Council Meeting
Draft Agenda

Date: December 6th, 2021 **Time:** 9:00 am **Location:** Online

Please join the meeting from your computer, tablet or smartphone.

LOGIN INFORMATION

https://us02web.zoom.us/j/85960677841?pwd=NXRRbHJpekZ1ZXM5TjhXcWxtaFJaQT09

Meeting ID: 859 6067 7841
Passcode: 654539
One tap mobile
+17789072071,,85960677841#,,,,*654539# Canada
+12042727920,,85960677841#,,,,*654539# Canada

Dial by your location
+1 778 907 2071 Canada
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AGENDA

	Time	Discussion Item	Presenter/ Speaker	Document Included	Action
1	9:05am	Call to order, roll call, Welcome	J. Pereira	Yes	Information
2	9:10am	Introductions	J. Pereira	No	Information
3	9:15am	Conflict of interest declarations	J. Pereira	No	Decision
4	9:20am	Approval of agenda	J. Pereira	Yes	Decision
5	9:25am	Approval of Minutes – September 27th, 2021	J. Pereira	Yes	Decision
6	9:30 am	**Action Items from the September 27th Meeting** • College staff to circulate proposed By-Law 13 amendments for external consultation, and present final amendments at December 2021 Council meeting – **Complete.** • College staff to circulate proposed By-Law 16 amendments for external consultation, and present final amendments at December 2021 Council meeting – **Complete.** • College staff to amend Governance and Nominations Committee Terms of Reference, and present final amendments to Executive Committee for approval – **Complete.**			
7	9:35 am	Drafted Audited Financial Statements	Ben M/Auditors	Yes	Decision
8	10:05am	**Committee Reports** • Discipline • ICRC • Registration • Quality Assurance • Patient Relations • Q1 Finance Report/Dashboard	Committee Chairs	Yes	Information
9	10:35 am	Draft Annual Report	N. Leris	Yes	Decision

10	10:50 am	**Registrar's Report** • Staffing Update • CPMF - Domain Three (SOFT Launch) • Alternate Signatory – College Bank Account	N. Leris	Yes	Information/Decision

11	11:05 am	**President's Report**
		• CNAR
		• Executive Committee meeting
		  ○ OATA letter
		  ○ Governance and Nominations Committee Terms of Reference
			J. Pereira	Yes	Information

12	11:15 am	**Registration Report** • Registration/Examination Statistical Report - Presentation	K. Simpson	No	Information
	12:00 pm	**Lunch Break**			
13	1:00 pm	• Spousal Exemption Guidelines • Jurisprudence Handbook	B. Fehst/ K. Simpson	Yes	Decision
14	1:20 pm	By-Law 13 Consultation	L. Thacker	Yes	Decision
15	1:35 pm	By-law 16 Consultation	L. Thacker	Yes	Decision
16	1:50 pm	2022 Council Meeting Dates	J. Pereira	Yes	Decision
17	2:10 pm	Review of Action Items	J. Pereira	No	Review
ADJOURNMENT					

Notes:

- The Conflict of Interest Declaration Committee Form is to be completed ahead of the meeting.

COLLEGE OF KINESIOLOGISTS OF ONTARIO

September Council Meeting Minutes

Date/Time of Meeting: Monday, September 27 /10:07a.m – 2:42p.m.

Council present: Jennifer Pereira, Chair; Chad McCleave; Teresa Bendo; Mary Pat Moore; Corby Anderson; Benjamin Phavalong; Victoria Nicholson; Leslee Brown; Graydon Raymer; Candace Glowa; Ryan Wight; Elwin Lau; Susan Garfat; Marie Cousineau; Sara Gottlieb, Ben Mattie, Bradly Markis

Staff Members: Nancy Leris, Registrar; Lara Thacker; Keisha Simpson; Colleen Foster

Consultants: Christine Forsyth, Daniel Roukema

Guests/Observers: Don Gracey, GC Management & Communications Inc.
Melanie Levac, Executive Director, CATA
Tyler Quennell, President, CATA

Others Christie Misketis

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1. Call to Order/Introductions

Jennifer Pereira welcomed Council and called the meeting to order at 10:07a.m.

As the notice of the meeting had been duly given in accordance with the By-Laws of the College of Kinesiologists of Ontario and a quorum was present, the meeting was duly constituted for the transaction of business.

2. Introductions

Jennifer Pereira congratulated re-elected and appointed Council Members after which attendees introduced each other.

Jennifer Pereira also recognized Thursday, September 30 as National Truth and Reconciliation Day.

All Council members introduced themselves.

3. Conflict of Interest Declarations

Jennifer Pereira asked whether any Council members present wished to declare a conflict of interest.

Conflicts of interest were declared pursuant to Agenda item 14, “Issue Note: Specialty Committee” by Susan Garfat and Corby Anderson by virtue of membership with the OATA. Elwin Lau disclosed a potential Conflict of Interest on the same Agenda item.

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COLLEGE OF KINESIOLOGISTS OF ONTARIO

4. Approval of Agenda

UPON A MOTION duly made by Mary Pat Moore and Seconded by Graydon Raymer, it was resolved that the agenda be approved. **Carried.**

5. Approval of Minutes

UPON A MOTION duly made by Victoria Nicholson and seconded by Leslee Brown it was resolved that the June 29, 2021 minutes be approved as amended. **Carried.**

6. Action Items from the June 28 Meeting

- Staff to define the word "group" or "defined group" in a Conflict-of-Interest Policy in relation to the proposed by-law 10 amendments pertaining to Council eligibility requirements - COMPLETED
- College staff to circulate proposed by-law 10 amendments externally for consultation and present final amendments and consultation report to Council for review and approval at September 2021 meeting - COMPLETED
- College staff to draft proposed by-law 13 amendments based on today's discussion and present to Council for review and approval for external consultation at September 2021 Council meeting - COMPLETED
- Risk management plan to define timeline in documentation (i.e., annual review or more than once per year, to bring back at the September Council meeting) – COMPLETED
- College staff to refine risk management plan and present proposed amendments to numbers assigned in risk matrix to Council at its September 2021 meeting; COMPLETED
- Business Continuity and Disaster Recovery Plan for 2021-2022 to be amended and revised, brought back to Council during September 2021 meeting; COMPLETED
- Revised QA Program policies to be posted to College website – COMPLETED
- College staff to post a summary of the Council evaluation survey on the College website. COMPLETED

Nancy Leris confirmed that all noted action items have been completed.

7. Committee Reports

Reports were provided in the Council package highlighting committee meetings, activities, changes, and discussions that took place since the June Council meeting. The fourth quarter financial report and dashboard were also included.

UPON A MOTION duly made by Teresa Bendo and seconded by Graydon Raymer, it was resolved that the Committee Reports be approved. **Carried.**

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8. Registrar's Report

Nancy Leris's report consisted of the following items:

HPRO Working Group on Anti-BIPOC Racism Project

The (Health Professions Regulators of Ontario) Working Group on Anti-BIPOC Racism project has established its mandate. As part of the Working Group's engagement efforts, information will be sought from organization stakeholders to understand how racism and bias manifest through health professions regulation, how racism and bias are enabled or mitigated through regulatory processes, and to identify mechanisms to address racism and bias to improve equity and justice.

A survey open to healthcare professionals was conducted and a project consultant, Dr. Javeed Sukkhera will use an environmental scan and conduct a literature search, in addition to the survey to make recommendations for action.

Results of the Council Election 2021

In District 4, Jennifer Pereira was acclaimed. One by-election in District 4 in July and two candidates competed for the election. Corby Anderson was appointed and attended orientation prior to his first council meeting.

In District 5, 2 candidates competed, and Ryan Wight was reappointed.
In District 6, Ben Phalavong was acclaimed.

Selection of New Committee Slate

A call went out to all Council members and members of the College for expressions of interest in serving on statutory and non-statutory Committees. A new slate for 2021/22 was developed and reviewed by the Executive Committee and brought forward to Council for approval.

Executive Committee met to discuss and make a recommendation to Council on the new slate. Committee considered members who have experience in serving as chairs and will be retiring from Council to act as mentors to new chairs. Selection on Committee was based on the by-laws and policy for selecting members. Members who have served for more than 2 years as Committee chairs would be selected as mentors to the new chairs on the proposed slate. As a result of turnover of Council and staff, some chairs were allowed to serve for another year to ensure that there is continuity to ongoing matters. The executive committee also reviewed a draft mentorship program which is in your package for consideration. This is a pilot program and can be adapted throughout implementation.

Operations

The Registrar noted that due to ongoing COVID-19 restrictions, staff continue to work from home. The College is examining options for establishing a gradual return-to-office or a hybrid solution.

The Registrar further noted that the College is recruiting a Director, Operations and Financial Services, and an Executive Assistant. The hiring process for a new communications Officer and Professional Practice Advisor will commence soon.

Lara Thacker, Director, Quality Assurance has been seconded on a part-time basis to the Royal College of Dental Surgeons of Ontario. Peer and practice assessments will continue to be overseen by Ms. Thacker, supported by a part-time staff person. Christine Forsyth will support governance reform, and Daniel Roukema is providing communications support while the College seeks to fill the role.

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The Registrar has been examining opportunities to realign and streamline various areas of management and administrative responsibilities to reflect the changing emphases in regulatory governance and regulatory practice.

Ministry of Health – Spousal Exception

The College recently received a communication from the Ministry of Health following up its November 2020 public Notice regarding Regulation 401.2 of the Kinesiology Act regarding a Spousal Exception. The Regulation has been sealed and forwarded for the Registrar's signature.

Background: The sexual abuse provisions of the Regulated Health Professions Act – the governing legislation for all health profession regulatory bodies - make it an offence for the members of the regulated health professions to treat their spouses and not be subject to the sexual abuse wording in the RHPA. The penalty for a proven case was, and still is, revocation of the member's registration. Concerns were expressed that there were circumstances in which treating a spouse (and concerns about who might be included in the category of spouse) would not necessarily expose the spouse being treated to harm.

As a result, in 2013 the RHPA was changed to allow a spousal exception option, if a college wished to do so. The addition to the law in 2013, said that the change would be made in the College's General Regulation.

Five years later, in December 2020, the Government posted the requested change to three College regulations, including CKO, Chiropractors and Denturists on the Ontario Regulatory Registry.

Not all colleges took the opportunity to seek a change to their General Regulation to give a spousal exception to the sexual abuse provisions.

Mandatory Vaccination

HPRO Colleges are currently discussing mandatory vaccination requirements of regulators, in person Council meetings and plans to return to the office.

iMIS Performance Improvement Advisory Service (PIAS)

A change in service providers during implementation increased the staff's administrative burden. Staff is working to improve efficiencies using iMIS.

There is an iMIS Performance Improvement Advisory Service (IAS) which provides clients with ongoing analysis and advice on the operational effectiveness and overall use of their iMIS system. The College will be engaging the services of the IMIS PIAS in the fall.

Inactive Class policy

The Registration Committee has requested that the Finance and Planning Committee provide comments on the possible impact on the College finances if registrants who are not working for any reason became eligible for the Inactive class. Data was provided to the Committee to assess the impact on the College Finances.

The Registration Committee is considering amendments to the inactive class policy to ensure that the policy addresses the limitation for staff to assess whether certain registrants qualify for the Inactive Class and to address the inconsistencies in the review process and the increase in registrants resigning because they do not meet the requirements.

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The Committee has decided, based on the financial risk factors and the potential impact on the College finances, that they will continue to monitor the last renewal and will be provided with regular up to date information on resignations and movement of members in the inactive class in the coming months prior to deciding on the matter. The Registration Committee is in the preliminary stages of reviewing this policy and is not ready to make a recommendation to Council.

9. President's Report

Jennifer Pereira provided the following update:

In the past quarter, the president attended the new Council orientation session. She also had the opportunity to participate in the HPRO focus group addressing discrimination, unconscious bias, systemic racism which was led by Dr. Javeed Sukkhera on July 22, 2021.

The president thanks Council members who provided feedback on the post-mortem on Council effectiveness and opportunities for handling concerns.

10. Risk Management Plan/Disaster Recovery/Business Continuity

Risk Management

Nancy Leris provided an overview of the College's review of the Risk Management Process and Review Cycle and outlined amendments made to the Risk Management Plan.

Nancy Leris also stated that the risk management plan will be reviewed by staff twice annually, and when required, reviewed, and updated.

Business Continuity

The College has established a framework to ensure that essential business functions can continue in the event of a declared emergency. It ensures staff, Council, Committees and registrants are informed, and manages and reduces the disruption of services (to an acceptable level).

Disaster Recovery

The Registrar stated that Disaster Recovery is part of Business Continuity Plan. It provides framework describing operational capabilities (Stage 2 – Implementation)
Its primary goal is to allow the College to fulfill mandate of public protection and provide services.

UPON A MOTION duly made by Ryan Wight and seconded by Elwin Lau, it was resolved that the plan be accepted as approved. **Carried.**

11. By-Law 10 Consultation Results

Lara Thacker, Director, Quality Assurance, summarized June's Council meeting. She proposed amendments to By-Law 10 to read as follows:

- *the member has not been in a leadership position, including but not limited to being an employee, officer or director of any professional association or certifying body related to the profession for three years prior to the date of their nomination for the Council of the College of Kinesiologists of Ontario, such that a real or apparent conflict of interest may arise.*
- *the member is not holding a responsible position with any organization/group whose mandate or interests conflict with the College;*

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- *the member is not the subject of a charge that is relevant to the registrant's ability to practice the profession; and*
- *before the nomination deadline, the member has successfully completed any qualification process established by the Council.*
- *the nomination shall be signed by the candidate.*

Lara Thacker also summarized the consultation feedback that was received.

UPON A MOTION duly made by Susan Garfat and seconded by Teresa Bendo, it was resolved that the consultation results on By-Law 10 be accepted. **Carried.**

12. By-Law 13 Amendments

Lara Thacker summarized June's Council meeting. She proposed amendments to By-Law 13 to read as follows:

Eligibility for appointment:

- *As soon as possible after the annual election of the President, the Vice-President and the Executive Committee, the Governance and Nominations Committee shall present a slate of recommended chairs and members of each committee to the Council, based on the College's governance policies as approved by Council.*
- *If any vacancies occur in the chair or membership of any committee, the Governance and Nominations Committee shall recommend a member to serve as a replacement. The Council shall appoint a replacement chair.*
- *the member is not holding a responsible position with any organization/group whose mandate or interests conflict with the College*
- *before the appointment, the member has successfully completed any qualification process established by the Council*

Following a discussion, Council agreed to accept amendments as presented and keep the committee term to three years as opposed to five.

UPON A MOTION duly made by Ben Matthie and seconded by Elwin Lau, it was resolved that the amendments on By-Law 13 be accepted as amended for external consultation. **Carried.**

13. Governance and Nomination Committee Terms of Reference

Lara Thacker, Director, Quality Assurance, presented the purpose and responsibilities of the Governance and Nominating Committee.

She also outlined it purpose and responsibilities, membership composition, and selection of committee members.

Council requested that language pertaining to performance evaluation of Council and committees be amended to clarify that the Governance and Nominations Committee would be overseeing the administration of the evaluation process, rather than actually evaluating Council and committees and members.

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UPON A MOTION duly made by Victoria Nicholson and seconded by Marie Cousineau, it was resolved that the Terms of Reference of the Governance and Nominating Committee be accepted as amended. **Carried.**

14. Issue Note: Speciality Committee

As members of OATA, Sue Garfat and Cory Anderson declared a conflict of interest. Elwin Lau noted possible conflict of interest and all three Council Members recused themselves from the meeting for this Agenda item.

Rebecca Durcan provided legal counsel on the matter.

Mary Pat Moore summarized a report to Council on a three-year study to establish a specialty designation for R.Kins who are also Athletic Therapists.

After thorough review, Mary Pat Moore announced that the Specialties Committee does not recommend to Council a specialty designation for Registered Kinesiologists who are also certified Athletic Therapists (ATs).

The Specialties Committee has reviewed all submissions from stakeholders including the Ontario Athletic Therapy Association (OATA) and the Canadian Athletic Therapy Association (CATA), with respect to Risk of Harm and a Specialty Framework. The committee concluded that the College's mandate of public protection is not furthered meaningfully with the addition of a specialty designation for ATs. Further, several significant barriers were identified by the committee that prevent implementation of a specialty designation, including:

- the absence of an independent national accreditation body
- some ATs do not meet the requirements for the College's general registration and therefore, do not have a path to a specialty designation
- there may be public confusion with the concepts of certification, regulation, and specialization
- there will be increased costs to some registrants to maintain a specialty designation

The Specialties Committee acknowledges that these barriers are possible to overcome with time however, the committee maintains that it does not recommend a specialty designation even if these identified barriers are adequately addressed in the future.

May Pat Moore also presented the Pros and Cons:

Pros:

- Increased ability for members of the public to search the public register for R.Kins who are also ATs
- Possible increase in revenue for the College with the collection of increased fees for R.Kins who are also ATs.
- Increased engagement with a portion of the registrant base

Possible increased opportunity for regulation of a sub-set of Kinesiologists who may have a higher rate of interaction with vulnerable sector (i.e. children in sports)

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Cons:

- There is no national association/authority or accrediting body for Kinesiology or Kinesiology programs. The Committee is of the opinion, supported by legal advice, that an association such as CATA cannot act as an accrediting body. There does not appear to be a third-party organization to do this work.
- Public confusion – who does the public contact with respect to complaints for ATs not registered with CKO.
- Will the public be able to decipher and distinguish between the concept of specialization and certification.
- A proportion of ATs are registered with another regulatory body and/or are not eligible for CKO registration.
- Costs for registrants to uphold specialty designation.

In making this recommendation, the Specialty Committee has thoroughly reviewed the submissions by the OATA with respect to risk of harm, and the extensive educational review of the CATA-accredited athletic therapy degree programs at Sheridan College and York University. The Committee has compared the requirements of other regulatory colleges which permit specialty classes and has considered the administrative requirements for managing specialty requirements. Finally, the Committee has been advised by legal counsel that if a CATA Certified Athletic Therapist cannot meet the general entry-to-practice requirements for the College of Kinesiologists of Ontario, then there is a legal barrier to creating a specialty designation. The Specialty Committee has therefore concluded that it is not feasible to submit a request to the Ministry of Health for a regulatory amendment for a specialty class for Athletic Therapists within the College of Kinesiologists of Ontario.

UPON A MOTION duly made by Ben Mattie and seconded by Victoria Nichols, it was resolved that the Council of the College of Kinesiologists of Ontario approves the report and decision of the Specialty Committee. **Carried.**

Following the Motion to approve the report and decision of the Specialty committee, the Specialty Committee was disbanded.

UPON A MOTION duly made by Mary Pat Moore and seconded by Ryan Wight, it was resolved that the Council of the College of Kinesiologists of Ontario disband the Specialty Committee. **Carried.**

15. Conflict of Interest: Policy and By-law Amendments

Lara Thacker presented on Council and Committee Member and Volunteers Conflict of Interest Policy.

The Policy:

1) Defines conflict of interest as it pertains to Council and committee members and volunteers;
2) Outlines the process and procedures for avoiding and, where not possible, managing conflict of interest in accordance with the By-Laws and Policy; and
3) Outlines the consequences for failing to comply with the By-Laws and the Policy.

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COLLEGE OF KINESIOLOGISTS OF ONTARIO

UPON A MOTION duly made motion by Susan Garfat and seconded by Elwin Lau, it was resolved that the Council of the College of Kinesiologists of Ontario approves the Conflict of Interest policy as presented, and approves the proposed amendments to By-law 16 as presented for external consultation. **Carried.**

16. Election of Executive Committee

UPON A MOTION duly made motion by Mary Pat Moore and seconded by Teresa Bendo, it was resolved that the Registrar be appointed as the Elections Officer and assume the chair for this portion of the meeting for this purpose. **Carried.**

The Registrar presided over the election of the College's Executive Committee:

- Jennifer Pereira was acclaimed President
- Mary Pat Moore was acclaimed Vice President
- Additional members acclaimed to the Executive Committee are Victoria Nicholson, Ben Matthie, and Susan Garfat.

17. Approval of Committee Membership

Jennifer Pereira noted that the Executive Committee met to consider committee composition for 2021/2022. All Council members were asked for their committee preferences. The College also invited the general membership to submit their interest to sit as members-at-large on committees. The Executive Committee has done a good job of balancing needs, preferences and opportunities for learning.

A proposed slate for each of the Committees and proposed chairs, has been provided to Council. Executive Committee considered Council members' preferences, applications received from the general membership, the workloads of each committee and geographic factors, to form the proposed slate.

UPON A MOTION duly made motion by Graydon Raymer and seconded by Corby Anderson, it was resolved that the Council of the College of Kinesiologists of Ontario approve the proposed committee slates, excluding the Specialty Committee. **Carried.**

18. Succession Planning and Mentorship Program

Nancy Leris presented on the establishment of a succession planning mentoring program, stating the importance of duty of care within the Council. The purpose of this pilot project is to provide support to new council members build skills as Council members with intent to teach and share resources, and better grasp and champion processes and procedures.

UPON A MOTION duly made motion by Victoria Nicholson and seconded by Marie Cousineau, it was resolved that the Council of the College of Kinesiologists of Ontario approve the succession planning mentorship program as presented. **Carried.**

19. Review of Action Items

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- College staff to circulate proposed By-Law 13 amendments for external consultation, and present final amendments at December 2021 Council meeting
- College staff to circulate proposed By-Law 16 amendments for external consultation, and present final amendments at December 2021 Council meeting
- College staff to amend Governance and Nominations Committee Terms of Reference, and present final amendments to Executive Committee for approval.

20. Adjournment

At 2:42 p.m., Sara Gottlieb moved to terminate the meeting.

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COLLEGE OF KINESIOLOGISTS OF ONTARIO

FINANCIAL STATEMENTS

AUGUST 31, 2021

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COLLEGE OF KINESIOLOGISTS OF ONTARIO

FINANCIAL STATEMENTS

AUGUST 31, 2021

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INDEPENDENT AUDITORS' REPORT

To the Council of College of Kinesiologists of Ontario

Opinion
We have audited the financial statements of College of Kinesiologists of Ontario (the College), which comprise the statement of financial position as at August 31, 2021, and the statement of operations, statement of changes in net assets and statement of cash flows for the year then ended and notes to the financial statements, including a summary of significant accounting policies.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the College as at August 31, 2021, and its results of operations and its cash flows for the year then ended in accordance with Canadian accounting standards for not-for-profit organizations.

Basis for Opinion
We conducted our audit in accordance with Canadian generally accepted auditing standards. Our responsibilities under those standards are further described in the *Auditors' Responsibilities for the Audit of the Financial Statements* section of our report. We are independent of the College in accordance with the ethical requirements that are relevant to our audit of the financial statements in Canada, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Other Information
Management is responsible for the other information. The other information comprises the information included in the Annual Report (but does not include the financial statements and our auditors' report thereon).

Our opinion on the financial statements does not cover the other information and we will not express any form of assurance conclusion thereon.

In connection with our audit of the financial statements, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit or otherwise appears to be materially misstated. If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

Responsibilities of Management and Those Charged with Governance for the Financial Statements
Management is responsible for the preparation and fair presentation of the financial statements in accordance with Canadian accounting standards for not-for-profit organizations, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

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In preparing the financial statements, management is responsible for assessing the College's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the College or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the College's financial reporting process.

Auditors' Responsibilities for the Audit of the Financial Statements
Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with Canadian generally accepted auditing standards, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.

- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the College's internal control.

- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.

- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the College's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditors' report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditors' report. However, future events or conditions may cause the College to cease to continue as a going concern.

- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

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We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

Chartered Professional Accountants
Licensed Public Accountants

Toronto, Canada

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COLLEGE OF KINESIOLOGISTS OF ONTARIO
STATEMENT OF FINANCIAL POSITION

At August 31	2021	2020
ASSETS		
Current		
Cash - unrestricted	**$ 1,991,787**	$ 2,077,258
Cash - restricted, internally *(Note 3)*	**290,000**	290,000
Prepaid expenses and sundry	**101,071**	97,205
Short-term investments *(Note 4)*	**105,053**	105,074
	2,487,911	2,569,537
Investments *(Note 4)*	**314,627**	419,826
Capital assets *(Note 5)*	**110,850**	145,964
	$ 2,913,388	$ 3,135,327
LIABILITIES		
Current		
Accounts payable and accrued liabilities *(Note 10)*	**$ 180,706**	$ 296,392
Deferred revenue	**1,510,710**	1,528,000
Deferred rent	**24,657**	21,780
Loan payable *(Note 7)*	**40,000**	30,000
	1,756,073	1,876,172
Deferred rent	**56,555**	81,212
	1,812,628	1,957,384
Commitment and contingencies *(Notes 9 and 10)*		
NET ASSETS		
Net assets invested in capital assets	**110,850**	145,964
Internally restricted net assets *(Note 3)*	**290,000**	290,000
Unrestricted net assets	**699,910**	741,979
	1,100,760	1,177,943
	$ 2,913,388	$ 3,135,327

The accompanying notes are an integral part of the financial statements

On behalf of the Board

Director Date

Director Date

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COLLEGE OF KINESIOLOGISTS OF ONTARIO
STATEMENT OF CHANGES IN NET ASSETS

Year ended August 31	Net assets invested in capital assets	Internally restricted net assets	Unrestricted net assets	**2021**	2020
Net assets, beginning of year	$ 145,964	$ 290,000	$ 741,979	**$ 1,177,943**	$ 1,297,438
Deficiency of revenue over expenses	(41,118)	-	(36,065)	**(77,183)**	(119,495)
Interfund transfers *(Note 3)*	6,004	-	(6,004)	**-**	-
Net assets, end of year	$ 110,850	$ 290,000	$ 699,910	**$ 1,100,760**	$ 1,177,943

The accompanying notes are an integral part of the financial statements

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COLLEGE OF KINESIOLOGISTS OF ONTARIO

STATEMENT OF OPERATIONS

Year ended August 31	2021	2020
Revenue		
Registration fees	**$ 1,696,163**	$ 1,705,973
Examination fees	**174,370**	124,751
Application fees	**62,600**	54,000
Jurisprudence fees	**28,177**	25,572
Interest income	**15,805**	34,171
Government funding *(Note 7)*	**10,000**	22,042
	1,987,115	1,966,509
Expenses		
Salaries and benefits	**984,557**	1,066,784
Professional fees	**243,096**	252,510
Rent	**213,576**	219,713
Registration costs	**206,005**	169,371
Communications and media costs	**121,721**	75,411
Professional conduct *(Note 10)*	**73,607**	34,386
Office and general	**71,097**	64,427
Council and committee costs	**49,531**	74,155
Processing fees	**37,532**	57,158
Quality assurance	**22,458**	24,015
Amortization of capital assets	**41,118**	48,074
	2,064,298	2,086,004
Deficiency of revenue over expenses	**$ (77,183)**	$ (119,495)

The accompanying notes are an integral part of the financial statements

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COLLEGE OF KINESIOLOGISTS OF ONTARIO
STATEMENT OF CASH FLOWS

Year ended August 31	2021	2020
SOURCES (USES) OF CASH		
Operating activities		
Deficiency of revenue over expenses	**$ (77,183)**	$ (119,495)
Items not involving cash		
Accrued interest income	**1,659**	232
Amortization of capital assets	**41,118**	48,074
Amortization of deferred rent	**(21,780)**	(14,180)
	(56,186)	(85,369)
Changes in non-cash working capital items		
Prepaid expenses and sundry	**(3,866)**	17,054
Accounts payable and accrued liabilities	**(115,685)**	89,404
Deferred revenue	**(17,290)**	946,649
Cash provided by (used in) operating activities	**(193,027)**	967,738
Investing activities		
Proceeds on maturity of investments	**103,560**	207,120
Purchase of investments	**-**	(207,120)
Acquisition of capital assets	**(6,004)**	-
Cash provided by investing activities	**97,556**	-
Financing activity		
Loan payable	**10,000**	30,000
Cash provided by financing activity	**10,000**	30,000
Net increase (decrease) in cash	**(85,471)**	997,738
Cash, beginning of year	**2,367,258**	1,369,520
Cash, end of year	**$ 2,281,787**	$ 2,367,258
Represented by:		
Cash - unrestricted	**$ 1,991,787**	$ 2,077,258
Cash - internally restricted	**290,000**	290,000
	$ 2,281,787	$ 2,367,258

The accompanying notes are an integral part of the financial statements

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1. Purpose of the organization and income tax status

The College of Kinesiologists of Ontario (the College) was created April 1, 2013 pursuant to the proclamation of the Kinesiology Act, 2007. The College is a non-profit organization mandated through legislation and regulations to regulate the profession of kinesiology in Ontario in the interest of the public. The College is committed to ensuring excellent professional practice by registered kinesiologists. Through the establishment of entry-to-practice requirements and through the provision of continuous practice support, the College ensures that registered kinesiologists deliver competent, safe and ethical services.

The College is exempt from income tax under Section 149(1)(1) of the Income Tax Act. Registration remains valid so long as the College continues to fulfill the requirements of the Income Tax Act and regulations in respect of non-profit organizations.

2. Significant accounting policies

These financial statements have been prepared in accordance with Canadian accounting standards for not-for-profit organizations.

Use of estimates

The preparation of financial statements in accordance with Canadian accounting standards for not-for-profit organizations requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and contingent liabilities at the statement of financial position date and the reported amounts of revenue and expenses during the reporting period. The more subjective of such estimates are the hearing costs for discipline cases (Note 10). Management believes its estimates to be appropriate; however, actual results could differ from those estimates.

Fund accounting

The net assets invested in capital assets reports the assets, liabilities, revenues and expenses related to the College's capital assets.

The internally restricted net assets of the College represents resources internally restricted by the Council for specific use.

The unrestricted net assets for current operations as well as the College's general operations.

Revenue recognition

Application fees are recognized as revenue upon assessment of the application.

Jurisprudence fees are recognized as revenue when the services have been provided.

Examination fees are recorded in the fiscal period to which they relate. Examination fees received in advance are recorded as deferred revenue.

Registration fees are recognized as revenue proportionately over the fiscal period to which they relate. Registration fees received in advance of the membership year to which they relate are recorded as deferred revenue.

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2. Significant accounting policies *(continued)*

Revenue recognition *(continued)*

Interest income is recognized as revenue when earned.

Government funding towards current expenses are recognized as revenue in the period during which these expenses are incurred, provided there is reasonable assurance that the College has complied and will continue to comply with all the conditions of the funding.

Financial instruments

The College initially measures its financial assets and financial liabilities at fair value.

The College subsequently measures all of its financial instruments at amortized cost using the straight-line method.

Transaction costs are recognized in the statement of operations in the period incurred.

Capital assets

Capital assets are recorded at cost less accumulated amortization. Amortization is provided annually on over the estimated useful lives, as follows:

Furniture and fixtures	-	straight line over 5 years
Computer equipment	-	straight-line over 3 years
Computer software	-	straight-line over 3 years
Leasehold improvements	-	straight-line over 10 years

Deferred rent

Deferred rent includes reduced rent benefits and tenant inducements received in cash.

The College recognizes rental expenses using the straight-line method whereby any contractual rents over the term of a lease are recognized into deficiency of revenue over expenses evenly over that term. The difference between the rental expense recognized and rental payments made is shown as deferred rent. Lease incentives received in connection with leasehold improvements are included in the determination of deficiency of revenue over expenses on a straight-line basis over the terms of the lease.

Leases

Leases are classified as either capital or operating leases. Leases that transfer substantially all of the benefits and inherent risks of ownership of property to the College are accounted for as capital leases. Rental payments under operating leases are included in the determination of deficiency of revenue over expenses over the lease term on a straight-line basis.

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2. Significant accounting policies *(continued)*

Contributed services

The College would not be able to carry out its activities without the services of numerous volunteers who donate a considerable amount of time. Because of the difficulty of determining their fair value, contributed services are not recognized in the financial statements.

3. Interfund transfers and internally restricted net assets

The purpose of the internally restricted net assets is to address unplanned expenses, any increases in investigation costs and hearings and provide support to victims of sexual abuse in the future.

These internally restricted amounts are not available for other purposes without approval of the council. The internally restricted net assets of $290,000 (2020 - $290,000) is comprised of the abuse therapy fund of $30,000 (2020 - $30,000), investigations and hearings fund of $170,000 (2020 - $170,000) and property and technology fund of $90,000 (2020 - $90,000).

During the year ended August 31, 2021, $6,004 (2020 - $Nil) was transferred from the unrestricted net assets to the net assets invested in capital assets in order to fund cash outlays for capital asset acquisitions.

4. Investments

The College's investments consist of publicly-traded fixed income instruments at cost plus accrued interest.

The investments are managed by a third party and subject to an investment policy set by the Finance and Planning Committee which has as its main objective the preservation of capital while earning a reasonable rate of return.

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5. Capital assets

	Cost	Accumulated Amortization	**2021 Net Carrying Amount**	2020 Net Carrying Amount
Furniture and fixtures	$ 137,186	$ 131,717	**$ 5,469**	$ 913
Computer equipment	55,238	53,068	**2,170**	8,926
Computer software	121,863	121,863	**-**	247
Leasehold improvements	326,662	223,451	**103,211**	135,878
	$ 640,949	$ 530,099	**$ 110,850**	$ 145,964

6. Bank loan

The College's banking facility provides for a maximum operating line of credit of $125,000. Borrowings under the line of credit bear interest at the prime rate of the College's banker plus 0.5% per annum, and are secured by a general security agreement and assignment of fire and other perils insurance on the College's leased premises. The line of credit remains unused as at August 31, 2021.

7. Government funding

Canada Emergency Business Account

As of August 31, 2021, the College has obtained a $60,000 (2020 - $40,000) loan from the Government of Canada under its Canada Emergency Business Account ("CEBA") program, which is designed to provide financial support to small businesses during the COVID-19 pandemic. The loan is interest-free, unsecured, repayable on December 31, 2022 and, if the loan is repaid on or before December 31, 2022, up to $20,000 (2020 - $10,000) of the loan will be forgiven. Since there is reasonable assurance that repayment will be made on or before December 31, 2022, the College has recognized the $10,000 (2020 - $10,000) forgivable portion as government funding on the statement of operations. The liability resulting from the interest-free loan was initially recognized at its fair value.

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8. Financial instruments

The College regularly evaluates and manages the principal risks assumed with its financial instruments. The risks that arise from transacting in financial instruments include liquidity risk, credit risk, market risk, interest rate risk, and foreign currency risk. The following analysis provides a measure of the College's risk exposure and concentrations. There are no significant changes in the risk exposures from the prior period.

Liquidity risk

Liquidity risk is the risk that an entity will encounter difficulty in meeting obligations associated with its financial liabilities as they come due. The College is exposed to this risk mainly in respect of its accounts payable and accrued liabilities and loan payable. Accounts payable and loan payable are generally repaid within the credit terms.

Market risk

The College's investments in guaranteed investment certificates exposes the College to fair value risks as market interest rate fluctuates. The College does not use derivative financial instruments to alter the effects of this risk.

The College is not exposed to any significant credit risk, interest rate risk and foreign currency risk at the statement of financial position date.

9. Commitments

The College is committed under several contracts which expire between October 2021 and October 2024. The College is also committed under a long-term lease for premises which expires in June 2024. Annual contract and lease payments (exclusive of requirement to pay taxes, insurance and maintenance costs) for the next three years are approximately as follows:

Year ending August 31, 2022	$ 148,900
2023	137,200
2024	100,700
	$ 386,800

10. Contingencies

The College is required to investigate and resolve complaints and disciplinary matters brought forward to it. The obligations associated with the resolution of complaints and disciplinary matters are recognized in the year the complaints are received, to the extent that the cost of hearing or resolution can be reasonably estimated. Management estimates that the ultimate liability arising from these matters will be approximately $28,563, however, there exists a reasonable possibility of loss in excess of the accrued amount. The amount is included in accrued liabilities and professional conduct expenses.

From time to time, the College is involved in litigation, investigations or proceedings related to claims arising out of its operations in the ordinary course of business. In the opinion of the College's management, these claims and lawsuits in the aggregate, even if adversely settled, will not have a significant impact on the College's financial statements.

11. Comparative figures

Certain reclassifications for the year ended August 31, 2020 have been made for the purpose of comparability.

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Resolution: Approval of Audited Financial Statements for fiscal 2020/2021

Whereas Council requires that its operations undergo a financial audit annually, and

Whereas the firm of Crowe Soberman was appointed to carry out this audit and did so during the month of October 2021; and

Whereas the auditor has now presented Council with draft financial statements as well as the auditor's opinion.

Resolution
Therefore, be it resolved that the Council of the College of Kinesiologists of Ontario approve for circulation, and submission to the Minister of Health, the audited financial statements for 2020/2021.

Moved by:

Seconded by:

Date: Monday, December 6, 2021

COLLEGE OF
KINESIOLOGISTS
OF ONTARIO

Discipline Committee Report

Committee: Discipline
Prepared for: Council
Date: December 6, 2021

Meetings

A Hearing was held on October 20, 2021. The penalty phase of the matter is pending.

There are no new cases that have been referred to the Discipline Committee.

COLLEGE OF KINESIOLOGISTS OF ONTARIO

ICRC Report

Committee: ICRC
Prepared for: Council
Date: December 6, 2021

Meetings

The ICRC met on October 29, 2021, to issue decisions on three returning matters, which are now closed.

ICRC orientation was held on December 2, 2021 for all committee members.

Matters

There is one active complaint in the intake process.

One matter has been appealed to HPARB with a review scheduled on March 2, 2022.

COLLEGE OF KINESIOLOGISTS OF ONTARIO

Registration Report

Committee: Registration
Prepared for: Council
Date: December 6, 2021

Registration Committee meetings

The Registration Committee met twice since the last report to Council on September 27, 2021, to review the decision on Guelph University's application for substantial equivalency of its bachelor's in human kinetics program and the impact on current registrants and existing and future applicants to the College. A training and orientation meeting was also held on November 30, 2021, for new and existing members of the Registration Committee.

The Committee also met twice in panels to review referrals from the Registrar.

Fall Examination

The spring sitting of the College's entry-to-practice examination which was scheduled to take place in April 2021 was rescheduled for September 18, 2021, across all writing centres.

A total of 457 candidates registered for the fall exam, this includes 10 candidates who requested testing accommodations, one candidate who requested writing the exam in French, and 46 candidates who either withdrew from the exam or postponed writing after the exam roster was finalized. Prior to the final exam roster an additional 100 applicants postponed or withdrew from the exam.

In 2021, a total of 411 candidates wrote the exam. The number increased by 9.6% compared to the previous year.

Number of Candidates	Spring	Fall	Total
2013	100	141	**241**
2014	141	252	**393**
2015	174	271	**445**
2016	207	265	**472**

2017	226	281	**507**
2018	211	240	**451**
2019	191	286	**477**
2020	Deferred to Fall	375	**375**
2021	Deferred to Fall	411	**411**

Membership Renewal

Renewal notices were sent to all eligible registrants on July 1, 2021. Registrants had until August 31, 2021, to complete their renewal. A notice of intention to suspend was sent to registrants on September 27, 2021. Registrants had until October 28, 2021, to renew their certificate to avoid it being placed under administrative suspension.

Due to the continued hardships experienced by kinesiologists because of the COVID-19 pandemic Council decided to waive the late penalty fee and reinstatement fee again this year. The late penalty fee was waived for a sixty-day period, beginning on September 1, 2021, for registrants who renewed after August 31, 2021. Additionally, registrants who were suspended for non-renewal this year, but applied for reinstatement prior to October 31, 2021, were not charged a reinstatement fee or a late fee.

Below is a breakdown of registrants who were eligible for renewal and their renewal outcome:

Renewal Eligibility and Outcome	
Renewed in the general class - On or before August 31, 2021	1943
Renewed in the inactive class - On or before August 31, 2021	240
Renewed in the general class – On or after September 1, 2021	380
Renewed in the inactive class – On or after September 1, 2021	135
Suspended for non-payment of fees	151
Deceased	0
Resigned	101

Membership Update

During the period September 1, 2021, to November 22, 2021, the College registered 23 new registrants. This number is low due mainly to the results of the Fall 2021 entry-to-practice examination being released in early November 2021. The College anticipates a significant increase in the number of new registrants by the end of the second quarter.

As of November 22, 2021, the total membership stands at 2712 registrants, with 2328 in the General Class and 384 in the Inactive Class. The total number of registrants includes newly registered, and reinstated registrants.

Years	General Class	Inactive Class
2014	1280	29
2015	1419	123
2016	1731	215
2017	2149	305
2018	2158	287
2019	2310	395
2020	2292	424
*2021	2328	384

*Registration Numbers as of November 22, 2021

COLLEGE OF KINESIOLOGISTS OF ONTARIO

Committee Report

Committee: Quality Assurance Committee
Prepared for: Council
Date: December 6, 2021

Each health regulatory college is required under the *Regulated Health Professions Act, 1991* to have in place a Quality Assurance (QA) Program to help the College achieve its mandate of ensuring that the public of Ontario receives competent, safe, and ethical kinesiology services.

Meetings

The Quality Assurance Committee (QAC) met once since the last Council meeting in September 2021.

QAC Training

Staff facilitated annual Committee training. Topics covered included the legislative framework; Committee mandate and powers; program components; the process for reviewing peer and practice assessment cases and rendering decisions and reasons; and criteria for referrals to the Inquiries, Complaints and Reports Committee; and governance, conflict of interest, and confidentiality.

Peer and Practice Assessment

Peer and Practice Assessment (PPA) is a legislated QA Program requirement and a key function of the College's regulatory mandate. It is an educational, structured interview conducted by a trained peer assessor. The PPA assesses kinesiologists' knowledge, skill, and judgement, and helps them identify areas of strength and opportunities for improvement within their practice. Each year, kinesiologists are randomly selected to participate in PPA to help ensure their continued competence. Kinesiologists are also selected to participate if they have declared insufficient currency at annual renewal, have neglected to complete another mandatory QA Program requirement (e.g., self-assessment), or if they volunteer to participate. Kinesiologists may be directed to undergo PPA for a second time after completing a mentorship program. Assessor reports and participant submissions are presented to the QAC for review and decision.

Twenty-four registrants participated in the Spring/Summer 2021 PPA Cycle. The QAC met and rendered decisions with respect to the 12 remaining PPA cases from the above noted cycle. Below is a summary of the QAC decisions:

- No further action – 10

- No further action with recommendation - 6
- Notice of intent to direct competency enhancement (demonstrated change report) - 3

The QAC will meet to review the remaining cases and registrants' submissions for cases where follow up was directed.

<u>Fall/Winter 2021 Cycle</u>

Notices to participate in the Fall/Winter 2021 PPA Cycle have been sent to kinesiologists, who were randomly selected to participate, deferred from a previous cycle, and/or neglected to complete the College's prescribed e-learning modules. Assessments are scheduled to take place from January to March 2022.

COLLEGE OF KINESIOLOGISTS OF ONTARIO

Patient Relations Committee Report

Committee: Patient Relations
Prepared for: Council
Date: December 1, 2021

The Patient Relations Committee met on December 1, 2021. The following matters came before the Committee:

- New Committee members were welcomed, as were new Staff.
- An update regarding outstanding action items from the previous meeting (February 9, 2021). Staff provided a description of “non-therapeutic expenses” that the College of Occupational Therapists of Ontario covers through the funding for therapy provided to patients who have reported or made allegations of sexual abuse by College registrants. Staff also updated the Committee that planned website updates re: sexual abuse were made by the previous Communications Manager prior to his departure from the College.
- Presentation given as an orientation to the Patient Relations Committee, covering a general description of the Committee’s role and duties, with specific description of sexual abuse policies and guidelines.
- Presentation and review of the spousal exception to the sexual abuse provisions of the RHPA and Health Providers Procedural Code. Committee suggested some additions and modifications to the proposed guideline and decision note regarding this matter. Committee voted to recommend the proposed guideline to Council for approval and voted to recommend gradual updates to currently existing Practice Standards, Guidelines and other materials. Changes to the guidelines will be communicated to the membership.
- Staff informed Committee of progress in the Health Profession Regulators of Ontario (HPRO) anti-BIPOC racism/EDI-B (Equity, Diversity, Inclusion and anti-Bias) initiative and working group. Staff to forward summary information to Committee.
- Evaluation survey. After meeting adjourned, Committee received a link to a survey to provide feedback on the meeting. Committee members were given time to complete the survey and results will be reviewed at a future meeting.

