that person to provide documents and other items relevant to the investigation.
- The member and the complainant are notified that an investigation has been commenced and a college investigator has been assigned. The complainant is provided with the name of the investigator. The college must also provide the investigated member with the name of the investigator and reasonable particulars of the complaint, unless the information would "significantly harm the investigation."
- The college investigator is required to make reasonable efforts to interview the complainant, unless, in the investigator's opinion, an interview is not possible or the complainant declines to be interviewed by the investigator.
- When the investigator interviews the complainant, they will gather background information and documents that relate to the complaint. The complainant may provide the investigator with the names of other persons who might have information related to the investigation.
- The college investigator may request a list of names and contact numbers of other individuals who may have direct knowledge of the matter from the investigated member, college and any interviewed individuals (including the complainant).
- The college investigator will meet with others who have direct knowledge of the investigated member's conduct. Some of these individuals may include those recommended by the complainant.
- The college investigator may request documents related to the complaint. Examples of Documents that may be requested include:
 - Policies and procedures
 - Clinical records (not including the full name of the patient, but sufficient identification to be specific about the incident, such as the patient's initials)
 - Notes of meetings
 - Written communications.
- Once all the information supporting the concerns has been gathered, the college investigator will interview the member.

- Members may want to be accompanied by a representative and/or support person, including if applicable a union official.
- When conducting an investigation, the college investigator may require any person to answer any relevant questions, if necessary under oath, and provide within a reasonable time any "document, substance or thing relevant to the investigation."
- The college investigator can enter and inspect at any reasonable time any building where a regulated member provides services, with the exception of entry into a private dwelling.
- The college investigator has the authority to investigate other matters outside the original complaint, which could give rise to a finding of unprofessional conduct.
- The complaints director must notify the complainant and the investigated member with the status of the investigation every 60 days or within any other period of time agreed to by the complaints director, complainant and the investigated member.

Outcomes of an Investigation

The complaints director may determine that a complaint should not be referred for a hearing if:

- there is insufficient evidence,
- the complaint is seen to be trivial or vexatious, or
- the matter is not within the college's jurisdiction to address.

If the complaints director determines not to proceed with a hearing, the complainant has the right to appeal to the Complaints Review Committee. The complainant also has access to the Ombudsman if there are concerns about the process (only after all other available processes are exhausted).

The complaints director may refer the complaint to the college's ACR process.

If the complaints director determines that a complaint should go to hearing, the matter will be referred to the hearings director, who is responsible for arranging the hearing tribunal.

In extraordinary situations, where there is a perceived threat to patient/client safety, the *Health Professions Act* allows for the immediate suspension of a practitioner's practice permit, pending the outcome of a hearing.

Considerations for Employers

Employers should investigate, manage and if necessary remediate employees demonstrating inappropriate behaviours, knowledge, skills and judgement in the workplace.

Employers are legally obligated to inform the college if:

- A practitioner's employment is terminated or suspended because of conduct the employer believes to be unprofessional conduct;
- The employee has resigned for reasons of unprofessional conduct; and/or,
- The employer has reasonable grounds to believe that the conduct of a regulated member may be sexual abuse of, or sexual misconduct towards, a patient.

In addressing these matters, the college will relate to the employer as a complainant.

Employers may choose to make a complaint to a college without terminating or suspending an employee's employment in limited circumstances (such as for example, off-duty conduct).

A college's formal involvement is not intended to replace or supersede employer remediation, investigative and disciplinary practices.

Employers will make what often may be a subjective decision about involving a regulated member's college, including instances involving incapacity, addictions and mental/physical health issues, professional practice issues, and instances of misconduct. Employers are encouraged to speak with their immediate supervisor, their human resources professional, a college official and/or legal counsel for advice.

In the course of a formal investigation initiated by a college, employers may be required by college officials to provide verbal and written information. Employers may also be compelled to attend disciplinary hearings.

Employers need to consider that an investigation is a threatening situation for individuals being investigated. It is important to ensure that tactfulness and understanding of the regulated member's circumstances are demonstrated throughout the process.

Health Professions Act References

Part 4 (Professional Conduct); See also the Protection for Persons in Care Act.

Disciplinary Hearings

Procedural Fairness

Disciplinary decisions have far-reaching implications for regulated professionals accused of unprofessional conduct. Sanctions can range from reprimands, fines, suspensions or revocations of an individual's registration. Suspension or revocation of an individual's registration deprives them of the opportunity to practice their profession.

As a result, there are general principles to ensure procedural fairness:

- The right to know the precise allegations, so the member can fully and adequately defend his/her self.
- The right to cross-examine witnesses, present supportive witnesses and documents, and the right to present comprehensive arguments.
- The right to a hearing before an impartial and unbiased tribunal, who have not made any prejudgment about the issues.

Formal Disciplinary Hearings Procedure

Disciplinary hearings are open to the public unless the tribunal closes the hearing or part of the hearing for one of the reasons specified in the Act. The investigated person has the right to be represented by counsel, at the investigated person's discretion (there is no requirement for employers to supply legal counsel).

Witnesses, including the complainant, may be called at a hearing. They will be provided with formal notice that sets out the allegations, as well as the date and time of the hearing.

During the hearing, witnesses are examined under oath and can be compelled to testify, even though their testimony may be seen to possibly incriminate them or subject them to disciplinary action under the *Health Professions Act*. Their testimony cannot be used against them in other civil or criminal actions, except for perjury or giving contradictory evidence under the *Health Professions Act*.

The college's legal counsel will usually prepare college witnesses by providing general information about the hearing process, questions that the college legal counsel may pose, as well as questions that may be anticipated from the member's counsel.

Witnesses are generally excluded from hearings until they are called to give their evidence.

While you should contact the appropriate college to confirm its hearing process, the order of a hearing is generally:

1. The Chairperson deals with any preliminary matters.
2. Allegations are read and the member is asked to respond. If the misconduct is denied or partially denied, then the hearing proceeds on whether the allegations are true. If misconduct is admitted, then the hearing proceeds in order to determine the appropriate sanctions.
3. Counsel for the college is asked whether he/she wishes to make an opening statement, which is usually a brief summary of the issues and the evidence to be called. Opening statements are not considered evidence; they are simply a summary of what evidence is expected to be called. Evidence can only be considered if it is given under oath.
4. The college representative is then asked to make an opening statement.
5. There may be documents which both counsel for the college and the member's representative agree can be marked as Exhibits. There may also be an Agreed Statement of Facts.
6. Counsel for the college then calls the first witness, and requires the witness to respond to questions.
7. The member is then given the opportunity to cross-examine the witness.
8. Counsel for the college is then asked if they have any questions arising from the cross-examination. The re-examination should generally only deal with issues raised during the cross-examination which were not covered in earlier testimony or are required to clarify testimony which appears inconsistent.
9. Committee members are given the opportunity to ask the witness any questions in clarification.
10. Counsel for the college and the member's representative are asked if they have any questions for the witness arising from the questions asked by the Committee members. Any questions should generally be restricted to issues directly raised by the witness' response to questions by the Committee.
11. The questioning processes repeat for each of the witnesses called by the college's counsel. After all the witnesses are called, the college's counsel advises that he/she has closed his case.
12. The member's representative then begins a similar process of starting the case, examining witnesses, cross-examining by the college's counsel, and questions from the Committee.
13. After all witnesses are called, the member's counsel advises the Committee that he/she has closed the case. The college's counsel is then provided the opportunity for any rebuttal evidence.

14. After rebuttal evidence is completed, the Chairperson asks both counsels to present their closing statements. Committee members may ask questions of clarification.
15. The Chairperson then declares the hearing to be completed and advises both counsel that a copy of the decision will be sent to the complaints director and the registrar, the complainant in the investigated person by mail. The Committee then commences its deliberations.