REVENUES

COLLEGE OF KINESIOLOGISTS OF ONTARIO

COLLEGE OF KINESIOLOGISTS OF ONTARIO - REVENUE REPORT FOR QTR 1
(SEPT - OCT 31 2021 Interim) FOR THE FISCAL YEAR 2021/2022

updated Nov 22

1	2	3	4	5
CATEGORY	APPROVED REVENUE FORECAST (Sept 1 2021 to Aug 31, 2022)	PROJECTIONS QTR 1 SEPT 1 - NOV 30, 2021	REVENUES RECEIVED QTR 1 SEPT 1 - Oct 30, 2021 (INTERIM)	VARIANCE QTR 1
	$	$	$	$
Revenue:				
Jurisprudence Fee ($48.25)	28,178	2,940	2,509	-431
Application Fee ($100)	59,900	2,500	1,500	-1,000
Examination Fee ($400)	194,000	0	-880	-880
Registration Fees*	1,818,763	295,588	278,863	-16,725
Interest Income	25,000	1,200	796	-404
TOTAL REVENUE	2,125,841	302,228	282,788	-19,440

*Registration Fees made-up of:	Approved Forecast	Projections Q1 (Sept-Nov)	Interim Actual (Sept- Nov)	Variance Q1
	$	$	$	$
New Registrants				
- Sept - Nov ($650)	13,000	13,000	6,500	-6,500
- Dec - Feb ($487.50)	49,725	0		0
- Mar - May ($325)	24,700	0		0
- Jun - Aug ($162.50)	8,288	0	0	0
Renewal ($650)	1,631,500	246,038	244,088	-1,950
Change in Status (members back to active)	3,950	3,950	6,300	2,350
Professional Corporation	2,000	1,200	800	-400
Professional Corporation Late fee	400	400		-400
Inactive Renewal ($200)	79,200	28,900	26,600	-2,300
Inactive Renewal Late Fee($50)	100	100	0	-100
Renewal Late Fee ($100)	1,400	1,100	100	-1,000
Re-instatement Fee ($300)	4,500	900	300	-600
Refunds			-5,825	
Total	1,818,763	295,588	278,863	-10,900

Notes

We are not expecting to meet projections under some categories by end of Q1.

Details:

Jurisprudence, application revenues and interest income are expected to meet projections in Q1.

Registration Fees

New Registration Sept to Nov variance: shortfall in Q1 due to April exam being postponed. New registration application *to increase in Q2. Inactive Renewal variance: decrease in inactive class renewal and increase in general class renewal. Reduction in suspensions:2020: 139 vs 2021: 151. Renewal late fee and reinstatement fee was deferred as per Council decision to provide relief for membership due to COVID-19*

Interest income: lower than expected in Q1 as a result of the pandemic. Interest on laddered GIC to mature in Feb 2022

EXPENDITURES

COLLEGE OF KINESIOLOGISTS OF ONTARIO - EXPENDITURE FORECAST FOR QTR 1
(SEPT-OCT. 31 2021 Interim) FOR THE FISCAL YEAR 2021/2022 updated Nov 22

1	2	3	4	5
CATEGORY	APPROVED BUDGET Sept 1 2021 to Aug. 31, 2022	PROJECTIONS QTR 1 SEPT - NOV 30, 2021	ACTUAL EXPENSES QTR 1 SEPT - Oct 30, 2021 (INTERIM)	VARIANCE QTR 1
	$	$	$	$
Expenditure:				
Council & Committees	60,150	10,450	7,450	3,000
Professional Fees	100,000	45,000	38,014	6,986
Communications & Media	85,500	12,253	7,953	4,300
Rent & Facility Costs	237,167	57,729	38,486	19243
Office & General	105,154	10,000	8,815	1,185
Salaries & Wages	1,137,914	194,054	133,588	60,466
Registration	253,527	18,500	13,823	4,677
Quality Assurance	35,336	5,450	3,450	2,000
Professional Conduct	53,500	12,105	9,223	2,882
TOTAL EXPENDITURE	**2,068,248**	**365,541**	**260,802**	**104,739**

Major Highlights:

Council and Committee

Payment of expenses for Council, Executive, Finance and Planning, Registration, Quality Assurance Committees in Q1.
Projections for end of Q1 for Executive, Finance & Planning, Quality Assurance, ICRC & Registration Committee meetings.

Professional Fees

Expenses for general & human resource legal fees, accounting services and consultant (CPMF & governance) costs in Q1. Projections for end of Q1 for payment of legal expenses, accounting services, consultant (CPMF & governance) and partial payment for the 2020/21 audit.

Communications & Media

Payment for IT Support and constant contact in Q1. Projections by end of Q1 for annual report design and IT support.

Office & General

Payment for bank charges, equipment rental, office supplies, telephone and training of Council in Q1.
Projection by end of Q1 for bank charges, postage and courier, telephone expenses.

Salaries & Wages

Payment for salary/benefits in Q1. Projections by end of Q1 for November pay periods.

Registration

Payment for database maintenance and hosting cost in Q1. Projection by end of Q1 for database support

and maintenace and hosting cost.

Quality Assurance
Payment for Peer and Practice Assessments (PPA) in Q1. Projections for end of Q1 for PPAs.

Professional Conduct
Expenditures for a disciplinary hearing and legal advice in Q1. These expenditures are demand driven and can occur at any time. Projections for end of Q1 for disciplinary costs.

2020/2021
Annual Report

COLLEGE OF
KINESIOLOGISTS
OF ONTARIO

RENEW, ENGAGE, RE-ENERGIZE.

Moving ahead on public protection.

2020/2021 Annual Report

For the period September 1, 2020 to August 31, 2021

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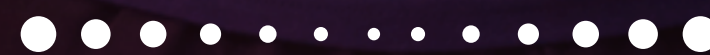
Despite the challenges confronting healthcare in 2020 and 2021, our commitment to regulatory excellence, public safety, and to governance best practices, and to engaging registrants, healthcare partners and the public, has never been stronger.



PRESIDENT'S MESSAGE

To call the year 2020-2021 unprecedented would be an understatement for the College of Kinesiologists of Ontario. The College has had to navigate and adjust its operations like so many businesses and other Colleges during a global pandemic, provide timely guidance to its registrants on public health directives, lead and transition its governance model within the regulatory sector, restructure and build a strong internal culture of teamwork where it is not only valued but is the ultimate expectation of staff and Council – all while remaining focused on its core mandate – public protection.

As president of the College, it's with tremendous pride and honour that I reflect on this past year. As has been said, change is inevitable, but growth is optional. The College has not only changed over the past year, it has grown in important ways. Together, we have:

- Cultivated a built-in entrepreneurial spirit – where leadership, accountability and creativity are not only embraced, but are the forces behind the modernization in the College's operational changes and its governance restructure.
- Successfully navigated the landmine environment of COVID-19 – all while implementing government directives.
- Reflected on our own practices, especially in the areas of equity, diversity and inclusion, and resolved we can and must do better.

I have witnessed the passion and tireless commitment of our staff and Council first hand. In the midst of uncharted waters, we pulled together as a cohesive team – a team with a unified and precision-focused mandate, despite the uncertainties we confronted.

- Continued our commitment to developing strong relationships with our stakeholders and other regulatory Colleges.
- Remained stable during a turbulent year when the College undertook the novelty of working from home and adjusting and growing its office team.

During unstable times, strong leadership is needed from all those who sit around the Council table and from those who have been willing to work exceptionally long hours, as our staff have. We often don't know how strong we can be until being strong is our only option. In a testament to sound succession development principles and practice, following the retirement of our previous Registrar and after engaging in a search process, the Council was pleased to appoint long-serving CKO senior staff member, Nancy Leris as the new College Registrar and CEO, who will guide the College into a new era.

During a year of uncertainty and a transition in leadership, we've all re-learned and redefined many versions of what once was: a strong collaborative relationship between Registrar and President, openness and questioning of processes and the development of a trusting environment, where staff and Council can debate topics of importance that are essential to public protection.

I have witnessed the passion and tireless commitment of our staff and Council first hand. In the midst of uncharted waters, we pulled together as a cohesive team – a team with a unified and precision-focused mandate, despite the uncertainties we confronted.

Clearly, more important work lies ahead. We can have confidence knowing that we have the right team to meet the challenges we will face. And patients/clients of kinesiologists in Ontario can confidently expect to receive safe healthcare under the protective oversight of a dedicated College staff and a visionary Council.

Jennifer Pereira
President

REGISTRAR'S MESSAGE

RENEW, ENGAGE, RE-ENERGIZE.

This past fiscal year presented unprecedented challenges for our College, and all healthcare professionals in Ontario, throughout Canada, and around the world. Despite this, the resilience and success demonstrated by our team underscore our commitment to regulatory excellence. We're looking ahead with determination and promise.

We're renewing our commitment to public safety and protection.
Looking back on the challenging circumstances of our 2020–2021 year of operations, we can now appreciate how the valuable experience we acquired under those pressures gave us fresh energy and led us to renew our commitment to leading and supporting the profession in providing safe, accessible kinesiology services to the patient/client communities we serve throughout Ontario.

Our re-energized governance modernization effort continues. We are intensifying our focus on promoting strong, accountable regulation that benefits both the practising kinesiologist and the community members seeking professional help to restore or improve their abilities.

We're engaging with registrants, healthcare partners and the public.
Working remotely throughout the entire period, our dedicated College staff coordinated and communicated vital messaging about patient/client safety protocols, engaging with our registrants and other important stakeholders through our website, social media, virtual meetings, webinars and the many one-on-one phone calls we fielded requesting professional advice. We also provided important scope-of-practice information and support to kinesiologists called upon to assist in the vaccination programs and other health initiatives to protect Ontarians, particularly those in communities more vulnerable to the pandemic's effects.

Re-energizing our drive towards governance best practices.
While continuing to address the evolving public protection protocols, the College is committed to re-energizing its governance reform initiatives, as set out in its 2019–2022 Strategic Plan. In a concentrated burst of effort over the past year, the College took concrete steps to create more transparency in Council and committee selection processes and, with valuable stakeholder input, to define more clearly the governance competencies that will ensure the makeup of College governance reflects the diversity of kinesiologist and client/patient populations, and reflects the skills and attitudes necessary to regulate in the public interest.

Our re-energized governance modernization effort continues. We are intensifying our focus on promoting strong, accountable regulation that benefits both the practising kinesiologist and the community members seeking professional help to restore or improve their abilities. These initiatives include acknowledging – through concrete actions – the diversity that exists in our communities of patients/clients and healthcare professionals, as well as the need to improve equity and inclusiveness by regulators and the broader healthcare system.

With this steady determination, we look forward to energizing our engagement with members of the public, members of the kinesiology profession and the wider network of healthcare regulators, as well as policymakers and service providers to support the delivery of safe, quality, patient/client-centred service and care in the weeks and months ahead.

Nancy Leris
Registrar and Chief Executive Officer

ABOUT THE COLLEGE

The College of Kinesiologists of Ontario is the regulatory body mandated by the Government of Ontario to protect the public by overseeing the profession of kinesiology in the province.

We do this by:

- **Setting requirements to become a kinesiologist and overseeing entry-to-practice standards.**
- **Developing rules and guidelines for kinesiologists' practice and professional conduct.**
- **Ensuring that kinesiologists maintain their knowledge and best practice skills.**
- **Investigating complaints received about kinesiologists and enforcing disciplinary action when necessary.**

VISION

A healthier Ontario through excellent kinesiology practice.

MISSION

To protect the public through governing and ensuring excellent professional practice of kinesiologists in Ontario.

VALUES

The College of Kinesiologists of Ontario holds honesty and integrity as its guiding principles. The College is committed to operating in a fair and open manner and treating its staff, members, the public and stakeholders with respect and dignity.

YEAR IN REVIEW

RENEWING AND EXTENDING OUR PARTNERSHIPS

Responding to the many challenges that arose by applying our best efforts, ingenuity and adaptability, College staff was able to coordinate the delivery of ongoing COVID-19 practice advice to kinesiologists, drawing upon the resources and support from our healthcare system partners: government, academic programs, professional associations and other healthcare profession regulators. The College greatly appreciates the collaboration that has been growing with and among our community of healthcare partners in recent years, with the pandemic emphasizing how essential such partnering is and will continue to be into the future.

ENGAGING TECHNOLOGY TO IMPROVE SERVICES TO REGISTRANTS AND APPLICANTS

To maintain the critical applicant qualification and registrant quality assurance processes, the College developed plans to engage the latest technology advances and made substantial progress toward moving to an online exam administration and in pivoting peer and practice assessments to a virtual environment.

RE-ENERGIZING OUR GOVERNANCE TO ENSURE ACCOUNTABILITY, DIVERSITY AND INCLUSIVENESS

We developed a Council and Committee Competency Profile that defines the knowledge, skill, judgement, attitude and experience (i.e., competencies) required of College Council and committee members for effective performance in their roles. The Profile will be used to:

- Determine eligibility and suitability of those seeking to stand for election to Council and/or be appointed to committee.
- Review applications for committee appointments based on identified competency and diversity needs and recommend committee appointments.
- Inform Council and committee development.
- Evaluate Council and committee performance.

Council approved in principle by-law amendments reflecting changes to eligibility criteria for those seeking to stand for election, including a requirement that registrants have successfully completed a qualification process. Council also approved in principle the terms of reference for a new Governance and Nominations Standing Committee to assist with competency-based assessment, education and evaluation of Council and committee members.

In late 2020, the Ministry of Health launched a survey – the College Performance Measurement Framework – to be completed by each of the 26 health regulatory Colleges. The Framework, which is intended “to strengthen accountability and oversight of Ontario’s health regulatory Colleges,” surveyed in depth, through a detailed self-reporting process, each College’s policies and practices during 2020 in seven domains, reflecting essential elements of regulation in the public interest. The College staff’s work to complete the survey took considerable time and effort and helped the College to identify areas of best practice and areas where continuing improvement is in progress or planned. The completed survey was submitted to the Ministry and posted to the College website in March 2021, following approval by the Council at its March 2021 meeting.

REGISTRANT STATISTICS

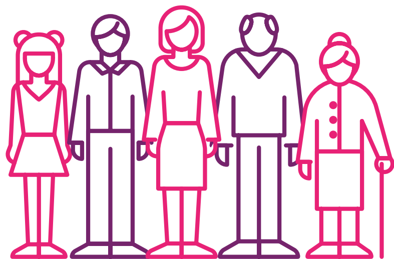
For the fiscal year ending August 31, 2021, data related to employment is collected at membership renewal, from R.Kins practising in Ontario, and only focuses on their primary practice.

TOTAL REGISTRANTS

ACTIVE
85%

INACTIVE
15%

AGE RANGE



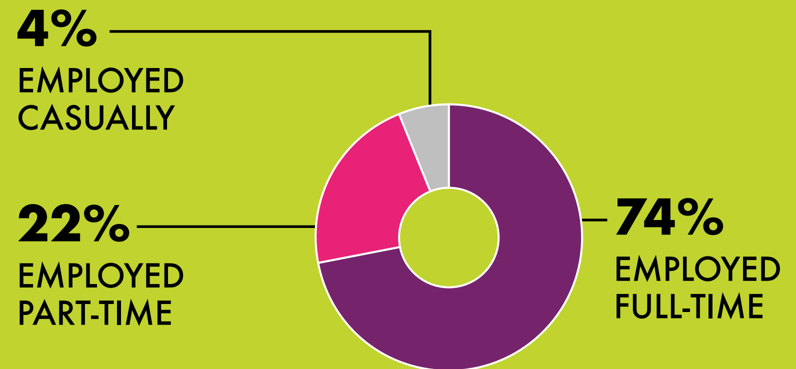
20–29	30–39	40–49	50–59	60+
33%	**37%**	**19%**	**9%**	**2%**

GENDER

FEMALE
65%

MALE
35%

EMPLOYMENT STATUS



TOP 5 PRACTICE ROLES

1. SERVICE PROVIDER
2. OWNER/OPERATOR
3. INSTRUCTOR OR EDUCATOR
4. CONSULTANT
5. MANAGER

NATURE OF PRACTICE

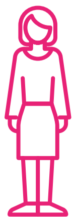
48%
IN CLINICAL PRACTICE

25%
IN NON-CLINICAL PRACTICE

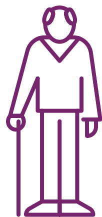
27%
IN MIXED PRACTICE
(combination of clinical and non-clinical)

AGE OF CLIENTS

51% OF R.KINs WORK WITH PEOPLE OF ALL AGES



41%
WORK WITH ADULTS



6%
WORK WITH SENIORS

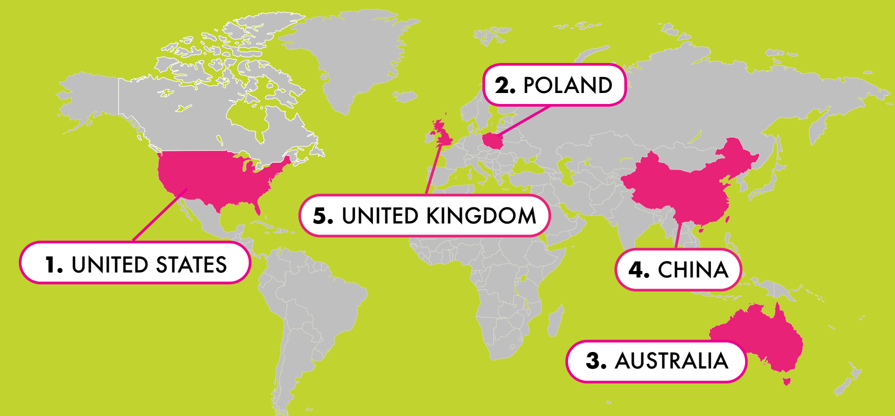
2%
WORK WITH CHILDREN
(under 18)

EDUCATION

TOP SOURCE PROVINCES FOR R.KINs EDUCATED OUTSIDE OF ONTARIO, FROM GREATEST TO LEAST

1. NOVA SCOTIA
2. QUEBEC
3. BRITISH COLUMBIA
4. ALBERTA
5. MANITOBA

TOP SOURCE COUNTRIES FOR INTERNATIONALLY EDUCATED R.KINs



REGISTRATION COMMITTEE

The Registration Committee develops and implements transparent, objective and impartial, and fair registration practices to protect the public, ensuring that only qualified individuals are registered to practise kinesiology in the province of Ontario.

The Committee considers applications for registration that have been referred by the Registrar in situations where the Registrar:

- has doubts about whether an applicant has met the registration requirements;
- is of the opinion that terms, conditions or limitations should be imposed on a certificate of registration; or
- proposes to refuse the application.

From September 1, 2020 to August 31, 2021, the Registration Committee reviewed and decided on the following:

TYPE OF CASE	NUMBER OF CASES	DECISION
Non-exemptible educational requirement.	16	7 (4**) applications were approved. 1** application was refused. 8 decisions were postponed pending further information or additional training prior to approval.
Reinstatement to the General Class after two years in the Inactive Class.	6	5 reinstatements into the General Class were granted. 1 reinstatement into the General Class was granted with conditions.
Expiration of one-year period for registration following notification of eligibility.	3	3 applications were approved and granted a certificate of registration.
Exemption request from re-challenging entry-to-practice examination after resignation and re-registration.	6	3 applications were granted exemption from re-challenging the entry to practice exam. 3 applications were refused.
Exceptional Circumstances – Exemption from exam timelines.	9	4 applications were approved. 5 decisions were postponed pending further information.
Proposal for upgrading/remediation.	4	3 remediation plans were approved. 1 remediation plan was refused.
Course Review.	5	
Good Conduct.	1	Decision postponed pending further information.
Review decision of the Health Professions Appeal and Review Board (HPARB).	0	

** Case was reviewed in the previous fiscal year and the decision was ratified in the current reporting period.

Applicants not satisfied with the decision of the Registration Committee may appeal to the Health Professions Appeal and Review Board (HPARB). There were no appeals submitted to HPARB from September 1, 2020 to August 31, 2021.

In addition to reviewing applications referred by the Registrar, the Committee carried out numerous other responsibilities, including:

- Submission of the annual Fair Registration Practices Report to the Office of the Fairness Commissioner of Ontario.
- Submission of the Professions Database Report to the Ministry of Health of Ontario.
- Review of submission for substantial equivalency of two non-kinesiology programs to a four-year kinesiology undergraduate program from an Ontario university.
- Review and revision of registration policies.
- Orientation and training of new Committee members.

EXAM

375 applicants wrote the entry-to-practice exam in September 2020. This number is significantly higher than previous years because the April 2020 exam was deferred to September 2020 due to the COVID-19 pandemic.

EXAM DATE	REGISTERED	WROTE	PASSED	% PASSING
September 19	251	233	169	73
September 26	143	142	95	67
Total	394	375	264	70.4

EXAMINATION APPEALS COMMITTEE

The Examination Appeals Committee is responsible for hearing appeals from applicants who unsuccessfully completed the entry-to-practice exam and who meet the criteria for filing an appeal.

In 2021, of the two appeals received, one was granted and the other denied.

EXAMINATION COMMITTEE

The Examination Committee consists of kinesiologists and faculty members from post-secondary kinesiology programs in Ontario. The Committee approves test forms, sets the pass mark for each exam, and ensures that the exam reflects entry-level competencies.

The Committee did not meet in this fiscal year.

The College is grateful for the support of those who assisted with the preparation, development and administration of the exam. Their contributions are invaluable.

QUALITY ASSURANCE COMMITTEE

The Quality Assurance (QA) Committee helps protect the public by administering programs that help kinesiologists keep their knowledge and skills up to date. The QA Program includes:

- self-assessment and continuing professional development;
- peer and practice assessments; and
- ways for the College to monitor kinesiologists' participation in and compliance with the Program.

The QA Program is educational and supportive. All kinesiologists registered in the General Class must participate in the Program and demonstrate commitment to continuous improvement and ongoing learning.

From September 1, 2020 to August 31, 2021, the College:

- administered the biennial self-assessment process that enables kinesiologists to reflect on their practice in relation to the practice standards and Essential Competencies of Practice, identify areas for improvement, and plan continuing professional development;
- pivoted to virtual peer and practice assessments, modifying program components and peer assessor training sessions in response to the ongoing COVID-19 pandemic and changing restrictions;
- proposed amendments to Deferral of Peer and Practice Assessment Policy (3.2) and Peer and Practice Assessment Exemption Policy (3.3) to Council for consideration and approval;
- conducted 24 virtual peer and practice assessments during spring/summer 2021 Peer and Practice Assessment cycle;
- administered the Prevention of Sexual Abuse and the Ethics and Professionalism e-learning modules for newly registered kinesiologists; and
- conducted an environmental scan and analysis of healthcare regulatory colleges' risk-based quality assurance programming policies and procedures.

PEER AND PRACTICE ASSESSMENT

The Peer and Practice Assessment (PPA) program is an individualized educational opportunity designed to assess kinesiologists' knowledge, skills and judgement, and help them identify areas of strength and opportunities for improvement within their practice.

PPAs CONDUCTED TO AUGUST 31, 2021 (REPORTED BY CALENDAR YEAR)

TOTAL PPAs CONDUCTED TO DATE	2015	2016	2017	2018	2019	2021
181	11 PPAs: all random selection	16 PPAs: all random selection	36 PPAs: • 2 insufficient currency (<1500 practice hours within last 3 years) • 34 random selection	55 PPAs: • 2 volunteers • 4 non-compliant with other QA program requirements • 4 insufficient currency • 45 random selection	39 PPAs: • 23 random selection • 16 insufficient currency	24 PPAs: • 18 random selection • 3 volunteers • 1 second PPA following completion of a mentorship program • 1 non-compliant with other QA program requirements • 1 insufficient currency

TOP AREAS FOR IMPROVEMENT IDENTIFIED THROUGH THE PPA

Record keeping, communication and consent were identified as the top areas for improvement. These areas of professional practice continue to be ones that require further support and guidance for kinesiologists.

FINAL PPA DECISIONS BY THE QA COMMITTEE (UP TO SEPTEMBER 9, 2021)

DECISION	2015 PPAs	2016 PPAs	2017 PPAs	2018 PPAs	2019 PPAs	2021 PPAs*
No further action	8	16	34	54	37	9
Competency Enhancement – Demonstrated Change Report	2	0	2	0	2	3 – notice of intent to direct competency enhancement (demonstrated change report)
Competency Enhancement – Mentorship Program	1	0	0	1	0	
Total (134)	**11**	**16**	**36**	**55**	**39**	

* Some PPAs require review and some decisions require follow up and further review at upcoming Quality Assurance Committee meetings.

COMPLAINTS AND DISCIPLINE COMMITTEE

From September 1, 2020 to August 31, 2021, the Inquiries, Complaints and Reports Committee (ICRC) met twice to review the following:

Registrar's Reports initiated	2
Complaints Received	1

Decisions

No action (including cases where the matter was found to be frivolous, vexatious, made in bad faith, moot or otherwise an abuse of process)	0
Advice/recommendations	1
Continuing education or remediation program	0
Caution in person	1
Referral of specified allegations to the Discipline Committee	0

Appeals

Certain decisions of the ICRC in complaints matters can be appealed to the Health Professions Appeal and Review Board (HPARB) by the complainant or kinesiologist. HPARB conducts a review of the matter to determine whether the ICRC's investigation was adequate and its decision was reasonable.

No matters were appealed to HPARB in this fiscal year.

COMMITTEE ACTIVITY

The Discipline Committee did not meet in this fiscal year.

PATIENT RELATIONS COMMITTEE

The Patient Relations Committee met on February 9, 2021. The following matters came before the Committee:

- An updated workplan for September 2020 – September 2021. It was identified early that the Committee would be involved in anti-racism initiatives. Staff was monitoring the work of the Health Profession Regulators of Ontario's (HPRO) Anti-BIPOC Racism Working Group and was waiting for concrete deliverables.
- Proposed revisions to website content to define sexual abuse. Staff facilitated a discussion on the website content relating to sexual abuse and how the College handles these matters.
- Staff reviewed other Colleges' policies on funding for therapy and counselling to gauge how they respond to such requests. Staff aligned with other Colleges and applicable legislation. The Committee reviewed the policies for funding and therapy and counselling and made no changes to the policy as it aligned with other Colleges and applicable legislation.

PRACTICE ADVICE

Patients, caregivers, kinesiologists, students, employers, insurers and others can contact the College for confidential advice about the practice of kinesiology. This service is offered to support quality of practice to help the public better understand their rights.

In 2020–2021, there were 325 Practice Advice inquiries.

Over 85% of the inquiries were made by registered kinesiologists with the remaining 15% coming from patients, other regulated healthcare professionals, and the public.

The top 3 Practice Advice questions in 2020–2021 were:

1. COVID-19 – best practices, interpreting government guidelines, specific practice scenarios, vaccination status, practice settings, virtual care
2. Scope of Practice – assistive devices, identifying patient red flags, dual registration
3. Interdisciplinary Care – working in a hospital team, referrals to community networks, private clinic settings with other regulated professions (PT, OT, RMT)

2020–2021 Practice Advice Inquiries

Category	Number
Advertising and social media	6
Clinical practice	63
Conflict of Interest/Code of Ethics	4
Consent/capacity	2
Discharge	2
Education/supervision of students	3
Employment issues	4
Fees & billing	34
IPAC	10
Insurance	9
Collaboration	4
Other	100
Privacy/confidentiality	6
Professional boundaries/sexual abuse	1
Record keeping	17
Scope of Practice/Controlled Acts/Delegation	31
Supervision: Students and Support Personnel	7
Titles & designation	19
Dual practice	3

COLLEGE COUNCIL AND COMMITTEES

COMMITTEE	PROFESSIONAL MEMBERS	PUBLIC MEMBERS	MEMBER(S)-AT-LARGE
Executive	**Jennifer Pereira, Chair** Ben Matthie Elwin Lau	**Mary Pat Moore, Vice-Chair** Leslee Brown	n/a
Finance	Jennifer Pereira Ben Matthie	**Chad McCleave, Chair** Mary Pat Moore	n/a
Specialties	Graydon Raymer Ryan Wight	**Mary Pat Moore, Chair** Sara Gottlieb Brad Markis	
Registration	**Ryan Wight, Chair** Graydon Raymer Elwin Lau Jennifer Pereira Susan Garfat Ben Phalavong	**Sara Gottlieb, Vice-Chair** Victoria Nicholson Leslee Brown (alternate – if needed) Teresa Bendo (alternate – if needed)	Jaclyn Benn Holly Wykes Kristin Baker
Quality Assurance	**Graydon Raymer, Chair** Marie Cousineau Candace Glowa Susan Garfat	**Leslee Brown, Vice-Chair** Victoria Nicholson Teresa Bendo Brad Markis	Mardy Fraser Alicia Oliveira Jane Gage Adeola Giwa Xana Ouellette
Inquiries, Complaints and Reports	**Elwin Lau, Chair** Ben Matthie Susan Garfat	**Chad McCleave, Vice-Chair** Leslee Brown Teresa Bendo Brad Markis	Michelle Young Doug Freer Francesca McKenzie Leanne Smith Evan Irani Kimberly Finnie

Patient Relations	Ryan Wight Jennifer Pereira Marie Cousineau Ben Phalavong	**Teresa Bendo, Chair** **Victoria Nicholson, Vice-Chair** Mary Pat Moore Sara Gottlieb	Ariel Zohar Aaron McCullagh Edward Madou Mashood Khan
Examination Appeals	**Ben Matthie, Chair** Candace Glowa	Chad McCleave Mary Pat Moore	
Discipline	All	**Sara Gottlieb, Chair** **Mary Pat Moore, Vice-Chair** All	Alyssa King Pamela Paquette
Fitness to Practise	**Jennifer Pereira, Chair** All	All	Amber Provencal Levesque

FINANCIAL STATEMENTS

COLLEGE OF KINESIOLOGISTS OF ONTARIO

STATEMENT OF FINANCIAL POSITION

At August 31

COLLEGE OF KINESIOLOGISTS OF ONTARIO
STATEMENT OF CHANGES IN NET ASSETS

COLLEGE OF KINESIOLOGISTS OF ONTARIO

STATEMENT OF OPERATIONS

Year ended August 31

COLLEGE OF KINESIOLOGISTS OF ONTARIO
STATEMENT OF CASH FLOW
Year ended August 31

COLLEGE OF
KINESIOLOGISTS
OF ONTARIO

College of Kinesiologists of Ontario
160 Bloor Street East, Suite 1402, Toronto ON, M4W 1B9
T (416) 961-7000 | F (416) 961-7009 | E info@coko.ca

COLLEGE OF KINESIOLOGISTS OF ONTARIO

Resolution: Approval of 2020/2021 Annual Report

Whereas the College is required to prepare and submit an annual report to the Ministry of Health and post the report to the College website; and

Whereas Council was provided with a draft annual report for 2020/2021; and

Whereas the report as presented fairly represents the College's achievements throughout 2020/2021;

Resolution

Therefore, be it resolved that Council accept and approve the draft annual report for 2020/2021 for submission to the Ministry of Health and posting to the College website.

Moved by:

Seconded by:

Date: Monday, December 6, 2021

Resolution for Appointment of Signing Officers

Whereas the College is required, as per the By-laws, to have a minimum of two signing officers in addition to the Registrar empowered to sign cheques and approve direct deposit payments; and

Whereas the financial checks and balances put in place by the College require two signatures on cheques and to release online payments; and

Whereas Ben Matthie was appointed as an alternate signing officer for the College's bank account as an additional approver; and

Whereas Ben Matthie was also appointed as chair of the Planning and Finance Committee at the September 27, 2021, Council meeting, and as chair of the committee, he should be separated from these duties.

Whereas the Planning & Finance Committee discussed the addition of an alternate signing officer for the College's bank account and recommended Victoria Nicholson as the alternate.

Therefore, be it resolved that Council approve Victoria Nicholson as an alternate signatory for the College's bank account.

Moved by:

Seconded by:

Date: Monday, December 6, 2021

160 Bloor St. E. Suite 1402, Toronto, ON M4W 1B9
T 416.961.7000 F 416.961.7009
info@coko.ca www.coko.ca

November 22, 2021

Mr. Andy Playter, OATA President
Ontario Athletic Therapists' Association (OATA)
60 Columbia Way, Suite 280
Markham, ON L3R 0C9

Dear Mr. Playter,

Thank you for your detailed letter dated October 19, 2021 addressed to the President and members of Council of the College of Kinesiologists of Ontario. I am responding on behalf of the Executive Committee.

The College acknowledges the OATA's disappointment regarding the recommendation of the Specialties Committee and the unanimous decision of Council to not proceed with designating Athletic Therapy as a specialty at this time. The recommendation of the Specialties Committee was based on their thorough review and deliberation. Other than an educational review report, everything pertinent to the decision-making process has been shared with the OATA.

As you are aware, the main stumbling block to the creation of a specialty class within the College of Kinesiologists is that unless an Athletic Therapist (AT) is eligible for registration with the College, there is no way to issue the specialty title. To create a title that would only apply to registrants of the College, with non-College member ATs continuing unregulated practice, would cause confusion to the public. That would be contrary to the mandate of the College.

The decision of Council was predicated on the information shared at the Council meeting of September 27, 2021. Contrary to your concerns, Council did not consider other irrelevant issues in coming to its decision.

In the interest of transparency, we want to assure you that your letter will be included and given due consideration at the upcoming Council meeting. We do not, however, anticipate that there will be much discussion as this matter has already been addressed.

The College recognizes the many efforts put forth by the OATA on this matter and understands its drive to seek regulation of its members. The focus and mandate of the College of Kinesiologists of Ontario is public protection – a driving force that underpins the decisions made by Council. Additionally, the College continues to remain open to developing continued strong relationships with stakeholders and reviewing changes and updates to evidence-based best practices.

We thank you for your contributions to the assessment of whether the College should create a specialty class, recognizing the outcome was not what the OATA anticipated. Both

organizations devoted time, resources and effort to this project, including the retention of external experts.

As both organizations continue to grow and learn from this and past endeavors, we trust that our relationship will continue to be a transparent and productive collaboration focused on public protection.

Jennifer Pereira, R. Kin
President

October 19, 2021

OATA RESPONSE TO CKO

TO:

The President and Members of the Council of the College of Kinesiologists of Ontario

Re-: "Specialties Committee recommendations to Council concerning the implementation of a specialty or class of athletic therapy (sic)."

It goes without saying that the OATA was deeply disappointed in the report of the Specialties Committee that was approved by the Council at its meeting on September 27. The OATA has decided to provide the following comments to Council pertaining to that report. Obviously, the OATA urges the CKO and the Specialties Committee to revisit their decision, but in any event the following are offered for the record and hopefully to inform future specialty application reviews by the College.

1. **CONTINUITY:** The OATA first made contact with the Transitional Council for the College Kinesiologists of Ontario in 2011. Since then the OATA has made a point of maintaining continuity in the personnel dealing with the TCCKO and subsequently with the College to the present day. On the other hand, there isn't a single individual on the College side who has been involved since Day One and, by our reckoning, only one member of the Specialties Committee has continued throughout the entire Committee review process. This lack of continuity meant that the College did not have a complete institutional memory of all of the activities, understandings and undertakings that happened over the last decade ------- many of which are missing from the Specialties Committee report. By way of example, the OATA and the previous Registrar anticipated there might be problems with the CATA Accreditation and perhaps with the CATA Certification. The OATA promised to have an alternative or alternatives acceptable to the CKO ready by the time the class or specialty became a reality and, since then, has spent considerable time and resources doing so. Those undertakings are not mentioned in the Committee report and may never have been relayed to the current Committee members.

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Markham, ON L3R0C9 | 905 946 8080

2. **COLLABORATION & TRANSPARENCY:** The Specialties Framework promised a working relationship between the Applicant for a specialty and the College that "is open, transparent and collaborative". That was certainly the case until recently. OATA representatives met or otherwise spoke frequently with the previous Registrar and CKO staff and a few times with the previous Chair of the Specialty Committee. Discussions usually revolved around next steps in the process, expectations, timelines, identifying issues that had arisen and exploring solutions to them. During the final stages of the process, namely the last 18 months or so, that transparency and collaboration ended. Under a truly transparent and collaborative relationship, the OATA would never have been blindsided by the findings and recommendations of the Specialty Committee and instead would have had an opportunity to rebut, clarify, provide more information or propose alternate solutions. On many occasions the OATA asked or offered to meet with the Specialties Committee, but in the end was given only one opportunity to do so. A truly collaborative working relationship also would have involved meaningful engagement by the Applicant with the Specialties Committee. Even having an AT Council member sit with the Committee as a non-voting resource to help the Committee fully understand the realities of AT field-of-play practice would have been helpful, but was not allowed.

   In a truly open, transparent and collaborative process, there would also have been some post- mortem or debriefing of the OATA by the Specialties Committee. The OATA's request for such a meeting has instead been denied.

3. **THE CRUX OF THE MATTER:** The OATA believes that the Specialties Committee simply got it wrong when it concluded that "an additional risk of harm posed by Kinesiologists working in an Athletic Therapy (sic) setting was negligible/not shown”. In the first place, it is difficult to square this finding with the Committee's statement that in its final "Risk of Harm" submission "… the many dimensions of risk of harm were addressed". 1

[1] "Specialties Committee recommendations to Council concerning the implementation of a specialty or class of athletic therapy", Page 6

OATA
HEALTH IN MOTION

Second, we wonder how the Committee defines "Athletic Therapy setting" and, since the focus of our Application was on field-of-play practice, why was that terminology not used instead? Did the Committee actually focus on Athletic Therapists in field-of-play practice?

It was, in fact, the former CKO Registrar who recommended to the OATA that it focus in his Application on field-of-play as a distinct niche distinguishing the AT profession from Kinesiology and to address the Specialities Committee's need to understand the AT "uniqueness" and our additional and different competencies.

Third, practitioners and organizations that are actually involved in field-of-play also strongly disagree with the Committee's finding.

Figure 1:

"As Sport and Exercise Medicine physicians, CASEM members frequently work with Athletic Therapists in the provision of care for athletes and active individuals. ATs are sought after for elite sports events such as Olympic and World Games, as well as by professional and elite amateur sports teams. Athletic Therapists do have a unique and clinically important skill set in healthcare that sets them apart and makes them deserving of the recognition of "specialists" in the College of Kinesiology(sic)"

Dr. E Laura Cruz, Past President, Canadian Academy of Sport and Exercise Medicine

"Athletic Therapists… are the true, front-line healthcare providers during practices and games"

Dr. Veronica Wadey, Orthopedic Surgeon, Holland & Arthritic Centre, Sunnybrook Health Sciences Centre.

The essential case made by the OATA and dozens of other stakeholders (See Figure 1 by way of example) is that which ATs do in their field-of-play practices is materially different, with substantially higher risk and requires different competencies compared to Kinesiologists, even from Kinesiologists in high-risk areas of practice such as cardiac respiratory therapy. This is further validated by the fact that Major Games organizations, such as Commonwealth Games, Olympics and Paralympics, require the medical teams to be comprised of Sport Medicine Physicians, Sport Medicine Physiotherapists and/or Certified Athletic Therapists (not Kinesiologists).

Recognition of the specialty role in field-of-play practice of Athletic Therapists was made by the Ontario Coroner's Jury in its Report into the tragic death of a young rugby player Rowan Springer. The Coroner's Jury's report recommended that Rugby practices and games be required to always have present an Athletic Therapist/Trainer.[2] (See Figure 2) No mention was made of Kinesiologists.

Figure 2:

Action #7 | Coroner's Report All higher-risk sports* teams should ideally have both a coach and an assistant coach, as well as an **athletic trainer/therapist**, present at all games and practices, and ideally there should be an assistant referee at all games.

Because of their familiarity with ATs and with the field-of-play environment in which ATs function, the renowned CASEM (Canadian Academy of Sport and Exercise Medicine) extended its support for the creation of an Athletic Therapist specialty within the CKO. The CASEM was developed because of specific medical problems that presented at the 1968 Summer Olympics in Mexico and became officially incorporated on June 8, 1970. Since that time, it has evolved from an organization providing medical care to elite athletes at international events to the leading source of information and expertise in the art and science of sports medicine. CASEM indicated it would heartily welcome and endorse the CKO's AT Specialty as only the second sport medicine specialty in Ontario.

The CASEM went so far as to provide to the OATA all its background documents and insights into how CASEM supported the Ontario Medical Association in the creation of the first sport medicine specialty – Sport Medicine Physicians – accepted by the College of Family Physicians and by the College of Physicians and Surgeons of Ontario. The CASEM

[2] Recommendation #38, Verdict of Coroner's Jury, Office of the Chief Coroner, Ministry of the Solicitor General, June 3, 2015.

also offered to be a resource to the CKO during the Specialties Committee review process. The Specialties Committee did not take up the offer.

There were many other stakeholders who wrote to the CKO in support, including the Coaches Association of Ontario that has recognized and welcomed the OATA's requirement that all ATs take the Safe Sport certification developed by the Coaching Association of Canada. The certification is aligned with the Universal Code for Safe Sport. This reflects the CCA/OCA recognition of the ATs' niche in field-of-play and recognizes ATs as important Safe Sport ambassadors due to their work with athletes of all ages in all sports, including at point of injury (field-of-play).

A letter of support from the BOC, Board of Certification of Athletic Trainers (ATs) in the USA was also submitted and the BOC offered to provide robust, independent program accreditation/equivalency. The BOC is recognized by the globally-respected National Commission for Certifying Agencies (NCCA) and the Institute for Credentialing Excellence (ICE). If that is not enough, the OATA has confirmation from the independent body that accredits athletic trainer/athletic therapy academic programs worldwide, called CAATE: Commission on Accreditation of Athletic Training [Therapy] Education. The CAATE accredits all AT education programs across the USA and is capable of providing and willing to provide the cross-Canada accreditation and equivalency required. The CAATE is recognized by the esteemed Council for Higher Education Accreditation (CHEA). Furthermore, the OATA has confirmed with the Ontario Postsecondary Education Quality Assessment Board (PEQAB) that it would accept the CAATE as an independent, qualified and credentialed body for the AT profession in Ontario.

The report's equivalency between Athletic Therapy and cardiac respiratory therapy is not apt. Respiratory therapy is usually carried out in hospitals, or in similar institutions. Kinesiologists in cardiac respiratory therapy have ready access to human and capital infrastructure, namely other practitioners, a range of equipment, etc. to respond to any emergencies or misadventures. ATs in field-of-play practice often function in adverse conditions, such as rain, snow, sleet and mud and must respond, entirely on their own to emergency, life-threatening situations, with minimal support, equipment and technology. In this regard, our members ask:

"When was the last time that a Kinesiologist had to deal with a goalie's severed carotid artery at a hockey game, or a football player who has been knocked unconscious on the field?"

" When was the last time a Kinesiologists had to tell a coach to abort a practice because of the risk of heat prostration?"

The distinguishing features of AT field play practice are 1) ATs are usually on their own, providing emergency aid in sometimes life-and-death situations and under difficult environmental and other conditions; 2) They are often called upon to perform controlled acts and do so either under delegations or under the emergency provisions of the RHPA; and 3) They are expected to inspect the field situation and players' equipment before games and to identify and address any defects that may create a risk of harm, including environmental issues such as excessive heat or cold.

The Specialties Committee also claims that any risk relating to ATs field-of-play practice is covered within the CKO's existing Practice Standards. Yet, the OATA has been unable to find a single mention of field-of-play in any regulations or Standards of Practice of the College.

4. **REQUIREMENTS FOR REGULATION:** The OATA was bemused and confused by the Committee report's references to the Policy on Regulatory Development and to the Ontario Regulatory Policy as requirements for any regulation submitted to the Ministry of Health and questions their relevancy.

To begin with, the Policy on Regulatory Development is a document issued by the Government of Canada (Treasury Board of Canada) that explicitly applies only to federal regulations and to federal regulators.

"……that are or will be registered as such under section 6 of the Statutory Instruments Act (Canada) made by or with the approval of the Governor in Council, the Treasury Board or a Minister of the Crown in right of Canada". [3]

[3] Cabinet Directive on Regulation, Treasury Board of Canada Secretariat; Section 1.0.

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As the quotation clearly indicates, the Policy applies only to federal government regulations and regulators and, as Council well knows, the regulation of health professionals is soundly within provincial jurisdiction. Furthermore, the document was issued in 2020 after the OATA had made its last submissions to the CKO.

The Ontario Regulatory Policy (2014) is not the framework against which the Ministry of Health would evaluate any draft regulation submitted by the CKO to establish a class or specialty for Athletic Therapists and its mention in the report is a puzzling non sequitur. The Policy itself states that it applies only to regulations "that affect business", are explicitly designed to reduce unnecessary red tape for business and the Policy was issued by what was then the Ministry of Research and Innovation in a previous government. The Policy has absolutely no relevance whatsoever to regulations to establish a class or specialty within a health professions regulatory College.

It is irrelevant meanderings such as this that raise questions as to whether the Specialties Committee really applied a fair, objective and thorough review to the OATA's Application.