Potential Outcomes

The hearing tribunal may determine there is no unprofessional conduct. However, if the hearing tribunal decides the conduct of any investigated person constitutes unprofessional conduct, it has numerous options to deal with the investigated person. These options include but are not limited to:

- A caution.
- A reprimand.
- Imposing conditions on the practice permit.
- Suspending the practice permit.
- Requiring counselling or treatment.
- Directing a specific course of study or supervised practical experience.
- Cancelling the registration and practice permit.
- Payment of a fine and/or the costs related to the hearing.

An Act to Protect Patients amended the *Health Professions Act* to include two mandatory disciplinary penalties that a hearing tribunal must impose in specific circumstances:

- Cancellation of a practice permit for any health professional whose conduct is determined to involve sexual abuse of a patient; and,
- Suspension of a practice permit for any health professional whose conduct is determined to involve sexual misconduct towards a patient.

The hearing tribunal has the authority to determine the length of suspension for sexual misconduct. The hearing tribunal maintains the authority to cancel the regulated member's practice permit rather than issuing the mandatory suspension for sexual misconduct.

The hearing tribunal also has the authority to issue additional disciplinary sanctions, beyond the mandatory penalties. When issuing sanctions related to the suspension of a regulated member's

practice permit due to behaviour that has been determined to be sexual misconduct, the hearing tribunal is prohibited from placing gender-based restrictions on a health professional's practice permit when they return to work.

Appeals

The decision may be appealed by the investigated member or the college. The complainant may not appeal the decision.

The investigated person and the complaints director on behalf of the college first have the right to appeal to the council of the college. This provides colleges an opportunity to correct their own errors.

The complainant does not have the right to appeal. At a disciplinary hearing, the case is between the college and the practitioner, not between the complainant and practitioner. The complainant has an interest in the hearing and may be a witness, but the complainant is not a party to the hearing and does not have the right to appeal.

Both the investigated person and the complaints director, on behalf of the college, may appeal the decision of the council of the college to the Court of Appeal.

Other Options

Any individual, including the complainant, may make a complaint to the Office of the Ombudsman.

If the Ombudsman believes that a decision of the college appears contrary to law, was unreasonable, unjust, oppressive or improperly discriminatory, or was based on a mistake of law or fact, the Ombudsman may recommend that corrective action be taken and that the college notify the Ombudsman within a specified time of the action taken. The Ombudsman cannot compel changes to be made and cannot reverse a decision.

Considerations for Employers

Health Professions Act and employers' disciplinary and related processes may operate concurrently and/or sequentially. Employers need to make their own decisions within

organizational directives, policies and procedures on disciplinary matters. The potential for or actual involvement of the college does not absolve employers from the responsibilities for appropriate investigation and discipline.

The professional conduct process may be initiated if a college receives a notice from a regulated member's employer, including circumstances where the member has been terminated, suspended, has resigned due to what may be unprofessional conduct or where the employer believes that sexual misconduct towards or sexual abuse of a patient has occurred.

Employers need to be mindful of the *Health Professions Act* disciplinary and ACR processes from the perspectives of applying human resource directives, policies and procedures and considering the provisions of collective agreements.

Employers may also be called on to give evidence in cases where others have initiated the complaint (for example, patients, clients or consumers).

Health Professions Act References

Part 4 (Professional Conduct) and Section 118 (Assessing Incapacity)

Liability Insurance

Overview

- College regulations often, but not always, specify that members must be covered by professional practice liability insurance, in an amount determined by the college.
- Should their college regulations specify, regulated members are required to demonstrate evidence of professional practice liability insurance every year upon renewal of their practice permits.
- Many colleges have made group arrangements with insurance carriers to provide professional practice liability insurance for regulated practitioners who are not covered by an employer.

Considerations for Employers

- Some employers provide professional practice liability insurance for their employees (although not necessarily for contractors). In many instances, colleges deem this to be an equivalent and acceptable level of coverage.
- Members who are employees are required to ensure that their employers' coverage is acceptable to their college.
- Some employers may differentiate whether they pay for professional practice liability insurance depending upon the employee's status (for example, part-time, casual, etc. may be ineligible)
- If employers do not provide professional practice liability insurance, they should ensure that their employees, contractors, sub-contractors and volunteers who are regulated health professionals provide appropriate proof of liability insurance on a continuing basis.

Health Professions Act references

Sections 28 (Applying for Registration), 40 (Applying for a Practice Permit) and 131 (Regulations, Bylaws, Codes of Ethics and Standards of Practice)

Glossary

(Please note that these definitions are not intended to have legal significance.)

Activities of daily living: - Routine self-care activities, including but not restricted to the removal of slivers and the cleaning of wounds, and specifically taught procedures, which generally result in predictable and stable responses, including but not restricted to catheterization, maintenance of drainage tubes and administration of drugs by injection. These are specifically exempted as restricted activities in Schedule 7.1 of the Government Organization Act.

Advanced clinical practice: Additional, formal duties that can be performed as a result of extra training beyond that required for basic entry into a health profession (for example, nurse practitioners).

Alternative Complaint Resolution Process: A process to assist the complainant, college and investigated person settle a complaint in a less adversarial, non-disciplinary matter.

Barriers to interdisciplinary practice: Impediments to collaboration among health professionals that may be caused by legislative barriers, bargaining unit boundaries, intra-and/or inter-disciplinary rivalries, etc.

Certified Bargaining Agent: exclusive authority to bargain collectively on behalf of employees in a functional bargaining unit for which it is certified and bind them by a collective agreement. A college or council of a college may not be a certified bargaining agent.

Code of ethics: guidelines for permissible professional behaviour adopted by a college. Non-compliance may be the basis for disciplinary action under the *Health Professions Act*.

College: The regulatory body for a profession that must:

- carry out its activities and govern its regulated members in a manner that protects and serves the public interest.
- provide direction to and regulate the practice of the regulated profession by its regulated members.
- establish, maintain and enforce standards for registration of continuing competence and standards of practice of the regulated profession.
- establish, maintain and enforce the code of ethics.

Competence: the combined knowledge, skills, attitudes and judgment required to provide health professional services.

Consultation: an in-depth evaluation of a patient with a written report to the referring health practitioner. For physicians, this includes recording a complete history, performing a complete physical examination appropriate to the physician's specialty, an appropriate record and advice to the patient. It may also include ordering appropriate diagnostic tests and procedures, as well as discussion with the patient and/or referring physician.

Continuing competence programs: a requirement to participate in educational and skill building experiences. Continuing competence programs are designed to ensure maintenance of skills and the ability to apply advances in one's profession.

They may include mandatory continuing education (a certain number of credits per year), self-assessment and development of learning plans, recertification (for example, CPR) on a regular basis, and on the job experience (practice hours).

Continuity of care: the health care provider supports the interest and well-being of the patient/client in a manner that ensures the patient/client receives the right service, by the right provider at the right time.

Council: the governing body of a college.

Diagnosis: a clinical judgment about an individual, family or community's response to actual or potential intervention, for which the regulated health professional is accountable (this is not a restricted activity).

Health authority/hospital privileges: formal agreements between health authorities and regulated health care practitioners that outline access to resources and corresponding responsibilities.

Health services: services provided to people to protect, promote or maintain their health: to prevent illness; to diagnose, treat or rehabilitate; or to take care of the health needs of the ill, disabled, injured or dying. Please also see "professional services."

Incapacitated: a practitioner suffering from a physical, mental or emotional condition or disorder or an addiction to alcohol or drugs as defined in the Pharmaceutical Profession Act, or other chemicals that impair the ability to provide professional services in a safe and competent manner.

Independent practitioner: a health practitioner who is not an employee.