The OATA is very aware of and had discussed with the previous Registrar and with the Ministry of Health about the criteria that the Ministry of Health would apply to and the expectations it has for any draft regulation submitted by the CKO and how the OATA and the CKO could collaborate in advancing such a regulation through the process. These discussions were never mentioned in the Committee report.

5. **RISK of HARM:** The Specialty Committee report suggests that it took the OATA a long time to make a compelling risk of harm case for creation of a specialty, but noted that the OATA ultimately was able to provide a submission that ensured "that the many dimensions of risk of harm were addressed". In her oral presentation to Council on September 27, the Committee Chair said that "risk of harm" was the major focus of the Committee.

   It is important to note that the Specialties Assessment Framework never mentions or uses the terminology "Risk of Harm".

   In its first applications the OATA responded to the criteria specified in section B of the Framework, as it was instructed to do. The risk of harm component was requested later.

The Registrar at the time explained and the OATA agreed that "Risk of Harm" had recently become an important area of focus by the Ministry because of the work done by the Professional Standards Authority in the UK. In the absence of a clear definition or criteria as to how the CKO wanted the OATA to demonstrate or quantify risk of harm, the OATA worked with the Professional Standards Authority itself and with the "father" of the Risk of Harm analysis (Sir Harry Cayton) to prepare the first "risk of harm" submission to the College. During the pre-AGM session hosted by the OATA Board in April 2019, and at which several representatives of the College were present, Sir Harry Cayton indicated that, in his judgement, the OATA had more than passed the risk of harm threshold for regulation as a profession. A telling factor for Sir Harry was that the Athletic Therapists, with only Sports Medicine Physicians and Sports Physiotherapists, work uniquely in what he called a "culture of risk".4

"… with a cohort of people who intentionally and regularly put themselves in the way of harm."

6. **LEAVE NO AT BEHIND:** The Specialties Committee expressed concerns that some ATs who do not meet the requirements of the College's general registration would not have a path to a specialty designation. This is a completely valid concern that has been a preoccupation of the OATA for some time, because the OATA has a fiduciary duty to represent and act in the best interests of ALL of its members. The matter was discussed with the previous Registrar and CKO staff beginning as early as 2014 as part of the discussions around grandparenting ATs for registration with the CKO. In the context of the Specialty Application, the OATA had several conversations with the previous Registrar about methods to ensure that "no AT is left behind".

As but one example, one alternative discussed at some length was the creation of a voluntary register, as per the voluntary register established by the College of Medical Laboratory Technologists of Ontario for laboratory technicians and for internationally trained

[4] Fletcher, et al , "Interprofessional Collaboration in Sports Medicine: Findings from a Scoping Review", **Health and Interprofessional Practice**, 2017.

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technologists. It has been applauded by the Ministry and is being examined by other colleges as a mechanism for bringing unregulated practitioners into the regulatory fold. [In essence, the voluntary register would require practitioners who are otherwise ineligible to join a College to enter into a contract whereby they would acceed to the regulatory jurisdiction of the College in order to protect the public, but have a title and perhaps a scope of practice that distinguishes them from full registrants.] We understand that the previous Registrar made contact with the CMLTO in order to understand thoroughly how the voluntary register worked and whether it would be feasible for the CKO in this case. The fact that this and other alternatives were not mentioned in the Specialties Committee report suggests that the Specialties Committee did not discuss such options— and may not even have been aware of them.

7. **BROKEN TELEPHONE:** The OATA was distressed to see that the Committee report apparently didn't consider, misunderstood or misrepresented OATA positions. For example, the report of the states (at page 8) that the OATA has indicated that Athletic Therapists registered with an RHPA College did not pose a greater risk than other regulated professionals. In actual fact, the OATA made a submission that said the exact opposite. In that submission to the Committee the OATA questioned the ability of certain Colleges in which ATs were registered to regulate them effectively in the public interest. The OATA stated that it is unreasonable to expect a College with only a handful of AT registrants to be able to regulate those registrants safely and effectively in the public interest. The OATA also stated in that submission that in the interests of regulatory efficiency, equal treatment and facilitating the public's access to practitioners and to ICRC, it would be much better for the public if all ATs were regulated by a single College.

8. **UNINTENDED CONSEQUENCES:** The OATA had advised the CKO that most of the ATs who registered with the CKO did so in anticipation or expectation of an AT class or specialty being created; they wanted to get in on the ground floor so to speak. When asked by the CKO, the OATA also indicated that up to 75% of those would leave the College if the Application to create a class or specialty was not successful. It is difficult to calculate the impacts of the pandemic on registrants' determination of the costs/benefits of registration, but the College's decision will inevitably prompt a substantial number of ATs to rejoin the

unregulated sector ------- where the OATA, the Ministry of Health and the Specialties Committee agree the risk of harm to the public is most acute. This existential risk did not appear in the Committee's report.

9. **COSTS TO REGISTRANTS:** The Specialties Committee legitimately worried about the increased costs to some registrants to maintain a specialty designation. If it had had the opportunity to do so, the OATA would have advised the Specialties Committee of the initiatives it was undertaking and the initiatives it was studying to mitigate the impact of the additional fees on members of the specialty, such as a group PLI program that substantially lowers members' PLI premiums.

10. **CONFUSION:** The Committee expressed concerns about public confusion among the concepts of “certification”, “regulation” and “specialization”. The Committee, however, provided no evidence that other Colleges had experienced such confusion. The OATA's own research indicates that this is not a meaningful concern.

In conclusion, both the OATA and the CKO spent considerable time and money on the OATA Application and its review. In that light, it is unfortunate that the process ended with what the OATA and other stakeholders perceive as a very imperfect report.

The OATA hereby requests due process and that the Committee's findings and conclusions be revisited with the transparency and collaboration with the OATA promised by the Specialties Framework.

Andy Playter | OATA President
On behalf of the OATA Board of Directors

Proposed Amendments to the Jurisprudence Handbook for Kinesiologists

The following are proposed amendments to the Jurisprudence Handbook for Kinesiologist of the College of Kinesiologists of Ontario.

Background

The Jurisprudence handbook serves to provide information on the ethical and legal framework within which Kinesiologists practice in Ontario. The handbook discusses the concepts of professionalism and self-regulation, upon which the *Kinesiology Act* is based. The handbook also addresses how proper communication with patients and colleagues is fundamental to a professional practice and reviews the various laws applicable to kinesiologists in their practice.

The Jurisprudence handbook was approved by Council in 2012. Since then, minimal changes have been made to the document in keeping with legislative requirements and the College's Standards and Guidelines. The College embarked on a comprehensive internal review of the handbook beginning in 2019, and in October 2021 contracted legal counsel to review the proposed changes to ensure they were current with changes in legislation.

Purpose of this Document

The purpose of this document is to identify high level changes to the handbook. Minor changes to the handbook such as grammatical edits, are not accounted for in this document but can be found in the appended document "Jurisprudence Handbook – Tracked Changes".

Proposed Changes

The proposed changes to the handbook are in keeping with the Colleges Standards and Guidelines and current legislation governing the practice of kinesiology in Ontario and other related legislation. The changes also aim to modernize the language used throughout, providing consistency and improved clarity.

A noted change in the handbook is consistent with O. Reg. 401/12 as it relates to the definition of sexual abuse with respect to Registered Kinesiologists in Ontario. On October 21, 2021, O. Reg. 718/21 amending O. Reg. 401/12 General Regulation under the *Kinesiology Act, 2007*, was filed with the Registrar of Regulations. The amended regulation will permit kinesiologists to treat their spouses as patients without triggering the sexual abuse provisions under the *Regulated Health Professions Act, 1991*.

In light of the proposed revisions to the Jurisprudence handbook, a guide for registrants of the College is required. The Patient Relations Committee has developed such a guide and has submitted this guide to Council for review and approval. The changes as they relate to the spousal exception to sexual abuse provisions are in keeping with the proposed guide.

Document Layout

The document is structured in a table that sets out the current Jurisprudence requirements, the proposed changes (additions are in red, deletions are struck out) and the rationale for the change.

Next Steps

Staff will update the Jurisprudence-eLearning Module to reflect the changes in the proposed Jurisprudence Handbook upon approval of the amendments by Council.

Jurisprudence Handbook

Current Handbook	Proposed change	Page Number	Rationale / Explanation
Patient/ Client Patients/ Clients	Patient Patients	Throughout document	Consistent with language used in the RHPA
Professional Members Registrant Member Practitioner	Kinesiologist Kinesiologists	Throughout document	For simplicity and clarity
S/he , He or She His/her Him/her	They Their Them	Throughout document	Gender neutral language
Ministry of Health and Long Term Care	Ministry of Health	Throughout document	
Alleged sexual abuser	Practitioner allegedly committing the sexual abuse	48	Provides clarity that the text is referring to the practitioner.
Health care provider who is abusive	Health care provider who committed the sexual abuse	48	The word “abusive” carries a negative connotation.
Dirty Joke	Sexually explicit joke	53	To emphasize that the text is referring to jokes of a sexual nature

2. Professionalism and Self-Regulation **a.** The Concept of Self Regulation **ii.** Council meetings and discipline hearings are open to the public. Observers can attend and watch what happens. **iii.** The College must consult with members of the profession and the public before making a regulation or by-law affecting them. The College must circulate the proposed wording of the regulation or certain by-laws for comment for a period of at least 60 days. **v.** The government has appointed two bodies that ensure that the College acts in the public interest. The Office of the Fairness Commissioner makes sure that the College's registration practices are transparent, objective, impartial and fair. In addition, the Minister of Health and Long-Term Care can refer concerns about the College's regulations or programs to the Health Professions Regulatory Advisory Council (HPRAC) for review. **vi.** The College has to report to the Minister. It has to make an annual report and such other reports as	**ii.** Council meetings and discipline hearings are open to the public. The date, time, agenda and supporting materials for all upcoming Council meetings must be posted on the College's website in advance. The date, time and statement of allegations for upcoming discipline hearings must also be posted on the College's website in advance. Observers can attend and observe the proceedings. ~~Watch what happens.~~ **iii.** The College must consult with Kinesiologists ~~members of the profession~~ and the public before making or amending any regulation or by-law affecting them. The College must circulate the proposed wording of the regulation or certain by-laws ~~for comment~~ for a period of at least 60 days so that people can comment on them. **v.** The government has appointed ~~two~~ an oversight ~~bodies~~ body that ensures that the College ~~acts~~ registration process works in the public interest. The Office of the Fairness Commissioner makes sure that the College's registration practices are transparent, objective, impartial and fair. ~~In addition, the Minister of Health and Long-Term Care can refer concerns about the College's regulations or programs to~~	8	**ii.** To provide clarity around the requirement to post the date and time of upcoming Council meetings and discipline hearings to the College website in advance of these meetings. **iii.** To provide reasoning for the need for consultation. **v.** HPRAC has been abolished. **vi.** Highlights new reporting requirements for CPMF.

the Minister requests. The Minister has the ability to make recommendations or even issue directions to the Council of the College. If there are serious concerns the Minster can audit the operations of the College and can appoint a supervisor to take over its administration. Thus, while the College is separate from the government, it still is accountable to the Minister of Health and Long-Term Care.	~~the Health Professions Regulatory Advisory Council (HPRAC) for review~~ **vi.** The College has to report to the Minister. It has to make an annual report and such other reports as the Minister requests. In addition, each year the College ~~has to~~ must file and publicly post a detailed description of its performance, known at the College Performance Measurement Framework. The Minister has the ability to make recommendations or even issue directions to the Council of the College. If there are serious concerns the Minster can audit the operations of the College and can appoint a supervisor to take over its administration. The Minister can also require the College to explain how it handled a matter involving an individual applicant for registration or a concern about an individual kinesiologist. Thus, while the College is separate from the government, it still is accountable to the Minister of Health ~~and long term Care~~.		

2. **Professionalism and Self-Regulation** **b.** Ethics, professional standards, professional misconduct, incompetence, incapacity. **Incompetence Scenario** *Incapacity* A kinesiologist is incapable when he or she has a health condition that prevents him or her from practising safely. Usually the health condition is one that prevents the kinesiologist from practising safely. thinking clearly. Even a kinesiologist with severe physical disabilities can practice safely so long as the kinesiologist understands his or her limits and gets the necessary help. Most incapable kinesiologists suffer from addictions or certain mental illnesses that impair the kinesiologist's professional judgment. For example, a kinesiologist who is addicted to alcohol or drugs may try to see patients/clients when they are impaired. Under the law, incapable kinesiologists are not treated as if they have engaged in professional misconduct or are incompetent.	*Incapacity* A kinesiologist is incapable when ~~he or she~~ they have a health condition that prevents ~~him/her~~ them from practising safely. ~~Usually the health condition is one that prevents the kinesiologist from practising safely. thinking clearly~~. A ~~even a~~ kinesiologist with severe physical disabilities can practice safely, so long as the kinesiologist understands their ~~his or her~~ limits and gets the necessary help. Most incapable kinesiologists suffer from a substance use disorder ~~addictions~~ or certain mental health diagnoses ~~illnesses~~ that impair the kinesiologist's professional judgment. For example, a kinesiologist who has a substance use disorder ~~is addicted to alcohol or drugs~~ may try to see ~~patients/clients~~ patients when they are impaired. Under the law, incapable kinesiologists are not treated as if they have engaged in professional misconduct or are incompetent. The investigation looks at the kinesiologist's health condition and the treatment that they are receiving. The College can require the kinesiologist to ~~go for a specialist examination~~ be examined by a specialist ~~examination~~ in the area of	14, 15, 79	*Incapacity* The implication that a health condition can prevent a registrant from practicing safely may be perceived as negative. The term "specialist examination" is vague. Language updated to reflect that an examination from a specialist may be required, and examples provided. *Conclusion* The requirement is that a registered kinesiologist practices safely and competently not "thinking safely". Language updated for clarify.

The investigation looks at the kinesiologist's health condition and the treatment that they are receiving. The College can require the kinesiologist to go for a specialist examination *Conclusion* Incapacity deals with health conditions that prevent a kinesiologist from thinking clearly.	concern, such as a psychiatrist or a substance use treatment expert. *Conclusion* Incapacity deals with health conditions that prevent a kinesiologist from ~~thinking safely~~ practising safely.		
3. Communication *b. Informed Consent* *Consent Where the Client is Incapable* If a kinesiologist concludes that the patient/client is not capable to give consent for a procedure, the kinesiologist should tell the patient/client. The kinesiologist should also tell the patient/client who the substitute decision maker will be. The kinesiologist should still include the patient/client in the discussions as much as possible. Of course there are circumstances where involving the incapable	If a kinesiologist concludes that the ~~patient/client~~ patient is not capable to give consent to a procedure, the kinesiologist should tell the ~~patient/client~~ patient. The kinesiologist should also tell the patients who the substitute decision maker will be. The kinesiologist should still include the ~~patient/client~~ patient in the discussions as much as possible. Of course there are circumstances where involving ~~the~~ an incapable ~~patient/client~~ patient in ~~the~~ such discussions will not be possible (e.g., if the patient(s) cannot understand the information at all, especially if the discussion ~~it will~~ could be quite upsetting to the ~~patient/client~~ patient or, where the	21	Updated for clarity as to the circumstances wherein an "incapable patient" may not be able to give consent. Could provide another example or remove all together if not a valid reason. Legal Advice: Further discussion may be required as it can result in paternalistic approaches if pushed too far.

patient/client in the discussions will not be possible (e.g., if patient/client it will be quite upsetting to the patient/client, where the patient/client is unconscious).	~~patient/client~~ patient is unconscious).		
3. Communication **c.** *Boundaries and sexual abuse* Maintaining professional boundaries is about being reasonable in the circumstances. For example, one should be careful about accepting gifts from patients/clients, but there are some circumstances in which it is appropriate to do so (e.g., a small New Year's gift from a patient/client). In other areas, however, crossing professional boundaries is never appropriate. For example, it is always professional misconduct to engage in any form of sexual behaviour with a patient/client.	Maintaining professional boundaries is about being reasonable in the circumstances. For example, one should be careful about accepting gifts from ~~patients/clients~~ patients, but there are some circumstances in which it is appropriate to do so (e.g., a small New Year's gift from a ~~patient/client~~ patient). In other areas, however, crossing professional boundaries is never appropriate. For example, it is always professional misconduct to engage in any form of sexual behaviour with a ~~patient/client~~ patient, unless the narrow spousal exception applies, as discussed below.	25	Revised to reflect legislative requirements under the spousal exception regulation and alert the reader that they need to check the definition of spouse.
	3. Communication **c.** *Boundaries and sexual abuse* *Treating Family Members, Other Close Personal Relations*	27	Revised to reflect legislative requirements under the spousal exception regulation. **Legal advice:** *Common Law Partner:*

	Kinesiologists may periodically find themselves in a position where they must decide whether to provide treatment to a family member(s) or someone with whom they share a close, personal relationship (where the relationship is of such a nature that it would reasonably affect the kinesiologist's professional judgment). The term family member refers to anyone with whom the kinesiologist has a close personal relationship with but does not include a spouse as defined below. It is generally inadvisable to provide treatment to family members, including a spouse, except in exceptional circumstances. This is because, despite a kinesiologist's intentions to deliver the best possible care, clinical objectivity may be compromised. Exceptional circumstances exist when the benefits of providing treatment to a family member(s) outweigh the risks. There is always a real and inherent risk when treating someone with whom a kinesiologist has a close personal relationship. The therapeutic patient-kinesiologist relationship is the foundation of safe, ethical care and the existence of a close personal relationship can threaten the efficacy of treatment.		Not every common law partner fits within the spousal exception. To avoid misunderstandings, it was recommended to refer only to spouses and then direct the reader to the discussion of that specific exception. *Treating relative and* friends: There may be issues about billing an insurer for treating a relative or friend, especially if full disclosure is not made. Further discussion may be required surrounding this.

	Exceptional circumstances may exist where: • There is no other similar or viable health care provider available • There is a demonstrated financial hardship • The patient's/client's level of distrust and/or discomfort is such that he/she is otherwise unlikely to seek treatment from a practitioner whom they do not know (for example, a family member who has been the victim of abuse) • There exists a real barrier to the patient accessing other health care services (for example, a severe communication disability) Often many of these factors may co-exist, which makes the circumstance exceptional. These circumstances may also no longer exist at some point. The kinesiologist must continue to evaluate the circumstances in which they are providing treatment and if other treatment becomes available to transfer the patient as soon as possible. The best interests of the patient must always be paramount. It is in their best interests to receive safe, ethical and effective treatment from someone they can access and trust. The best interests must be assessed from the patient's/client's perspective.		

	If a kinesiologist determines that treating a family member is in the best interests of that family member(s), they remain accountable to the College for care/services provided. Kinesiologists are expected to adhere to the College's Practice Standards in any situation. A kinesiologist should consider how they will fulfill their obligations as a regulated health professional before treating a family member.		
3. Communication *c. Boundaries and sexual abuse* Sexual Abuse This definition of sexual abuse includes treating one's spouse. There have been a number of court decisions that have established that a health care provider cannot treat his or her spouse (with very limited exceptions, like an emergency). Kinesiologists need to transfer the care of their spouse or lover to other kinesiologists. It does not matter that the spousal relationship came first. Touching, behaviour or remarks of a clinical nature is not sexual abuse. For example, if it is	Under the Regulated Health Professions Act, 1991 (RHPA), regulated health professionals are not permitted to treat their spouses, and it is considered sexual abuse. In 2012, the Ministry of Health updated the RHPA to allow individual professions to decide if they wanted to exempt spouses from the RHPA's definition. Colleges who wished to adopt this spousal exception were required to submit a regulation allowing this exception. As of December 2015, the College voted to submit the regulation to the Ministry of Health and remove spouses from the RHPA definition. The regulation was finally filed on October 22, 2021. This regulation means that the treatment of spouses from that date onwards will not automatically be deemed sexual abuse, and the rule will read:	30	Revised to reflect the spousal exception regulation. **Legal advice:** *Common Law Relationships:* The exception does not apply to common law relationships. The exception only applies to spousal relationships which is defined to include some common law relationships.

necessary for the treatment of a patient/client to ask about the patient's/client's sexual history, it can be done. However, asking about a patient's/client's romantic life where this is unnecessary for treatment is sexual abuse. Similarly, touching of the chest or pelvic area of a patient/client must be clinically necessary (and, as discussed above, be done only after receiving informed consent). It is always the responsibility of the kinesiologist to prevent sexual abuse from happening. If a patient/client begins to tell a sexual joke, the kinesiologist must stop it. If the patient/client makes comments about the appearance or romantic life of the kinesiologist, the kinesiologist must stop it. If the patient/client asks for a date, the kinesiologist must say no (and explain why it would be inappropriate). If the patient/client initiates sexual touching (e.g., a kiss), the kinesiologist must stop it.	"Conduct, behaviour or remarks that would otherwise constitute sexual abuse of a patient by a member under the definition of "sexual abuse" in subsection 1(3) of the Health Professions Procedural Code of the *Regulated Health Professions Act, 1991*, shall not constitute sexual abuse if: (a) the patient is the member's spouse; and (b) the member is not engaged in the practice of kinesiology at the time the conduct, behaviour or remarks occur." Such a regulation only applies to pre-existing spousal relationships; it is always considered sexual abuse to initiate a sexual relationship with an existing patient, and, in some cases, former patients. The definition of "spouse" is narrow. In general terms it refers to people who are married to each other or who have lived in a conjugal relationship outside of marriage continuously for a period of not less than three years. If the definition is not met, the spousal exception does not apply and treating the patient would still be considered sexual abuse. If in doubt, obtain legal advice.		

	~~This definition of sexual abuse includes treating one's spouse. There have been a number of court decisions that have established that a health care provider cannot treat his or her spouse (with very limited exceptions, like an emergency). Kinesiologists need to transfer the care of their spouse or lover to other kinesiologists. It does not matter that the spousal relationship came first.~~ Touching, behaviour or remarks of a clinical nature is not sexual abuse. For example, if it is necessary for the treatment of a ~~patient/client~~ patient to ask about the ~~patient's/client's~~ patient's sexual history, it can be done. However, asking about a ~~patient's/client's~~ patient's romantic life where this is unnecessary for treatment is sexual abuse. Similarly, touching of the chest or pelvic area of a ~~patient/client~~ patient must be clinically necessary (and, as discussed above, be done only after receiving informed consent). It is always the responsibility of the kinesiologist to prevent sexual abuse from happening. If a ~~patient/client~~ patient begins to tell a sexual joke, the kinesiologist must stop it. If the ~~patient/client~~ patient makes comments about the appearance or romantic life of the kinesiologist, the		

	kinesiologist must stop it. If the ~~patient/client~~ patient asks for a date, the kinesiologist must say no (and explain why it would be inappropriate). If the ~~patient/client~~ patient initiates sexual touching (e.g., a kiss), the kinesiologist must stop it.		
3. Communication ***c.*** *Boundaries and sexual abuse* Sexual Abuse Where the sexual abuse involved sexual intercourse, or similar sexual acts, and a finding is made, there is a mandatory minimum penalty. The kinesiologist's registration will be revoked for a period of at least five years. In all cases where a finding of sexual abuse has been made, the kinesiologist will be reprimanded. If a finding of sexual abuse has been made, the kinesiologist can be ordered to pay for the costs of any counselling and therapy of the patient/client. The College is also responsible to pay for at least some of the costs of any counselling or therapy needed by	Where a finding of sexual abuse is made, there is a mandatory minimum penalty. If the sexual abuse involved sexual intercourse, or ~~similar~~ other specified sexual acts (e.g., sexual touching of a patient/s/client's genitals, anus, breasts or buttocks), ~~and a finding is made, there is a mandatory minimum penalty. The~~ the kinesiologist's registration will be revoked for a period of at least five years. In cases where revocation is not imposed, the kinesiologists' registration will still be suspended for a period of time. In all cases ~~where a finding of sexual abuse has been made,~~the kinesiologist will be reprimanded. ~~If~~ Further, if a finding of sexual abuse has been made, the kinesiologist can be ordered to pay for the costs of any counselling and therapy of the ~~patient/client~~ patient.	31-33	Revisions: - reflects the spousal exception regulation and current/ proposed Standards and Guidelines. - identifies the cooling off period for dating former patients. - provides additional suggestions for preventing the perception of sexual abuse. - defines what constitutes a patient for determining whether sexual abuse has occurred. **Legal Advice:** One year cooling off period- There is an exception for emergency services where care is transferred as quickly as possible. However, that would be such a rare event in the

the patient/client if a finding of sexual abuse is made. Kinesiologists should therefore consider ways of preventing sexual abuse (or even the perception of sexual abuse) arising. Experience indicates that most sexual abuse is not done by predators. Rather, in most cases the kinesiologist and the patient/client develop romantic feelings for each other and the kinesiologist fails to act. Where any romantic feelings develop, the kinesiologist has two choices: • put a stop to them immediately, or transfer the care of the patient/client to another kinesiologist immediately. Other suggestions for preventing even the perception of sexual abuse include the following: • Do not engage in any form of sexual behaviour. • If a client initiates sexual behaviour, put a stop to it. Be sensitive, but firm when doing so. • Do not date patients/clients. • Avoid self-disclosure.	The College is also responsible to pay for at least some of the costs of any counselling or therapy needed by the ~~patient/client~~ patient ~~if a finding of~~ in relation to alleged sexual abuse ~~is made~~. Kinesiologists should therefore consider ways of preventing sexual abuse (or even the perception of sexual abuse) ~~arising~~. Experience indicates that most sexual abuse is not done by ~~predators~~ with the deliberate intent of exploiting a vulnerable person. Rather, in most cases the kinesiologist and the ~~patient/client~~ patient develop romantic feelings for each other and the kinesiologist fails to act to prevent it. Where any romantic feelings develop, the kinesiologist has only ~~two choices~~ one option: put a stop to them immediately~~, or~~. In most circumstances, it would also be advisable to transfer the care of the ~~patient/client~~ patient to another kinesiologist immediately. Other suggestions for preventing even the perception of sexual abuse include the following: • Do not engage in any form of sexual behaviour, including comments or remarks of a		kinesiology context that it is probably best not to get into it at all. It may just confuse things. Suggestion was made to omit the word "predators as the word carries a very negative connotation. *Most changes in this section were adopted in 2019 and incorporated in the most recent posted version of the handbook.

• Avoid comments that might be misinterpreted (“You are looking good today”). • Do not take a sexual history unless there is a good clinical reason for doing so. If one must take a sexual history, explain why first and be very clinical in one’s approach. • Do not touch a patient/client except when necessary for assessing or treating them. If one must touch a patient/client, explain the nature of the touching first, the reason for the touching and be very clinical in one’s approach (e.g., wear gloves). Consider having a third person in the room if examining or otherwise touching a disrobed patient/client. • Do not comment on a patient’s/client’s body or romantic life. • Document well any clinical actions of a sexual nature or any incidents of a sexual nature. Dating former patients/clients is a sensitive issue. Technically, it is not sexual abuse because the person is no longer the	sexual nature, towards a ~~patient/client~~ patient. • If a client initiates sexual behaviour, put a stop to it. Be sensitive, but firm when doing so. • Do not date current or former ~~patients/clients~~patients. • Avoid self-disclosure. • Avoid comments that might be misinterpreted (“You are looking good today”). • Do not take a sexual history unless there is a good clinical reason for doing so. If one must take a sexual history, explain why first and be very clinical in one’s approach. • Do not touch a ~~patient/client~~ patient except when necessary for ~~assessing~~ assessment or ~~treating them~~ treatment. If one must touch a ~~patient/client~~ patient, explain the nature of the touching first, the reason for the touching and be very clinical in one’s approach (e.g., wear gloves). Consider having a third person in the room if examining or otherwise touching a disrobed ~~patient/client~~ patient.		

kinesiologist's patient/client. However, it can still be unprofessional where the kinesiologist still has power over the patient/client. There should be an appropriate "cooling off" period. The length of the cooling off period will depend on the circumstances (e.g., how long the person was a patient /client, how intimate the professional relationship was).	• Be sensitive when offering assistance to patients who may not be mobile. Ask both whether and how best to help them before doing so. • Avoid hugging and kissing patients. • Be aware and mindful of cultural, religious, age, gender and other areas of differences. If in doubt, ask if one's proposed action is acceptable to the patient. • Do not comment on a ~~patient's/client's~~ patient's ~~body~~ appearance or romantic life. • Document well any clinical actions of a sexual nature or any incidents of a sexual nature. Dating former ~~patient's/client's~~ patients is a sensitive issue. ~~Technically, it is not sexual abuse because the person is no longer the kinesiologist's~~ Dating a former ~~patient/client~~ patient ~~However, it can still be unprofessional where the kinesiologist still has power over~~ is legally prohibited for a period of at least one year following the date on which the ~~patient/client~~ patient ~~There should be an appropriate "cooling off" period. The length of the cooling off period will depend on the circumstances (e.g., how long the person was a~~ left the care of		

	kinesiologist. Dating a former~~/patient/ client~~ patient, ~~how intimate the professional relationship was).~~ before the expiry of the ~~one year~~ one-year period is considered sexual abuse. It is important to note that who will be considered a patient for the purpose of determining whether sexual abuse has occurred is very broad. A person is considered a patient of a kinesiologist if any of the following criteria are met: • The kinesiologist has provided a health care service to the person. • The kinesiologist has charged or received payment from the person or a third-party (e.g. insurance company) for a health care service provided to the person. • The kinesiologist has contributed to a health record or file for the person. • The person has consented to a health care service recommended by the kinesiologist. It is therefore not necessary for a kinesiologist to have provided a health care service directly to a person for that person to be		

	considered a patient; for example, if a kinesiologist contributes to a health care record for a person, that person is considered a patient of the kinesiologist for a period of one year.		
3. Communication *c. Boundaries and sexual abuse* Sexual Abuse Sexual Abuse Scenario No. 2 *Donna, correctly, tells David that he has already engaged in sexual abuse by letting the attraction develop while continuing to treat Paul. Donna also says that it is important for David to transfer the care of Paul right away and certainly before they get together for coffee.* ***Sample Exam Question*** Which of the following is sexual abuse: iv. Dating a former patient/client *Sexual behaviour with employees may, however, constitute sexual harassment under the Human Rights Code and could otherwise be unprofessional. Answer iv is not the best answer because the person is not a patient/client at*	Sexual Abuse Scenario No. 2 *Donna, correctly, tells David that he has already engaged in sexual abuse by letting the attraction develop while continuing to treat Paul. Donna also says that it is important for David to transfer the care of Paul right away and ~~certainly before they get together for coffee.~~ to cease pursuing a personal/romantic relationship with him. Donna reminds David that dating a patient is prohibited for a period of at least one year after the patient leaves the kinesiolgist's care, and that dating a patient within this period would be considered sexual abuse that could lead to the revocation of David's registration.* ***Sample Exam Question*** Which of the following is sexual abuse: iv. Dating a former ~~patient/client~~ patient after not having had any contact with the ~~patient/client~~ patient or their health care for a period of five years.	33-34	Sexual Abuse Scenario No. 2 Change made in keeping with requirements for mandatory cooling off period ***Sample Exam Question*** Provides context specific to the timeline (cooling off period) in which engaging in a relationship with one's former client is no longer considered to be sexual abuse; and cautions against engaging in such relationships. *Most changes in this section were adopted in 2019 and incorporated in the most recent posted version of the handbook.

the time of dating. However, it might still be unprofessional to date a former patient/client soon after they stop being a patient/client (or, sometimes ever), particularly if the kinesiologist had an intense or intimate role in the treatment of the patient/client.	*Sexual behaviour with employees may, however, constitute sexual harassment under the Human Rights Code and could otherwise be unprofessional. Answer iv is not the best answer because the person* ~~*is*~~ *has not been* a ~~patient/client~~ patient more than one year at the time of dating. However, it might still be unprofessional to date a former ~~patient/client~~ patient ~~soon~~ after they stop being a ~~patient/client~~ patient ~~*(or, sometimes ever)*~~, regardless *of the time period, particularly if the kinesiologist had an intense or intimate role in the treatment of the* ~~patient/client~~ patient*.*		
4. Law **b.** *RHPA* **i.** Controlled acts and delegation Since only diagnostic ultrasound is prohibited, that means that therapeutic ultrasound is not a controlled act. The eighth controlled act refers to the definition of a drug in the *Drug and Pharmacies Regulation Act.* It reads as follows: "drug" means any substance or preparation containing any substance,	The eighth controlled act refers to the definition of a drug in the *Drug and Pharmacies Regulation Act.* It reads as follows: "drug" means any substance or preparation containing any substance, (a) manufactured, sold or represented for use in, (i) the diagnosis, treatment, mitigation or prevention of a disease, disorder, abnormal physical or mental state or the symptoms thereof, in humans, animals or fowl, or	40-41	Updated to reflect changes to the *Drug and Pharmacies Regulation Act* as it relates to the use of cannabis.

(a)manufactured, sold or represented for use in, (i) the diagnosis, treatment, mitigation or prevention of a disease, disorder, abnormal physical or mental state or the symptoms thereof, in humans, animals or fowl, or (ii) restoring, correcting or modifying functions in humans, animals orfowl, (b)referred to in Schedule I, II or III, (c)listed in a publication named by the regulations, or (d)named in the regulations, but does not include,(e) any substance or preparation referred to in clause (a), (b), (c) or (d) manufactured, offered for sale or sold as, or as part of, a food, drink or cosmetic, (f)any "natural health product" as defined from time to time by the *Natural Health Products Regulations* under the *Food and Drugs Act* (Canada), unless the product is a substance that is identified in the regulations as being a drug for the purposes of this Act despite this clause, either specifically or by its membership in a class or its listing or identification in a publication, (g)a substance or preparation	(ii) restoring, correcting or modifying functions in humans, animals or fowl, (b) referred to in Schedule I, II or III, (c) listed in a publication named by the regulations, or (d) named in the regulations, but does not include, (e) any substance or preparation referred to in clause (a), (b), (c) or (d) manufactured, offered for sale or sold as, or as part of, a food, drink or cosmetic, (f) any "natural health product" as defined from time to time by the *Natural Health Products Regulations* under the *Food and Drugs Act* (Canada), unless the product is a substance that is identified in the regulations as being a drug for the purposes of this Act despite this clause, either specifically or by its membership in a class or its listing or identification in a publication, (f.1) cannabis, other than, (i) a drug containing cannabis to which the *Cannabis Regulations* (Canada) apply,		

named in Schedule U, (h)a substance or preparation listed in a publication named by the regulations, or (i)a substance or preparation that the regulations provide is not a drug;	(ii) cannabis obtained for medical purposes in accordance with Part 14 of those Regulations or in accordance with a court order, and (iii) cannabis that is identified in the regulations as being a drug for the purposes of this Act despite this clause,		
4. Law **b.** *RHPA* **iiii.** Use of titles The third set of rules is created by each College for its members in the registration and professional misconduct regulations. For example, each class of registration is given a specific designation for them to use (e.g., R. Kin, or R. Kin (Inactive)). Kinesiologists can only use the title associated with their class of registration. In addition, kinesiologists are only able to use a title indicating specialization where: a) it is conferred by a recognized credentialing body, b) it is earned,	The third set of rules is created by each College for its ~~members~~ registrants in the registration and professional misconduct regulations. For example, each class of registration is given a specific designation for them to use (e.g., R. Kin, or R. Kin (Inactive)~~)~~. ~~Kinesiologists can only use the title associated with their class of registration. In addition, kinesiologists are only able to use a title indicating specialization where:~~ ~~a) it is conferred by a recognized credentialing body,~~ ~~b) it is earned,~~ ~~c) it meets established standards, and~~ ~~d) prominence is given to the member's legislated title.~~	47	Removed as the College has not undertaken any formal recognition of a specialty.

c) it meets established standards, and d) prominence is given to the member's legislated title.			
4. Law **b.** *RHPA* **iv.** Mandatory reports A kinesiologist must report if he or she ends a business relationship with another health care provider on the basis that the other health care provider is incompetent or incapacitated or engaged in professional misconduct. Examples of business relationships include employer-employee, partners, shareholders in a professional corporation or space sharing. The report must be made even if the person quits or resigns first; if the kinesiologist was going to make a report it must still be made.	A kinesiologist must report if they ~~he/she~~ end~~s~~ a business relationship with another health care provider on the basis that the other health care provider is incompetent, ~~or~~ incapacitated or engaged in/has committed an act of professional misconduct. Examples of business relationships include employer-employee, partners, shareholders in a professional corporation or space sharing. The report must be made even if the person quits or resigns first if there are reasonable grounds to believe that the departure or resignation reasonably relates to the person's professional misconduct, incompetence or incapacity. A report must also be made where the person resigns or quits or during an investigation into such concerns. ~~The report must be made even if the person quits or resigns first; if the kinesiologist was going to make a report it must still be made.~~	49	Highlights the continued need for a mandatory report in cases of resignation.
4. Law **b.** *RHPA* **iv.** Mandatory reports	*Charges and Offences – Self Report* Kinesiologists ~~have to~~ must report themselves when they have been charged or found guilty of an offence, including any bail conditions or other restrictions imposed on	50	Outlines the updated requirements for self-reports for charges and finding of guilt, and the requirements for posting and removing such on the public register.

<table>
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<td>Offences – Self Report

Kinesiologists have to report themselves when they have been found guilty of an offence. All offences are supposed to be reported. Thus criminal offences, offences under federal drug or other legislation and provincial offences (including highway traffic offences) need to be reported. Only courts can make offence findings. Thus any findings by a body that is not a court (called “tribunals”) are not reportable under this provision. All findings are reportable regardless of whether or not they resulted in a conviction (i.e., a finding of guilt that leads to an absolute or conditional discharge is not a conviction).

Reports are to be made to the Registrar of the College as soon as possible after the finding and should contain the following information:

• the name of the kinesiologist filing the report;</td>
<td>them. All offences are ~~supposed~~ to be reported~~;~~. ~~t~~Thus criminal offences, offences under federal drug or other legislation and provincial offences (including highway traffic offences) need to be reported. Only courts can make offence findings. Thus any findings by a body that is not a court (called “tribunals”) are not reportable under this provision. All charges and findings are reportable regardless of whether or not they resulted in a conviction (~~i~~e.g., a finding of guilt that leads to an absolute or conditional discharge is not a conviction, but still needs to be reported to the College).

Reports are to be made to the Registrar of the College as soon as possible after the charge or finding and should contain the following information:

• the name of the kinesiologist filing the report;

• the nature of, and a description of the charge or offence;</td>
<td></td>
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• the nature of, and a description of the offence; • the date the kinesiologist was found guilty of the offence; • the name and location of the court that found the kinesiologist guilty of the offence; and • the status of any appeal initiated respecting the finding of guilt. The report will be reviewed by the College and may result in an investigation. However, the report does not automatically get put on the public register (see the discussion of the register below).	• the date the kinesiologist was charged or found guilty of the offence; • information regarding every bail condition or other restriction imposed or agreed to in relation to the charge; • the name and location of the court in which the charge was laid, the bail condition or restriction was imposed, or that found the kinesiologist guilty of the offence; and • the status of the proceedings and any appeal initiated respecting the finding of guilt. If there is an appeal that alters the information reported, an updated report must be made. The report will be reviewed by the College and may result in an investigation. ~~However, the report does not automatically get put~~ Charges, bail conditions and		

	restrictions, and findings of guilt in relation to the *Criminal Code* (Canada) and the *Controlled Drugs and Substances Act* (Canada) will appear on the public registry ~~register (see the discussion of the register below)~~. This information will only be removed when the charges are withdrawn or no finding of guilt is made; the bail conditions or restrictions are lifted; or when the finding of guilt is subject to a pardon, is subject to a record suspension, or is overturned on appeal.		
	4. Law **b.** *RHPA* **ii.** Professional misconduct regulation *Controlled Acts, Delegation and Supervision* In addition, if a kinesiologist accepts the delegation of a controlled act, they must be able to perform it with an appropriate level of knowledge, skills and judgment.	60	Clarifies the need for requisite knowledge skills and judgement to appropriately perform a controlled act.
	4. Law **d.** *The College*	74	Identifies when an interim order may be made by the ICRC

	ii. Complaints and discipline process *Intake of Registrar's Reports investigations* At any point after a complaint is received or an investigator is appointed by the Registrar, the ICRC may make an interim order to protect the public while awaiting the outcome of the investigation and any discipline hearing. For example, the ICRC may order that the kinesiologist's registration be suspended until the investigation and any discipline hearing is finished. Interim orders are fairly rare and are only used when necessary to protect patients from harm.		
	4. Law **e.** Other laws **i.** PHIPA *Protecting personal health information* Where a kinesiologist has been involved in a privacy breach that results in the Custodian taking action against the kinesiologist (or the kinesiologist leaves voluntarily), the Custodian must report the	87	These changes have been made in keeping with the *Personal Health Information Protection Act* ("PHIPA").

	conduct to the College. In addition, Custodians must report serious privacy breaches to the Information and Privacy Commissioner (IPC) and make annual reports of all privacy breaches to the IPC.		

COLLEGE OF
KINESIOLOGISTS
OF ONTARIO

Jurisprudence Handbook for Kinesiologists

Last Updated October 2021

Important Legal Principles Kinesiologists Need to Know

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1. Introduction

The purpose of this handbook is to provide information on the ethical and legal framework within which Kinesiologists practice in Ontario.

This book will first discuss the concepts of professionalism and self-regulation. The *Kinesiology Act* is based on these concepts. This handbook will then look at how proper communication with patients and colleagues is fundamental to a professional practice. For example, informed consent is not possible without it. This handbook will then review the various laws that kinesiologists are most likely to have to deal with in their practice.

In this book there are a number of Acts that are referred to by their abbreviations including the following:

- AODA - *Accessibility for Ontarians with Disabilities Act*
- CFSA - *Child and Family Services Act*
- HCCA - *Health Care Consent Act*
- PHIPA – *Personal Health Information Protection Act*
- PIPEDA – *Personal Information Protection and Electronic Documents Act*
- RHPA – *Regulated Health Professions Act*

Other abbreviations include the following:

- CAS – Children's Aid Society
- CCB – Consent and Capacity Board
- HPARB- Health Professions Appeal and Review Board
- ICRC – Inquiries, Complaints and Reports Committee
- SDM – substitute decision maker.

2. Professionalism and Self-Regulation

A profession is different from a business. Members of a profession believe that they help patients, not just make money from them. Kinesiologists have a number of duties to the patients they serve. For example, kinesiologists have the duty to be honest with patienst. Kinesiologists have a duty to provide good service to patients. Kinesiologists have a duty to tell patients what they are going to do for the patient and to ask for the patient's/client's consent before doing it.

Being a member of a profession also means that kinesiologists have a duty to other members of the profession. Kinesiologists have a duty to be respectful to each other. Kinesiologists have a duty to work with fellow kinesiologists to serve the welfare of their patients. For example, kinesiologists need to try to coordinate the care of a patient they are both treating whenever possible (and the patient consents).

Kinesiologists also have a duty to work with their regulatory College to protect the public from dishonest or incompetent kinesiologists. For example, kinesiologists are required to cooperate in an investigation of a complaint.

Professionals must also obey the laws that apply to them. There are many different laws that apply to a kinesiologist. The purpose of this book is to describe some of these laws in a general way so that kinesiologists understand the basic principles. It does not cover all of the exceptions and special circumstances that arise in real life. If a kinesiologist has a specific legal question about their own circumstance, they should seek advice from a lawyer.

a. The concept of self-regulation

The "regulation" of an activity means that the law imposes restrictions on it to ensure that members of the public are not harmed, and actually benefit, from it. There are many ways in which an activity can be regulated. For example, the government could create offences for improperly doing the activity. Or the government could have one of its Ministries overseeing the activity.

In Ontario, most professions are self-regulated. In many other parts of the world, professions are regulated directly by the government or through general consumer protection laws. Ontario has chosen the model of self-regulation so that those who best understand the profession are involved in its regulation.

Self-regulation means that the Ontario government has made a statute (often called an Act) giving the duty to regulate the profession to a separate body (called a College) the majority of whose Council is elected by the profession. The Council is the Board of Directors of the College. (The College is a regulatory body, not an educational institution). The Council establishes the policies of the College (e.g., it makes the professional misconduct regulation) and oversees the administration of the regulatory activities of the College (e.g., it establishes the budget for the quality assurance program of the College). The College operates through committees (e.g., the Registration Committee, the Discipline Committee) the majority of whose members are from the profession, with other members coming from the public.

The mandate of the College is to serve the public interest. It does this by regulating the profession in the public interest. Under its statute, the College "has a duty to serve and protect the public interest". The College cannot serve the self-interest of the profession (e.g., the College cannot set fees to be charged to patients, nor can it advocate to the government on behalf of the interests of

the profession); that is the role of a professional Association, not a regulatory College. Self-regulation does not mean self-interest; in fact it means exactly the opposite. Self-regulation means public-interest. That is, the College ensures that the profession acts honestly and competently.

There are a number of safeguards that ensure that the College serves the public interest. They include the following:

i. The Council and the committees of the College also have public members on them (i.e., non-kinesiologists appointed by the government). While public members are a minority of the Council and its committees, they usually form a sizable minority.
ii. Council meetings and discipline hearings are open to the public. The date, time, agenda and supporting materials for all upcoming Council meetings must be posted on the College's website in advance. The date, time and statement of allegations for upcoming discipline hearings must also be posted on the College's website in advance. Observers can attend and observe the proceedings.
iii. The College must consult with kinesiologists and the public before making a regulation or by-law affecting them. The College must circulate the proposed wording of the regulation or certain by-laws for a period of at least 60 days so that people can comment on them.
iv. Decisions of the committees of the College can be reviewed by other bodies. For example, decisions of the Registration Committee or the Inquiries, Complaints and Reports Committee can be referred by the affected individuals to the Health Professions Appeal and Review Board (HPARB). Decisions of the Discipline Committee or the Fitness to Practise Committee can be appealed to the Divisional Court.
v. The government has appointed an oversight body that ensures that the College registration process works in the public interest. The Office of the Fairness Commissioner makes sure that the College's registration practices are transparent, objective, impartial and fair.
vi. The College has to report to the Minister. It has to make an annual report and such other reports as the Minister requests. In addition, each year the College must file and publicly post a detailed description of its performance, known at the College Performance Measurement Framework. The Minister has the ability to make recommendations or even issue directions to the Council of the College. If there are serious concerns the Minster can audit the operations of the College and can appoint a supervisor to take over its administration. The Minister can also require the College to explain how it handled a matter involving an individual applicant for registration or a concern about an individual kinesiologist. Thus, while the College is separate from the government, it still is accountable to the Minister of Health .

These safeguards help ensure that the College serves the public interest in a fair and open manner.

Given the public interest mandate of the College and the safeguards that are in place, kinesiologists elected to the Council need to be careful about their role. Council members are like directors of a corporation who have a duty of loyalty and good faith to the mandate of their organization. Council members are not like politicians who represent and serve those who elected them. The only "constituents" of a Council member are the public as a whole.

Sample Exam Question

What sentence best describes the roles of the College and professional associations?

i. The College serves the public interest and the professional associations serve the interests of the profession.
ii. The College and the professional associations both serve the public interest.
iii. The College and the professional associations both serve the interests of the profession.
iv. The professional associations direct the operations of the College.

The best answer is i. The College's mandate is to regulate the profession in order to serve and protect the public interest. Answer ii is not the best answer because professional associations are designed to serve the interests of their members. While professional associations care about the public interest and often take actions that assist the public interest, they are under no statutory duty to do so and are accountable only to their members. Answer iii is not the best answer because the College is not permitted to serve the interests of its members under its statute. While it tries to ensure that it regulates its members sensitively and fairly, and consults with its members, the College's mandate is the public interest. Answer iv is not correct. While the College consults with the professional associations and considers seriously their views and respects their expertise, the College is not under the control of any professional association.

b. Ethics, professional standards, professional misconduct, incompetence, incapacity

A major part of the College's role is to develop and, sometimes, enforce a Code of Ethics and professional standards. The College takes action against professional misconduct, incompetence and incapacity. Each of these concepts is slightly different in its role and purpose. This section of this handbook looks at each of them.

Code of Ethics

Professions have ethical principles to guide their members. Some of the more common ethical principles are to be honest at all times, to respect the confidentiality of a patient, to treat patients with sensitivity, to maintain one's competence and to allow patients to make informed choices as to their health care. Many professional associations have developed a Code of Ethics for their members.

The College is authorized under its statute and under the *Regulated Health Professions Act* to develop a Code of Ethics for kinesiologists. Such a Code of Ethics takes precedence over the Codes of Ethics of professional associations.

The purpose of the Code of Ethics is to set out the goals or ideals that kinesiologists try to reach. The principles are often set out as positive statements (e.g., a kinesiologist will be honest). This is different from a professional misconduct regulation which sets out the minimum kinesiologists must do to avoid discipline (e.g., a kinesiologist will not issue a false or misleading document). Many principles of the Code of Ethics also encourage kinesiologists to continually improve (one can always try to be more sensitive to the client).

The Code of Ethics is not enforced through the discipline process. Rather, its role is to guide and encourage the kinesiologist. If a kinesiologist follows the principles of the Code of Ethics (e.g., being honest) they will avoid engaging in professional misconduct (e.g., they will not issue a false or misleading document).

Ethics Scenario

> *David, a kinesiologist, is always polite to his patients, in a formal way. He feels good about himself. However, he often says "God" to express surprise. The phrase means nothing to him and no one has ever expressed concerns about it. One of his patients, Paul, has shared that he is very religious. Whenever David says "God" Paul flinches a bit. David notices and asks Paul if the use of the word "God" bothers Paul. Paul says that, actually it does. David makes a point of not saying "God" anymore in front of Paul. After discussing the incident with a colleague, David decides that the ethical thing for him to do is to stop using the word "God" as an expression of surprise whenever he is with a patient because David cannot tell in advance who will be offended.*

Professional Standards

Professional standards describe the way in which kinesiologists practise their profession. For example, it is a professional standard to assess a patient before treating them.

Often the details of the professional standard are not written down anywhere by the College. For example, the College may not have a document describing exactly how a kinesiologist assesses a

patient. Indeed, often how the standard is applied changes with the circumstances (e.g., the answers the patient gives to the kinesiologist's questions will change how the assessment is done). Professional standards are learned through one's education, one's professional reading and learning, one's experience in practice and in one's discussions with other kinesiologists. Professional standards are always changing.

However, to assist kinesiologists, the College develops written publications that discuss professional standards. These publications can have different names (e.g., Standards of Practice, Guidelines, Policies, Position Statements) depending on their context and purpose. The purpose of these publications is to remind kinesiologists about the factors that are required to practice safely, ethically and effectively. These publications are on the College's website and cover a wide variety of topics. These publications will be updated and amended as the needs of kinesiologists and the public indicate a need for greater clarity or direction. While professional standards are not "law" in the same way that a statute or regulation is, failing to comply with a published standard will often lead to a violation of the law or will result in professional misconduct.

Discontinuing Professional Services Scenario

> *Donna, a kinesiologist, wants to stop treating a patient because the patient has stopped paying. She reads an article in the College's newsletter suggesting that patients should be given at least two weeks to find a new kinesiologist before one stops treating the patient. Donna cannot see why she needs to see a patient who is not paying for her services and does not follow the newsletter suggestion. The patient experiences pain once the treatment stops and misses ten days of work before the patient can find another kinesiologist to treat them. The patient complains to the College. After investigating the complaint, the College requires Donna to appear before it to receive a verbal caution because Donna abandoned a patient who was in pain without giving the patient adequate time to find another kinesiologist. The fact that Donna was not paid did not remove her duty to the patient who was in pain.*

Professional Misconduct

Professional misconduct is conduct that falls below the minimum expectations of a safe and ethical kinesiologist. Professional misconduct is written in either the statute or the regulations that apply to kinesiologists. The provisions in the statute and regulations are described in more detail below on professional misconduct regulations. As noted above, many College publications will assist kinesiologists to recognize how to avoid engaging in professional misconduct.

Engaging in professional misconduct can lead to disciplinary proceedings that could result in serious orders (e.g., a fine, suspension or even revocation of one's certificate of registration). It is very serious for a kinesiologist to engage in professional misconduct.

Permitting Illegal Conduct Scenario

David, a kinesiologist, is registered with the College. David's father, who was a kinesiologist, is no longer registered with the College. David's father sometimes drops into David's office to treat his former long term patients. The office assistant refers to David's father as "Doctor" when booking patients. A patient complains to the College when her extended health insurance refused to pay for David's father's services because he was unregistered. Is David at risk for his father's conduct?

The answer is yes. It is professional misconduct to permit a person to hold themselves out as practising the profession when they are not registered. Similarly, permitting a person to illegally use the title "Doctor" in one's practice would often be seen as professional misconduct if David knew about it. David condoned the conduct that occurred at his office. David, by being registered, gave credibility and status to the illegal conduct of his father. David could face a discipline hearing.

Incompetence

Incompetence is where a kinesiologist shows a serious lack of knowledge, skill or judgment when assessing or treating a patient. It is defined in the Act. A concern that a kinesiologist is incompetent can be investigated by the College and can result in a discipline hearing. If the Discipline Committee finds that a kinesiologist is incompetent, it can impose restrictions on the kinesiologist's registration (e.g., the kinesiologist cannot do certain things, such as practising with children) or it can suspend or revoke the kinesiologist's registration.

In any investigation of incompetence, the College will usually look at the kinesiologist's records. They will interview the patient and the kinesiologist and ask other kinesiologists if they think the conduct shows incompetence. Both the investigating committee and the Discipline Committee will have other kinesiologists on it who know the difference between good and bad practice.

Incompetence Scenario

Donna, a kinesiologist, does not really assess her patients. She just asks the patient what is wrong and then gives all of them exactly the same treatment. A patient, Paula, came in with a serious condition. Donna did not recognize it. Paula's condition worsened. Donna still did not recognize it. After three months Paula went to the emergency department of the hospital and was immediately diagnosed and treated correctly. Paula complained to the College about Donna's incompetence. The Inquiries, Complaints and Reports Committee looked at

Donna's records and heard Donna's explanation for what she had done. It sent the case to discipline. The Discipline Committee agreed that Donna showed a lack of knowledge, skill and judgment. It ordered Donna to participate in specific upgrading courses aimed at assessment.

Incapacity

A kinesiologist is incapable when they have a health condition that prevents them from practising safely. . A kinesiologist with severe physical disabilities can practice safely, so long as the kinesiologist understands their limits and gets the necessary help. Most incapable kinesiologists suffer from a substance use disorder or certain mental health diagnoses that impair the kinesiologist's professional judgment. For example, a kinesiologist who has a substance use disorder may try to see patients when they are impaired.

Under the law, incapable kinesiologists are not treated as if they have engaged in professional misconduct or are incompetent. The investigation looks at the kinesiologist's health condition and the treatment that they are receiving. The College can require the kinesiologist be examined by specialist in the are of concern, such as a psychiatrist or a substance use treatment expert. If the concern is justified, the kinesiologist is referred to the Fitness to Practise Committee for a hearing. The Fitness to Practise Committee can order the kinesiologist to undergo medical treatment, have medical monitoring and to restrict their practice. In an extreme case (e.g., where the kinesiologist continues to see patients while impaired) the Fitness to Practise Committee can suspend or revoke the kinesiologist's registration in order to protect the public.

Incapacity Scenario

David, a kinesiologist, has been drinking a lot more alcohol the last few months. He has been coming to work with a hangover. More recently he has been drinking at lunch. One day David comes back after lunch under the influence of alcohol. Paul, a patient, notices that David smells of alcohol and that David is stumbling around the office. Paul tells the College. At first David denies he has a problem. However, during the investigation, the College learns that some of David's colleagues have noticed a significant change in David's behaviour in recent months. The College also learned that David has been charged with impaired driving. The College sends David to a medical specialist who diagnoses David with a serious substance use disorder. The College encourages David to go for treatment.. David agrees. The matter is referred to the Fitness to Practise Committee. David and the College agree to an order requiring David to stop drinking, attend Alcoholics Anonymous group meetings, see his new substance use specialist regularly and have a colleague watch David at work and send regular reports to the College.

Conclusion

Each of the above provisions looks at different aspects of professional practice. Each of these provisions also serves a different purpose. The Code of Ethics deals with the ideals which kinesiologists try to achieve. Professional standards deal with ways in which to practise safely, effectively and professionally. Professional misconduct deals with the minimum conduct necessary to avoid discipline. Incompetence deals with having an adequate level of knowledge, skill and judgment in the assessment and treatment of a patient. Incapacity deals with health conditions that prevent a kinesiologist from practising safely.

Sample Exam Question

The sentence “Kinesiologists are sensitive to the wishes of their patients” is most likely to be found in which of the following provisions?

i. The definition of incapacity.
ii. The definition of incompetence.
iii. The definition of professional misconduct.
iv. Professional standards published by the College.
v. The Code of Ethics.

The best answer is v. Striving to be sensitive is an ideal that kinesiologists work towards. Answer i is not the best answer because incapacity deals with the kinesiologist’s health condition. Seriously insensitive behaviour may accompany some illnesses , but it is the illness that must be treated first. Answer ii is not the best answer because incompetence deals with kinesiologists having an adequate level of knowledge, skill and judgment. Answer iii is not the best answer because professional misconduct deals with the minimum conduct that is necessary to avoid discipline. The corresponding professional misconduct provision would likely be that kinesiologists shall not abuse their patients. Answer iv is not the best answer because professional standards deal with ways in which to practice safely, effectively and professionally. A professional standard would likely provide practical suggestions about how to practice sensitively (e.g., advice on how to listen to the patient first before doing anything else.).

3. Communication

a. Introduction

Many complaints against kinesiologists could be avoided by good communication with patients, staff and colleagues. Good communication involves, first, listening to others. Understanding the person's wishes, expectations and values before doing anything is important. Asking questions to clarify and expand on what the person is saying also helps. Repeating back to a patient, in the kinesiologist's own words, can help ensure understanding and reassures the patient that the kinesiologist has been listening. Good communication also involves making sure that the other person knows what you are going to do, why you are going to do it and what is likely going to happen. When the other person is confused by what you are doing or why, there is miscommunication. Also, people do not like to be surprised (e.g., by pain, an unexpected side effect). Telling the person what will or may happen will remove the surprise. The following section of this book deals with some of the areas in which good communication is particularly important for legal reasons.

b. Informed consent

Patients have the right to control their bodies and their health care. Kinesiologists do not have the right to assess or treat a patient unless the patient agrees to it (i.e., consents). A kinesiologist who assesses or treats a patient without the patient's/client's consent can face criminal (e.g., a charge of assault), civil (e.g., a lawsuit for damages) or professional (e.g., a discipline hearing) consequences. This section of this handbook deals with consent for the assessment and treatment of patients. Other parts of this handbook deal with the need for consent when dealing with a patient's/client's personal health information or for billing them.

General Principles

To be valid, a patient's consent must include the following:

- *Relate to the Treatment.* The kinesiologist cannot receive consent for one procedure (e.g., taking a history of the patient's/client's health) and then use it to do a different procedure (e.g., physically examine the patient). The patient's/client's consent must be for what is actually going to be done.
- *Be Specific.* The kinesiologist cannot ask for a vague consent. For example, one cannot ask for the patient to consent to any treatment the kinesiologist believes is appropriate. One must explain the actual assessment or treatment procedure that is being proposed. This means that the kinesiologist often has to obtain the patient's/client's consent many times as changes in treatment become advisable. This also means that a kinesiologist cannot obtain a "blanket consent" when the patient first comes in, to cover every procedure.
- *Be Informed.* It is necessary that the patient understands what they are agreeing to. The kinesiologist must explain to the patient everything the patient needs to know before asking the patient to give consent. For example, if someone asks for your consent to drive your car without telling you that they intend to use it to race over rocky fields, your consent was not informed. To be informed consent, it must include the following:
    - *Nature of the Assessment or Treatment.* The patient must understand exactly what the kinesiologist is proposing to do. For example, does the kinesiologist intend to just ask questions or will the kinesiologist also be touching the patient? If the kinesiologist is going to be touching the patient, they should tell the patient about it first.

- *Who will be Doing the Procedure?* Will the kinesiologist be doing the procedure personally or will an assistant or colleague be doing it? If it is an assistant or colleague, are they registered with the College, another College, or unregistered?
- *Reasons for the Procedure.* The kinesiologist must explain why they are proposing that procedure. What are the expected benefits? How does the procedure fit in with the overall plan of the kinesiologist? How likely is it that the hoped for benefits will happen?
- *Material Risks and Side-Effects.* The kinesiologist must explain any "material" risks and side-effects. A risk or side-effect is material if a reasonable person would want to know about it. For example, if there is a high risk of a modest side-effect (e.g., discomfort), the patient should be told. Similarly, if there is low risk of a serious side effect (e.g., death or serious harm/injury), the patient needs to be told.
- *Alternatives to the Procedure.* If there are reasonable alternatives to the procedure, the patient must be told. Even if the kinesiologist does not recommend the option (e.g., it is too aggressive and has a higher risk), the kinesiologist should describe the option and tell the patient why the kinesiologist is not recommending it. Also, even if the kinesiologist does not offer the alternative procedure (e.g., it is provided by a member of a different profession, such as a physician), the kinesiologist must tell the patient if it is a reasonable option.
- *Consequences of Not Having the Procedure.* One option for a patient is to do nothing. The kinesiologist should explain to the patient what is likely to happen if the patient does nothing. If it is not clear what will happen, the kinesiologist should say so and provide some likely scenarios.
- *Particular Patient/Client Concerns.* If the individual patient has a special interest in some aspect of the procedure (e.g., its nature, a side-effect), the patient needs to be told (e.g., the procedure would violate the patient's/client's religious beliefs).

- *Voluntary.* The kinesiologist cannot force a patient into consenting to a procedure. This is particularly important when dealing with younger or older patients who may be overly influenced by family members or friends. This is also important where the assessment or treatment will have financial consequences for the patient (e.g., the patient will lose their job or will lose financial benefits if the patient refuses to consent). The kinesiologist should discuss with the patient that consent is their choice and that the patient should not let anyone pressure them into doing something the patient does not want to do.
- *No Misrepresentation or Fraud.* The kinesiologist must not make claims about the assessment or treatment that are not true. For example, telling the patient that a treatment will cure them when in fact the results are uncertain. This situation would not result in a true consent. Patients must be given accurate factual information and honest opinions.

Therefore, consent to an assessment or treatment must involve effective communication between the kinesiologist and the patient. The kinesiologist must make sure that the patient understands what they are agreeing to. While it may sound like a lot of work, most of the time informed consent can be obtained quickly and easily. It is only when dealing with complex or particularly risky matters that a lot of time is required.

Consent Scenario No. 1

Donna, a kinesiologist, meets a new patient Paula. Paula complains about feeling stressed and tired. Donna says: "I would like to fully understand your personal and family background and your medical history. There could be a lot of things making you feel tired and stressed and this information will help me try to figure out why. If you are uncomfortable with any of my questions, please let me know. OK?" Donna has just obtained informed consent for taking a full history.

Sample Exam Question

Obtaining a broad consent (often called a "blanket consent") in writing from the patient on their arrival at the office is probably a bad idea because:

i. The patient does not know if they will need someone to drive them home afterwards.
ii. The patient does not have confidence in the kinesiologist yet.
iii. The patient does not know what they are agreeing to.
iv. The patient does not know how long the visit will be.

The best answer is iii. Informed consent requires the patient to understand the nature, risks and side-effects of the specific procedure proposed by the kinesiologist, as well as who will be performing the assessment or treatment. It is impossible for the patient to know these things upon their arrival at the office. Answer i is not the best answer because it focuses on a side-issue and does not address the main issue. Answer ii is not the best answer because having confidence in the kinesiologist is not enough for there to be informed consent. A patient may trust the kinesiologist and that may motivate the giving of consent, but the patient still needs to know what they are agreeing to. Answer iv is not the best answer because it focuses on a side-issue and does not address the main issue.

Ways of Receiving Consent

There are three different ways in which a kinesiologist can receive consent. Each has its advantages and disadvantages.

- *Written Consent.* A patient can give consent by signing a written document agreeing to the procedure. A written consent provides some evidence that the patient did give consent. One disadvantage of written consent is that people confuse a signature with consent. A patient who signs a form without actually understanding the nature, risks and side-effects of the procedure has not given a true consent. Also, the use of written consent documents can discourage the asking of questions. In addition, the kinesiologist might not then check with the patient to make sure the patient understands the information and is truly consenting.
- *Verbal Consent.* A patient can give consent by a verbal statement. A verbal consent is the best way for the kinesiologist and the patient to discuss the information and ensure that the patient really understands it. Making a brief note in the patient record of the discussion ensures that the discussion is documented, assists in confirming the plan for future care, and can provide useful evidence later on if there is a complaint.
- *Implied Consent.* A patient can give consent by their actions. For example, in Consent Scenario No. 1, above, the patient Paula could just nod her head. That would be implied consent for Donna to begin asking her questions. The main disadvantage of implied consent is that the kinesiologist has no opportunity to check with the patient to make sure that the patient truly understands what is going to happen.

Consent Scenario No. 2

David, a kinesiologist, proposes that his patient Paul take a vitamin and mineral supplement. David says: "Try these: they will make you think more clearly". Paul takes one immediately and buys a bottle from the receptionist. When arriving at home Paul reads about the supplement on the internet and learns that it contains megadoses of Vitamin A[1] which, if taken for a long period of time, could lead to liver and other damage. Paul complains to the College. David tells the College that he was relying on Paul's implied consent by swallowing the first pill and buying a bottle from the receptionist. The Inquiries, Complaints and Reports Committee issues a decision critical of David for not obtaining informed consent because:

- *David did not explain the nature of the "pill" including that it had megadoses of Vitamin A;*
- *David did not explain how the supplement would make Paul think more clearly;*
- *David misrepresented the hoped for benefit of the supplement as there was little evidence to support his very strong statement that it would make Paul think more clearly;*
- *David did not explain the way in which the supplement was to be used (how often to take the supplement and for what period of time);*
- *David did not explain the alternatives to taking the supplement including not taking anything; and, perhaps more importantly,*
- *David did not explain the risks of taking the supplement to Paul.*

Consent Where the Client is Incapable

A patient is not capable of giving consent if the patient either:

- Does not understand the information, or
- Does not appreciate the reasonably foreseeable consequences of the decision.

For example, if the kinesiologist recommends that a patient take a calcium supplement once a day for a month to prevent bone loss and the patient insists that taking 30 supplements at once will prevent the patient from forgetting to take them, it is pretty clear that the patient does not appreciate the consequences of the decision.

A kinesiologist can assume a patient is capable unless there is evidence to the contrary. A kinesiologist does not need to conduct an assessment of the capacity of every patient. However, if the patient shows that they may not be capable (e.g., the patient simply cannot understand the explanation of the kinesiologist) the kinesiologist should assess the patient's capacity. The kinesiologist can assess the capacity of the patient by discussing the proposed procedure with the patient to see if the patient understands the information and appreciates its consequences.

The issue is whether the patient is capable to give consent for the proposed procedure. A patient can be capable to give consent for one procedure but not capable for another. For example, a fifteen year old patient might be capable to consent to an exercise program but not be capable of

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[1] A megadose of Vitamin A probably results in the supplement being classed as a drug. Thus this scenario also raises issues about whether the kinesiologist is engaging in a controlled act. See the discussion of controlled acts below.

consenting to treatment for a major eating disorder. (There is no minimum age of consent for health care treatment.)

If a kinesiologist concludes that the patient is not capable to give consent for a procedure, the kinesiologist should tell the patient. The kinesiologist should also tell the patient who the substitute decision maker will be. The kinesiologist should still include the patient in the discussions as much as possible. Of course there are circumstances where involving an incapable patient in such discussions will not be possible (e.g., if the patient cannot understand the information at all, especially if the discussion could be quite upsetting to the patient(s), where the patient is unconscious).

Unless it is an emergency, the kinesiologist must then obtain consent for the assessment or treatment from a substitute decision maker. A substitute decision maker must meet the following requirements:

- The substitute must be at least 16 years of age.[2] There is an exception where the substitute is the parent of the patient (for example, a 15 year old parent can be the substitute decision maker for the care of their child).
- The substitute must, themselves, be capable. In other words, the substitute must understand the information and appreciate the consequences of the decision.
- The substitute must be able and willing to act.
- There must be no higher ranked substitute who is able and willing to make the decision. The ranking of the substitute decision maker is as follows (from highest ranked to lowest ranked):
  - A court appointed guardian of the person.
  - A person who has been appointed attorney for personal care. The patient would have signed a document appointing the substitute to act on the patient's/client's behalf in health care matters if the patient ever became incapable.
  - A person appointed by the Consent and Capacity Board to make a health decision in a specific matter.
  - The spouse or partner of the patient. A partner can include a same-sex partner. It can also include a non-sexual partner (e.g., two elderly sisters who live together).
  - A child of the patient or a parent of the patient or the Children's Aid Society who has been given wardship of the patient.
  - A parent of the patient who does not have custody of the patient.
  - A brother or sister of the patient.
  - Any other relative.
  - The Public Guardian or Trustee if there is no one else.

[2] While there is no minimum age of consent for a capable patient, a substitute decision maker must be 16 years old.

Here is a scenario that shows how these rules work.

Consent Scenario No. 3

> *Donna, a kinesiologist, proposes a procedure for her patient Paula. Paula does not understand the proposed procedure at all. She is clearly incapable. Donna knows that Paula appointed her friend Pat to be her power of attorney for personal care. However, Pat is travelling outside of the country and cannot be reached. Therefore Pat is not able to make the decision. Donna contacts Paula's elderly mother, but Paula's mother is frail herself and does not feel confident in making the decision. Thus Paula's mother is not willing to act as a substitute decision maker. Paula's sister is willing and able to make the decision on Paula's behalf and appears to understand the information and its consequences for Paula. Paula's sister is able to give the consent even though she is not the highest ranked substitute.*

If there are two equally ranked substitute decision makers (e.g., two sisters of the patient), and they cannot agree, the Public Guardian and Trustee can then make the decision.

A substitute decision maker must consent to treatment decisions on the following basis:

- The substitute must act in accordance with the last known capable wishes of the patient, if known. For example, if terminally ill patient while still thinking clearly said: "Don't send me to the hospital, I want to die at home" the substitute needs to obey those wishes.
- The substitute must act in the best interests of the patient if the substitute does not know of the last known capable wishes of the patient. For example, if a proposed treatment is simple and painless, would make the patient more comfortable through a difficult illness with little risk of harm, the substitute decision maker should consent to it.

Where it becomes clear that a substitute decision maker is not following the above rules the kinesiologist should speak with the substitute decision maker about it. If the substitute decision maker is still not following the above rules in a way that will harm a patient, the kinesiologist should call the office of the Public Guardian and Trustee. The contact information of the Public Guardian and Trustee of Ontario is available on the internet.

Consent Scenario No. 4

> *David, a kinesiologist, proposes a procedure for his patient Paul. Paul does not understand the proposed procedure at all. He is clearly incapable. David knows that Paul appointed his friend Samuel to be his power of attorney for personal care. Samuel is going to inherit Paul's money when Paul dies. Paul has a lot of money. Paul is going to die within a few months. The proposed procedure is simple and painless, would make the patient more comfortable through a difficult illness and has little risk of harm. David is convinced that Samuel is refusing to consent to the treatment in order to inherit more money (even though treatment is not very expensive). The rest of Paul's family is very upset because they want Paul to receive the treatment. David suggests that the family contact the office of the Public Guardian and Trustee.*

The above rules on obtaining informed consent when a patient is incapable come from the *Health Care Consent Act*. Kinesiologists should be familiar with that statute. It is a difficult statute to read. Kinesiologists can read about informed consent, including the requirements of the *Health Care Consent Act* from a number of books and articles and from a number of websites. See the College's website for more details.

Sample Exam Question

Which of the following is the highest ranked substitute decision maker (assuming that everyone was willing and able to give consent):

i. A power of attorney for personal care for the patient.
ii. The patient's/client's live-in boyfriend.
iii. The patient's/client's mother.
iv. The patient's/client's son.

The best answer is i. Only a court appointed guardian is higher ranked than a power of attorney for personal care. Answer ii is not the best answer because the patient's/client's spouse or partner is a lower ranked substitute decision maker. In addition, it is not clear that the live-in boyfriend is a spouse (under the Health Care Consent Act, they must have been living together for at least one year, have had a child together or have a written cohabitation agreement to be spouses). Answers iii and iv are not the best answers because they are lower ranked than both a power of attorney for personal care or a patient's/client's spouse. In addition, the patient's/client's mother and son are equally ranked so either they would have to give the same consent or one would have to sort out which one would give consent.

Emergencies

One exception to the need for informed consent is in cases of emergencies. There are two kinds of emergencies:

- Where the patient is incapable and a delay in treatment would cause suffering or serious bodily harm to the patient.
- Where there is a communication barrier (e.g., language, disability) despite efforts to accommodate the barrier and a delay in treatment would cause suffering or serious bodily harm to the patient.

In either case the kinesiologist must attempt to obtain consent as soon as possible (either by finding a substitute decision maker in the first example or by finding a means of communication with the patient in the second example).

Emergencies are rare for kinesiologists but can occur.

Consent Scenario No. 5

Donna, a kinesiologist, is seeing her patient Paula at the office. Paula suddenly collapses from an apparent heart attack. Donna has a defibrillator in the office. Without trying to get consent from a substitute decision maker, Donna uses the defibrillator. Donna was able to act without consent in these circumstances.

Across the city, David, a kinesiologist, is seeing his patient Paul at the office. Paul has terminal cancer and has filled out a wallet card saying that he does not want any measures taken to resuscitate him should he have a cardiovascular incident t. Paul has mentioned this to David. Paul suddenly collapses from an apparent heart attack. David has a defibrillator in the office. David is not able to act without consent in these circumstances. David already has a refusal from Paul that applies to these circumstances.

c. *Boundaries and sexual abuse*

Kinesiologists must be careful to act as a professional health care provider, and not as a friend, to patients. Becoming too personal or too familiar with a patient may be confusing to patients and may make them feel uncomfortable. Patients will be uncertain as to whether the professional advice or services are motivated by something else other than the best interests of the patient. It is also easier for a kinesiologist to provide professional services when there is a “professional distance” between them and the patient (e.g., telling the patient the truth about the patient’s/client’s condition).

Maintaining professional boundaries is about being reasonable in the circumstances. For example, one should be careful about accepting gifts from patients, but there are some circumstances in which it is appropriate to do so (e.g., a small New Year’s gift from a patient). In other areas, however, crossing professional boundaries is never appropriate. For example, it is always professional misconduct to engage in any form of sexual behaviour with a patient, unless the narrow spousal exception applies, as discussed below

The following are some of the areas where kinesiologists need to be very cautious to maintain professional boundaries.

Self-Disclosure

When a kinesiologist shares personal details about their private life, it can confuse patientpatient. They might assume that the kinesiologist wants to have more than a professional relationship. Self-disclosure suggests that the professional relationship is serving a personal need for the kinesiologist rather than serving the patient’s/client’s best interests. Self-disclosure can result in the kinesiologist becoming dependent on the patient to serve the kinesiologist’s own emotional needs, which is damaging to the relationship.

Self-Disclosure Scenario

> *Donna, a kinesiologist, is treating Paula for workplace stress-related conditions. Paula is having difficulty deciding whether to marry her boyfriend and talks to Donna about this issue a lot during treatment sessions. To help Paula make up her mind, Donna decides to tell Paula details of her doubts in accepting the proposal from her first husband. Donna tells of how those doubts gradually ruined her first marriage resulting in both her and her husband having affairs. Paula is offended by Donna’s behaviour and stops coming for treatment.*

Giving or Receiving of Gifts

Giving and receiving gifts is potentially dangerous to the professional relationship. A small token of appreciation by the patient purchased while on a holiday, around New Year’s, or given at the end of treatment may be acceptable. In addition, one must be sensitive to the patient’s/client’s culture where refusing a gift may be considered to be a serious insult. However, anything beyond small gifts can indicate that the patient is developing a personal relationship with the kinesiologist. The patient may even expect something in return. Gift giving by a kinesiologist will often confuse a patient. Even small gifts of emotional value, such as a “friendship” card, can confuse the patient even though the financial value is small. While many patients would find a Christmas / holiday season card from a kinesiologist to be a kind gesture and good business sense, some patients might feel obliged to send one in return. So even here thought should be given to the type of patients in one’s practice .

Gift Giving Scenario

David, a kinesiologist, has a patient from a Mediterranean culture who brings food for every visit. David thanks her, but tries not to treat it as an expectation. On one visit David happens to mention his home-made pizza recipe. The patient insists that David bring it over to her house for Thanksgiving. David politely declines, giving the patient a written recipe instead. The patient stops bringing in food, is less friendly during visits and starts missing appointments. David did not do anything wrong, in this scenario, but it shows the confusion that can occur with a patient when the boundaries start to be crossed.

Dual Relationships

A dual relationship is where the patient has an additional connection to the kinesiologist other than just patient (e.g., where the patient is a relative of the kinesiologist). Any dual relationship has the potential for the other relationship to interfere with the professional one (e.g., being both the individual's kinesiologist and employer). It is best to avoid dual relationships whenever possible. Where the other relationship predates the professional one (e.g., a relative, a pre-existing friend), referring the patient to another kinesiologist is the preferred option. Where a referral is not possible (e.g., in a small town, where there is only one kinesiologist), special safeguards are essential (e.g., discussing the dual relationship with the patient and agreeing with the patient to be formal during visits and never talk about the issues outside of the office).

Dual Relationships Scenario

Donna, a kinesiologist, has Paula as a patient. . Paula works part-time as a house cleaner and has a limited income. Donna decides to hire Paula to clean Donna's house. Donna also recommends Paula to some of Donna's friends who also hire Paula. Paula is extremely grateful. Later Donna recommends a change in treatment that will not be covered by Paula's insurance. Paula wonders to herself if Donna is recommending this treatment in order to get back the money for cleaning Donna's house. Paula also feels that she cannot say no or else she will lose her job cleaning the houses of Donna's friends. Did the dual relationship contribute to Paula's confusion?

Treating Family Members, Other Close Personal Relations

Kinesiologists may periodically find themselves in a position where they must decide whether to provide treatment to a family member(s) or someone with whom they share a close, personal relationship (where the relationship is of such a nature that it would reasonably affect the kinesiologist's professional judgment). The term family member refers to anyone with whom the kinesiologist has a close personal relationship with but does not include a spouse as defined below. It is generally inadvisable to provide treatment to family members, including a spouse, except in exceptional circumstances. This is because, despite a kinesiologist's intentions to deliver the best possible care, clinical objectivity may be compromised.

Exceptional circumstances exist when the benefits of providing treatment to a family member(s) outweigh the risks. There is always a real and inherent risk when treating someone with whom a kinesiologist has a close personal relationship. The therapeutic patient-kinesiologist relationship is the foundation of safe, ethical care and the existence of a close personal relationship can threaten the efficacy of treatment.

Exceptional circumstances may exist where:

• There is no other similar or viable health care provider available
• There is a demonstrated financial hardship
• The patient's/client's level of distrust and/or discomfort is such that he/she is otherwise unlikely to seek treatment from a practitioner whom they do not know (for example, a family member who has been the victim of abuse)
• There exists a real barrier to the patient accessing other health care services (for example, a severe communication disability)

Often many of these factors may co-exist, which makes the circumstance exceptional. These circumstances may also no longer exist at some point. The kinesiologist must continue to evaluate the circumstances in which they are providing treatment and if other treatment becomes available to transfer the patient as soon as possible. The best interests of the patient must always be paramount. It is in their best interests to receive safe, ethical and effective treatment from someone they can access and trust. The best interests must be assessed from the patient's/client's perspective.

If a kinesiologist determines that treating a family member is in the best interests of that family member(s), they remain accountable to the College for care/services provided. Kinesiologists are expected to adhere to the College's Practice Standards in any situation. A kinesiologist should consider how they will fulfill their obligations as a regulated health professional before treating a family member.

Ignoring Established Customs

Established customs usually exist for a reason. Ignoring a custom confuses the nature of the professional relationship. For example, treatment sessions are usually held during regular business hours at the clinic rather than at a restaurant. Ignoring this custom, the patient might begin thinking that the meeting is a social visit. Or, the patient might feel that they have to pay for the meal. Treating patients as special, or different from other patients, can be easily misinterpreted.

Personal Opinions

Everyone has personal opinions. Kinesiologists are no exception. However, kinesiologists should not use their position to promote their personal opinions (e.g., religion, politics or even a vegan lifestyle) on patients. Similarly, strongly held personal reactions (e.g., that a client is unpleasant and obnoxious) should not be shared. Disclosing personal reactions does not help the professional relationship.

Personal Opinions Scenario

> *Paul, a patient discussing world events, pushes for David's, his kinesiologist's, views on immigration. At first David resists, but eventually says he has some concerns about the abuses of the immigration system. David says he has heard, often directly from patients, about how they have lied to the immigration authorities. Paul loudly criticizes the immigration authorities for allowing too many immigrants into the country. Paul is overheard by other patients in the clinic at the time, including some who are new Canadians. The other patients tell other staff at the clinic that they feel uncomfortable with either David or Paul around.*

Becoming Friends

Being a personal friend with a patient is a form of dual relationship. Patients should not be placed in the position where they feel they must become a friend of the kinesiologist in order to receive ongoing care. Kinesiologists bear the main responsibility to not allow a personal friendship to develop. It is difficult for all but the most assertive of patients to communicate to the kinesiologist that they do not want to be friends.

Touching and Disrobing

Touching can be easily misinterpreted, particularly where disrobing is involved. A patient can view an act of encouragement by a kinesiologist (e.g. a hug) as an invasion of space or even a sexual gesture. Extreme care must be taken in any touching between kinesiologists and their patients. The nature and purpose of any clinical touching must always be explained first and the patient should always give consent before the touching begins. Patients should be asked to disrobe themselves wherever possible. Cultural sensitivities should be observed. The presence of a third party should be permitted and even offered where appropriate. The touching must always have a clinical relevance that is obvious to the patient.

Managing boundaries is important for both kinesiologists and patients.

Sexual Abuse

The *Regulated Health Professions Act* (*RHPA*) is designed to eliminate any form of sexual contact between health care professionals and patients. Because of the status and influence of kinesiologists, there is the potential for any such sexual contact to cause serious harm to the patient. Even if the patient consents to the sexual contact, it is prohibited for the kinesiologist.

The term "sexual abuse" is defined broadly in the *RHPA*. It includes the following:

- sexual intercourse or other forms of physical sexual relations between the health care professional (e.g., kinesiologist) and the patient;

- touching, of a sexual nature, of the patient by the kinesiologist; or
- behaviour or remarks of a sexual nature by the kinesiologist towards the patient.

For example, telling a patient a sexual joke is sexual abuse. Hanging a calendar on the wall with sexually suggestive pictures (e.g., women in bikinis, a "fire fighters" calendar) is sexual abuse. Non-clinical comments about a patient's/client's physical appearance (e.g., "you look sexy today") is sexual abuse. Dating a client is sexual abuse.

Under the Regulated Health Professions Act, 1991 (RHPA), regulated health professionals are not permitted to treat their spouses, and it is considered sexual abuse. In 2012, the Ministry of Health updated the RHPA to allow individual professions to decide if they wanted to exempt spouses from the RHPA's definition. Colleges who wished to adopt this spousal exemption were required to submit a regulation allowing this exemption. As of December 2015, the College voted to submit the regulation to the Ministry of Health and remove spouses from the RHPA definition. The regulation was finally filed on October 22, 2021. This regulation means that the treatment of spouses from that date onwards will not automatically be deemed sexual abuse, and the rule will read:

"Conduct, behaviour or remarks that would otherwise constitute sexual abuse of a patient by a member under the definition of "sexual abuse" in subsection 1(3) of the Health Professions Procedural Code of the *Regulated Health Professions Act, 1991*, shall not constitute sexual abuse if:

(a) the patient is the member's spouse; and
(b) the member is not engaged in the practice of kinesiology at the time the conduct, behaviour or remarks occur."

Such a regulation only applies to pre-existing spousal relationships; it is always considered sexual abuse to initiate a sexual relationship with an existing patient, and, in some cases, former patients.

The definition of "spouse" is narrow. In general terms it refers to people who are married to each other or who have lived in a conjugal relationship outside of marriage continuously for a period of not less than three years. If the definition is not met, the spousal exception does not apply and treating the patient would still be considered sexual abuse. If in doubt, obtain legal advice.

Touching, behaviour or remarks of a clinical nature is not sexual abuse. For example, if it is necessary for the treatment of a patient to ask about the patient's sexual history, it can be done. However, asking about a patient's romantic life where this is unnecessary for treatment is sexual abuse. Similarly, touching of the chest or pelvic area of a patient must be clinically necessary (and, as discussed above, be done only after receiving informed consent).

It is always the responsibility of the kinesiologist to prevent sexual abuse from happening. If a patient begins to tell a sexual joke, the kinesiologist must stop it. If the patient makes comments about the appearance or romantic life of the kinesiologist, the kinesiologist must stop it. If the patient asks for a date, the kinesiologist must say no (and explain why it would be inappropriate). If the patient initiates sexual touching (e.g., a kiss), the kinesiologist must stop it.

Sexual Abuse Scenario No. 1

Donna, a kinesiologist, tells a colleague about her romantic weekend with her husband at Niagara-on-the-Lake for their anniversary. Donna makes a joke about how wine has the opposite effect on the libido of men and women. Paula, a patient, is sitting in the reception area and overhears. When being treated by Donna, Paula mentions that she overheard the remark and is curious as to what Donna meant by this, as in her experience, wine helps the libido of both partners. Has Donna engaged in sexual abuse? Donna clearly has crossed boundaries by making the comment in a place where a patient could overhear it. However, the initial comment was not directed towards Paula and was not meant to be heard by her. It would certainly be sexual abuse for Donna to answer Paula's question. Donna should apologize for making the comment in a place where Paula could hear it and state that Donna needs to focus on Paula's treatment.

Because sexual abuse is such an important issue, Colleges must take it very seriously. Each College must take steps to prevent sexual abuse from occurring. For example, the Patient Relations Committee of the College must develop a sexual abuse prevention plan that will educate kinesiologists, kinesiology training programs, employers of kinesiologists, and the public about avoiding sexual abuse.

In addition, kinesiologists are required to make a report where the kinesiologist has reasonable grounds to believe that another health care provider has engaged in sexual abuse. The report is made to the Registrar of any health College where the other health provider is registered. For example, if a patient tells a kinesiologist that her physiotherapist touched her inappropriately , the kinesiologist must make a written report to the Registrar of the College of Physiotherapists of Ontario. This reporting obligation is discussed in more detail below, under the heading "Mandatory Reports".

There are also a number of special provisions dealing with the handling of sexual abuse matters in the complaints and discipline process. Such complaints are always taken seriously. If the complaint involves sexual touching and if there is evidence to support the complaint, a referral to discipline for a hearing is likely.

At the discipline hearing the identity of the patient is protected. The patient may even be given a role at the discipline hearing (e.g., to make a statement on the impact of the sexual abuse on the patient if a finding is made).

Where a finding of sexual abuse is made, there is a mandatory minimum penalty. If the sexual abuse involved sexual intercourse, or other specified sexual acts (e.g., sexual touching of a patient/s/client's genitals, anus, breasts or buttocks), the kinesiologist's registration will be revoked for a period of at least five years. In cases where revocation is not imposed, the kinesiologists' registration will still be suspended for a period of time. In all cases, the kinesiologist will be reprimanded.

Further, if a finding of sexual abuse has been made, the kinesiologist can be ordered to pay for the costs of any counselling and therapy of the patient. The College is also responsible to pay for at least some of the costs of any counselling or therapy needed by the patient in relation to alleged sexual abuse.

Kinesiologists should therefore consider ways of preventing sexual abuse (or even the perception of sexual abuse). Experience indicates that most sexual abuse is not done by ~~predators~~ with the

deliberate intent of exploiting a vulnerable person. Rather, in most cases the kinesiologist and the patient develop romantic feelings for each other and the kinesiologist fails to act to prevent it.

Where any romantic feelings develop, the kinesiologist has only one option: put a stop to them immediately. In most circumstances, it would also be advisable to transfer the care of the patient to another kinesiologist immediately.

Other suggestions for preventing even the perception of sexual abuse include the following:

- Do not engage in any form of sexual behaviour, including comments or remarks of a sexual nature, towards a patient.
- If a client initiates sexual behaviour, put a stop to it. Be sensitive, but firm when doing so.
- Do not date current or former patients.
- Avoid self-disclosure.
- Avoid comments that might be misinterpreted ("You are looking good today").
- Do not take a sexual history unless there is a good clinical reason for doing so. If one must take a sexual history, explain why first and be very clinical in one's approach.
- Do not touch a patient except when necessary for assement or treating them. If one must touch a patient, explain the nature of the touching first, the reason for the touching and be very clinical in one's approach (e.g., wear gloves). Consider having a third person in the room if examining or otherwise touching a disrobed patient.
- Be sensitive when offering assistance to patients who may not be mobile. Ask both whether and how best to help them before doing so.
- Avoid hugging and kissing patients.
- Be aware and mindful of cultural, religious, age, gender and other areas of differences. If in doubt, ask if one's proposed action is acceptable to the patient.
- Do not comment on a patient's body or romantic life.
- Document well any clinical actions of a sexual nature or any incidents of a sexual nature.