Inter-disciplinary team: those members of a regulated profession who collaborate in the provision of services to a patient or client.

Mandatory Registration: individuals who have met the qualifications for registration in a health profession must register if they are to provide the services of the profession. For qualified professionals, registration is no longer voluntary – all must register.

For the purpose of mandatory registration, "practicing the profession," means:

(i) providing professional services directly to the public as outlined in the schedules of the *Health Professions Act*

(ii) supervising and managing regulated members

(iii) teaching the practice of the profession to regulated members and students of the profession.

Non-professional conduct: please see [Unprofessional conduct](#)

Patient: for the purposes of a complaint made in respect of unprofessional conduct in relation to sexual abuse or sexual misconduct, means a patient as set out in the standards of practice of the college.

Practice statement: details the commonly performed (but not exclusive) activities and services provided by a group of health professionals, and is noted in the profession's Schedule under the *Health Professions Act* (replaces the term "Scope of Practice")

Practice visits: on-site assessments of a competency, as one component of a continuing competence program. Practice visits are best suited for those professionals whose members practice in their own offices as sole practitioners. They need to be specifically authorized by a regulation. The health authority's consent must be gained for practice visits to a "public" facility.

Professional services: services that come within the practice of a regulated health profession. These are services reflected in a profession's practice statement in Section 3 of the profession's Schedule under the *Health Professions Act*.

Protection of title: within the provisions of the *Health Professions Act*, the following terms are protected: "college," "regulated/registered," "doctor", "surgeon", "pathologist", "oncologist" and "nurse," and the titles reserved by each regulated profession for the exclusive use of their members.

Referral: may include a written or verbal communication, or communication between practitioners' agents at the direction of the practitioners. This may give rise to the need for a [Consultation](#).

Registered health practitioner: a practitioner who is registered as a member of a professional college under any existing health profession legislation

Regulated health professional: synonymous with **Registered health practitioner**

Regulatory authority (for health practitioners): a body responsible for the governance of a regulated health profession under the *Health Professions Act* or other statute. Under the *Health Professions Act*, these regulatory bodies can be identified by the use of the term “college” in their names.

Restricted activities: a term defined in the Section 7.1 of the Government Organization Act that applies to specific health services that carry significant risk to a patient's physical and/or psychosocial well-being.

Sexual abuse: as defined in the *Health Professions Act*, is the threatened, attempted or actual conduct of a regulated member towards a patient that is of a sexual nature and includes any of the following conduct:

- i) sexual intercourse between a regulated member and a patient of that regulated member;
- ii) genital to genital, genital to anal, oral to genital, or oral to anal contact between a regulated member and a patient of that regulated member;
- iii) masturbation of a regulated member by, or in the presence of, a patient of that regulated member;
- iv) masturbation of a regulated member's patient by that regulated member;
- v) encouraging a regulated member's patient to masturbate in the presence of that regulated member;
- vi) touching of a sexual nature of a patient's genitals, anus, breasts or buttocks by a regulated member.

Sexual misconduct: as defined in the *Health Professions Act*, is any incident or repeated incidents of objectionable or unwelcome conduct, behaviour or remarks of a sexual nature by a regulated member towards a patient that the regulated member knows or ought reasonably to know will or would cause offence or humiliation to the patient or adversely affect the patient's health and well-being but does not include sexual abuse.

Sexual Nature: as defined in the *Health Professions Act*, does not include any conduct, behaviour or remarks that are appropriate to the service provided.

Scope of practice: this term has been replaced with **Practice Statements** in each health professional college's schedule under the *Health Professions Act*.

Standards of practice: a set of standards and expectations issued by a college about the required level of skills or means of performing activities and/or conduct required for professional practice

Supervision: as it relates to the provision of health services including restricted activities, this term is defined in the profession-specific regulations by each college. It implies overseeing without delegation by an authorized practitioner, who is ultimately accountable. It should be distinguished from supervision from an employment perspective.