Dating former patients is a sensitive issue. Dating a former patient is legally prohibited for a period of at least one year following the date on which the patient left the care of kinesiologist. Dating a former patient before the expiry of the one-year period is considered sexual abuse.

It is important to note that who will be considered a patient for the purpose of determining whether sexual abuse has occurred is very broad. A person is considered a patient of a kinesiologist if any of the following criteria are met:

- The kinesiologist has provided a health care service to the person.
- The kinesiologist has charged or received payment from the person or a third-party (e.g. insurance company) for a health care service provided to the person.
- The kinesiologist has contributed to a health record or file for the person.
- The person has consented to a health care service recommended by the kinesiologist.

It is therefore not necessary for a kinesiologist to have provided a health care service directly to a person for that person to be considered a patient; for example, if a kinesiologist contributes to a health care record for a person, that person is considered a patient of the kinesiologist for a period of one year.

Sexual Abuse Scenario No. 2

David, a kinesiologist, is attracted to his patient Paul. David notices that he is looking forward to working on the days when Paul will be there. David extends the sessions a few minutes in order to chat informally with Paul. David thinks Paul might be interested as well by the way that he makes eye contact. David notices that he is touching Paul on the back and the arm more often. David decides to ask Paul to join him for a coffee after his next visit to discuss whether Paul is interested in him. If Paul is interested, David will transfer Paul's care to a colleague. If Paul is not interested then David will make the relationship purely professional. David decides to ask a colleague, Donna, for advice.

Donna, correctly, tells David that he has already engaged in sexual abuse by letting the attraction develop while continuing to treat Paul. Donna also says that it is important for David to transfer the care of Paul right away and certainly before they get together for coffeeto cease pursuing a personal/romantic relationship with him. Donna reminds David that dating a patient is prohibited for a period of at least one year after the patient leaves the kinesiolgist's care, and that dating a patient within this period would be considered sexual abuse that could lead to the revocation of David's registration.

Sample Exam Question

Which of the following is sexual abuse:

i. Taking a sexual history when it is clinically necessary to do.
ii. Using glamour shots of scantily dressed Hollywood stars as your interior design theme in order to attract younger patients.
iii. Telling an employee a sexual joke when there are no patients around.
iv. Dating a former patient after not having had any contact with the patient or their health care for a period of five years.

The best answer is ii. These pictures sexualize the atmosphere at the clinic which is inappropriate in a health care setting. Answer i is not the best answer because taking a sexual history is appropriate when it is needed to assess the patient and it is done professionally. Answer iii is not the best answer because the sexual abuse rules only apply to patients. Sexual behaviour with employees may, however, constitute sexual harassment under the Human Rights Code and could otherwise be unprofessional. Answer iv is not the best answer because the person has not been a patient more than one year at the time of dating. However, it might still be unprofessional to date a former patient after they stop being a patient regardless of the time period, particularly if the kinesiologist had an intense or intimate role in the treatment of the patient.

d. Interprofessional collaboration

It is in the best interest of patients if all of their health care providers work with each other in collaboration. Such collaboration would help ensure that treatments are coordinated and as effective as possible. Collaboration would also reduce the chances of there being conflicting or inconsistent treatment (e.g., phasing out a patient's/client's drug prescriptions as other forms of treatment begin to work). Collaboration could also reduce the chances of patients receiving inconsistent information and advice.

The *Regulated Health Professions Act* requires the College to promote interprofessional collaboration. The College tries to model this collaboration by working together with other health Colleges (e.g., sharing information on investigations, developing standards together to promote their

consistency). In addition, the College attempts to help kinesiologists collaborate with registrants of other health care professions when treating the same patients.

The patient controls the extent of interprofessional collaboration. If a patient is uncomfortable with it, the patient can direct kinesiologists not to share the patient's/client's personal health information with others. The kinesiologist must comply with such a direction unless one of the exceptions in the *Personal Health Information Protection Act* (which is discussed in more detail below) applies.

Kinesiologists should discuss any planned interprofessional collaboration with the patient when possible. However, there are circumstances where prior patient consent is not possible (e.g., when the patient goes to the hospital in an emergency and the hospital calls asking about what treatment the patient has received). Kinesiologists can disclose information needed for the treatment of the patient without consent so long as the patient has not prohibited the kinesiologist from doing so.

Interprofessional collaboration only succeeds if kinesiologists respect their colleagues. Even if the kinesiologist does not agree with the approaches taken by the other colleague, communications should be respectful. Kinesiologists should share information and cooperate with their colleagues whenever possible. Reasonable attempts to coordinate treatment should be made. Compromises may sometimes need to be made (e.g., as to which treatment to try first). Interprofessional rivalries should be set aside; it is the patient's/client's best interests that should come first. Attempts should be made to avoid forcing the patient to choose which health care provider to use (avoid saying: "either she goes or I go").

Where interprofessional collaboration involves working in a multi-disciplinary setting (i.e., a place where registrants of different professions work together and where patients are often seen by multiple health care providers), other issues arise, including the following:

- Will the setting have shared records or will the kinesiologist have separate records?
- If the records are shared, will the kinesiologist keep any private notes outside of the shared record? If so, how will the kinesiologist make sure that the other health care providers have access to the information they need?
- How does the setting deal with the wording used in the records? Will everyone use the same abbreviations?
- What happens to the records if the kinesiologist leaves to practise elsewhere? Will the patient be told where the kinesiologist has gone? Will another kinesiologist from the setting take over the patient's/client's care? Will the patient be given a choice? The patient really should be given a choice although some settings will only do so if the patient asks.
- Who is the health information custodian that owns the records?
- Will there be one person who has overall responsibility for the care of the patient? If so, who? If not, how will the patient's/client's care be coordinated?
- How will disagreements be dealt with in the approach to the care of the patient? If it is the kinesiologist who is in disagreement, when and how does the kinesiologist tell the patient?
- Is the patient aware of all of the above?

This is one of the many areas covered in this document in which a kinesiologist should consider consulting with their own lawyer.

While interprofessional collaboration will be complicated and challenging for the kinesiologist, it is the inevitable direction of health care in Ontario. It is also in the best interest of most patients.

Interprofessional Collaboration Scenario

Donna, a Kinesiologist, has started up her own rehabilitation clinic. Donna receives a referral from a GP for one of his more challenging patient, Paula, who was involved in a motor vehicle collision three years earlier and has not responded well to the treatment she has received. Paula was seen by a physiatrist who completed a normal physical assessment and had a cervical recumbent MRI completed. The physiatrist has continually recommended cervical muscular strengthening with ROM stretching that has been carried out by a physiotherapist. Paula reports feeling much worse after rehabilitation treatments and insists that her pain and dysfunction have had little to no improvement over the years of treatment. Her physiatrist wants her to continue with the exercise regimen.

Donna completes her own physical assessment and declines to complete the physiatrist's suggested exercise regimen. Donna convinces Paula's GP to obtain a set of lateral stress X-rays. Donna understands that a static recumbent MRI would be unable to detect these dynamic lateral stress X-ray findings and also suggests that it was time to obtain an Upright Weight Bearing MRI. She sent Paula back to the physiatrist with the findings of the lateral stress X-rays and the suggestion to obtain the UWB MRI. The physiatrist was agitated by Donna's referral back to him. He told Paula that the radiologist's report and findings of the lateral stress X-rays were nothing and that his own physical examinations could detect pathology just fine. The physiatrist also told Paula that there are no Upright Weight Bearing MRI's in Canada and that it would be a waste of money to go down to the US to obtain one. He said that if Donna didn't want to do the exercises he suggested then she should seek out someone else to assist her with them. Paula did travel to the US and obtained an Upright Weight Bearing MRI that confirmed multiple ligamentous failure and other traumatic non-degenerative structural pathology. As suspected by Donna there were other biomechanical issues going on with Paula that were never properly addressed. With the new information Paula, Donna and the physiatrist agree that a new course of treatment is indicated.

e. Billing

The College does not set fees for kinesiologists to charge. Establishing fees is not part of the mandate of the College. In fact, the College does not regulate the amount a kinesiologist can bill the patient unless the fee is excessive. A fee is excessive when it takes advantage of a vulnerable patient or is so high that the profession would conclude that the kinesiologist is exploiting a patient.

However, the College does regulate the way in which kinesiologists bill patients. Billing must be open and honest. Patients must be told the amount of the kinesiologist's fees before the service is provided. The patient must also be advised that they are free to purchase any products elsewhere; the patient is not required to buy them from the kinesiologist. The best way to tell patients the amount of the fees is to give patients a written list or description of the fees of the kinesiologist. However, the patient can also be told verbally or there can be a sign clearly displaying the fees in the reception area of the practice. The problem with those methods of notification is that the patient might forget. The list or description of the fees must include all charges including any penalties for late payment.

A kinesiologist must provide an itemized bill for professional services provided to a client. The bill must describe the services that were provided and the products that were given. Any document

relating to fees (e.g., a bill or a receipt) must be accurate. For example, it would be inaccurate for the document to do the following:

- Indicate that the kinesiologist provided the service when someone else did.
- Indicate the wrong date for the service. For example, it is unprofessional to put in a date when the patient had insurance coverage rather than the actual date of service when the patient did not have insurance coverage.
- Indicate that one service was performed when, in fact, another service was provided. For example, it is unprofessional to indicate that the fee is for a follow-up visit when in fact there was only a telephone conversation.
- Bill for services at more than the kinesiologist's usual rate because the service is being paid for by an insurance company.
- Indicate that a service was performed when, in fact, no service was performed. For example, it is unprofessional to indicate that a patient visit occurred when, in fact, the patient missed the appointment and a late cancellation fee is being billed.

No fee can be billed when no service was provided. The only exception is that a fee can be billed when a patient misses an appointment or cancels the appointment on very short notice. However, most insurance companies will not pay for a missed appointment and the fee must be charged directly to the patient.

Kinesiologists cannot offer a reduction in the amount of a bill if it is paid immediately. That would give patients with a higher income an advantage over other patients. However, a kinesiologist can charge interest in overdue accounts because there is an actual cost to kinesiologists in collecting them.

Some kinesiologists offer "free" initial consultations. This is often more of an advertising issue than a billing issue. See the discussion of advertising below. The main point is that any such offers must be completely honest. The initial consultation must be complete and not just a partial service. There must be no requirement to attend a second time (e.g., to get the results). There must be no hidden charges. The offer must be open to everyone.

Billing Scenario

> *David, a kinesiologist, has a posted rate of $120 per visit in the reception area of his office. In fact, if the patient is paying for the service personally and does not have extended health insurance coverage, David provides a credit reducing the rate to $99 per visit. If a patient has special financial needs, David will consider reducing his rate even further; in fact he has three regular patients who pay only $5 per visit.*
>
> *The above scenario is contrary to the professional misconduct regulation. In effect David's posted fees are not honest and accurate. David is, in effect, billing clients with insurance more than his actual regular fee.*
>
> *It is acceptable, however, for David to lower his actual fee in individual cases of financial hardship. David has to do this on a case-by-case basis and not through a general policy intended to hide his true fee.*

4. Law

a. Types of law

There are a number of sources of law. They include the following:

- *Statutes.* Most often when one thinks of law, one thinks of statutes (also called Acts). There are overriding statutes that take priority over other statutes such as the *Canadian Charter of Rights and Freedoms.* The statutes that kinesiologists will need to be most aware are the *Regulated Health Professions Act* and the *Kinesiology Act*. Statutes are made by the Legislative Assembly (in Ontario, the Legislative Assembly is often called Queen's Park).
- *Regulations.* Regulations are made by the government when a statute permits them to be made. Under the *Regulated Health Professions Act* regulations can be proposed by the College (e.g., registration, professional misconduct, quality assurance) or by the Minister of Health (e.g., controlled acts, professional corporations).
- *By-laws.* By-laws are made by the College. They deal primarily with the internal operations of the College. Some by-laws affect kinesiologists (e.g., fees, professional liability insurance, information that must be provided by kinesiologists to the College, additional information that could be put on the public register, election of kinesiologists to the Council of the College).
- *Case Law.* Court decisions are used as a guide by lawyers and judges when similar issues arise in the future. Courts try to be consistent, so long as the result is not unfair. Court decisions are particularly important on guiding the procedure of College committees (e.g., investigations by the Inquiries, Complaints and Reports Committee, the Discipline Committee).
- *Guiding documents.* The College publishes official documents called Standards of Practice, Guidelines, Policy Statements and Position Statements. These documents are not actually "law". However, they help kinesiologists and College committees understand and interpret the law. As such these documents are important for kinesiologists to read and understand. These documents are sometimes called "soft law".

Below is a discussion of the laws that are most applicable to the daily professional life of kinesiologists.

b. RHPA

The *Regulated Health Professions Act* applies equally to all 26 health Colleges. It sets out the duties and responsibilities of the Minister of Health ; the Colleges and each of its committees; and of regulated health professionals, including kinesiologists. The profession-specific statute of each College (i.e., the *Kinesiology Act*) integrates the *Regulated Health Professions Act* into that statute so that they can be treated as one Act.

i. Controlled acts and delegation

There are certain health care procedures that are potentially dangerous and should only be done by a properly qualified person. These potentially dangerous procedures have been listed in the *Regulated Health Professions Act*. They are called “controlled acts”. No one can perform controlled acts without legal authority.

The fourteen controlled acts are as follows:

1. Communicating to the individual or his or her personal representative a diagnosis identifying a disease or disorder as the cause of symptoms of the individual in circumstances in which it is reasonably foreseeable that the individual or his or her personal representative will rely on the diagnosis.
2. Performing a procedure on tissue below the dermis, below the surface of a mucous membrane, in or below the surface of the cornea, or in or below the surfaces of the teeth, including the scaling of teeth.
3. Setting or casting a fracture of a bone or a dislocation of a joint.
4. Moving the joints of the spine beyond the individual’s usual physiological range of motion using a fast, low amplitude thrust.
5. Administering a substance by injection or inhalation.
6. Putting an instrument, hand or finger,
    i. beyond the external ear canal,
    ii. beyond the point in the nasal passages where they normally narrow,
    iii. beyond the larynx,
    iv. beyond the opening of the urethra,
    v. beyond the labia majora,
    vi. beyond the anal verge, or
    vii. into an artificial opening into the body.
7. Applying or ordering the application of a form of energy prescribed by the regulations under this Act.
8. Prescribing, dispensing, selling or compounding a drug as defined in the *Drug and Pharmacies Regulation Act*, or supervising the part of a pharmacy where such drugs are kept.
9. Prescribing or dispensing, for vision or eye problems, subnormal vision devices, contact lenses or eye glasses other than simple magnifiers.
10. Prescribing a hearing aid for a hearing impaired person.
11. Fitting or dispensing a dental prosthesis, orthodontic or periodontal appliance or a device used inside the mouth to protect teeth from abnormal functioning.
12. Managing labour or conducting the delivery of a baby.
13. Allergy challenge testing of a kind in which a positive result of the test is a significant allergic response.
14. Treating, by means of psychotherapy technique, delivered through a therapeutic relationship, an individual’s serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual’s judgement, insight, behaviour, communication or social functioning.

The seventh controlled act refers to forms of energy set out in the Minister’s regulation. That regulation lists the following forms of energy that cannot be used:

1. Electricity for,

i. aversive conditioning,
ii. cardiac pacemaker therapy,
iii. cardioversion,
iv. defibrillation,
v. electrocoagulation,
vi. electroconvulsive shock therapy,
vii. electromyography,
viii. fulguration,
ix. nerve conduction studies, or
x. transcutaneous cardiac pacing.

2. Electromagnetism for magnetic resonance imaging.
3. Soundwaves for,
   i. diagnostic ultrasound, or
   ii. lithotripsy.

Since only diagnostic ultrasound is prohibited, that means that therapeutic ultrasound is not a controlled act.

The eighth controlled act refers to the definition of a drug in the *Drug and Pharmacies Regulation Act.* It reads as follows:

"drug" means any substance or preparation containing any substance,
(a) manufactured, sold or represented for use in,
(i) the diagnosis, treatment, mitigation or prevention of a disease, disorder, abnormal physical or mental state or the symptoms thereof, in humans, animals or fowl, or
(ii) restoring, correcting or modifying functions in humans, animals or fowl,
(b) referred to in Schedule I, II or III,
(c) listed in a publication named by the regulations, or
(d) named in the regulations,
but does not include,
(e) any substance or preparation referred to in clause (a), (b), (c) or (d) manufactured, offered for sale or sold as, or as part of, a food, drink or cosmetic,
(f) any "natural health product" as defined from time to time by the *Natural Health Products Regulations* under the *Food and Drugs Act* (Canada), unless the product is a substance that is identified in the regulations as being a drug for the purposes of this Act despite this clause, either specifically or by its membership in a class or its listing or identification in a publication,
(f.1) cannabis, other than,
(i) a drug containing cannabis to which the *Cannabis Regulations* (Canada) apply,
(ii) cannabis obtained for medical purposes in accordance with Part 14 of those Regulations or in accordance with a court order, and
(iii) cannabis that is identified in the regulations as being a drug for the purposes of this Act despite this clause,
(g) a substance or preparation named in Schedule U,
(h) a substance or preparation listed in a publication named by the regulations, or
(i) a substance or preparation that the regulations provide is not a drug;

Unfortunately, this definition refers to a number of other provisions. Kinesiologists may need to do some research or obtain advice when dealing with a specific substance. A general rule is that if a substance has a DIN (drug identification number) it is usually considered to be a drug.[4]

It is important for kinesiologists to be familiar with the above list of controlled acts.

Controlled Acts Scenario No. 1

> *David, a Kinesiologist, is traveling with an Ontario Amateur Wrestling Team at an International Open Tournament in Northern Ontario. David has years of training and experience treating injured athletes and is also accompanied by a physician sports medicine specialist. Two wrestlers are warming up for the next match and one of the wrestlers receives a gash laceration wound over his left eye and profuse bleeding. The physician, who travels to the hospital with another unconscious wrestler, instructs David to stop the bleeding and stitch up the wrestler's laceration. David, following the physician's instruction and using the medical kit left behind, stitches up the laceration. On the flight back, for the first time, the physician looks at David's stitching work from the previous day. He comments that the wound seems a little red and tells the wrestler to follow up with his family physician and removes David's stitching.*
>
> *David performed a controlled act (performing a procedure below the dermis) that is not authorized to kinesiologists. However, as discussed below, he did so in an emergency situation (which is a recognized exception to the prohibition) and did it under the delegation of a physician. Thus he is not at risk for illegal conduct. However, he might still face civil liability if he did so negligently (e.g., if an infection develops because of poor sterile technique and a failure to advise the wrestler to follow up with his own physician).*

There are four ways in which a health care provider can receive legal authority to perform a controlled act:

- ***Authorization.*** Being authorized to perform the controlled act by the health care provider's enabling statute. The *Kinesiology Act* does not authorize kinesiologists to perform any controlled acts.
- ***Exceptions.*** The *Regulated Health Professions Act* creates a number of exceptions permitting people to perform controlled acts in certain circumstances. These exceptions include the following:
    - Helping someone in an emergency.
    - While in formal training to become a member of a College authorized to perform the controlled act.
    - Performing the controlled act under supervision.
    - Treatment by prayer or spiritual means pursuant to one's religion.
    - When done for a member of one's household. This exception is limited to communicating a diagnosis (e.g., telling one' child that she had a cold), administering a substance by injection or inhalation or entering a body opening (e.g., removing a small toy lodged deep in a child's nose).

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[4] Some non-drug substances have different kinds of drug numberings, for example, a Natural Product Number (NPN) or Homeopathic Medicine Number (DIN-HM).

  - Helping a person with their routine activities of living where it includes administering a substance by injection or inhalation (e.g., on a home visit helping a patient with their insulin injection) or entering a body opening (e.g., suctioning at home).
  - Counselling a person (so long as the counselling does not amount to communicating a diagnosis or providing psychotherapy). In many ways the counselling exception provision is simply intended to convey the point that counselling, itself, does not normally fall within any of the controlled acts. It is not really a true exception.
  - Providing Indigenous healing practices within the indigenous communities.
- ***Exemptions.*** In addition to the exceptions listed in the *Regulated Health Professions Act*, the Minister of Health has provided a number of exemptions in a Minister's regulation. Most of those exemptions are limited in scope (e.g., dentists are permitted to apply electricity for electro coagulation). A few of the exemptions have broader application, including the following:
  - Anyone can perform cosmetic body piercings and tattooing.
  - Anyone can perform electrolysis.
  - Registrants of eight health Colleges can perform acupuncture under exemption.[5]
  - Anyone can perform male circumcision, when performed as part of a religious or cultural practice.
- ***Delegation.*** A health care provider who is permitted to perform a controlled act can delegate the controlled act to others if they are confident that the person being delegated the act has the knowledge and skill to perform the act. For example, in the controlled act scenario described above, if the attending physician had also instructed David on the administration of an injectable antibiotic and was confident that David could perform this function, he could have requested that David carry out this controlled act on the wrestler as part of the treatment for his injury. David would be authorized to perform the procedure. Delegation can be made to another health care provider or to an unregistered person. Delegation is subject to a number of rules, including the following:
  - The person giving the delegation is limited by any regulations or professional standards of their College. Since kinesiologists are not authorized to perform any controlled acts, the College has not made any such regulations.
  - The person receiving a delegation is limited by any regulations or professional standards of their College. For example, a kinesiologist would not be complying with the professional misconduct regulation by accepting delegation for a procedure for which the kinesiologist has had no training or for which the kinesiologist does not feel knowledgeable and competent to perform.
  - The person delegating the procedure is responsible, along with the person receiving the delegation, for the actions of the person receiving the delegation. For example, if the sports specialist delegated to David the controlled act of injecting a substance subcutaneously, instructed David on the procedure but neglected to discuss the importance of first ensuring that there was no risk of allergic reaction, it would be the physician who would be held primarily responsible should such a reaction occur and endanger the client/patient.

[5] They are: chiropody, chiropractic, massage therapy, naturopathy, nursing, occupational therapy, physiotherapy and dentistry. There are registrants of other Colleges, such as traditional Chinese medicine and physicians, who can perform acupuncture under the authorization of their profession-specific Acts.

Controlled Acts Scenario No. 2

Diana, a chiropractor, performs spinal manipulation on her patient Petra. Spinal manipulation is a controlled act authorized to chiropractors under the Chiropractic Act. Diana is authorized to perform that controlled act.

Controlled Acts Scenario No. 3

David, a kinesiologist, has a plate of cookies in his waiting room. Paul a patient eats one and goes into anaphylactic shock. David is called into the room. David recalls that Paul has a peanut allergy and realizes that the cookies may have peanuts in them. David looks in Paul's briefcase and finds an EpiPen containing a measured dose of epinephrine. David injects the epinephrine into Paul's muscle and calls 911. Paul recovers. While David did perform a controlled act not authorized to him (administering a drug by injection), he did so under an emergency which is a recognized exception to the controlled acts rule.

Controlled Acts Scenario No. 4

Donna, a kinesiologist, only works part time. Her other job is to perform artistic body piercings. Even though such piercings go beyond the dermis, this procedure is exempted under the Minister's regulation on controlled acts. However, Donna would have to be careful not to leave the impression that she was performing the procedure as part of her kinesiology practice

Controlled Acts Scenario No. 5

David, a kinesiologist, works with a physician. Because of David's knowledge of anatomy, the physician trusts David to perform injections on patientpatient at precise anatomical locations. The physician delegates intra-muscular injections of local anaesthesia to patientpatient as part of their pain management treatments. David is permitted by the delegation to perform these injections. However, both David and the physician will be responsible if something goes wrong.

Sample Exam Question

Which of the following is a controlled act:

i. Removing broken glass that has been deeply embedded in a child's leg.
ii. Cleaning a scrape on a child's elbow with soap and water.
iii. Applying alcohol to that scrape on a child's elbow.
iv. Wrapping the child's wounds.

The best answer is i. Deeply embedded glass almost certainly has gone beyond the dermis and is sitting in deeper tissue. There may be an issue as to whether this is an emergency (likely not as in most cases it would be possible to take the child to a hospital or physician's clinic for treatment), but that does not change the fact that removing the glass is a controlled act. Similarly, the household exemption does not apply to these sorts of procedures. Answer ii is not the best answer because a scrape on the skin implies that it has not gone beneath the dermis. Answer iii is not the best answer because applying a substance to the skin is not administering a substance by inhalation or injection. Answer iv is

not the best answer because the procedure is above the skin and does not fall within any of the other controlled acts.

ii. Scope of practice

Because the *Regulated Health Professions Act* uses controlled acts to protect the public from potentially dangerous health procedures, the scope of practice of each profession is not the primary way of protecting the public. No profession has an exclusive scope of practice. Members of other professions can do the same things that kinesiologists can. There are two exceptions:

- People cannot perform a controlled act unless they have legal authority to do so.
- There is a "risk of harm" provision that prevents people from performing potentially dangerous procedures even if they are not controlled acts.

Risk of Harm Provision

The risk of harm provision prohibits a kinesiologist from providing dangerous treatment outside of the scope of kinesiology. For example, a kinesiologist could be prosecuted under the risk of harm provision for treating a systemic infection with multi-vitamins even though no controlled act is involved. Obtaining informed consent is not a defence.

The risk of harm provision prohibits a person from treating or advising a person "with respect to their health in circumstances in which it is reasonably foreseeable that serious bodily harm may result from the treatment or advice or from an omission from them"[6]. This provision is designed to prevent individuals from taking advantage of vulnerable patientpatient, in ways other than performing a controlled act. For example, encouraging a cancer patient to try diet as the **only** means of treatment might fall within this risk of harm provision.

However, the risk of harm provision does not apply to kinesiologists practising within their scope of practice. Thus it is not an offence for a kinesiologist to provide treatment within the scope of practice of kinesiology even if there is an inherent risk to the treatment (e.g., of tearing a muscle). If there was incompetent care, the kinesiologist is accountable to the College (not provincial offences court) for their conduct. However, if a kinesiologist provides treatment outside of the scope of practice of the profession, the risk of harm provision does apply. For example, if a kinesiologist treated a patient's/client's cancer by using diet advice alone, then the kinesiologist could face prosecution.

Thus it is important for kinesiologists to know their scope of practice.

Scope of Practice Statement

A profession's "scope of practice" is a description of what that profession does. Under the *Kinesiology Act*, the scope of practice statement reads as follows:

> 3. The practice of kinesiology is the assessment of human movement and performance and its rehabilitation and management to maintain, rehabilitate or enhance movement and performance.

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[6] Section 30 of the *Regulated Health Professions Act.*

While fairly broadly stated, this scope of practice statement does not allow a kinesiologist to provide treatments that are outside of the usual practices of kinesiologists. For example, any form of surgery is not included in this scope of practice.

Kinesiologists are permitted to perform procedures that are not inherently dangerous that lie outside of their scope of practice. For example, providing general nutritional counselling and natural health products to patientpatient would often be permissible. However, the College has a policy that patientpatient need to know whether a kinesiologist is acting as a kinesiologist, or as another health care provider. This policy applies whether the kinesiologist is registered with another College or not. The patient must be told which professional hat the kinesiologist is wearing. In fact, to ensure that a patient is not misled, separate appointments, records and billings should be made.

Scope of Practice Scenario

> *Donna, a kinesiologist, is seeing Paula, a patient diagnosed with Stage IV cancer. Paula is scheduled for surgery next week to be followed by chemotherapy. Paula's physician says that the treatment has a 50% chance of success (i.e., meaning she has a 50% chance of surviving and being cancer free in five years' time). Paula's physician also said that without treatment, Paula had a less than 5% chance of surviving for five years. After a careful assessment, Donna advises the patient to cancel both the surgery and the chemotherapy. Donna recommends a combination of relaxation tapes and a fasting cleansing program followed by an all fruit diet instead. Laura dies within two months and the family go to the police asking that Donna be prosecuted under the risk of harm clause.*
>
> *In this case, Donna appears to have provided treatment that is outside of the scope of practice for kinesiologists. The treatment also appears to have no evidence to support it. There was an inherent risk of harm in advising the patient to reject the proposed medical treatment that had evidence of a reasonable chance of recovery for a treatment that had not been fully researched.*

iii. Use of titles

There are a number of rules about the use of professional titles and designations by kinesiologists.

The first general rule is that only approved persons can use any form of the title "Doctor" when providing or offering to provide health care services in Ontario. If a person is not from one of the approved health professions, they cannot use the title in a clinical setting even if the person has an earned doctoral degree (i.e., the person holds a Ph.D). Allowing a staff person to call the health care provider "Doctor" would constitute an offence. Under this provision, people can use the title "Doctor" in other settings, such as socially or in a purely teaching setting, where there are no patientpatient.

Kinesiologists are not permitted to use the title "Doctor" in a clinical setting.

The second rule is that each profession-specific statute regulates the use of titles relating to their profession. Each profession has specific titles that only persons registered with their College can use as a professional title. For example, only kinesiologists registered with the College can use the title "kinesiologist" or any variation of that title. In addition, even if the unregistered person does not use the protected title, they cannot hold themselves out as a kinesiologist. This prevents people from pretending that they are kinesiologists when they are not.

Thus kinesiologists need to be careful not to use as a professional title, a designation that is permitted to registrants of other Colleges. For example, unless a person is registered with the College of Physiotherapists, they cannot call themselves a physiotherapist or a physical therapist.

The third set of rules is created by each College for its registrants in the registration and professional misconduct regulations. For example, each class of registration is given a specific designation for them to use (e.g., R. Kin, or R. Kin (Inactive
Finally, there are general professional misconduct regulations preventing the use of misleading titles or designations or engaging in false or misleading advertising. For example, it would be professional misconduct for a kinesiologist to refer to an educational degree that had not been received.

Use of Titles Scenario

> *David, a kinesiologist, teaches at a school that trains kinesiologists. The school has a clinic where patientpatient are seen. David supervises the students at the clinic. The students refer to him as "Doctor David" at the clinic. The Dean of the school pulls David aside and tells him to ask his students to stop calling him "Doctor" in the clinic where there are patientpatient. It is okay in the classroom, but not the clinic. David reviews* the Regulated Health Professions Act *and realizes that the Dean is correct. David is assisting in the treatment of patientpatient there and thus is not permitted to call himself (or allow others to call him) "Doctor" there. David also recognizes that he was being a poor model for the students.*

iv. Mandatory reports

Part of being a member of a regulated health profession is that one cannot remain silent when another health care provider is harming a patient. A kinesiologist must speak up in those circumstances. The *Regulated Health Professions Act* carefully balances the need to protect patientpatient by requiring kinesiologists to make a report and disrupting the health care system with many unnecessary reports. The statute also recognizes that if kinesiologists unnecessarily report on their colleagues, it will harm the atmosphere necessary for interprofessional collaboration. This section of this handbook describes the mandatory reporting provisions of the *Regulated Health Professions Act*. There are some mandatory reporting provisions in other statutes (e.g., the *Child and Family Services Act*) some of which are dealt with below.

Both the *Regulated Health Protection Act* and case law provide immunity to kinesiologists who make a mandatory report in good faith.

The mandatory reporting requirements also create an exception to the kinesiologist's duty of confidentiality. In addition, the *Personal Health Information Protection Act* permits a report to the College to be made as an exception to the privacy duties under that statute.

Sexual Abuse
A kinesiologist must report sexual abuse of a patient by another health care provider. The duty arises if the kinesiologist has reasonable grounds to believe the sexual abuse occurred in the course of practising the profession or while operating a health facility (which includes an office or clinic). The reasonable grounds could arise even if the kinesiologist did not personally observe the sexual abuse. For example, if a patient tells the kinesiologist details of the abuse, that would likely constitute reasonable grounds. A kinesiologist does not have to investigate the events first nor does the kinesiologist have to actually believe that the information is true (e.g., the kinesiologist might know

the alleged abuser and cannot believe that they would do such a thing). If the information constitutes reasonable grounds, the report must be made. Reasonable grounds means information that would cause a reasonable person who does not know the individual involved to conclude that it is more likely than not that the information is correct.

The report must be made in writing to the Registrar of the College to whom the alleged sexual abuser belongs. The report has to contain the reporting kinesiologist's name and the grounds of the report. ***However, the report cannot contain the patient's/client's name unless the patient agrees in writing that the name can be included.*** This limitation is intended to protect the privacy of patientpatient who may be in a vulnerable position. The report must be made within 30 days of receiving the information. If it appears that patientpatient are continuing to be harmed and there is an urgent need for intervention, the report must be made right away.

Where one is providing psychotherapy (unlikely for kinesiologists as this is a controlled act) to a health care provider who is abusive, one must provide an opinion as to whether the health care provider who is abusive is likely to sexually abuse patientpatient in the future (unless one cannot form such an opinion). In addition, one has to make a report immediately after the abusive health care provider ceases psychotherapy.

Sexual Abuse Mandatory Report Scenario

> *Donna, a kinesiologist, is told by Paula, a patient, that Paula had an affair with her family doctor. Donna asks Paula if her family doctor was treating her while the affair was ongoing. Paula says yes. Donna tells Paula that she is required by law to report this information to the Registrar of the College of Physicians and Surgeons of Ontario (CPSO). Donna explains that the CPSO will want to investigate the report. It will be very difficult for the CPSO to investigate the report if Paula's name and contact information is not included in the report. The CPSO will likely want to interview Paula about the affair. The investigation could lead to a discipline hearing. However, the law is clear that Donna cannot include Paula's name and contact information unless Paula is prepared to sign a written consent permitting Donna to do so. Donna says that they can call the CPSO right now, on an anonymous basis, to see what the process would be like. Paula agrees to the telephone call. After the call is completed Paula says that she will not give her consent to include her name and contact information. Donna then provides the report in writing without identifying Paula.*

Incompetence, Incapacity and Professional Misconduct
There are two separate reporting provisions that apply to incompetence, incapacity and professional misconduct. The first is a termination report when one ends a professional relationship with another practitioner. The second is a report by a facility operator. These two reporting requirements have slight differences. For example, a facility operator does not have to report professional misconduct (except for sexual abuse, as described above), only incompetence or incapacity.

A kinesiologist must report if they end a business relationship with another health care provider on the basis that the other health care provider is incompetent, incapacitated or engaged in/has committed an act of professional misconduct. Examples of business relationships include employer-employee, partners, shareholders in a professional corporation or space sharing. The report must be made even if the person quits or resigns first if there are reasonable grounds to believe that the departure or resignation reasonably relates to the person's professional misconduct, incompetence or incapacity. A report must also be made where the person resigns or quits or during an investigation into such concerns.

The report must be made in writing to the Registrar of the College that regulates the other health care provider. The report must be made in 30 days of ending (or proposing to end) the business relationship. Under this mandatory reporting obligation, the name of the patient can be included without the patient's/client's consent.

In addition, if a kinesiologist operates a health facility (which includes an office or clinic), the kinesiologist must report any reasonable grounds to believe that another health care provider is incompetent or incapacitated.[7] This report must be made even if the business relationship with the other health care provider is not ended. For example, if a health care provider at the facility is found to have a substance use disorder and goes into a treatment program while the job is kept for them, the report would still have to be made.

Again, the report of the operator of the health facility must be made in writing to the Registrar of the College to whom the alleged incompetent, incapacitated or unprofessional practitioner belongs. The report has to contain the reporting kinesiologist's name and the grounds of the report. Under this mandatory reporting obligation the name of the patient can be included without the patient's/client's consent. The report must be made within 30 days of receiving the information. If it appears that patientpatient are continuing to be harmed, the report must be made right away.

Incompetence, Incapacity and Professional Misconduct Mandatory Report Scenario

> *David, a kinesiologist, learns that his employer, also a kinesiologist, has an alcohol use disorder. David tries to help his employer get treatment, but the employer keeps relapsing. Yesterday the employer came back after lunch impaired such that David had to call his employer's wife to pick him up and take him home. David had to cover for his employer with his patientpatient. What scared David the most was that his employer treated three patientpatient after lunch before David found out about his condition. David is preparing his letter of resignation. He consults a lawyer about what to do. David's lawyer advises him that David must make a written report to the Registrar of the College of David's employer, in this case, the College of Kinesiologists of Ontario.*

Charges and Offences – Self Report
Kinesiologists must report themselves when they have been charged or found guilty of an offence, including any bail conditions or other restrictions imposed on them. All offences are to be reported; thus criminal offences, offences under federal drug or other legislation and provincial offences (including highway traffic offences) need to be reported. Only courts can make offence findings. Thus any findings by a body that is not a court (called "tribunals") are not reportable under this provision. All charges and findings are reportable regardless of whether or not they resulted in a conviction (e.g., a finding of guilt that leads to an absolute or conditional discharge is not a conviction, but still needs to be reported to the College).

Reports are to be made to the Registrar of the College as soon as possible after the charge or finding and should contain the following information:

- the name of the kinesiologist filing the report;

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[7] This duty to report does not apply if the person just committed professional misconduct but is not incompetent or incapable (e.g., the health care provider published a misleading advertisement).

- the nature of, and a description of the charge or offence;
- the date the kinesiologist was charged or found guilty of the offence;
- information regarding every bail condition or other restriction imposed or agreed to in relation to the charge;
- the name and location of the court in which the charge was laid, the bail condition or restriction was imposed, or that found the kinesiologist guilty of the offence; and
- the status of the proceedings and any appeal initiated respecting the finding of guilt.

If there is an appeal that alters the information reported, an updated report must be made.

The report will be reviewed by the College and may result in an investigation.

Charges, bail conditions and restrictions, and findings of guilt in relation to the *Criminal Code* (Canada) and the *Controlled Drugs and Substances Act* (Canada) will appear on the public register. This information will only be removed when the charges are withdrawn or no finding of guilt is made; the bail conditions or restrictions are lifted; or when the finding of guilt is subject to a pardon, is subject to a record suspension, or is overturned on appeal.

Offence Mandatory Report Scenario

*Donna, a kinesiologist, is found guilty of careless driving under the Highway Traffic Act. On the College's annual renewal form she sees a question asking if she has been found guilty of any offence. She cannot believe that this question is meant to include her careless driving charge. She calls the College for clarification. Donna is told that the Regulated Health Professions Act requires **all** offences to be reported. The intent of requiring such reports is to prevent kinesiologists from determining whether the findings were relevant or not. That decision is to be made by the College. In fact, Donna should have reported the finding when it occurred and not waited six months for the annual renewal form. Donna makes the report. A few weeks later she receives a letter from the College thanking her for her report, stating that the College does not believe that this finding is worth investigating further and reminding her that in future such findings need to be reported right away.*

Registration with Other Regulators
Kinesiologists must advise the Registrar if they are registered with a regulatory body for a profession. This applies to both other professions in Ontario (e.g., massage therapy) or in another jurisdiction (e.g., registration as a kinesiologist in another province or another country). In addition, if the kinesiologist is found to be incompetent or to have engaged in professional misconduct, the practitioner must report the full details to the Registrar as soon as possible. Any changes to the findings (e.g., on appeal) must also be reported as soon as possible. The reports of disciplinary findings should contain the following information:

- the name of the kinesiologist filing the report;
- the nature of, and a description of the finding;
- the date of the finding;
- the name and location of the regulator making the finding; and
- the status of any appeal initiated respecting the finding.

Professional Negligence – Self-Report
Kinesiologists have to report themselves when they have been found to have engaged in professional negligence or malpractice. Findings of professional negligence or malpractice are only

made by the courts. Thus any findings by a tribunal are not reportable under this provision. Settlements of claims for professional negligence may not be included in the reporting requirement if they did not result in a court "finding".

Reports are to be made to the Registrar of the College as soon as possible after the finding and should contain the following information:

- the name of the kinesiologist filing the report;
- the nature of, and a description of the finding;
- the date of the finding;
- the name and location of the court that made the finding; and
- the status of any appeal initiated respecting the finding.

The report will be reviewed by the College and may result in an investigation. The report is automatically put on the public register (see the discussion of the register below).

If there is an appeal that alters the information reported, an updated report must be made.

Professional Negligence Mandatory Report Scenario

> *David, a kinesiologist, is sued in Small Claims Court by a patient, Paul. Paul claims that he told David about pain in his lower abdomen but that David attributed those symptoms to stress. After two weeks of supportive treatment for the stress, despite increasing pain, Paul went to the emergency department. Paul was rushed into surgery for appendicitis and stayed in the hospital for almost a week. Paul claims David should have referred David to another health care provider to rule out appendicitis before treating the symptoms as purely stress related. The Small Claims Court judge agreed and ordered David to pay Paul $10,000 for his malpractice. David reports the finding to the College. The College places a note about the finding on the public register.*

Duty to Warn
Under case law, a kinesiologist who has reasonable grounds to believe that another person is likely going to cause severe bodily harm has to warn the appropriate people of the risk. This duty applies even if the person who will likely cause the harm is the patient of the kinesiologist.

The College has included an aspect of this duty to warn in its professional misconduct regulation. Where a kinesiologist learns of an incident of unsafe practice by another kinesiologist, the first kinesiologist must report this to the Registrar. This duty to report does not include all forms of incompetence, incapacity or professional misconduct. It only applies where the kinesiologist jeopardizes the safety of a person (normally, but not always, a patient). This provision only applies where the other person, causing the risk of harm, is a kinesiologist.

However, where the health care provider causing a risk of harm belongs to another profession, there may be an ethical or even a case law duty to intervene in an appropriate way to prevent harm to a patient or other person.

The report must be made promptly to the College. It would be advisable to make the report in writing with all necessary details. Under this mandatory reporting obligation, the name of the patient can be included without the patient's/client's consent.

Duty to Warn Mandatory Report Scenario

Donna is a kinesiologist who works for a company that provides long-term disability management services for an insurance company's claimants. They have a contract to complete Functional Capacity Assessments (FCA) for one particular insurance company that pays Donna's company only after they are able to complete an FCA and report. Donna hires Paul, another kinesiologist, to assist her. Paul is trained by Donna on the FCA process they use to service their various insurance clients. Included with the process is a cardiovascular component to the FCA. Paul inquires with Donna as to what point they would discontinue cardiovascular testing for increased blood pressure rate. Donna tells Paul never. She tells Paul that it is imperative that they complete their testing so that they can conclude their written report; only then will they get paid. Donna tells Paul that it is the claimant's job to get their own physicians to sign off on their company's form stating that they can participate in Donna's FCA. Paul then asks if the FCA is completed regardless of a completed form. Donna says yes because forms are given in advance for completion. Donna also stated that she could tell if the cardiovascular testing was too strenuous just by watching the clients. If it looked like too much she could just decrease the intensity, that no one ever dies, and that they would call 911 before that. Donna also told Paul that they had a BP cuff in the cupboard but it was too much work to use and takes too much time. She reiterated that the more tests their company completes the more they can get paid. Donna also reminded Paul that she was the senior kinesiologist in charge so it was her decision, not his.

Paul is required to take some action to protect the clients/patient if Donna's approach reasonably creates a significant risk of serious bodily harm. The duty to warn reporting obligation is not necessarily to the College, but that might be the most appropriate place to report on the facts of this case. If Paul loses his job, then a termination report would also be required. The College would not be able to get Paul his job back, but Paul would be able to take Donna to the civil courts for wrongful dismissal.

Sample Exam Question

Is a mandatory report required where a kinesiologist overhears another kinesiologist tell two male patients a sexually explicit joke that causes the patients to laugh loudly?

i. No. Sexually explicit jokes are not sexual abuse.
ii. Yes. This is sexual harassment. The report should be made to the Human Rights Tribunal.
iii. No. The patients liked the joke and would not have been harmed by it.
iv. Yes. This constitutes sexual abuse.

The best answer is iv. Sexual abuse includes comments of a sexual nature to a patient. Reporting sexual abuse is mandatory. While it is unlikely that punitive action will be taken by the College (perhaps a sensitivity course), it is still important that kinesiologists learn that such conduct can be harmful to some patients. *One never knows what experiences* patients *have had in their past that might make a sexually explicit joke harmful. Answer i is incorrect because sexually explicit jokes are sexual abuse as that term is defined in the Regulated Health Professions Act. Answer ii is not the best answer because there are no mandatory reporting requirements under the Human Rights Code. Also, the Regulated Health Professions Act uses the term sexual abuse rather than sexual harassment and gives that term a unique meaning. Answer iii is not the best answer because whether the patient was a*

willing participant or not is irrelevant. The comment still should not have been made. Also, one never knows what experiences patients *have had in their past that might make a sexually explicit joke harmful. In addition, sexualizing the practice of the profession is inherently confusing to* patients *who assume that there is not sexual aspect to their relationship with kinesiologists.*

v. Public register

The *Regulated Health Professions Act* requires that the public be able to get certain information about kinesiologists. This information helps the public (e.g., patients, employers) to decide whether to choose a particular kinesiologist. This information also helps the public to see how well the College is regulating kinesiologists. The register also helps ensure that kinesiologists practise only as they are permitted to. For example, if a kfinesiologist is suspended for three months, people can more easily report to the College if the kinesiologist is still working in their professional role during the suspension period.