Transfer of function/duties: a term that is falling into disuse because of its overlap with "supervision" and "delegation"

Unprofessional conduct: as defined in the *Health Professions Act*, the most relevant criteria include:

- displaying a lack of knowledge or lack of skill or judgment in the provision of professional services.
- contravention of the *Health Professions Act*, a code of ethics or standards of practice.
- contravention of other legislation that applies to the profession.
- representing or holding out that a person was a regular member and in good standing while the person's registration or practice permit was suspended or cancelled.
- representing or holding out that person's registration or practice permit is not subject to conditions when it is misrepresenting the conditions.
- failure or refusal to comply with the requirements of the continuing competence program.
- failure or refusal to comply with an agreement that is part of a ratified settlement.
- conduct that harms the integrity of the regulated profession.

Appendix I: Protecting Patients from Sexual Abuse and Sexual Misconduct

In November 2018, Bill 21: *An Act to Protect Patients* received Royal Assent and introduced amendments to the *Health Professions Act* to strengthen protection for patients from sexual abuse and sexual misconduct by regulated health professionals in Alberta. These new provisions apply to any health professional regulated under the *Health Professions Act*.

Under *An Act to Protect Patients*, all regulatory colleges were required to establish a Standard of Practice, which received approval from the Minister of Health, establishing who is considered to be a patient and when, if ever, it is appropriate for a sexual relationship to occur between a regulated member and a patient. These definitions are integral to the application of the other provisions in the legislation, including the mandatory disciplinary penalties for sexual abuse of or sexual misconduct towards a patient.

Bill 21 also introduced two new responsibilities for regulatory colleges. First, colleges must establish a patient relations program, which includes measures for preventing and addressing sexual abuse of and sexual misconduct towards patients. Such required measures include educational requirements and guidelines for regulated members, training for college staff and council, information for Albertans respecting the college's complaints process and assistance in directing individuals to appropriate resources, persons or organizations that may also be able to assist them.

Second, regulatory colleges must provide funding for the purposes of providing treatment or counselling for patients alleging sexual abuse or sexual misconduct by a regulated member of that college.

The new amendments also introduced specific requirements related to hearings of allegations of sexual misconduct towards or sexual abuse of a patient. This includes:

- Requiring hearing directors to strive to ensure that at least one member of the hearing has the same gender identity as the patient;
- Requiring all members of the hearing tribunal to have received training on trauma informed practice and sexual violence which must be completed prior to the hearing;
- Where a hearing tribunal has decided that the conduct of the regulated member constitutes sexual abuse or sexual misconduct, allowing the victim to provide an oral or written statement describing the impact of the sexual abuse or sexual misconduct, before the hearing tribunal can issue its orders; and,

- Establishing mandatory disciplinary penalties: (i) suspension of a practice permit where a regulated member's conduct is deemed sexual misconduct towards a patient; and, (ii) cancellation of a practice permit where a regulated member's conduct is deemed sexual abuse of a patient.

New reporting requirements for regulated members have also been established. Members are now required to report to their regulatory college when:

- A governing body of a similar profession in another jurisdiction has made a decision of unprofessional conduct against that member;
- A finding of professional negligence has been made against the regulated member; and,
- The member has been charged or convicted of an offence under the Canadian Criminal Code.

Additionally, a report must be made to the appropriate regulatory college when a regulated member, acting in their professional capacity, has reasonable grounds to believe that the conduct of another regulated member of any college constitutes sexual abuse or sexual misconduct. A report is not required if information respecting the conduct of the other member was obtained in the course of the regulated member providing professional services to that other regulated member.

Health Professions Act References

Amendments in sections 1, 4, 16, 28, 35, 45, 55, 57, 58, 61, 65, 77, 81.1, 82, 90, 92, 96.2, 97, 119, 122.01, 127.1, 127.2, 132, 133.1, and 135.5 to 135.94.