The register must contain detailed information about each kinesiologist, including the following:

- Name
- Business address and telephone number
- Name and business address and telephone number of each professional corporation
- Class of registration
- Any terms, conditions and limitations on the registration
- Referrals to the Discipline Committee for a discipline hearing
- Discipline hearings, inspections and their outcomes
- Oral Cautions and SCERPs (specified continuing education or remediation)
- A summary of every finding of professional misconduct, incompetence or incapacity
- Findings by a court of professional negligence
- Findings of guilt, undertakings and bail conditions
- Every suspension of registration for any regulated profession
- Every revocation of registration for any regulated profession
- Applications for and decisions surrounding reinstatement and
- Any agreement to resign and never reapply for registration.

In addition, the College has made by-laws which requires some additional information to be placed on the public register. For example, all business addresses and languages spoken by the kinesiologist are placed on the public register.

There are only a few circumstances where the College can choose not to put this information on the register or to remove information from the register. However, it can do so in the following circumstances:

- The information (e.g., contact information) would jeopardize the safety of a kinesiologist (e.g., if a kinesiologist is being stalked).

- The information is obsolete or no longer relevant (e.g., the finding of professional misconduct relates to conduct that is now acceptable, for example if the advertising rules happen to change).
- Unnecessary information about the personal health of a kinesiologist (e.g., in incapacity matters).
- After six years, where there was only a reprimand, a fine or a finding of incapacity and the Discipline Committee or Fitness to Practise Committee agrees that there is no public interest in keeping the information on the register.

The register is available to the public in a number of ways. It is on the College's website. It is available at the College's office. A paper copy can be requested. The College can also give information on the register over the telephone. Where a person asks about a kinesiologist, the College must help the person find whatever information that person wants that is on the register.

Public Register Scenario

> *Donna, a kinesiologist, has separated from her husband. Donna's husband has physically abused her a number of times. Since the separation, Donna's husband has been following her. The police cannot seem to stop him. Donna moves to another city. She asks the Registrar not to put her business address or telephone number on the public register so that Donna's husband cannot find her. Donna provides documents from the police and the courts about her husband's behaviour. The Registrar removes Donna's contact information from the register.*

vi. Professional corporations

Kinesiologists offering their services to the public can choose to practise personally (i.e., in their own names), through a partnership or through a professional corporation (i.e., a special type of corporation for regulated professionals). Kinesiologists cannot offer their services to the public through regular business corporations; they can only practice through a professional corporation. (This is distinct from a corporation hiring a kinesiologist to provide services to their own employees, rather than to the public, which is acceptable.)

Kinesiologists working at a rehab clinic or multi-disciplinary practice need to be clear that it is they, not the clinic, that are providing the services to the patients. Often such clinics leave the impression that it is the clinic (often owned by a corporation), not the practitioners who are providing the services.

Professional corporations have a number of conditions and restrictions. These include the following:

- only kinesiologists can hold shares;
- the officers and directors of the professional corporation must be shareholders;
- the name of the professional corporation must include the words "Professional Corporation";
- the professional corporation cannot be a numbered company (*e.g.*, 1234567 Ontario Inc.); and
- the professional corporation can only practise the profession, or provide related or ancillary services. It cannot, for example, practise another profession like massage therapy.

Kinesiologists cannot avoid professional liability through a professional corporation. Injured patients can sue the kinesiologist personally. However, kinesiologists working through a professional

corporation do have protection against trade creditors. For example, if suppliers or other creditors are not paid by the professional corporation, they cannot sue the kinesiologist personally.

A number of provisions have been made to prevent kinesiologists from hiding behind the professional corporation when facing scrutiny by the College. These include the following:

- the RHPA applies to kinesiologists despite their practising through a professional corporation;
- a kinesiologist's fiduciary (i.e., loyalty and good faith) and ethical obligations to patients remain in place and now apply equally to the professional corporation as well;
- during investigations and other proceedings involving kinesiologists, the College has the same powers over the professional corporation (*e.g.*, access to premises and documents) as it does against the kinesiologist;
- any monetary orders against kinesiologists are also payable by the professional corporation;
- any duty to a patients, the public or the College takes precedence over the duties of the kinesiologist as an officer or director of the professional corporation;
- any terms, conditions and limitations against a kinesiologist apply to the professional corporation as well; and
- any knowingly false representation made to obtain a certificate of authorization is an offence.

Professional corporations have to obtain from the College a "certificate of authorization", similar to a certificate of registration, for individual kinesiologists. To obtain a certificate of authorization, a kinesiologist goes through the following process:

- Select a name for the professional corporation. Ministry regulations require that the name must contain the surname of at least one shareholder (as set out in the College register). The name can also include the person's given name and initials. The name of the corporation must also indicate the name of the registrant's health profession (i.e., "Kinesiology"). The name must also include the words "professional corporation". The name can include nothing else.
- The professional corporation must then be incorporated with the government. This involves preparing articles of incorporation, corporate by-laws, paying a fee and submitting an application form with the government. If the paperwork is acceptable the government will issue a corporate profile report and a certificate of incorporation.
- Within 30 days of obtaining one's corporate profile report, the professional corporation must apply to the College for a certificate of authorization. Such an application will require the following:
  - Completing the application form that can be obtained from the College. The application form will require the name, registration numbers and addresses of each shareholder. The application form will require the applicants to specify which shareholders hold which positions with the corporation. The business premises or practice locations of the corporation will have to be identified.
  - Paying the fee required by the College in its by-laws.
  - Enclosing a copy of a corporation profile report, issued by the Ministry of Government and Consumer Services or by a service provider which is under contract with the Ministry of Government and Consumer Services, that is no more than 30 days old.
  - Enclosing a copy of the certificate of incorporation issued by the government.
  - Providing a declaration (i.e., a written statement) from a director of the corporation that was completed not more than 15 days before the application date that certifies

the accuracy of the documents submitted with the application and that the corporation will only practice the profession or related or ancillary activities.

Once incorporated, the corporation must notify the College immediately if its name or articles of incorporation change. Also, the College needs to be notified promptly of any change in shareholder, officer or director of the professional corporation or if the corporation changes its location or locations of practice. Each year the professional corporation must renew its certificate of authorization. The renewal process involves completing the same sort of paperwork as was involved in the initial application. The renewal process updates the information about the corporation and its shareholders.

A certificate of authorization can be revoked if it does not follow the rules.

The College cannot give advice to kinesiologists as to whether a professional corporation is suitable for them. Kinesiologists will need to obtain advice from their own accountants or lawyers.

Professional Corporation Scenario

David, a kinesiologist, sets up a business with his spouse and children are shareholders. It is not a professional corporation. What are his options?

David has to do something. He cannot operate a regular business corporation because it does not follow the rules for professional corporations. David has to either change his business corporation into a professional corporation, or give up the business corporation. David's spouse and children cannot be shareholders of the professional corporation unless they are also registered with the College. If David fails to convert his business corporation into a professional corporation, he cannot practice the profession through it. Doing so risks prosecution and significant tax implications. David should speak to his accountant or lawyer to get advice as to what is best for him.

c. Kinesiology Act, regulations, by-laws

The *Kinesiology Act* is the profession-specific statute of the College of Kinesiologists of Ontario. As mentioned before, the *Kinesiology Act* works together with the *Regulated Health Professions Act* so that they can be treated as one Act. Together, these Acts authorize the College to develop regulations and by-laws to regulate the profession.

Regulations and by-laws are both forms of law. The major difference between a by-law and a regulation is that a by-law is made directly by the Council, while a regulation must be approved by the government of Ontario. By-laws typically relate to the administration and internal affairs of the College with some exceptions, such as the public register. Regulations generally deal with matters of broader public concern.

i. Registration regulation

The Registration regulation sets out the requirements for obtaining and maintaining registration with the College. It is intended to make sure that kinesiologists are competent and have good character.

The registration regulation establishes two classes of kinesiologists:

1. General Registration - intended for kinesiologists who are actively practising the profession; and
2. Inactive Registration – intended for existing kinesiologists who for whatever reason are not currently practising the profession but wish to remain registrants of the College.

General requirements

There are certain requirements that must be met by all applicants for registration with the profession. All applicants must complete an application form fully and pay applicable fees. The applicant must also inform the College of any criminal or regulatory proceedings or findings against them. The application form requires applicants to provide information regarding the applicant's training and experience, past professional experiences (including previous registration with another regulatory body). The applicant must also provide other information that may affect their ability to practise effectively and safely (i.e., professional liability insurance). They must be able to speak, read and write in either English or French with reasonable fluency. The applicant must not be incapacitated (i.e., have an illness that prevents them from practising safely, for example a substance use disorder that is not under control).

All applicants must have completed a jurisprudence program on basic health regulation and law that applies to their practice.

Specific Requirements

There are specific requirements for each class of registration. For example, applicants for General registration must have completed an acceptable educational program and passed the registration examination.

Applicants for Inactive registration need to first be General registrants and must promise not to practise while inactive.

If the profession of kinesiology becomes regulated in another jurisdiction in Canada, there are registration regulation provisions that allow for out-of-province registrants from elsewhere in Canada to transfer to Ontario with recognition of their qualifications. These are called mobility provisions. The Ontario College will not require qualified applicants registered elsewhere in Canada to once again prove that they have adequate education, experience and examination credentials.

General Conditions

Once a person is registered with the College, they must continue to meet certain general terms, conditions and limitations. For example, if a kinesiologist is charged or found guilty of a criminal or other offence, the kinesiologist must tell the College. If a kinesiologist is disciplined by another professional regulator, the kinesiologist must tell the College. If the kinesiologist no longer has professional liability insurance coverage, the kinesiologist must tell the College. Kinesiologists of each class of registration are assigned a specific title that they must use so that the public can identify their registration status.

Registration Regulations Scenario

Assume that British Columbia obtains a regulatory College for kinesiologists and David was registered with the College in BC. He has been invited by a colleague to come to Ontario to

demonstrate a particular technique at a conference and provide demonstrations with patientpatient in Ontario. David would have to obtain registration in Ontario to use the kinesiologist title in Ontario. However, David could rely on the mobility provisions to become registered in Ontario without having to do the registration examinations.

ii. Professional misconduct regulation

As discussed above, some types of professional misconduct are contained in the *RHPA* itself. For instance, the *RHPA* makes breaking the law, professional misconduct (e.g., to be found guilty of an offence relevant to a kinesiologist's suitability to practise the profession). Also, being found guilty of professional misconduct by another regulator outside of Ontario can lead to disciplinary action in Ontario as well. Sexual abuse of a patient is also professional misconduct. So is failing to cooperate with the quality assurance program.

However, the College's professional misconduct regulation describes additional examples of professional misconduct. Some provisions found in the professional misconduct regulation are common to many of the professions under the *RHPA*, while others are more specific to this profession.

The following are the main topics found in the professional misconduct regulations.

Standards of Practice
The professional misconduct regulation makes failing to meet the standard of practice of the profession an act of professional misconduct. Usually, this relates to the assessment and treatment of patientpatient by the kinesiologist. The standards of practice may be written or unwritten. They reflect a shared understanding of the profession and how it should be practised effectively and safely. This is based on what would be reasonably expected of the ordinary competent kinesiologist in their field of practice. Expert witnesses are often used to describe a standard of practice when it is unwritten or under consideration.

One specific standard of practice in the professional misconduct regulation is that a kinesiologist must refer a patient to another health care provider where the patient has a condition that is beyond the knowledge, skill and judgment of the kinesiologist. For example, if a patient had symptoms that suggested advanced cardiac disease, the kinesiologist should not try to handle this alone. A referral to a physician would be required.

Inappropriate Behaviour Towards Patient/Clients or the Public
Many provisions in professional misconduct regulation relate to inappropriate behaviour towards patientpatient or the public. For example, physical or verbal abuse of patientpatient is professional misconduct. This includes rude or unbecoming behaviour towards patientpatient, members of the public or other health professionals. In addition, if a patient has a concern about a kinesiologist's conduct and wishes to make a complaint, the kinesiologist has a professional obligation to advise the patient about the College's regulatory role and how to get in contact with the College.

Record Keeping
Failing to make and keep appropriate and adequate records is professional misconduct. This is an important area to understand for kinesiologists, so it is discussed in depth in its own section below.

Informed Consent

Informed consent has been discussed in more detail above in the section on communication and is also mentioned in regards to record keeping. The regulation makes it professional misconduct to fail to obtain informed consent before assessing or treating a patient.

Controlled Acts, Delegation and Supervision
Since Kinesiologists are not authorized to perform any controlled acts, they cannot delegate them.

However, a kinesiologist may assign certain tasks which are not controlled acts to a person. The College expects that the kinesiologist will supervise those doing any procedure on the kinesiologist's behalf.

In addition, if a kinesiologist accepts the delegation of a controlled act, they must be able to perform it with an appropriate level of knowledge, skills and judgment.

Confidentiality
Kinesiologists must keep all patient information confidential. Failing to maintain confidentiality can be considered professional misconduct. There may be exceptions depending on the circumstances to this duty of confidentiality. For example, patients can consent to the kinesiologist disclosing information. Also, where a kinesiologist is required (e.g., by a court summons) or permitted (e.g., when selling one's practice) by law to disclose patient information, it can then be disclosed. The concept of confidentiality is discussed further in the section below on the *Personal Health Information Protection Act ("PHIPA").*

Conflict of Interest
Kinesiologists have a duty to act in the best interest of their patients. A conflict of interest arises when a kinesiologist has an inconsistent duty to both the patient and to someone else at the same time. For example, a kinesiologist has a duty to only refer patients to others where it is in the best interest of the patient. Where a health care provider pays a kinesiologist to refer patients to them, the kinesiologist has a conflicting interest (i.e., getting paid for the referral) that is unprofessional. Conflict of interest is discussed in its own section below.

Improper Billing and Fees
Kinesiologists must be honest in their billings. Because of this, the professional misconduct regulation prohibits improper billing. Billing has been discussed above.

Misrepresentation
It is professional misconduct to be dishonest in one's dealings with clients, colleagues, third party payers or the College. Dishonesty with third parties is also not acceptable (even if the intent is to help a patient). Third parties often assume that kinesiologists are honest because of their professional status and rely upon their integrity. For example, it would be professional misconduct to issue a letter or certificate saying that a patient was too sick to work when the kinesiologist does not know this to be true.

Improper Use of Names, Title or Descriptions
There are specific rules in the professional misconduct regulation that restrict use of certain names, titles or descriptions. For example, the title of the kinesiologist will depend on their class of registration (classes of registration are discussed above in the registration regulation section). These rules are intended to ensure consistent, appropriate and clear use of titles that help the public know with whom they are dealing and to prevent confusion. Also, as discussed above, kinesiologists cannot use a term, title or designation indicating or implying that they have a specialization in an area or areas of practice. Also, practising the profession under a name that is not registered with the College may be considered professional misconduct (e.g., if a kinesiologist uses a nickname when practising, the College must be told of that nickname first so that it may enter this into the register).

Improper Advertising
It is professional misconduct to engage in false or misleading advertising. There is a section below describing more details regarding improper advertising for kinesiologists.

Conduct towards Colleagues
Kinesiologists must treat their colleagues with courtesy and civility. For example, if a patient goes to another kinesiologist or another health care provider and that kinesiologist asks for a copy of the record (with patient consent), one cannot simply ignore the letter. If a kinesiologist disagrees with the treatment being provided by another health care provider, the kinesiologist must not make insulting comments about the other health care provider to the patient.

Conduct towards the College
Obligations come with the privileges of self-regulation. One obligation is that kinesiologists must accept the regulatory authority of the College. Examples of conduct towards the College which can constitute professional misconduct include:

- Publicly challenging the integrity of the College's role or actions.
- Breaching an undertaking given to the College.
- Failing to co-operate in, or obstructing, an investigation by the College.
- Failing to participate in the quality assurance program.
- Failing to respond appropriately and promptly to correspondence from the College.
- Failing to report a kinesiologist to the College who has jeopardized the safety of a patient.

Disregarding Restrictions on Certificate of Registration
A kinesiologist must confine their practice to what is legally permissible. If the Act or a committee of the College restricts a kinesiologist in certain areas, it would be professional misconduct to exceed those restrictions. For example, a kinesiologist who is required by a committee to practise under supervision, must always do so.

General 'Catch-all' Provisions
The College has two general catch-all provisions. These cover types of conduct that are not specifically dealt with elsewhere. One provision prohibits conduct that would be reasonably regarded as dishonourable, disgraceful or unprofessional. This provision assumes that there is a general consensus in the profession of conduct or behaviour that would be considered unacceptable. For example, there is no specific provision that says that a kinesiologist cannot abuse a patient's/client's mother during a visit. However, no one doubts that this conduct would be unprofessional.

The second catch-all provision makes it professional misconduct to engage in conduct unbecoming a kinesiologist. This provision refers to conduct in a kinesiologist's private life that brings discredit to the profession. For example, a kinesiologist who engaged in a fraud on the stock exchange could be disciplined for the dishonesty.

Professional Misconduct Regulations Scenario

> *Donna, a kinesiologist, has recently been criticized by her colleague, Wendy, who works in the same practice as her, that sometimes she is too loud with her* patients*. Wendy mentions that in speaking loudly she is disrupting other kinesiologists in the office. Donna tells Wendy that she is sorry for disrupting her, and any of her* patients*, and that she will try to keep her voice down or lower it out of respect for the rest of the practice. But Wendy feels this is a serious problem, and that Donna should be reported to the College for professional misconduct because she cannot stand loud noise during her sessions with her* patients*. She wants the very best atmosphere created for her* patients*, and thinks loud talking is completely unprofessional. Is Wendy correct in saying this would be professional misconduct according to the regulations? Probably not. Wendy holds a particular view about Donna's level of voice that may not be consistent with the rest of the profession. Unless the conduct persists and unless it is so loud that most neutral observers would agree that Donna is disrupting the rest of the office, it is not professional misconduct. While it is courteous for Wendy to raise the issue with Donna so that they can come to a reasonable resolution, professional misconduct is not meant to apply to uniquely personal views of unacceptable behaviour. Instead, it is intended to be based on conduct that is by a general consensus in the profession considered unacceptable.*

Sample Exam Question

Which of the following situations is possible professional misconduct according to the professional misconduct regulation?

i. Failing to maintain patient confidentiality.
ii. Using verbal threats and insults to a patient in an email to them when they did not show up for an appointment.
iii. Giving a patient a reduced rate for services if they do not have insurance.
iv. All of the above.

The best answer is iv. The regulation describes many types of professional misconduct. All of the situations described involve conduct that is specifically prohibited in professional misconduct regulation. Answer a, b and c are not the best answers because all of the situations listed in the question are clear examples of professional misconduct.

iii. Record keeping

One important aspect of the standard of practice is record-keeping. Keeping records is essential for providing good client care; even kinesiologists with excellent memories cannot recall all of the details of their patients' health status and treatment. Records permit the monitoring of changes in patients. Records assist other kinesiologists who may see the patient afterwards. Records also enable a kinesiologist to explain what they did for patients if any questions arise. Records help a kinesiologist defend themselves if a patient recalls things differently than the kinesiologist. Failure to make and keep adequate records can be a failure to maintain minimum professional standards and is professional misconduct.

College provisions on record keeping deal with matters such as:

- The information that must be recorded;
- The form in which records can be kept (e.g. written, computerized);
- How long the information must be kept;
- Maintaining or transferring records upon leaving a practice or retiring;
- Confidentiality and privacy issues; and
- Patient access to records.

The information that must be recorded

The patient record is intended to record what was done and what was considered by the kinesiologist. It acts as a communication aid to ensure that there is continuity of care for the patient. Proper records also enhance patient safety. The following is a list of general requirements of the patient health record:

- The record should always contain identifying information such as the name and date of birth of the patient. Identifying information should be on each document in the record so that a particular document may be returned to the record if separated.

- The record should include all relevant subjective and objective information gathered regarding the patient. This includes all relevant information provided by the patient (or their authorized representative, or other health care providers involved in the patient's/client's care) to the kinesiologist regardless of the medium or format (e.g. communicated in person, on paper, email, fax, telephone, etc). It also includes any records regarding findings from assessments or during observations (e.g. how the patient walked into the office).

- Any results of testing done (including physical testing, etc.) by the kinesiologist should be recorded. If a patient discloses test results from another health professional it should be noted in the record. However, kinesiologists do not have to ask for copies of reports if they are not needed.

- The treatment plan or advice/recommendations should be recorded. Then the actual treatment provided should be described. The record should also include any progress notes of how the patient progressed during treatment, any changes in the patient's/client's

condition, or any reassessments or modifications of the treatment plan. It should be clear to any kinesiologist reading the record what happened.

- Other communications with or about the patient.

- If the patient was a referral, the person who made the referral and the reason for the referral should be in the record.

- Any consent that is obtained should be included in the record. Please see the consent section above for specific guidelines surrounding consent.

Records will vary depending on the nature of the practice of the kinesiologist. For example, a kinesiologist in ergonomic practice may not have a "treatment plan" per se, but rather will make ergonomic recommendations for the workplace itself. However, these should be documented appropriately just like a treatment plan would. The concepts described above need to be applied to the context.

The form in which records can be kept

Records must be legible. Failure to maintain a legible record would defeat the purpose of maintaining a complete and accurate record.

Records can be on paper or digital. Digital records should be printable and viewable and should have an audit trail of changes made. These requirements are discussed further in the section on the *Personal Health Information Protection Act (PHIPA)* section below.

It should be clear who made each entry into the record, and when that entry was made. Any change or amendment to the record should be indicated, the date on which the change was made should be noted, and who made the change should be recorded. Importantly, any changes to the record should still permit the reader to read the original entry.

Kinesiologists cannot falsify records; this means that if an error is made in a previous entry it cannot be removed (e.g. 'whited-out', or deleted). The record should be maintained with correction to the error (usually a simple line through the erroneous entry with the date and initial of the person correcting the error).

The record should be in English or French. The information can be recorded in other languages so long as all the information is also recorded in English or French. The generally accepted languages in the health care system in Ontario are English or French. This permits other health care providers on the patient's/client's health care team (e.g., physicians, chiropractors, other kinesiologists, other health care providers) to understand the record.

How long the information must be maintained

The kinesiologist (or health information custodian for whom the kinesiologist works) needs to keep the record for 10 years from the last interaction with the patient, or the patient's/client's 18th birthday, whichever is later. For example, if a patient is 8 years of age the last time the kinesiologist sees the patient (i.e., last patient visit) then the kinesiologist would have to keep the record for 20 years since that last interaction. An interaction can involve any contact with the patient, including a phone call or an email.

The rule regarding keeping records for 10 years includes financial records, appointment and attendance records, and where appropriate, equipment records, in addition to the patient health record.

Maintaining or transferring records upon leaving a practice or retiring

The entire original record should be kept by the kinesiologist (or the health information custodian for whom the kinesiologist works) and only copies are supplied to others.

Even when a kinesiologist retires or leaves practice (i.e., resigns as a registrant of the College) the original record should be kept for the 10-year retention period, unless the record has been transferred to another kinesiologist or other healthcare provider who will maintain the record. The patient must be notified of the transfer. In those circumstances, the original record can be transferred to the new kinesiologist.

However, if the patient has just been referred to another health care provider and the patient record has not been transferred, then the retention period of the entire original record (i.e., ten years from last contact or the patient's/client's eighteenth birthday) is still mandatory.

The only exception to this is if there is some legal compulsion to provide the original record (i.e. in a police, Coroner's or College investigation, or with a summons). If this circumstance occurs, the kinesiologist should keep a legible copy of the record for themselves.

When the time period for keeping the record has expired, the destruction of the records should be done in a secure manner that prevents anyone accessing, discovering, or otherwise obtaining the information (i.e. shredding, complete electronic destruction). If a kinesiologist destroys any records, a good practice would be to keep a list or record of the names of the files which were destroyed and the date they were destroyed.

If transferring from paper records to electronic records, and the original paper record has been scanned into an electronic form, then the original may be destroyed. The electronic version of the document becomes the original.

Confidentiality and privacy issues

Kinesiologists should take reasonable steps to keep records safe and secure. In general, no one outside of the authorized circle of care of health professionals should be able to access the records. Privacy protections must be in place to ensure the records cannot be seen, altered or removed by others. Paper records should be kept locked in a secure location. Digital records need to be password protected on servers that have firewall and virus protections and be backed up regularly. Particular privacy issues are discussed later in the section on the *Personal Health Information Protection Act ("PHIPA")* below.

Patient access to records

Generally, a patient has the right to review and receive a copy of all clinical records kept by a kinesiologist unless access would significantly jeopardize the health or safety of a person. Although the kinesiologist may own the health care record and be responsible for it, patients are authorized by the *Personal Health Information Protection Act ("PHIPA")* to access the record. Also, the patient has

the right to correct any errors in the patient health record. If a patient requests any relevant parts of the record, the kinesiologist should provide them with a copy and not the original. This topic is discussed later in the section on the *Personal Health Information Protection Act ("PHIPA")* below.

Record Keeping Scenario

David, a kinesiologist, has been practising for 35 years in the same practice, and has built up a busy and successful practice. He decides he is ready for retirement but wonders what he is supposed to do with his patient records. Does he have to keep them himself? Ordinarily he would have to retain patient records for 10 years from the last interaction with the patient, or the patient's/client's 18th birthday, whichever is later. But, in this case David may be transferring his practice over to another kinesiologist to take over the business and patients*. If this is the case, he does not have to retain the records himself but needs to notify the* patients *of the transfer of their patient records. This can be done through a combination of telling* patients *on their next visit and placing a notice in the local newspaper.*

Sample Exam Question

Which one of the following does not need to be recorded in the patient's/client's record?

i. The patient's/client's birth date.
ii. The person who recommended the patient to you.
iii. The patient's/client's health concerns.
iv. The treatment plan for the patient.

The best answer is ii. Only if the patient was referred by another health care provider must there be a record of who recommended the patient. If another patient referred the person or the person found out about your service through advertising, that does not have to be recorded (although in some cases it would be helpful to record this information). Answer i is not the best answer because kinesiologists need to record the patient's/client's birth date. It is relevant to many treatment decisions. Answer iii is not the best answer because kinesiologists need to record the patient's/client's health concerns (sometimes called chief complaints). It is relevant to many treatment decisions. Answer iv is not the best answer because kinesiologists need to record the treatment plan for the patient. It is relevant to following through with the treatment on future visits and for justifying one's actions should questions be raised later.

iv. Conflicts of interest

A kinesiologist must not engage in a conflict of interest. In order to avoid a conflict of interest, kinesiologists must put the interests of their patients first, and not allow personal or other interests to interfere. A conflict of interest arises where a kinesiologist does not take reasonable steps to separate their own personal interests from the interest of patients. Where the personal interest would reasonably affect the kinesiologist's professional judgment, a conflict of interest exists. For example, if a kinesiologist refers a patient to a health store owned by the kinesiologist's spouse to buy products, a reasonable person would question whether the kinesiologist recommended that product because the patient needed it or in order to help their spouse.

There is no need for proof of an actual conflict of interest because this would require reading the kinesiologist's mind (to know if they were influenced by the conflicting interest). Instead, one looks to what a reasonable person might conclude from the circumstances regardless of what is actually

going on in the mind of the kinesiologist. A conflict of interest can be actual, potential or perceived. In that way, the conflict of interest rules are intended to prevent concerns from arising.

A conflict of interest can be direct or indirect. For instance, an improper benefit conferred on a close relative (i.e. parent, grandparent, child, spouse, or sibling) of a kinesiologist can put the kinesiologist in a conflict of interest.

Some common examples of conflicts of interest are as follows:

- Splitting fees with a person who has referred a patient;
- Receiving benefits from suppliers or persons receiving referrals from the kinesiologist;
- Giving gifts or other inducements to clients who use the kinesiologist's services where the service is paid for by a third party (e.g., insurance);
- Working for an unregistered person who is in a position to interfere with professional decisions (e.g., how much time is scheduled for each appointment);
- Using or referring a patient to a business in which one has a financial interest; and
- Selling a product to patient for a profit without disclosing the mark-up.

Many of the examples depend on the reasonableness of the circumstance in determining if a conflict of interest exists. The kinesiologist should always ask themselves – would another objective and reasonable person think that there is a conflict of interest, given this circumstance? For example, it probably would be appropriate to give a patient a small calendar to record their future appointments even if an insurance company pays for the treatment. However, giving the patient a new pair of expensive running shoes is unreasonable in the circumstances (even if the patient needs to exercise).

Many conflicts of interest are prohibited outright. However, there are certain circumstances where taking certain safeguards could remove the concern. In the example above about referring a patient to a health store owned by the kinesiologist's spouse to buy a product, such a referral would not raise concerns if the kinesiologist did the following:

- Disclose the nature of the relationship with the health store (e.g. "my spouse owns the store");
- Provide alternative options (e.g. "here are three other places you could get the product I am recommending for you"); and
- Reassure the patient that choosing another store will not affect the patient's/client's care (e.g. "You are free to choose any of the places to get the product; you will still be welcome here as my patient").

Kinesiologists must provide the College with any documents, explanations or information regarding a suspected conflict of interest if requested. This is to enable the College to assess whether a conflict of interest is a concern. For example, if the College receives information that a kinesiologist is making unusual payments to a health food store whenever they refer patients to the kinesiologist, then the College could ask for an explanation of those payments, and any financial records related to them, to determine whether there is a conflict of interest.

Conflict of Interest Scenario No. 1

Donna, a kinesiologist, owns a practice down the street from a gym. She has been practicing there for less than a year. She is trying to build her practice and wants people to know she is new to the neighbourhood. Donna offers to give the manager of the gym free services in return for having him and his staff refer patients *to Donna's practice. The manager of the gym thinks this is a great idea, and offers Donna a free membership to the gym if Donna also refers* patients *to his gym. While this may seem like a good business decision, Donna is in a conflict of interest for two reasons. Donna cannot give free services to the manager of the fitness center in order to obtain referrals as this would constitute a collateral benefit. Patient should be referred to Donna because they need her services and not because the referring person is getting free service. Further, Donna cannot accept free membership at the gym as this would conflict with her duty to refer* patients *to a gym only if Donna honestly believed that this would be in their best interest. In addition, unless there was something special about the local gym, Donna should recommend that the patient go to the gym that they are most likely to actually use. The referrals would be based on professional judgment and not on any 'kickbacks' she may receive.*

Conflict of Interest Scenario No. 2

David is a kinesiologist who has a busy and successful practice. Recently, he began using a new "daily back protection" video. Patients have responded quite well to it. David calls the company to tell them his feedback from his patients *and that he likes using the product, and to order copies. The company asks him if he would like to be in a new advertising campaign they are going to put into some health and wellness magazines where he would provide statements similar to what he just gave to the company for promoting the product. They plan to put a picture of him within the advertisement and identify him by name and qualifications. They say they cannot pay him because they are still a small company, and don't have the budget for it. He thinks, why not? He likes the product, and since he is not getting paid he is not inappropriately benefiting from the relationship. Unfortunately, this would still likely be a conflict of interest and would be professional misconduct. A kinesiologist cannot use their professional status to promote a product commercially. This is so even though he has not been paid for the endorsement. It can be assumed that he will benefit from the advertisement in some indirect manner (for example, he may have increased patient influx from those people who see the advertisement). Also, without making any observations or assessments of an individual, a kinesiologist should not be making any sort of clinical recommendations. David can give advice on products and remedies, including in choosing what type of videos to recommend to* patients*, provided it is within a kinesiologist-patient relationship, and it is based on professional judgment regarding a patient's/client's individual needs through proper assessment.*

v. Advertising

Advertising is an appropriate way to provide information to potential new patients. Kinesiologists can use appropriate advertising to communicate the type and availability of services within their scope of practice to the public, or to other health professionals. The purpose of advertising should be to provide relevant information to the public in order for them to make informed choices about their health care needs. However, advertising must be honest, truthful and responsible.

Advertising is any message that communicates information about a kinesiologist, their practice and what services they may offer, under the kinesiologist's control. Advertising may be in any medium and may include (but is not limited to) the following:

- Radio
- Television
- Websites
- Print based notices – e.g., letterheads, newspapers, magazines, journals, flyers
- Contact listing services – e.g., yellow pages
- Social media sites – e.g., Facebook, Instagram, LinkedIn

Advertising should be factual, accurate, objectively verifiable, independent of personal opinion, comprehensible, and professionally appropriate. It should not include any information that is misleading by either leaving out relevant information, or including non-relevant, false, or unverifiable information. For example, providing before and after pictures of how one's services can enhance a patient's/client's appearance is inherently misleading and unverifiable. Kinesiologists should also take reasonable steps to ensure that the advertisements placed by others (i.e. employers, marketing consultants) meet these standards.

In particular, references to qualifications in the advertisement should be consistent with the College's rules. For instance, the title the kinesiologist can use will depend on their class of registration. Another example is that a kinesiologists should not suggest that they are a specialist.

Important information such as office hours and days of operation, telephone numbers, languages spoken, website address, location, and methods of payment are acceptable inclusions in advertising. Fees or prices advertised should meet expectations for honesty and accuracy.

Further, advertisements are prohibited if they:

- promote a demand for any unnecessary services,
- make a claim or promise a result that cannot always be delivered (i.e. or be interpreted as a guarantee as to the success of a service provided),
- use comparative (e.g., "better"), superlatives (e.g., "best"), suggestion of uniqueness, or appeals to a person's fears about any service quality, products or people (e.g. comparing one's services to another's, or claims their service to be superior to others, is not verifiable), and
- contain testimonials from a patient, former patient, or other person in respect of the kinesiologist's practice; however, statements that refer to the benefits of kinesiology, and not to a particular kinesiologist or office, are permissible.

Advertising should also not involve the pressuring of vulnerable clients or patients. Soliciting or permitting the solicitation of an individual in person, by telephone, through electronic communications or by similar means, is unprofessional. However, it is not solicitation to remind existing patients of appointments, new developments or changes in the office.

Advertising Scenario

> *Donna, a kinesiologist, has just started performing a new procedure with her* patients *that helps improve posture and is noticing great results. She wants to let other people know she now does this procedure so that clients can choose to come to her for it, or maybe even have another health care provider refer clients to her to have her perform it. She adds her weekly advertisement in the community paper with a description of the service. She makes*

sure the description only describes the procedure and does not offer any guaranteed outcomes, compare it to other procedures or provide reasons why she might be a better choice because she performs this procedure. However, she wants people to know the great results she has been seeing with her patients *. So, with the consent of a few of her* patients *, she takes some before and after pictures and publishes them in the local paper. She feels that people can decide for themselves based on the pictures if they want to try the procedure. Unfortunately, in doing so Donna has violated the advertising standards for the profession. Before and after pictures are inherently misleading as they cannot be verified for authenticity and involve comparisons in order to promote a specific procedure. Also, before and after pictures may be construed as suggesting an outcome, or a guarantee, that cannot always be expected.*

Sample Exam Question

Advertising needs to be:

i. Accurate.
ii. Verifiable.
iii. Not contain personal opinions.
iv. All of the above

Answer iv is the best answer. All of the qualities are those that are required of advertising. There are more qualities that advertisements should be such as factual, objective, comprehensible, and professional appropriate. Answer i is not the best answer because all of the qualities listed in the question are fine. Answer ii is not the best answer because all of the qualities listed in the question are fine. Answer iii is not the best answer because all of the qualities listed in the question are fine.

d. The College

The College does a number of things in order to protect the public. Under its Act, the College has to set up various committees and operate various programs. The following are some of the most important processes the College carries out in the regulation of the profession.

i. Registration process

As mentioned above, registration is the way for a person to enter into the profession and become a registrant of the College if they meet the requirements set out in the registration regulation. The process of registration itself is fairly structured.

To become a registrant of the College a person files an application form with the Registrar and pays the applicable fees. The form is available on the College website. Through the application form the applicant provides the College with information about their training and experience, their conduct, and other information that may affect their ability to practise effectively (e.g. language fluency, professional liability insurance, current experience, etc.). The applicant should provide enough information to demonstrate that they meets the requirements for registration. The applicant must not make any false statements on the application.

Where the applicant meets the requirements including passing or completing any courses or exams that are required by the College, the Registrar's office will simply accept the application. In this case, a certificate of registration is issued to the new registrant of the College.

However, if it appears that the applicant does not meet the registration requirements (or even if the Registrar is not sure) the Registrar will refer the application to the Registration Committee. The applicant will be told of the concern and be given an opportunity to provide a written response to the concerns. The Registration Committee will consider the application further and determine suitability of the applicant to become a registrant. If the Registration Committee concludes that the applicant meets the requirements, a certificate of registration will be issued. If the Registration Committee concludes that the applicant does not meet the requirements it can make a number of decisions including:

1. Direct the applicant to complete further training or examinations.
2. Register the applicant with terms, conditions and limitations (for example, if the missing requirement is exemptible and the public can be protected in the circumstances).
3. Refuse the application.

If a certificate is not granted by the Registration Committee, the applicant has further options. The decision may be appealed to the Health Professions Appeal and Review Board (HPARB). HPARB is appointed by the government and is independent of the College. HPARB will review the file and, if the applicant wishes, hear from witnesses. HPARB can determine that an applicant meets the registration requirements or require the Registration Committee to obtain additional information and make a new decision. HPARB's decision can be appealed to the courts.

To ensure that a College's registration process is fair, the registration system itself is audited and reviewed through the office of the Fairness Commissioner of Ontario. Further, the *RHPA* has provisions to ensure that the registration process of Colleges is transparent, objective, impartial and fair.

Where an applicant is registered in another part of Canada, the College must, with rare exceptions, accept the applicant's education, experience, and examination credentials without further inquiry. One exception would be if the class of registration was not the same. The College can still review the other registration requirements (e.g., good character, professional liability insurance, jurisprudence requirements).

Registration Process Scenario 1 – Making False Statements

> *David, a kinesiologist, filled out his application form for registration, but when asked if he had any previous criminal findings he did not want to put down the shoplifting conviction he received 20 years ago. He was worried it would affect his application. So, on his application he reported that he did not have any previous criminal findings. On the basis of the application form, the College registers David. A few years later the College is told about David's previous conviction. The College realizes that David made a false statement. The College can revoke David's registration because he made the false statement on the application form. Ironically, if David had disclosed the conviction, the Registration Committee would probably have accepted David for registration since he has had no difficulties in twenty years. However, making a false statement on the application form is so serious and reflects current dishonesty, that now he may be removed from the profession.*

An applicant who has received a pardon, is subject to a record suspension, or who has received a conditional or absolute discharge from court must still report the offence.

ii. Complaints and discipline process

In order to protect the public, investigating concerns about a kinesiologist's professional conduct or competence is an essential element of self-regulation. Where a concern appears serious, disciplinary action must be taken. Where possible, the College deals with concerns related to potential professional misconduct and incompetence in an educational manner. If a matter is referred for discipline, the College provides a fair procedure to the kinesiologist.

The following outlines how the complaints and discipline process works.

The ICRC
The Inquiries, Complaints and Reports Committee (ICRC) is the statutory committee of the College that handles kinesiologist-specific concerns (e.g. professional misconduct, incompetence and incapacity).

The ICRC can only handle concerns regarding memkinesiologistbers and some former registrants of the College. Further, ICRC is only involved in allegations regarding professional misconduct, incompetence or incapacity. It does not handle claims about professional negligence (i.e. civil lawsuits) unless the negligence also constitutes professional misconduct or incompetence.

For professional misconduct and incompetence issues there are two main sources for concerns:
1. Formal complaints; and
2. Formal investigative reports (called Registrar's Reports).

Incapacity concerns are also handled by the ICRC but will be discussed in a later section because they are handled in a different way than complaints that bring a kinesiologist's professional conduct or competence into question.

Intake of Complaints
For concerns to be considered a formal complaint the following requirements must be met:
- The complaint must be in writing or recorded on tape, film, disk or other medium (as set out in the *Health Professions Procedural Code.*)
- The complainant must be identified.
- The kinesiologist who is the subject of the complaint must be identifiable (the ICRC may be able to assist in identifying the kinesiologist based on the information provided by the complainant.)
- The complaint must identify some conduct or actions that are of concern (e.g., not just the complaint that a kinesiologist is "unprofessional", "incompetent" or "incapable", but instead including some level of detail about those complaints.)
- The complainant must intend the matter to be a complaint.

The Registrar must give the kinesiologist notice of complaint. This must be done within 14 days of the receipt of the formal complaint. With limited exceptions, all complaints must be investigated by the College.

Intake of Registrar's Reports investigations
As mentioned before, the discipline process can be initiated by a Registrar's Report. In this method the following occurs (with a few exceptions in urgent cases):
- A concern arises that the Registrar believes warrants investigation, and it is brought to the ICRC with the request for the ICRC to approve appointment of an investigator.

- Where approved by the ICRC, an investigator is appointed.
- The investigation is conducted, and the investigator makes a report to the Registrar.
- The Registrar then makes a Registrar's Report to the ICRC.

Once a Registrar's Report is made to the ICRC, the matter proceeds in much the same way as a complaint.

At any point after a complaint is received or an investigator is appointed by the Registrar, the ICRC may make an interim order to protect the public while awaiting the outcome of the investigation and any discipline hearing. For example, the ICRC may order that the kinesiologist's registration be suspended until the investigation and any discipline hearing is finished. Interim orders are fairly rare and are only used when necessary to protect patients from harm.

Investigations
The investigations by the ICRC should be thorough but neutral, objective and fair.

1. Complaints Investigations:
   - Frivolous or Vexatious Complaints: One exception to the requirement for the ICRC to investigate every complaint it receives is when a complaint is 'frivolous or vexatious.' When a complaint is frivolous, vexatious, made in bad faith, is moot or is otherwise an abuse of process, the ICRC can choose not to investigate it. This happens rarely. Generally, it must be fairly obvious that there is little merit to the complaint and the processing of the complaint is unfair in the circumstances. For example, a complainant repeating a complaint without any new evidence would be frivolous and vexatious. Notice is given to the kinesiologist and complainant if the ICRC intends to take no action in these cases.
   - Investigative Steps: Both complainant and kinesiologist are usually first asked to provide all documentation available to them. The ICRC staff gathers additional information until they determine it is likely that all reasonable and available evidence has been obtained. Information is gathered from a variety of sources including College files, the kinesiologist's files, public databases (i.e., court files), other regulators, witnesses, and other kinesiologists.
   - ICRC decision: At the completion of the investigation the ICRC makes its decision about the complaint.
   - Time limits: A complaint is supposed to be completed within 150 days of it being filed with the College. After that the parties must be notified regularly about the progress of the complaint. If the College takes too long, the complainant or the kinesiologist can ask the Health Professions Appeal and Review Board to take action.

2. Registrar's Reports Investigations:
   - There are three types of appointment of investigators that can occur: 1) Concerns that come to the attention of the Registrar; 2) Request made by the ICRC to help investigate a complaint, and; 3) Information from the Quality Assurance Committee.
     - Any concern that is about the conduct or actions of a kinesiologist that is not a formal complaint is generally brought to the attention of the Registrar. If the Registrar is of the view that there are reasonable and probable grounds that the kinesiologist engaged in significant professional misconduct or is incompetent, the Registrar brings the concerns to the attention of the ICRC. The ICRC is asked to approve appointment of an investigator.

  - Complaints Investigations: If the ICRC cannot obtain important information about a complaint on its own (e.g., a person refuses to provide it), the ICRC can ask the Registrar to use their special powers to help by appointing an investigator.
  - Appointments based on Quality Assurance Committee Information: Where a kinesiologist does not co-operate with the quality assurance process, or the process has revealed significant concerns about the kinesiologist, the Quality Assurance Committee can bring the concern to the ICRC. The ICRC can decide whether to appoint an investigator.
- The Investigation: The investigator appointed by the Registrar has special powers. For example, they can enter the office of the kinesiologist and examine files, can summons documents and can compel witnesses to answer questions.
- Time limits: There is no set deadline to complete a Registrar's Report Investigation and render a decision. However, they should be completed within reasonable time.

ICRC Disposition (Decision)
Once the investigation is completed the ICRC makes a decision on the issues. There are many options for the ICRC. Discipline is not the only option. The ICRC is a 'screening' body directing the concern to the most reasonable solution. The ICRC does not hold a hearing, make findings of credibility, find wrongdoing, or impose a disciplinary sanction (i.e. fine or suspension). Only the Discipline Committee can do these things. The following are some of the dispositions that can take place.

- Withdrawal of complaint: If a complainant wishes to withdraw a complaint, the ICRC can still proceed with investigation. However, the College can choose to accept the withdrawal of the complaint in appropriate circumstances. The Registrar can decide whether to accept a withdrawal of a complaint.
- Request an Undertaking: This means that a kinesiologist promises to do certain things (or refrain from doing certain things).
- Referral to Discipline: Discipline is intended for serious concerns (e.g. dishonesty, breach of trust, wilful disregard of professional values, inability to practice competently) Even then the ICRC must ensure that there is reasonable evidence to support the concern.
- Referral for Incapacity Proceedings: This is done where the conduct may be due to an illness or health condition. The procedure is described separately below.
- Appearance for a Caution: The kinesiologist can be required to appear before the ICRC for a conversation about the conduct. Usually this is accompanied with the statement that if the circumstances do not change that the kinesiologist will face more formal action in the future.
- Other Actions: The ICRC can be creative in their decisions and solutions. For example the ICRC can require the kinesiologist to undergo a specified continuing education and remediation program (SCERP) (e.g., a record keeping course).
- Taking No Action: If there is no basis for concern the ICRC can close (or dismiss) the complaint. Reasons must be given for taking no action.

Unless the ICRC refers the concerns to discipline for a hearing or begins the incapacity process, the ICRC must give written reasons explaining why it made its decision.

Review Before HPARB
In a complaints matter, either party can seek a review of an ICRC decision before the Health Professions Appeal and Review Board (HPARB) (unless the decision was referred to discipline proceedings or for incapacity proceedings). HPARB may confirm a decision of the ICRC or return the

matter to the ICRC to make a new decision. HPARB can also make recommendations to the ICRC or require the ICRC to take specific action (e.g., specify the outcome.)

Discipline Proceedings
All discipline matters are referred to discipline by the ICRC. Formal complaints and other matters first go through the ICRC. Where the ICRC views the matter as serious, it can refer specified allegations to the discipline process.

As noted above, in very serious cases the ICRC may make an interim order (for example, the suspension of the kinesiologist's certificate of registration) to protect the public while awaiting a discipline hearing. It is only used when absolutely necessary to protect *patients* from harm.

Procedure Before the Discipline Hearing Starts:

- Notice of the hearing officially initiates proceedings before the Discipline Committee. The notice contains information necessary to ensure that the kinesiologist can participate effectively in the hearing. It usually is accompanied by a statement of allegations outlining the facts, and legal conclusions to be drawn from the facts (i.e., incompetence, or category of professional misconduct).
- Disclosure of all relevant information in the College's files is made to the kinesiologist. Disclosure will enable the kinesiologist to present the best possible defence.
- The Chair of the Discipline Committee selects a panel from among the members of the Discipline Committee to hold the hearing for any allegations referred to it. It is usually five people (two must be public members, and three are usually kinesiologists). These decision makers must be disinterested and unbiased.
- Prehearing conferences may be held before the discipline hearings. This is to reach an agreement on as many issues as possible, and to plan the hearing. Discussions at pre-hearing conference are 'off the record'. If a resolution is agreed upon (e.g., settlement) it is presented to the panel of Discipline Committee for acceptance.

Procedure at the Discipline Hearing:

- The procedure of a discipline hearing is formal, and unlike most meetings non-lawyers have been exposed to. It is similar to a court case in that there are two sides, the College and the kinesiologist , where each side presents their arguments and evidence to the panel. The Discipline Committee panel ensures that the cases are presented fairly, they listen impartially to the evidence and arguments, and after both parties have completed their presentations, the panel decides on the issues.
- The hearing is open to the public unless there is some compelling reason for privacy. Open hearings uphold transparency and fairness in the process. There are only a few limited exceptions where the hearing may be closed (e.g. a person's health privacy interests might be disclosed and outweigh the interests in a public hearing).
- The College presents its witnesses first. Then the kinesiologist is permitted to call their witnesses. The kinesiologist may choose to testify. The College can then call witnesses to reply to what the kinesiologist's witnesses said.

Evidence at the Discipline hearing:

- Generally, rules of evidence that apply to civil court trials apply to discipline hearings.
- Decisions are to be based exclusively on the evidence admitted before it. The Committee cannot rely on any knowledge to make a finding that was not presented as evidence.
- A record is kept compiling all the exhibits of evidence.

Findings of Professional Misconduct:

- Once a Discipline Committee determines what a kinesiologist has done, it must then decide whether or not that behaviour constitutes professional misconduct as is outlined in the *RHPA* and the regulations (as described above).

Findings of Incompetence:

- Incompetence is different from professional misconduct. It generally does not involve unethical or dishonest conduct, but rather that the kinesiologist does not have the knowledge, skill and judgment to practise safely. A finding of incompetence is based on the care of one or more of the kinesiologist's *patients*.
- A finding of incompetence can either be that the kinesiologist is unfit to continue to practise, or that the kinesiologist's practice should be restricted.

Decisions and Orders in Discipline Cases:
If a kinesiologist has been found to engage in professional misconduct, the Discipline Committee can make one of more of the following orders:

- Revocation – the removal of the kinesiologist from the profession; it lasts at least a year, then the kinesiologist must satisfy the Discipline Committee they ought to be permitted back into the profession. In cases of sexual abuse involving certain frank sexual acts (e.g., sexual intercourse), revocation for a minimum of five years is mandatory.
- Suspension – the temporary removal of a kinesiologist from the profession. Its duration can be fixed or flexible, or dependent on an event occurring (e.g., successful completion of a course).
- Terms, conditions or limitations – can either be for a specified period (e.g., until the kinesiologist successfully completes certain remedial training) or for an indefinite period (e.g. the kinesiologist cannot consume any alcohol). The terms, conditions or limitations must relate to the finding made by the Discipline Committee. For example, if the kinesiologist was dishonest because of a problem with substance use , the condition cannot be to take remedial education courses because there was no finding the kinesiologist lacked any basic knowledge.
- Reprimand – conversation between the Discipline Committee and the kinesiologist where the Committee tells the kinesiologist its views of their conduct and how to avoid similar problems in the future.
- Fine – the Discipline Committee can impose a fine of up to $35,000.
- Reimbursement for funding in sexual abuse cases – where there is a finding of sexual abuse the Discipline Committee can require a kinesiologist to reimburse the College for any funding for counselling or therapy provided to the patient.
- Minimum order in sexual abuse cases – cases involving frank sexual acts have a mandatory minimum order of both a reprimand and revocation. No reinstatement can be made for five years after revocation on these grounds.
- Costs can be ordered by the Discipline Committee to cover a portion of the expenses associated with the hearing.

In incompetence cases, the Discipline Committee can order revocation, suspension or terms conditions and limitations.

The Discipline Committee must issue both a written decision and written reasons.

Appeals
Either party at the discipline hearing may appeal to the Divisional Court. The Divisional Court has the power to confirm, amend or reverse a decision of the Discipline Committee if it acted unreasonably or made an error of law.

Complaints and Discipline Scenario – The Typical Complaint

> *A patient sends a letter of complaint to the College saying that Donna, a kinesiologist, was rude to her. The patient says that Donna became angry when the patient expressed concern that the treatment was not working. The patient says that Donna "threw her out of the office". The Registrar sends a letter notifying Donna of the complaint and asking for a response. Donna responds that the patient was extremely challenging and after doing all that she could for the patient the patient became verbally abusive and Donna had to terminate the professional relationship. Donna's letter is sent to the patient who replies that*

she was never verbally abusive to Donna and that Donna is making this up to defend herself. The Inquiries Reports and Complaints Committee (ICRC) obtains statements from the patient's/client's husband, Donna's receptionist and a couple of patients who were around at the time. It is difficult to reconcile the stories but the picture that emerges is that there was a verbal confrontation in which both parties may have used intemperate language. The ICRC decides that this is not a case for discipline, particularly since there have been no previous complaints about Donna. However, the ICRC sends Donna a letter of advice reminding her of the need to be professional in her dealings with patients even in challenging circumstances.

iii. Incapacity process

As noted above, incapacity has a particular definition when it refers to a kinesiologist under the *Regulated Health Professions Act*. It relates to a kinesiologist having a physical or mental condition which may warrant some restrictions on their registration or their removal from practice. This section focuses on what happens when incapacity becomes a concern.

Because the intent of the incapacity provisions is not to punish an ill kinesiologist, the goal of the incapacity process is to ensure that the kinesiologist receives appropriate treatment and is supervised and monitored sufficiently closely that they can continue to practice without undue risk to the public. Only on rare occasions will the kinesiologist have their certificate of registration suspended or revoked by the Fitness to Practise Committee.

Concern of Incapacity Initiated
When incapacity becomes a problem for a kinesiologist, the concern is brought to the Inquiries, Complaints and Reports Committee (ICRC). The information of possible incapacity can come from a number of sources including a law enforcement agency, a mandatory report by an employer, or an expression of concern by a kinesiologist or the public.

ICRC Inquiry
Once an ICRC panel is selected, notice is given to the kinesiologist that the ICRC panel intends to inquire into whether the kinesiologist is incapacitated. The ICRC inquiries panel is an investigative body. Its role is to gather information and then determine if formal proceedings should be initiated. The inquiry may involve any (or all) of the following:

- an interview with the kinesiologist;
- a review of any relevant information that might be contained in other College files;
- obtaining of witness statements from *patients*, co-workers, colleagues, family members, and others who have observed the kinesiologist's behaviour recently, particularly any unusual behaviour;
- obtaining hospital and health care provider office charts of relevant treatment of the kinesiologist;
- obtaining a report from health care providers who have treated the kinesiologist; and
- ordering an examination of the kinesiologist by a specialist in the area of concern (e.g., psychiatrist, substance use expert).

The ICRC must prepare a report of its inquiries and send a copy to the kinesiologist for comment. The ICRC then determines if the matter should be referred to the Fitness to Practise Committee for a hearing.

ICRC Decision to refer to Fitness to Practise Committee for hearing (or not)
The matter is only referred when the kinesiologist's problem is serious. The decision to refer to the Fitness to Practise Committee for a hearing is not taken lightly and there must be sufficient evidence of, and a reasonable prospect of finding, incapacity. This is usually when there is some concern that the kinesiologist's illness will, now or in the future, affect their professional practice negatively. Typically, it involves a lack of insight by the kinesiologist into the extent of their condition.

The ICRC can make an order that directs the Registrar to suspend the certificate of registration of the kinesiologist, or to impose terms, conditions, or limitations on the kinesiologist's registration, temporarily until the Fitness to Practise Committee addresses the matter.

In suitable cases the ICRC can negotiate an undertaking with the kinesiologist to employ suitable safeguards to protect the public such as ongoing treatment and monitoring.

Hearing before the Fitness to Practise Committee
The hearings before the Fitness to Practise Committee share many similarities with the hearings before the Discipline Committee. Generally, the procedure at a fitness to practise hearing is as follows:

- Panel is selected by the chair of the Fitness to Practise Committee – a panel consists of at least three people including at least one public member of College Council and at least two other persons (usually kinesiologist).
- Disclosure of evidence – the College has the same disclosure obligations as in a discipline hearing.
- Closed hearing – ordinarily fitness to practise hearings are closed to the public because of the personal nature of such hearings (and because the hearing is not meant to be punishment to the kinesiologist). Only the kinesiologist can request that the hearing be opened to the public.
- Order of hearing – is similar to a discipline hearing. The burden of proving that the kinesiologist is incapacitated lies upon the College. The College presents its case first.

Decisions of Fitness to Practise Hearing
The Fitness to Practise Committee must determine if a kinesiologist is indeed incapacitated. As mentioned, this requires that the kinesiologist have a physical or mental condition and that the condition warrants, in the public interest, some restrictions on the kinesiologist 's registration (e.g., supervision or treatment). This will be based upon evidence presented at the hearing, usually involving expert evidence on the kinesiologist 's health status. The Committee looks at the present status of the kinesiologist 's health (which is different from a discipline hearing).

If the Fitness to Practise Committee finds the kinesiologist to be incapacitated, it must also decide what restriction to place on the kinesiologist 's certificate of registration. It can revoke a kinesiologist 's certificate entirely, suspend a kinesiologist 's certificate, or impose terms, conditions or limitations on the kinesiologist 's certificate of registration. Usually terms, conditions or limitations on the certificate are ordered, for example, an order for treatment followed by monitoring and supervision.

If circumstances change, the Committee can vary an order it made in the past. For instance, if a kinesiologist establishes a period of time that their illness has been in remissions (e.g., sobriety) there can be a loosening of the restrictions on their certificate of registration.

Appeals

Either party at the fitness to practise hearing may appeal to the Divisional Court. Despite an appeal being made, any order from the Fitness to Practise Committee takes effect while the appeal is pending. Again, the Divisional Court can confirm, amend or reverse a decision of the Fitness to Practise Committee.

Fitness to Practise Scenario – The Typical Case

> *David is a kinesiologist working with John, another kinesiologist. John reports to the College that he is terminating his partnership with David because David's drinking is beginning to affect his work. John is tired of covering for David when he comes to the office two hours late after excessive drinking . The Registrar makes some inquiries that tend to confirm John's report. David, however, denies he has any problems. The Registrar reports the matter to the ICRC. The ICRC asks David for consent to obtain a copy of his medical records, which David provides. Those records indicate that David has separated from his wife who accuses him of drinking and that David has recently been charged for impaired driving. The ICRC directs that David attend an assessment with a specialist in substance use disorders. The report from the specialist indicates that David clearly has a substance use disorder. The ICRC refers David to the Fitness to Practise Committee for a hearing and suspends David's certificate of registration until the hearing can be completed. David enters and successfully completes a 30-day in-patient treatment program for substance use and is an active participant in the recommended after-care program. At the Fitness to Practise hearing David's lawyer and the College's lawyer present a joint submission asking the Committee to find that David is incapacitated, as defined in the Act, and order that David's certificate of registration be restored on the condition that he continue in regular treatment, that he work with another kinesiologist who will monitor David's performance at work and that regular reports be made to the College of David's progress. The Committee accepts the joint submission.*

iv. Quality assurance program

Purposes of the program
Every profession expects that its registrants are learning continuously. Professions are constantly evolving and expanding. The quality assurance program of the College supports and, to some extent, formalizes this already existing process.

Every College is required by the *Regulated Health Professions Act* to have a quality assurance program. The quality assurance program is intended to assist kinesiologists improve and enhance their practice by participating in professional development activities and receiving constructive feedback.

The quality assurance program is not a form of discipline. No information about a kinesiologist obtained through the quality assurance program may be used by the College to discipline a kinesiologist or by any person in any legal proceeding. At most the Quality Assurance Committee can report the kinesiologist's name and alleged misconduct to the Inquiries, Complaints and Reports Committee. The only exception is where the kinesiologist makes a false statement to the College or fails to cooperate with the program.

The quality assurance program is administered by the Quality Assurance Committee of the College (the "Committee"). The quality assurance program has the following components:
- Professional development,
- Self, peer and practice assessments, and

- Monitoring of kinesiologists' participation in and compliance with the program.

Self-assessment and professional development
Kinesiologists must participate in self-assessment and professional development activities. For example, kinesiologists are required to complete an annual self-assessment wherein the kinesiologist describes the nature of their practice, the skills needed to practice well, and what actions the kinesiologist plans to improve those skills. The kinesiologist could then take a course or otherwise improve those skills. Kinesiologists are required to record these activities so that the College can monitor them. A kinesiologist must produce their record upon the request of the College.

Professional development activities allow kinesiologists to remain informed about changes and innovations in practice standards and techniques, and develop skills and knowledge of inter-professional collaboration.

Peer and practice assessment and remediation
Every year, the Committee selects kinesiologists to participate in peer and practice assessments. This allows the Committee to assess kinesiologists' skill, knowledge and judgment.

Selection of kinesiologists
Kinesiologists may be randomly selected for a peer and practice assessment. A kinesiologist may also be selected if the College asks to see the kinesiologist's record of self-assessment and professional development activities, and the record is incomplete or inadequate. The College may also develop other criteria for selecting kinesiologists for peer and practice assessments (e.g., kinesiologists who have not practised many hours). These criteria are published on the College's website.

Practice assessors
A peer and practice assessment is conducted by an independent practice assessor appointed by the Quality Assurance Committee. Generally those assessors will be kinesiologists and every effort will be made to ensure that an assessor has the knowledge and background to carry out a meaningful assessment in the area of practice of the kinesiologist being reviewed. A practice assessor may review a kinesiologist's education, professional development and self-assessment records. A practice assessor can also obtain information about a kinesiologist's practice by various methods including visiting the kinesiologist's office.

Kinesiologists must cooperate with an assessment. In particular, during a peer and practice assessment, kinesiologists must:

- Permit the assessor to enter and inspect the premises where the kinesiologist practices; however, assessors may not enter a kinesiologist's home;
- Permit the assessor to inspect the kinesiologist's records of the care of clients, even if they are confidential;
- Give the assessor any information requested regarding the care of clients or the kinesiologist's records, and
- Meet with the assessor upon request.

Role of the Committee
Following a peer and practice assessment, the practice assessor will prepare a report for the Committee. The practice assessor's role is simply to review and report on a kinesiologist's practice, and not to make any rulings about the kinesiologist's practice.

The Committee's role is to determine if the kinesiologist's knowledge, skills or judgment are satisfactory. If the Committee is of the opinion that the kinesiologist's knowledge, skills or judgment are not satisfactory, the Committee may do any of the following:

- Require a kinesiologist to participate in specified continuing education or remediation programs;
- Direct the Registrar to impose terms, conditions or limitations on the kinesiologist's certificate of registration for a specified period of time; or
- If the Committee believes the kinesiologist may have committed an act of professional misconduct, or may be incompetent or incapacitated, the Committee may disclose only the name of the kinesiologist and the allegations against the kinesiologist to the Inquiries, Complaints and Reports Committee.

Since the quality assurance program is educational and supportive in nature, it will be rare for the Committee to direct anything other than upgrading (e.g., courses or seeing a mentor) even in cases where there are significant gaps in the kinesiologist's knowledge, skill and judgment.

The Committee must consider any written submissions by the kinesiologist before taking any action.

Quality Assurance Scenario No. 1

Donna, a kinesiologist, fails to complete and submit her annual self-assessment. Accordingly, Donna is selected to participate in the Peer and Practice Assessment Process. A practice assessor is appointed. The practice assessor meets with Donna, conducts an interview, and reviews her professional development and self-assessment activities. The practice assessor prepares a report for the Committee that describes Donna's responses and the professional development activities that Donna participated in. The Committee may decide that there is no reason to take any action because Donna has learned from this experience about the importance of completing her annual self-assessment and keeping records of professional development activities.

Quality Assurance Scenario No. 2

David, a kinesiologist, is randomly selected for a peer and practice assessment. A practice assessor is appointed. David cooperates with the practice assessor's review of his records and inspection of his office. The practice assessor provides a report to the Committee, who reviews the report and finds that David has not been keeping adequate clinical records. The Committee gives David an opportunity to respond in writing. After reviewing David's response, the Committee decides that David must take a record keeping course. The Committee also directs that David's practice be reassessed in one year's time to see if there has been an improvement.

Sample Examination Question

If a kinesiologist is selected for a peer and practice assessment, the kinesiologist should:

i. Cooperate with the practice assessor's review, including permitting the assessor to inspect their office and upon request, provide any requested records.
ii. Permit the practice assessor to inspect their home.
iii. Give the assessor all records except those that are confidential.

iv. Complete all required professional development records and fill in gaps in client records before sending them to the practice assessor.

The best answer is i. Kinesiologists have a duty to cooperate with peer and practice assessments. Answer ii is the not best answer because practice assessors are not permitted to enter private homes. Answer iii is not the best answer because the practice assessor's right to access premises and records overrides patient confidentiality. Answer iv is not the best answer because while a practice assessment is a good opportunity to improve record keeping and other practices, a kinesiologist should always update client records immediately so that they are accurate. Kinesiologists should never wait until they are selected for an assessment to update their records. Additionally, if records are falsified, the Committee may report the kinesiologist's name and this allegation to the Inquiries, Complaints and Reports Committee.

e. Other laws

i. PHIPA

Personal health information
Kinesiologists have a legal and professional duty to protect the privacy of *patients*' personal health information. The *Personal Health Information Protection Act* ("PHIPA") governs kinesiologists' use of personal health information, including its collection, use, disclosure, and access. *PHIPA* helps guide the general duty of confidentiality described above.

Personal health information refers to almost anything that would be in a kinesiologist's files on a patient. It is defined in PHIPA as written or oral identifying information about a person, if the information:

(a) Relates to the person's physical or mental health, including the person's family health history;
(b) Relates to the providing of health care to the person, including the identification of a person as someone who provided health care to the person;
(c) Is a plan of service within the meaning of the *Home Care and Community Services Act, 1994* for the person;
(d) Relates to the person's payments or eligibility for health care, or eligibility for coverage for health care:
(e) Relates to the donation by the individual of any body part or bodily substance of the person or is derived from the testing or examination of any such body part or bodily substance;
(f) Is the person's health number; or
(g) Identifies a person's substitute decision-maker.

Health Information Custodians
A Health Information Custodian ("Custodian") is the person or organization responsible for all health records. The Custodian must create, implement and oversee a privacy policy that meets the requirements of *PHIPA*.

A sole kinesiologist is the Custodian over any health information and records that the kinesiologist collects.

If a kinesiologist works for a health organization such as a hospital or long-term care home, the organization is usually the Custodian of health records.

Two or more kinesiologists who work together may decide to act as a single organization for the purposes of *PHIPA*. This may be helpful because the kinesiologists can create a single privacy policy. This would allow for consistent health record keeping practices. In this case the kinesiologists will have shared responsibility for complying with *PHIPA*.

Information Officers
PHIPA requires every kinesiologist and organization to appoint a contact person (often called an Information Officer). An Information Officer is the person who ensures compliance with the privacy policy and requirements of *PHIPA*. The Information Officer's duties include reviewing the organization's privacy practices, providing training, and monitoring compliance. The Information Officer is also the contact person for requests for information from the public.

A sole kinesiologist usually acts as Information Officer. A health organization may appoint a person within the organization, or may hire a person outside of the organization to be its Information Officer.

PHIPA Scenario

> *Three kinesiologists work together in an office. They decide they will act as an organization for privacy purposes. Their organization is the Health Information Custodian. The kinesiologists create a privacy policy together. The kinesiologists decide to appoint the most senior kinesiologist to be the Information Officer. The Information Officer creates a procedure to protect personal information, develops a privacy complaints procedure, and ensures that all kinesiologists comply with the privacy policy.*

Protecting personal health information
Custodians must put in place practices to protect personal health information in the Custodian's custody or control.

Kinesiologists or organizations must take appropriate measures to protect personal health information from unauthorized access, disclosure, use or tampering. Those safeguards must include the following components:

- physical measures (e.g., restricted access areas, locked filing cabinets),
- organizational measures (e.g., need-to-know and other employee policies, security clearances), and
- technological measures (e.g., passwords, encryption, virus protection, firewalls).

Kinesiologists or organizations need to systematically review all of the places where they may temporarily or permanently hold personal health information and assess the adequacy of the safeguards. Almost every organization will find that it needs to make changes.

Where a kinesiologist has been involved in a privacy breach that results in the Custodian taking action against the kinesiologist (or the kinesiologist leaves voluntarily), the Custodian must report the conduct to the College. In addition, Custodians must report serious privacy breaches to the Information and Privacy Commissioner (IPC) and make annual reports of all privacy breaches to the IPC.

Kinesiologists or organizations also need to securely retain, transfer and dispose of records in accordance with the College's requirements. For example, the College requires that patient records be kept for ten years from the last contact with the patient (or if the patient was not an adult at the last contact, ten years from when the patient turned 18).

A kinesiologist or organization's privacy policy should explain how health information will be protected.

Collection, use and disclosure of personal health information
A kinesiologist or organization must only collect, use, or disclose a person's personal information if the person consents or if the collection, use or disclosure is otherwise permitted or required by law. A kinesiologist should collect, use or disclose no more information that is reasonably required in the circumstances.

A kinesiologist's or organization's privacy policy should clearly explain how and when personal health information will be collected, used and disclosed.

Under *PHIPA*, collection, use and disclosure of personal health information is permitted without consent in limited circumstances such as within the patient's/client's "circle of care".

Circle of Care
A kinesiologist can share personal health information with other individuals within a patient's/client's "circle of care" for the purposes of providing health care, without the patient's/client's express consent.

A circle of care may include other health professionals who provide care to the same patient. A kinesiologist may assume that they have a patient's/client's implied consent to disclose personal health information to other health providers in the patient's/client's circle of care.

A kinesiologist who is working in a multidisciplinary setting may share personal health information with other health care professionals who are providing care to the same patient, because these other health care professionals are within the patient's/client's circle of care.

A kinesiologist who refers a patient to another health professional may consider that health professional to be within the patient's/client's circle of care.

The circle of care of a sole kinesiologist's patient may also include other health care providers in other institutions, if it is necessary for providing health care to the individual, and it is not reasonably possible for consent to be obtained in a timely manner. However, some kinesiologists do not share information with others in the health care team without the patient's/client's explicit consent unless it is an emergency so as to avoid misunderstandings. This caution is particularly important where the information is sensitive.

The exception to this principle is that if a patient or patient's/client's substitute decision maker says that they do not want the information to be shared. The information must then be put in a "lock box" and cannot be shared unless another provision in *PHIPA* permits it.

Circle of Care Scenario

> *Donna, a kinesiologist, receives a telephone call from a registered nurse at a local hospital. The nurse advises Donna that her patient, who has dementia and is incapable, has just been admitted to the hospital. The nurse reports that she has been unable to contact the patient's/client's substitute decision-maker (SDM). The nurse wants to know about what treatment Donna has been providing to the patient. Donna tells the nurse of the treatment she has been providing and discloses the contact information she has for the SDM. In this case, the "circle of care" principle allows Donna to disclose her patient's/client's personal health information without express consent and it would be inappropriate to insist on a signed consent form before making any disclosure.*

Family and friends
Generally speaking, consent should be obtained before sharing personal health information with members of a patient's/client's family.

However, personal health information may be disclosed for the purposes of contacting family members, friends, or other persons who may be potential substitute decision-makers, if the individual is injured, incapacitated, or ill, and cannot provide consent. This may be particularly relevant for kinesiologists working in acute care settings.

Disclosure related to risk
A kinesiologist may disclose a person's personal health information if the kinesiologist believes on reasonable grounds that the disclosure is necessary to eliminate or reduce a significant risk of serious bodily harm to the person or anyone else.

For example, if a patient has a serious and highly contagious illness, and has been admitted to a hospital, a kinesiologist does not require a patient's/client's consent to disclose this to the hospital. This is because the disclosure is necessary to reduce the risk of the illness spreading to other *patients* and hospital staff.

Other laws
PHIPA permits disclosure of personal health information that is permitted or required by many other acts, including the following:

- The *Health Care Consent Act* or *Substitute Decisions Act* for the purposes of determining, assessing or confirming capacity;
- Disclosure to a College in accordance with the *Regulated Health Professions Act*; and
- Disclosure to an investigator or inspector who is authorized by a warrant or by any provincial or federal law, for the purposes of complying with the warrant or facilitating the investigation or inspection.

Additionally, as discussed above in the section of this handbook on Mandatory Reports, there are some circumstances in which disclosure of personal health information is mandatory.

Access to personal health information
Every patient has a right to access their own personal health information. One important exception is if granting access would likely result in a risk of serious harm to the patient's/client's treatment or recovery, or a risk of serious bodily harm to the patient or another person. Many students of privacy law believe that "bodily harm" includes mental or emotional harm.

If a person makes a request to access personal health information, the Custodian must either:

- permit the person to see the record and provide a copy at the person's request;

- determines after a reasonable search that the record is unavailable, and notify the person of this in writing as well as their right to complain to the Information and Privacy Commissioner; and
- determine that the person does not have a right of access, and notify the person of this as well as their right to complain to the Information and Privacy Commissioner.

The Information and Privacy Commissioner may review the Custodian's refusal to provide a record, and may overrule the Custodian's decision.

If law does not permit disclosure for any reason, a kinesiologist should black out (on a copy, not the original) those parts that should not be disclosed if it is reasonable to do so, so that the patient may access the rest of the record.

Sample Exam Question

Which of the following best describes a patient's/client's right to look at their personal health information contained in a kinesiologist's records?

i. A patient has an unrestricted right to access their personal health information.
ii. A patient generally has a right to access their health information, and has a right to complain to the Information and Privacy Commissioner if access is refused for any reason.
iii. A patient has a right to access their health information unless the kinesiologist believes it is not in the patient's/client's best interests to see the information.
iv. A patient can request a copy of a record containing their personal health information, but a kinesiologist does not have to provide it.

The best answer is answer ii. A patient's/client's right to access their health information is broad but has some legal limits. However, even if access is refused for an appropriate reason, the patient is entitled to bring a complaint to the Information and Privacy Commissioner. Answer i is not the best answer because the right to access personal health information may be restricted in some circumstances (e.g., where there is a serious risk of significant bodily harm). Answer iii is not the best answer because a kinesiologist's opinion about whether it is good for the patient to see the record is irrelevant. Only if the kinesiologist believes on reasonable grounds that viewing the information would seriously harm the patient's/client's treatment, may access be refused. Answer iv is not the best answer because a kinesiologist does not have a general right to refuse a person access to personal health information.

Correction of personal health information
Individuals generally have a right to request corrections to their own personal health information. A kinesiologist or other Custodian who receives a written request must respond to it by either granting or refusing the request within 30 days. It is wise to respond to verbal requests as soon as possible as well. If the request cannot be fulfilled within 30 days the person should be advised of this in writing.

Corrections to records must always be made in a way that allows the original record to be traced. The original record should never be destroyed, deleted, or blacked out. If the record cannot be corrected on its face, it should be possible for another person accessing the record to be informed of the correction and where to find the correct information. The person should also be notified of how the correction was made.

At the person's request, the kinesiologist should notify anyone to whom the kinesiologist has disclosed the information of the correction. The exception to this is if the correction will not impact the person's health care or otherwise benefit the person.

The kinesiologist (or Custodian) may refuse the request if the kinesiologist believes the request is frivolous or vexatious; if the kinesiologist did not create the record and does not have the knowledge, expertise and authority to correct it; or if the information consists of a professional opinion made in good faith. In other words, corrections are limited to factual information, not professional opinions.

A kinesiologist who refuses to make a correction must notify the person in writing, with reasons, and advise the person that they may:

- prepare a concise statement of disagreement that sets out the correction that the kinesiologist refused to make;
- require the kinesiologist to attach the statement of disagreement to their clinical records, and disclose the statement of disagreement whenever the kinesiologist discloses related information;
- require the kinesiologist to make all reasonable efforts to disclose the statement of disagreement to anyone to whom the kinesiologist has previously disclosed the record; and
- make a complaint about the refusal to the Information and Privacy Commissioner.

Complaints
Every organization must have a system in place to deal with complaints regarding personal health information. Patients should also be aware of their right to complain to the College and/or to the Information and Privacy Commissioner.

ii. PIPEDA

Another privacy law that kinesiologists should be aware of is the Personal Information Protection and Electronic Documents Act (*PIPEDA*). *PIPEDA* is a federal law that governs the collection, use, and disclosure of personal information in relation to commercial activity outside of the health care.

PIPEDA applies only to commercial activities of kinesiologists, such as the sale of products at kinesiologists' offices, and the offering of educational sessions. Unlike *PHIPA*, which governs personal health information, *PIPEDA* governs all types of non-health personal information. Examples of personal information include the person's name, date of birth, and home address.

The following ten privacy principles apply to kinesiologist's commercial activities:

1. <u>Accountability</u>: Someone in an organization (the "privacy officer", sometimes called an "information officer") must be accountable for the collection, use, and disclosure of personal information. The privacy officer must develop privacy policies and procedures, and ensure that staff receives privacy training.
2. <u>Identifying Purposes</u>: An organization must identify the purposes for which personal information will be used at the time that the information is collected.
3. <u>Consent</u>: Informed consent is required to collect, use, and disclose personal information except in limited circumstances, e.g., in emergencies or where the law otherwise permits this.
4. <u>Limiting Collection</u>: An organization must only collect the information that is necessary to collect for the identified purposes.

5. Limiting Use, Disclosure, and Retention: An organization must only use, disclose and retain personal information that is necessary, for the identified purposes and is obtained with consent. It should be retained no longer than necessary.
6. Accuracy: An organization must make reasonable efforts to ensure that any personal information collected is accurate, complete, and up-to-date.
7. Safeguards: An organization must protect personal information with appropriate safeguards in order to protect against loss, theft, unauthorized access, disclosure, copying, use, or modification.
8. Openness: An organization must make its privacy policies readily available.
9. Individual Access: Upon request, an individual must be informed of the existence, use, and disclosure of their personal information, and be given access to it. An individual can request corrections to the information. Access may be prohibited in limited circumstances such as the privacy of other persons, prohibitive cost to provide it, or other legal reasons.
10. Challenging Compliance: An organization must have a complaints procedure relating to personal information and must investigate all complaints.

As one can see, *PHIPA* and *PIPEDA* are based on the same principles. *PHIPA* simply provides more details about how to achieve those principles in the health care context.

iii. Health Care Consent Act

The *Health Care Consent Act* ("*HCCA*") sets out rules about consent to treatment especially where there is concern about the capacity of the patient to consent to treatment. The topic of informed consent is dealt with in detail above. In brief, except in cases of emergency, informed consent for any assessment or treatment must be obtained from the patient. If the patient is incapable, informed consent is obtained from the patient's/client's substitute decision maker.

Where there is a dispute about the care of incapable *patients*, the decision-making body responsible for making decisions regarding consent and capacity in Ontario is the Consent and Capacity Board ("CCB"). A kinesiologist, patient, or substitute decision-maker may apply to the CCB when a decision relating to a patient's/client's consent or capacity needs to be made. The powers of the CCB include the following:

- The CCB can consider a patient's/client's challenge to a decision by a kinesiologist that they are incapable with respect to a treatment. The CCB may agree with the kinesiologist, or may overrule the kinesiologist and find that the patient is capable with respect to the treatment. If the CCB overrules the kinesiologist, the kinesiologist cannot administer the treatment unless the patient consents.
- The CCB can provide direction to a substitute decision-maker with respect to an incapable person's wishes, e.g., whether the wish applies to the circumstances, or whether or not the wish was expressed when the person was capable.
- The CCB can also consider a request from a substitute decision-maker to depart from a person's wish that was expressed while the person was capable.
- The CCB can review decisions regarding a person's capacity to consent to treatment, admission to care facilities, or the use of a personal assistive service.
- The CCB can appoint a substitute decision-maker to make decisions for an incapable person with respect to treatment, admission to a care facility or use of a personal assistance service.
- The CCB can amend or terminate the appointment of a representative.
- The CCB can review a decision to admit an incapable person to a hospital, psychiatric facility, nursing home or retirement home for the purpose of treatment.

- The CCB can review a substitute decision maker's compliance with the rules for substitute decision-making.

A patient may challenge a decision of the CCB by appealing to the courts.

Health Care Consent Act Scenario

> *David, a kinesiologist, is of the opinion that a patient is not capable with respect to a proposed treatment. The patient does not agree with this decision and decides to challenge it at the CCB. The CCB holds a hearing. It receives testimony from both David and the patientclient and concludes that the patient is capable of consenting to the treatment. The patient tells David he is refusing to consent to the treatment. In this situation, David cannot administer the treatment, even if David believes the treatment is in the patient's/client's best interests.*

iv. Child, Youth and Family Services Act

A kinesiologist who suspects that any child is in need of protection must report this to a children's aid society (CAS). This duty overrides all privacy and confidentiality duties and laws, including *PHIPA*. No legal action can be taken against a kinesiologist for making a report, unless the report is made maliciously or without reasonable grounds. The College cannot discipline a kinesiologist for making such a report in good faith and with reasonable grounds.

As a result of a report, a CAS worker may investigate the report further, and where action is needed, in many cases a CAS will offer a family services such as counselling and parental education.

A kinesiologist has a duty to report with respect to any child under the age of 16 (or who is 16 or 17 years old and under a child protection order). This includes all children, including a child of a patient, or a child who is a patient, or any other child. However, a kinesiologist has a special responsibility to report information about a child who is a patient or client if the information was obtained while providing treatment or services to the child. A kinesiologist may be fined up to $5000 for failing to make a report in this circumstance.

The duty to report is ongoing (for new information) even if a previous report has been made respecting a child. A kinesiologist must make a report personally.

A kinesiologist must make a report if they have reasonable grounds to suspect any of the following:

The child has been or is at risk of harm
A report is required if a child has been or is at risk of likely being physically harmed by a person having charge of the child (e.g., a parent or guardian), either directly or as a result of neglect or a pattern of neglect.

A report is also required if a child has been or is at risk of being sexually abused or sexually exploited, either by a person having charge of the child, or by another person, if the person having charge of the child knows or should know of the risk of this happening and fails to protect the child.

Failure to provide or consent to services or treatment

There are numerous circumstances where a report is required because the person having charge of a child does not or cannot provide services or treatment to a child, or does not or cannot consent to services or treatment for a child.

A report is required where a child is not receiving services or treatment, and:

- the child requires medical treatment to cure, prevent or alleviate physical harm or suffering;
- the child has suffered or is likely at risk of suffering emotional harm, demonstrated by serious anxiety, depression, withdrawal, self-destructive or aggressive behaviour, or delayed development believed to be caused by action or inaction of the person having charge of the child;
- the child has a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development; or if
- the child is under the age of 12, has killed or seriously injured another person or has caused serious damage to another person's property, and services or treatment are needed to prevent a recurrence.

Abandonment
A report is required if a child has been abandoned by a parent or guardian, or is otherwise left without a caregiver. This includes the death of a child's parents.

Failure to supervise a child
A report is required if a child has injured another person or damaged another person's property more than once because a person having charge of a child encouraged the child to do so.

A report is also required if a child has injured another person or damaged another person's property more than once because a person having charge of a child has not or cannot supervise a child adequately.

Mandatory Reporting Scenario 1

Donna, a kinesiologist, has a patient who discloses that she has physically harmed her son. Donna has a duty to make a report, even if the patient reported this in confidence or in the course of assessment or treatment. If two months later the patient says something that makes Donna suspect that the patient has physically harmed her son again, Donna has a duty to make another report.

Mandatory Reporting Scenario 2

David, a kinesiologist, has an 11-year-old patient who has been displaying signs of erratic and violent behaviour, and reports that he violently attacked his friend last week. David believes that specialized health care services are necessary to prevent the patient from causing serious injury to other people again and recommends a referral to another health care provider. The patient's/client's parents do not believe that their 11-year-old son would hurt anybody, and refuse to consent to any further treatment. In this case David has a duty to make a report. This duty to report exists even if the child does not want anyone to know about the incident and the parents refuse to believe it and are angry at the kinesiologist.

v. Long-Term Care Homes Act

The *Long-Term Care Homes Act* regulates long-term care homes in Ontario, which are facilities that provide 24-hour nursing care and supervision.

Resident care and rights
The *Long-Term Care Homes Act* sets out a Residents' Bill of Rights requiring long-term care homes to ensure residents are treated fairly and with dignity and respect. This includes the right to participate in decision-making about the resident's care, the right to privacy in treatment and care, and the right to receive care and assistance that is aimed at maximizing the resident's independence as much as possible.

A long-term care home must have a zero-tolerance policy with respect to abuse and neglect of residents. Abuse includes physical, sexual, emotional, verbal or financial abuse.

Complaints
Kinesiologists have a duty to report abuse and neglect of residents and certain other conduct to the Ministry of Health . A report is required if a kinesiologist (or any other person) suspects on reasonable grounds that any of the following have occurred:

- improper or incompetent treatment or care of a resident that resulted in harm or a risk of harm to the resident;
- abuse of a resident by anyone;
- neglect of a resident by staff, including management, that resulted in harm or a risk of harm to the resident;
- unlawful conduct that resulted in harm or a risk of harm to a resident;
- misuse or misappropriation of a resident's money; or if
- misuse or misappropriation of funding provided to a long-term care home.

It is an offence for a kinesiologist to fail to make a report in any the above circumstances if the kinesiologist provides care or services in a long-term care home. A kinesiologist may be fined up to $100,000 for failing to make such a report on a first offence.

Complaints and reports about the care of a resident or the operation of a long-term care home must be investigated by the Ministry of Health if they involve certain matters including abuse of a resident by anyone, and neglect of a resident by staff.

Every person including a kinesiologist is protected from retaliation for making a report or for cooperating with an investigation. This includes protection from being fired, disciplined or suspended.

Sample Exam Question

A kinesiologist is not required to report the following:

i. A resident's son frequently yells and swears at the resident.
ii. A staff member is borrowing money from a resident with memory difficulties.
iii. A nurse has not been monitoring a resident over the past several shifts.
iv. A resident's daughter has stopped visiting the resident.

The best answer is iv. All of the above except iv must be both reported and investigated. While a resident's family member may neglect that person, this does not have to be

investigated unless the neglect is to the point of emotional abuse. Answer i is not the best answer because this may constitute emotional abuse, and emotional abuse by any person must be reported and investigated. Answer ii is not the best answer because this may be considered financial abuse, and any person who financially abuses a resident must be reported and investigated. Answer iii is not the best answer because a nurse who has not been monitoring a resident may be neglecting that patient. Neglect of a patient by a staff member must be reported.

vi. Human Rights and Accessibility Legislation

Human Rights Code
Every person is entitled to access and receive health care services in a manner that respects their human rights. The *Ontario Human Rights Code* requires every kinesiologist to treat *patients*, potential *patients*, employees, and others equally, regardless of the person's race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.

If a person feels that a kinesiologist or organization has violated the *Human Rights Code*, the person can complain to the Human Rights Tribunal of Ontario. If the Human Rights Tribunal finds that a kinesiologist has violated the Human Rights Code, it may order the kinesiologist or organization to pay damages and require a kinesiologist or organization to take action, such as, undergo training or implement a human rights policy.

. Since the Human Rights Tribunal does not have the power to suspend or revoke a kinesiologist's certificate of registration, a person who believes their human rights have been violated may also bring a complaint to the College.

Duty not to discriminate
A kinesiologist must not discriminate against any person on any prohibited ground. Examples of discrimination may include the following:

- Refusing to accept a new patient for a prohibited reason;
- Refusing to continue treating a patient for a prohibited reason;
- Making a treatment decision for a prohibited reason;
- Insulting a patient in relation to a prohibited reason;
- Refusing to permit a patient with a disability to meet with the kinesiologist with a support person; and
- Making assumptions, not based on clinical observation or professional knowledge and experience, about a person's health or abilities because of their age or another prohibited reason.

It is not discrimination to make clinical decisions or to accept or refuse to continue seeing a patient for reasons other than prohibited grounds. For example, if a kinesiologist does not have the competency to treat or continue to treat a person, or if the treatment required is not within the kinesiologist's scope of practice, a kinesiologist should not accept or continue to treat a patient.

In order to meet the obligations of the College and to avoid a misunderstanding that could lead to a human rights complaint, kinesiologists should always clearly communicate their reasons for making clinical, treatment, referral, and other types of decisions. Kinesiologists should always make decisions to refuse or end treatment in good faith and should not use their own lack of competency as an excuse to refuse to provide services to a person if there is no real competency issue.

Kinesiologists are similarly entitled to rely on professional knowledge, judgment and experience to make comments upon clinically relevant matters that relate to a person's age or gender.

However, it is discrimination to treat someone unequally even if the kinesiologist did not intend to do so. For example, a policy that does not permit any animals in a building discriminates against persons who rely on service animals, even if the policy was not intended to discriminate against anyone. The policy would have to make exceptions for "service animals".

Duty to accommodate
The *Human Rights Code* requires that persons with disabilities be accommodated unless the accommodation would result in undue hardship, e.g., because of a real risk to health or safety or because of undue cost.

Accommodation must be individualized. Not all persons with the same disability will require or request the same accommodation. Individual accommodations should be discussed with the person where possible and must be provided in a manner that respects the person's dignity and autonomy. However, a kinesiologist is not required to provide the exact accommodation that a person requests, if another form of accommodation is reasonable and acceptable.

Examples of accommodation may include the following:

- Permitting a patient who uses a wheelchair to reschedule an appointment with less than 24 hours notice if the elevator in the kinesiologist's office is temporarily out of service;
- Offering an extended appointment time to a patient with an intellectual, learning, or mental health disability who may need a longer time to explain their symptoms;
- Permitting a person with a disability to enter your premises with a support person, service animal, or assistive device; and
- Communicating in writing if a person with a hearing impairment or other disability requests this.

The duty to accommodate also applies to other prohibited grounds of discrimination.

Human Rights Code Scenario No. 1

> *Donna, a kinesiologist, determines she is not competent to continue to treat her patient because the patient's/client's health condition has become increasingly more complex. The patient is unhappy about Donna's decision and believes that Donna has always had a problem with him because of his race and religion. Donna should carefully communicate her reasons for terminating the kinesiologist-client relationship so that the patient is not left with a misunderstanding such as that the decision was for a prohibited reason such as the patient's/client's race or religion. Donna should also provide an appropriate referral if possible and in a timely manner.*

Human Rights Code Scenario 2

David, a kinesiologist, has a potential new patient who has an intellectual disability. David finds it difficult to communicate with the potential patient. David should ask how he can help communicate better with the patient. If the patient has a support person who sometimes provides assistance, the patient may ask to bring his or her support person to David's office. David is required by law to permit a support person to accompany a patient. However, David should not assume that the patient needs a support person and should discuss the issue with the patient if possible. Additionally, if the patient does not have the capacity to make treatment decisions, the patient may need a substitute decision maker. In any of these circumstances, David cannot refuse to accept the patient because of her disability even if it will take David more time for those visits.

Human Rights Code Scenario 3

Donna, a kinesiologist, has a patient who has been diagnosed with a mental illness. Donna has been having increasing difficulties interacting with her patient. The patient has also been rude towards Donna and staff. While no patient has a right to be abusive towards kinesiologists and staff, Donna may consider whether the behaviour is caused or exacerbated by the person's mental illness. Donna cannot stop providing treatment or health services because of the patient's/client's mental illness, unless Donna concludes she is not competent to continue treating the patient or unless there are health and safety concerns for Donna or her staff. If Donna believes a referral to another health care provider with the appropriate competencies to manage the patient's/client's health care needs is necessary, Donna should clearly explain the reasons for the decision. Donna also should consider whether any accommodations are possible. For example, a patient who is uncomfortable in a crowded waiting room because of his or her mental health disability might be offered an alternative space to wait. There may be other practical measures that the patient may be able to suggest that will help the patient manage his or her disability-related symptoms.

Accessibility for Ontarians with Disabilities Act
The Accessibility for Ontarians with Disabilities Act ("*AODA*") provides for accessible customer service, information and communications, transportation, employment, and built environment (i.e., physical facilities). The *AODA* applies to every person and organization in Ontario. The intention of the standards is to achieve accessibility for Ontarians with disabilities by 2025. A kinesiologist or organization the kinesiologist works for may be fined for not complying with the *AODA*.

The standards currently apply only to persons and organizations with at least one employee in Ontario. Different standards apply depending on the number of employees an organization has. A sole proprietor or a group of persons in a partnership are not considered "employees", and therefore the *AODA* standards currently do not apply to some kinesiologists. However, if a kinesiologist has incorporated as a business, the kinesiologist may be considered an "employee" of the corporation along with any other employees the kinesiologist has. Larger organizations, generally those with more than 20 employees, must provide reports on how they are complying with the standards.

The standards deal with topics such as communications (e.g., accessible websites), employment (e.g., steps to facilitate recruitment of employees with disabilities), transportation (e.g., emergency plans to assist passengers with disabilities), and the built environment (e.g., public pathways). Many of the standards relate to the training of employees.

Interaction between AODA and other laws
Accessibility standards are found in regulations and have the status of law. If a standard provided in the *AODA* is different from a standard required under a different law, the higher standard always prevails. However, the *AODA* will not necessarily prevail over other legal requirements such as occupational health and safety laws.

A breach of an *AODA* standard is not necessarily a breach of the *Human Rights Code*. However, it is possible that the *AODA* standards will be used as a reference point in Human Rights Tribunal hearings.

AODA Scenario

David, a kinesiologist, has an office with one employee who provides administrative support. Under the AODA's standards, David must create an accessibility plan for providing accessible customer service and accessible information and communications. David is not required to put its policies, practices and procedures in writing, but must ensure that they are followed, including by his employee. David is also responsible for ensuring that training is provided to the employee regarding the accessibility standards (e.g., that support persons, animals or devices are allowed on the premises). David should also be aware of how the information and communications and employment standards will apply to his or her practice.

vii. Municipal licensing

In addition to being registered with the College, kinesiologists may require a municipal licence. A municipal licence, such as a business licence, is granted and regulated by the municipality, and not by the provincial government. A municipal licence does not give a kinesiologist the right to be registered with the College. However, a kinesiologist may be registered with the College and also hold a municipal licence.

Generally speaking, the purpose of municipal licensing is to set conditions for a kinesiologist's premises in which a kinesiologist operates, as well as public health matters such as sanitation. For example, a municipal inspector may inspect a kinesiologist's office and ensure that protocols are in place to avoid the spread of disease. A municipal licensing body is generally not focused on professional qualifications or professional conduct.

If the College requires a higher standard or different standard than the municipality does, the College's standard must always be followed. The *Regulated Health Professions Act* is a provincial statute; it takes priority over a municipal by-law.

Municipal licensing scenario

Donna, a kinesiologist, has a municipal licence to practice in her city and pays a fee every year to renew her licence. The municipal authority recently inspected Donna's practice and found no violations. Donna now wishes to register with the College. Donna must meet all registration requirements of the College in order to become a kinesiologist. While the municipal licensing authority did not require Donna to maintain accurate clinical records and did not look at Donna's records during its inspection, the College does require this. Donna must understand and abide by the College's record keeping expectations.

5. Conclusion

If legal issues arises, kinesiologists are encouraged to discuss them with colleagues and their professional association and to check with the College as to its expectations. The College cannot provide legal advice (neither can one's colleagues or professional association). Thus on many issues a kinesiologist may need to consult with their own lawyer.

COLLEGE OF
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Spousal Exception Regulation Guideline

Background

Under the *Regulated Health Professions Act, 1991* (RHPA), it is considered sexual abuse if a regulated health professional treats their spouse, and the penalty is an automatic revocation of a practitioner's licence to practise for five years.

In 2012, the Ministry of Health and Long-Term Care received a report on the issue of treatment of spouses and the associated mandatory revocation, which recommended changing the definition of sexual abuse to exclude spouses. The Ministry changed the RHPA to allow individual professions to decide if they wanted to exempt spouses from the RHPA's definition. Colleges wishing to exempt spouses are required to submit a regulation allowing this exemption. Such a regulation will apply only to pre-existing spousal or common law relationships. It is always considered sexual abuse to initiate a sexual relationship with an existing patient, and, in some cases, former patients.

The College's Patient Relations Committee considered the issue, and after discussions and extensive analysis on November 7, 2014 and consultation with a working group of kinesiologists on April 10, 2015, recommended to Council on May 27, 2015 that the spouses of registered kinesiologists be exempt from the definition of sexual abuse. Council considered the recommendation on June 15, 2015 and decided to pursue a regulation.

On October 21, 2021, O. Reg. 718/21, amending O. Reg. 401/12 General Regulation under the *Kinesiology Act, 2007* was filed with the Registrar of Regulations. The amended regulation will allow kinesiologists to treat their spouses as patients without triggering the sexual abuse provisions under the *Regulated Health Professions Act, 1991*.

Description of the Spousal Exception Regulation

The Spousal Exception Regulation permits registrants to provide kinesiology treatment to their spouses, without triggering the sexual abuse provisions under the Regulated Health Professions Act, 1991 (RHPA).

Please note that the definition of a "spouse" for the purposes of this regulation is very narrowly defined in the Health Professions Procedural Code of the RHPA, and includes only:

> **(1) a person who is the registrant's spouse as defined in section 1 of the Family Law Act (i.e., a person to whom the member is married), or**
>
> **(2) a person who has lived with the registrant in a conjugal relationship outside of marriage continuously for a period of not less than three years.**

Kinesiologists are thus now permitted to treat their spouses, but only where the registrant's spouse meets the statutory definition of "spouse" as defined above.

Moreover, while treating a spouse, Registered Kinesiologists must follow all legislation, standards of practice, policies, and guidelines that they would for any other patient, while complying with appropriate boundaries and separation between the professional relationship and personal relationship.

It is important to note that treating a sexual partner who does not meet the above definition of a spouse under the RHPA will trigger the sexual abuse provisions under the RHPA.

Application

The College of Kinesiologists is committed to proactively ensuring that all members behave in accordance with the highest standards of personal and professional conduct. The College will continue to be vigilant in protecting the public by working to prevent and prosecute sexual abuse, harassment, and misconduct of any kind.

As a result, the College advises:

a) That registrants consider the potential conflicts of interest and other risks associated with treating close personal relations, including spouses, and that **registrants of the College should therefore refrain from treating spouses or other close personal relations except in demonstrably exceptional circumstances.**

b) That registrants are mindful that sexual abuse can occur within a spousal relationship and are aware that this spousal exception does not grant immunity from investigation or prosecution if a member's conduct, behaviour, or remarks towards their spouse meet the definition for sexual abuse in any context.

c) That registrants are expected to maintain a high standard of personal and professional conduct, including compliance with the College's Code of Ethics as well as all other practice standards and guidelines.

d) That registrants who are also registered with another regulatory College are aware of the regulations of that College with respect to spousal treatment and sexual abuse. **The College of Kinesiology expects that registrants will adhere to the strictest standard required of them.**

Frequently Asked Questions

To assist Kinesiologists to interpret the expectations outlined in the standard, several frequently asked questions have been identified.

1. Do all health colleges have a spousal exception?

Most health colleges do not have an exception in place; however the following colleges have recently implemented the spousal exception regulation:

- Chiropractors

- Optometrists
- Denturists
- Dental Hygienists
- Dentists

2. Does this mean I may treat my fiancé(e)?

No, unless the relationship meets the criteria for common-law or conjugal living (i.e.: you have co-habited with this partner for no less than 3 years).

3. I am a Registered Kinesiologist who also practices and is registered as a Massage Therapist. May I treat my spouse?

No. The College of Kinesiologists expects that it's registrants will adhere to the strictest standard to which they are accountable. In this case, as the College of Massage Therapists of Ontario has not adopted the Spousal Exception regulation, a dual-registered Kinesiologist/Massage Therapist would not be able to treat their spouse.

4. If I go for a run, or lift weights, with my partner, is that sexual abuse?

Kinesiologists are encouraged to think about the boundaries that exist between their practice and personal lives. Factors such as power or knowledge imbalance are important. The following criteria used to define a "patient" may be helpful:

A patient can be defined as anyone who has had an interaction with the Kinesiologist and:

- The Kinesiologist has charged or received payment for a healthcare service for the individual.
- The Kinesiologist has contributed to a health record or file for the individual.
- The individual has consented to a healthcare service recommended by the Kinesiologist.

It is true that, for Kinesiologists, the line between treatment and recreation can seem, at times, difficult to judge. Some points to consider:

- Are you providing instruction, information or support to your romantic/sexual partner that is not reasonably available to the general public? If the answer to this is "yes", there may be a power imbalance present that could constitute sexual abuse.
- Is this activity being done for recreational or social purposes, or as part of a goal-oriented, structured treatment plan or routine? If the latter is the case, who is responsible for goal-setting and routine planning/programming?
- Are you providing information or a service to your partner, relative or spouse in a manner differently (for example, without billing) than you would to a member of the general public?

- Is the relationship, particularly any sexual activity, in any way derived from, associated with or contingent upon the activity?
- Would a reasonable outside observer consider your partner to be your patient as per the definition of a "patient"?
- Does your partner meet the criteria for the spousal exception?

5. **I am a Kinesiologist working as a sports coach. An athlete and I developed mutual romantic feelings for each other. We married. Does the spousal exception apply to our relationship?**

In theory, yes, the spousal exception would permit you to act as a coach to your spouse. That said, the College discourages Kinesiologists from treating close personal relations, including spouses, unless there are exceptional circumstances.

It is also important to note that the initial romantic feelings in this case appear to have developed while there was a coach-athlete or Kinesiologist-patient relationship. Good faith compliance with the spousal exception would require the professional relationship to have been fully disclosed at the time it began, treatment to have been discontinued as soon as possible (including discharge to another Kinesiologist), and for the Kinesiologist and the patient or athlete to wait at least 1 year before commencing the romantic and/or sexual relationship.

It may be helpful to consider differences between two athletes (for example collegiate track and field team members) engaging in a consensual sexual or romantic relationship vs an athlete and a coach engaging in a consensual sexual or romantic relationship.

Resolution: Approval of Spousal Exception and Guideline

Whereas An amendment (O. Reg. 718/21, amending O. Reg. 401/12) to the *Kinesiology Act,* 2007 went in to force upon filing with the Registrar of Regulations on October 22, 2021; and

Whereas the regulation, which takes effect on filing, allows kinesiologists to treat their spouses as patients without triggering the sexual abuse provisions of the *Regulated Health Professions Act, 1991*; and

Whereas the Patient Relations Committee has reviewed and provided comments on the draft guideline and recommends the guideline to Council for approval.

Resolution
Therefore, be it resolved that the Council of the College of Kinesiologists of Ontario approve of the Spousal Exception Guideline to the regulation for posting on our website and circulation to the members of the College, the public and other stakeholders; and

Therefore, be it also resolved that the Council of the College of Kinesiologists of Ontario approve of timely, incremental updates to College Practice Standards, Guidelines and other resources and materials to ensure that all such materials are consistent with O. Reg. 718/21.

Moved by:

Seconded by:

Date: Monday, December 6, 2021

COLLEGE OF KINESIOLOGISTS OF ONTARIO

Decision Note

Decision: Approval of Guide regarding Spousal Exception to Sexual Abuse
Prepared for: Council
Date: December 6, 2021

Purpose:

The purpose of this note is to gain Council approval of an updated Guide to the *Regulated Health Professions Act, 1991* (RHPA), which affects registrants of the College of Kinesiologists of Ontario.

Explanation:

Under the *Regulated Health Professions Act, 1991* (RHPA), it is considered sexual abuse if a regulated health professional treats their spouse, and the penalty is an automatic revocation of a practitioner's licence to practise for five years. Effective 2013, a spousal exception was added to the RHPA (2013, c. 9 s. 1 (1)), with Council granted the authority to make a regulation regarding the spousal exception (RHPA s. 95 (1)(0.a)).

The College's Patient Relations Committee considered the issue, and after extensive analysis and consultation on November 7, 2014 with a working group of kinesiologists (conducted on April 10, 2015), recommended, on May 27, 2015, to Council that an exception be adopted regarding registered kinesiologists providing treatment to their spouses. Council considered the recommendation and, on June 15, 2015, decided to pursue such a regulation.

On October 21, 2021, O. Reg. 718/21, amending O. Reg. 401/12 General Regulation under the *Kinesiology Act, 2007* came in to force upon filing with the Registrar of Regulations. The amended regulation permits kinesiologists to treat their spouses as patients without triggering the sexual abuse provisions under the Regulated Health Professions Act, 1991.

In light of these proposed changes, a guide for registrants of the College is required. The Patient Relations Committee has had an opportunity to review the draft guide and is recommending the draft to Council for approval.

Policy, Standard and Guideline Impact:

The following Practice Standards, Guidelines and other documents/modules published by the College of Kinesiologists will be affected by this change and will require gradual revision over an appropriate time frame:

1) Practice Standard – Dual Practice: Standard: should be updated to reflect the possibility that different standards may be applicable. College registrants are expected to adhere to the strictest conduct standard to which they are accountable.
2) Practice Standard – Fees and Billing: Standard may require update to state that fee and billing policies must be followed for all patients including spouses if the Kinesiologist is able to and chooses to treat their spouse. Should mention be made of need for disclosure to third party payor in the event of spousal treatment?
3) Practice Standard – Professional Boundaries: Standard must be updated to include regulation regarding spousal exception to sexual abuse. Might also be helpful to add definition of "spouse" as well as the definition of "patient" to the practice standard.
4) Practice Standard – Professional Collaboration: Should standard be updated to include wording that mandates or recommends disclosure of spousal status of a patient when collaborating?
5) Practice Standard – Record Keeping: Should standard be updated to include "reasonable information regarding disclosure of potential conflicts of interest"?
6) Practice Standard – Discharging a Client: Should the standard be updated to specify need for early discharge planning in the presence of spousal treatment (or similar conflicts of interest in general)?
7) Practice Guideline – Accountabilities in Different Roles: Requires language regarding differing standards when working in multidisciplinary environments?
8) Practice Guideline – Mandatory Reporting: the spousal exception should be incorporated into the Sexual Abuse section of this Guideline.
9) Practice Guideline – Professional Boundaries and the Prevention of Sexual Abuse: Guideline needs to be updated to reflect adoption of the spousal exception regulation.
10) Practice Guideline – Treating Family Members and Other Close Personal Relations: update required to reflect spousal exception regulation. Also, this Guideline is likely an excellent place to ensure the parameters of the exception are clear. Does the language around "conflict of interest" – specifically "Kinesiologists cannot provide treatment if a conflict of interest exists or the perception of a conflict of interest exists" need to change or be removed?
11) Article – Scope of Practice and Dual Registration: Update article to include expectation that Kinesiologists must comply with the strictest standards for personal and professional conduct if the standards for both professions are not identical.
12) Webinars: Review and update the following: Professionalism, Treating Family Members, Mandatory Reporting, Professional Boundaries
13) Explainer Videos: Review and update as needed: Professionalism, Professional Boundaries. Others?
14) Jurisprudence Handbook and Online Module: Update in response to adoption of regulation.
15) E-Learning Module – Prevention of Sexual Abuse: Update in response to adoption of regulation.

Decision of Council:

- To approve of the Spousal Exception Guideline to the regulation for posting on our website and circulation to the members of the College, the public and other stakeholders; and
- To approve the timely, incremental review and revision of applicable Standards, Guidelines and other College documents or modules to ensure compliance with the spousal exception and associated guide.

Moved by________________________________seconded by______________________________________

Date:____

COLLEGE OF
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Proposed Amendments to By-Law 13 of the College of Kinesiologists of Ontario

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The following are proposed amendments to the By-Laws of the College of Kinesiologists of Ontario.

Background

Health profession regulators like the College of Kinesiologists of Ontario exist to protect the public.

The provincial government has called for improved openness and transparency in licensing and professional regulation and has directed Ontario health regulators to implement strategies to improve the way they protect the public. This announcement follows reviews of regulatory bodies in other Canadian provinces.

As a result, the College of Kinesiologists of Ontario (CKO) has commenced the process of reviewing its regulatory practices.

In CKO's strategic plan for 2019-2022, the College committed to improving the way it operates. The first step we undertook was to develop a Council and Committee Competency Profile for the election and selection of Council and committee members. Council approved this document on March 1, 2021.

Council approved proposed amendments to By-Law 13 for external consultation on September 27, 2021. Staff circulated the document for a 60-day consultation period. College staff reviewed all feedback received during the consultation, and Council is being provided with final changes and information obtained during the consultation process for Council's consideration at its December 6, 2021 meeting. Once the amendments are approved, staff will communicate these changes to registrants and other stakeholders.

Proposed Changes

The proposed changes are contained in By-Law 13; consequently, this is the by-law presented for approval.

An important change concerns the creation of a new Governance and Nominations Committee, a non-statutory committee of Council appointed by Council to assist with competency-based assessment, education and evaluation of Council and committee members. Drawing from the Procedural Code; the Ontario Ministry of Health's College Performance Measurement Framework; and the mission, vision and values of the College, the aim of the Governance and Nominations Committee is as follows:

> *To improve Council decision-making capacity by assisting with competency-based assessment, education, and evaluation of Council and committee members.*

The Governance and Nominations Committee, supported by College staff, is responsible for:

I. screening applicants seeking election to serve on Council for eligibility;
II. evaluating applications for committee membership and recommending committee slate appointments to Council;

III. overseeing the administration of the Council and committee performance evaluation process (periodically by a third-party vendor) (i.e., the Committee will not evaluate Council and other committee members' performance (individually or as a whole) per se – rather, the Committee will be responsible for ensuring the Council has implemented a performance evaluation framework, engages a third-party vendor periodically, and ensures that Council effectiveness is evaluated regularly);
IV. receiving and reporting results of Council and committee evaluation; and
V. based on evaluation results, and recommendations from Council and committees:
   a. reviewing and making recommendations about updating the Council and Committee Competency Profile;
   b. identifying continuing development needs for Council and committee members; and
   c. identifying specific recruitment needs (e.g., ensuring representation from diverse groups).

Another key change concerns a new requirement introduced by the Ontario Ministry of Health that registrants may only attend their first committee meeting after they have completed an orientation program about the College's mandate and expectations pertaining to the committee role and responsibilities. At the March 1, 2021 Council meeting, Council passed a resolution codifying the need for an online orientation program for all registrants seeking to be appointed to a College committee. Completion of an educational orientation program will help reinforce the mandate of the committees and ensure individuals considering applying for appointment to committee understand the duties and obligations involved with serving on committees, as well as time commitments from the outset. The new by-law provision stipulates that a member is eligible for appointment to committee if "before the appointment, the member has successfully completed any qualification process established by the Council".

Another notable by-law amendment stipulates that the registrant "has not resigned from Council or a College committee within the past three years other than for health or personal reasons acceptable to Council". The amendment allows for some discretion, to enable registrants to return if their reasons for resigning were deemed legitimate and reasonable by Council.

Two new provisions stipulating: "the member is not holding a responsible position with any organization/group whose mandate or interests conflict with the College;" and "the member is not a consultant to third party providers engaged by the College" serve to expand and clarify examples of conflict of interest with respect to serving on committees.

Another amendment adds a cooling off period for a person in a leadership position including but not limited to serving as an employee, officer or director of any professional association or certifying body related to the profession from one to three years prior to the date of applying for appointment to committee. This duration has been identified as a best practice.

Otherwise, there are minor proposed changes to the by-laws to improve clarity and consistency between sections.

Document Layout

The document is structured in a table that sets out the current by-law provision, the proposed changes (additions are in red, deletions are struck out) and the rationale for the change.

By-Law 13: Specific Composition and Selection of Committee Members

Current by-law	Proposed by-law	Rationale
13.01 Executive Committee The Executive Committee shall be composed of the President, the Vice-President and three (3) members of Council. Three (3) members of the Executive Committee shall be members and two (2) members of the Executive Committee shall be public members.	No change.	N/A
13.02 Registration Committee The Registration Committee shall be composed of: i.at least two (2) members of Council who are members of the College; ii.at least one (1) member of Council appointed to the Council by the Lieutenant-Governor-in-Council; and iii.one or more members of the College who are not members of Council, if Council so wishes.	No change.	N/A

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13.03 Inquiries, Complaints and Reports Committee The Inquiries, Complaints and Reports Committee shall be composed of: i.at least two (2) members of Council who are members of the College; ii.at least one (1) member of Council appointed to Council by the Lieutenant Governor in Council; and iii.at least one (1) member of the College who is not a member of Council.	No change.	N/A
13.04 Discipline Committee The Discipline Committee shall be composed of: i.every member of Council; ii.at least two (2) members of the College who are not members of Council; and iii.one or more members of the College who are not members of Council, if Council so wishes.	No change.	N/A
13.05 Fitness to Practise Committee The Fitness to Practise Committee shall be composed of every member of Council and one or more members of the College who	No change.	N/A

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are not members of Council, if Council so wishes.		
13.06 Quality Assurance Committee The Quality Assurance Committee shall be composed of: i.at least two (2) members of Council who are members of the College; ii.at least two (2) members of Council appointed to Council by the Lieutenant-Governor-in-Council; and iii.at least one (1) member of the College who is not a member of Council.	No change.	N/A
13.07 Patient Relations Committee The Patient Relations Committee shall be composed of: i.at least one (1) member of Council who is a member of the College; ii.at least two (2) members of Council appointed to Council by the Lieutenant-Governor-in-Council; and iii.at least two (2) members of the College who are not members of Council.	No change.	N/A
13.08 Term of Office of Committee Members	No change.	N/A

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The term of office of a committee member shall commence immediately after the appointment and shall continue for approximately one (1) year. The chair of every statutory and non-statutory committee shall be eligible for appointment for a maximum of two (2) consecutive one (1) year terms.		
13.09 Chairs Unless stated otherwise in these by-laws, the chair or chairs of each committee shall be appointed by Council. The chair of any statutory committee must be a member of Council.	No change.	N/A
13.10 Decisions Regarding Appointments As soon as possible after the annual election of the President, the Vice-President and the Executive Committee, the Executive Committee shall present a slate of recommended chairs and members of each committee to the Council, based on the College's governance policies as approved by Council. The Council shall appoint the chair and members of each committee. Where, for any reason, the Council fails to appoint a new committee at the time provided for in this by-law, the existing members of the committee shall continue	As soon as possible after the annual election of the President, the Vice-President and the Executive Committee, the ~~Executive~~ Governance and Nominations Committee shall present a slate of recommended chairs and members of each committee to the Council, based on the College's governance policies as approved by Council. The Council shall appoint the chair and members of each committee. Where, for any reason, the Council fails to appoint a new committee at the time provided for in this by-law, the existing members of the committee shall continue	New non-statutory Governance and Nominations Committee established by Council to enable shift to Council and committee competency-based assessment and education.

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to serve as the committee provided that a quorum exists. If any vacancies occur in the chair or membership of any committee, the Executive Committee shall recommend a member to serve as a replacement. The Council shall appoint a replacement chair. Where the chair of a committee is unable to act for a matter or for a period of time, he/she shall appoint from the committee a person to act on his/her own behalf, failing which the President shall appoint an acting chair from the committee. Despite the above, in circumstances of urgency, the Executive Committee can act to immediately fill a vacancy.	to serve as the committee provided that a quorum exists. If any vacancies occur in the chair or membership of any committee, the ~~Executive~~ Governance Committee shall recommend a member to serve as a replacement. The Council shall appoint a replacement chair. Where the chair of a committee is unable to act for a matter or for a period of time, he/she shall appoint from the committee a person to act on his/her own behalf, failing which the President shall appoint an acting chair from the committee. Despite the above, in circumstances of urgency, the Executive Committee can act to immediately fill a vacancy.	
13.11 Eligibility for Appointment to a Committee A member shall be eligible for appointment to a committee of the College as a non-Council member if, on the date of appointment: i. The member has filed a completed application in the form approved by the Registrar; ii. the member practises kinesiology in Ontario, or if the member does not practise Kinesiology, the member resides in Ontario;	**13.11 Eligibility for Appointment to a Committee** A member shall be eligible for appointment to a committee of the College as a non-Council member if, on the date of appointment: i. The member has filed a completed application in the form approved by the Registrar; ii. the member practises kinesiology in Ontario, or if the member does not practise Kinesiology, the member resides in Ontario;	

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iii. the member is not the subject of any disciplinary or incapacity proceedings;	iii. the member is not the subject of any disciplinary or incapacity proceedings of the College or any other regulatory body;	iii. expanded definition for clarity and to include regulatory history with other professions and/or jurisdictions
iv. no finding of professional misconduct, incompetence or incapacity has been made against the member in the preceding three (3) years;	iv. the member has not been the subject of a ~~no~~ finding~~s~~ of professional misconduct, incompetence or incapacity ~~has been made against the member~~ in the preceding three years at the College or any other regulatory body;	iv. consistent language, for clarity and expanded to include regulatory history with other professions and/or jurisdictions
v. the member is not subject to any order, direction, or term, condition or limitation of the Discipline Committee, the Fitness to Practise Committee or the Quality Assurance Committee;	v. the member is not subject to any order, direction, or term, condition or limitation of the Discipline Committee, the Fitness to Practise Committee or the Quality Assurance Committee;	
vi. the member is not an employee, officer or director of any professional kinesiology association such that a real or apparent conflict of interest may arise, including but not limited to being an employee, officer or director of the Ontario Kinesiology Association;	vi. the member ~~is~~ has not been in a leadership position including but not limited to being an employee, officer or director of any professional association or certifying body related to the profession for three years prior to the date of application such that a real or apparent conflict of interest may arise, ~~including but not limited to being an employee, officer or director of the Ontario Kinesiology Association~~;	vi. added cooling off period of three years. Best practice and in alignment with recommendation in Professional Standards Authority report by Sir Harry Cayton: *An Inquiry into the performance of the College of Dental Surgeons of British Columbia and the Health Professions Act, December 2018* Removed reference to Ontario Kinesiology Association to be more general and inclusive.
vii. the member has not been disqualified from the Council or a committee of the Council in the previous three (3) years;	vii. the member has not been disqualified from the Council or a committee of the ~~Council~~ College in the previous three (3) years;	
viii. the member is not a member of the Council or of a committee of the college of any other health profession;	viii. the member is not a member of the Council or of a committee of the college of any other health profession;	vii. consistent with viii.
ix. the member has not been a member of the staff of the College at any time within the preceding three (3) years; and		
x. the member has not been appointed to a committee of the College as a non-Council member in		

DRAFT

each of the three (3) consecutive prior terms.	ix. the member has not been a member of the staff of the College at any time within the preceding three (3) years; x. the member has not been appointed to a committee of the College as a non-Council member in each of the three (3) consecutive prior terms;	
	xi. the member is not holding a responsible position with any organization/group whose mandate or interests conflict with the College; xii. the member is not a consultant to third party provider engaged by the College;	xi and xii – expands examples of conflicts of interest
	xiii. the member has not resigned from Council or a College committee within the previous three years other than for health or personal reasons acceptable to Council; xiv. the member is not in default of payment of any fees, fines, costs, or other amounts owed to the College; xv. the member is not in default of completing and submitting any required form or information to the College; xvi. the member does not have a criminal finding of guilt that is relevant to the member's ability to practise the profession; xvii. the member is not the subject of a charge that is relevant to the registrant's ability to practise the profession; and	xiii. permits resignations for reasonable extenuating circumstances determined to be acceptable by Council (e.g., parental leave, moving out of province, etc.). xiv.-xvii. common health regulatory by-law provisions, xviii. New Ontario Ministry of Health requirement that registrants may only stand for election after they have completed an orientation program about the College's mandate and expectations pertaining to the member's role and responsibilities. Best practice and in alignment with recommendation in Professional Standards Authority report by Sir Harry Cayton: *An Inquiry into the performance of the College of Dental Surgeons of British Columbia and the Health Professions Act, December 2018*

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	xviii. before the appointment, the member has successfully completed any qualification process established by the Council.	

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COLLEGE OF KINESIOLOGISTS OF ONTARIO

Consultation Report: Proposed Amendments to By-Law 13

December 1, 2021

About the College

The College is a regulatory body that oversees kinesiologists working in the province. The College receives its authority from the *Kinesiology Act, 2007* and the *Regulated Health Professions Act, 1991*.

The College regulates kinesiologists and protects the public by:

- setting requirements to enter the profession so that only qualified individuals can practise kinesiology;
- maintaining on its website a list of individuals qualified to practise kinesiology, known as the public register, or Find a Kinesiologist;
- developing rules and guidelines for kinesiologists' practice and conduct, including a code of ethics;
- investigating complaints about kinesiologists and disciplining when necessary; and
- requiring kinesiologists to participate in a program that helps ensure that their knowledge and skills are up to date, and monitoring that participation.

Background and Context

Health profession regulators like the College of Kinesiologists of Ontario exist to protect the public.

The provincial government has called for improved openness and transparency in licensing and professional regulation and has directed Ontario health regulators to implement strategies to improve the way they protect the public. This announcement follows reviews of regulatory bodies in other Canadian provinces. As a result, the College of Kinesiologists of Ontario (CKO) has commenced the process of reviewing its regulatory practices.

In CKO's strategic plan for 2019-2022, the College committed to improving the way it operates. The first step we undertook was to develop a Council and Committee Competency Profile for the election and selection of Council and committee members. Council approved this document on March 1, 2021.

This document sets out the respective proposed by-law amendments pertaining to the eligibility requirements for Committee selection, including a provision that registrants have successfully completed a qualification process as established by Council.

The purpose of this consultation was to obtain feedback on the proposed amendments to By-law 13.

Consultation process

On September 30, 2021, the College emailed its registrants and stakeholders a notice of the consultation and its process. A dedicated webpage was created on the College's website to promote the consultation, and anyone with comments was invited to submit feedback via Survey Monkey or email. The consultation concluded on November 30, 2021.

What we heard

Feedback from Survey

During the consultation period, a survey was available on the College's website to gather feedback on the draft competency profile. Fourteen respondents completed the survey: all respondents were registered kinesiologists.

The survey asked respondents to indicate their agreement and provide comments on the following questions:

- Do the by-law amendments clearly describe the eligibility criteria and nomination process to be a Committee member?
- Are the by-laws relevant and important to board governance?
- Are there any eligibility requirements we have missed?
- Do you have any concerns with the proposed amendments?

Respondents were given the opportunity to provide written comments throughout the survey. For more information about the survey responses, view the attached summary and individual response reports.

Analysis of feedback and how the feedback was used

Among the highlights of the survey:

- Most respondents (84.62%) felt that the by-law amendments clearly describe the eligibility criteria and nomination process to be a Committee member.
- All respondents (100%) felt that the by-laws were relevant and important to board governance.

Below is a table capturing themes in the feedback and revisions made in response.

Comment	Change	Note
Inquiry as to whether an Inactive Class registrant can serve on Council and/or committee(s)	No change.	Any class of registrant can serve. Language consistent with provisions in By-Law 10.09 Eligibility for Election
Inquiry regarding how by-law addresses management of conflict of interest by the President and Council members	No change.	Conflict of interest provisions pertaining to Council and committee members are addressed in By-Law 16: Conflict of Interest

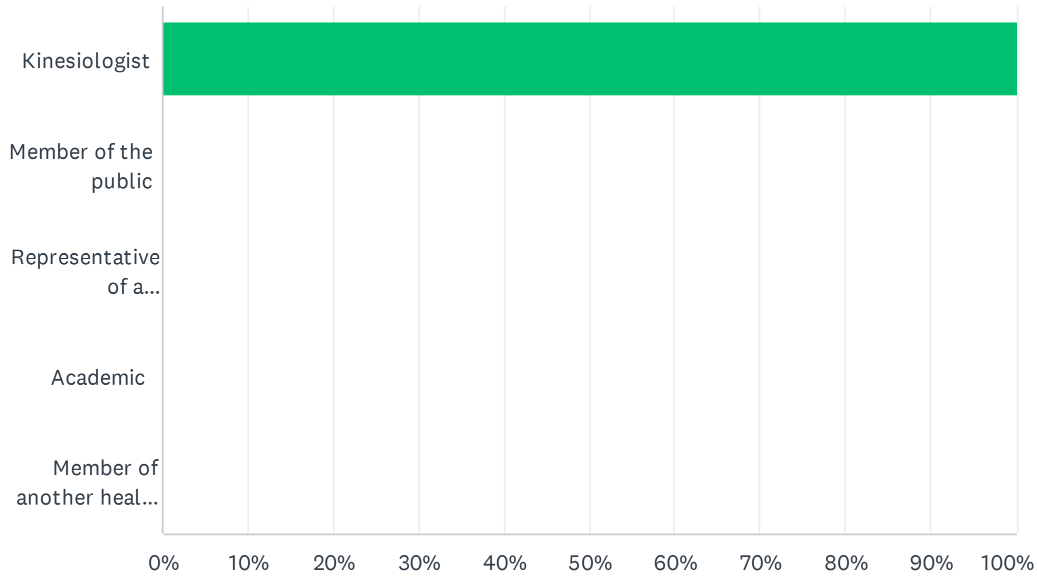
Consultation feedback reports

The following are attached:

- Summary responses to online feedback survey
- Individual responses to online feedback survey and consultation

Q1 I am a/an:

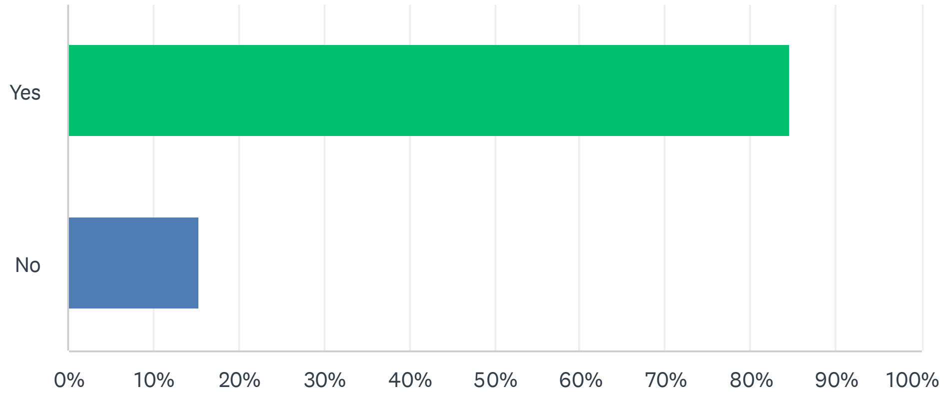
Answered: 14 Skipped: 0



ANSWER CHOICES	RESPONSES	
Kinesiologist	100.00%	14
Member of the public	0.00%	0
Representative of a professional association	0.00%	0
Academic	0.00%	0
Member of another health profession	0.00%	0
TOTAL		14

Q2 Do the by-law amendments clearly describe the eligibility criteria to be a Committee member?

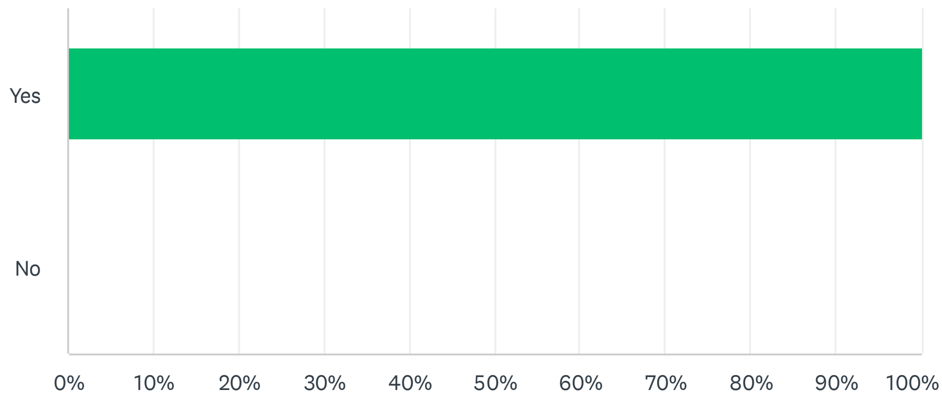
Answered: 13 Skipped: 1



ANSWER CHOICES	RESPONSES	
Yes	84.62%	11
No	15.38%	2
TOTAL		13

Q3 Are the by-laws relevant and important to board governance?

Answered: 13 Skipped: 1



ANSWER CHOICES	RESPONSES	
Yes	100.00%	13
No	0.00%	0
TOTAL		13

Q4 Are there any eligibility requirements we have missed?

Answered: 3 Skipped: 11

Q5 Do you have any concerns with the proposed amendments?

Answered: 3 Skipped: 11

Q6 Further comments:

Answered: 0 Skipped: 14

#1

COMPLETE

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IP Address: 99.244.79.90

Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly describe the eligibility criteria to be a Committee member?

Yes

Q3

Are the by-laws relevant and important to board governance?

Yes

Q4

Are there any eligibility requirements we have missed?

Respondent skipped this question

Q5

Do you have any concerns with the proposed amendments?

Respondent skipped this question

Q6

Further comments:

Respondent skipped this question

#2

COMPLETE

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Last Modified: Wednesday, November 17, 2021 2:52:21 PM
Time Spent: 00:00:24
IP Address: 65.94.118.86

Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly describe the eligibility criteria to be a Committee member?

Yes

Q3

Are the by-laws relevant and important to board governance?

Yes

Q4

Are there any eligibility requirements we have missed?

Respondent skipped this question

Q5

Do you have any concerns with the proposed amendments?

Respondent skipped this question

Q6

Further comments:

Respondent skipped this question

#3

COMPLETE

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Last Modified: Wednesday, November 17, 2021 2:54:18 PM
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IP Address: 142.116.140.111

Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly describe the eligibility criteria to be a Committee member?

Yes

Q3

Are the by-laws relevant and important to board governance?

Yes

Q4

Are there any eligibility requirements we have missed?

Respondent skipped this question

Q5

Do you have any concerns with the proposed amendments?

Respondent skipped this question

Q6

Further comments:

Respondent skipped this question

#4

COMPLETE

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Time Spent: 00:00:28
IP Address: 142.158.141.3

Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly describe the eligibility criteria to be a Committee member?

No

Q3

Are the by-laws relevant and important to board governance?

Yes

Q4

Are there any eligibility requirements we have missed?

Respondent skipped this question

Q5

Do you have any concerns with the proposed amendments?

Respondent skipped this question

Q6

Further comments:

Respondent skipped this question

#5

COMPLETE

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IP Address: 99.237.14.107

Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly describe the eligibility criteria to be a Committee member?

Yes

Q3

Are the by-laws relevant and important to board governance?

Yes

Q4

Are there any eligibility requirements we have missed?

Respondent skipped this question

Q5

Do you have any concerns with the proposed amendments?

Respondent skipped this question

Q6

Further comments:

Respondent skipped this question

#6

COMPLETE

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Time Spent: 00:00:21
IP Address: 69.158.143.228

Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly describe the eligibility criteria to be a Committee member?

Yes

Q3

Are the by-laws relevant and important to board governance?

Yes

Q4

Are there any eligibility requirements we have missed?

Don’t believe so

Q5

Do you have any concerns with the proposed amendments?

No

Q6

Further comments:

Respondent skipped this question

#7

COMPLETE

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Last Modified: Wednesday, November 17, 2021 9:52:01 PM
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Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly describe the eligibility criteria to be a Committee member?

Respondent skipped this question

Q3

Are the by-laws relevant and important to board governance?

Respondent skipped this question

Q4

Are there any eligibility requirements we have missed?

Respondent skipped this question

Q5

Do you have any concerns with the proposed amendments?

Respondent skipped this question

Q6

Further comments:

Respondent skipped this question

#8

COMPLETE

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Last Modified: Thursday, November 18, 2021 10:58:42 AM
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IP Address: 192.133.45.25

Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly describe the eligibility criteria to be a Committee member?

Yes

Q3

Are the by-laws relevant and important to board governance?

Yes

Q4

Are there any eligibility requirements we have missed?

No

Q5

Do you have any concerns with the proposed amendments?

No

Q6

Further comments:

Respondent skipped this question

#9

COMPLETE

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Last Modified: Monday, November 22, 2021 9:43:24 AM
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IP Address: 184.151.37.73

Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly describe the eligibility criteria to be a Committee member?

Yes

Q3

Are the by-laws relevant and important to board governance?

Yes

Q4

Are there any eligibility requirements we have missed?

Respondent skipped this question

Q5

Do you have any concerns with the proposed amendments?

Respondent skipped this question

Q6

Further comments:

Respondent skipped this question

#10

COMPLETE

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Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly describe the eligibility criteria to be a Committee member?

Yes

Q3

Are the by-laws relevant and important to board governance?

Yes

Q4

Are there any eligibility requirements we have missed?

Respondent skipped this question

Q5

Do you have any concerns with the proposed amendments?

Respondent skipped this question

Q6

Further comments:

Respondent skipped this question

#11

COMPLETE

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IP Address: 99.237.120.73

Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly describe the eligibility criteria to be a Committee member?

Yes

Q3

Are the by-laws relevant and important to board governance?

Yes

Q4

Are there any eligibility requirements we have missed?

Respondent skipped this question

Q5

Do you have any concerns with the proposed amendments?

Respondent skipped this question

Q6

Further comments:

Respondent skipped this question

#12

COMPLETE

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Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly describe the eligibility criteria to be a Committee member?

Yes

Q3

Are the by-laws relevant and important to board governance?

Yes

Q4

Are there any eligibility requirements we have missed?

Respondent skipped this question

Q5

Do you have any concerns with the proposed amendments?

Respondent skipped this question

Q6

Further comments:

Respondent skipped this question

#13

COMPLETE

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Last Modified: Saturday, November 27, 2021 12:02:34 PM
Time Spent: 00:10:14
IP Address: 24.200.207.73

Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly describe the eligibility criteria to be a Committee member?

No

Q3

Are the by-laws relevant and important to board governance?

Yes

Q4

Are there any eligibility requirements we have missed?

I`m not sure the requirements identify the difference registration classes? Can an "in-active" class member become a member of a committee or the Board?

Q5

Do you have any concerns with the proposed amendments?

Not sure its addresses COI by the President, Registrar, only members of the Board? Who then makes that determination?
Who is the decider of a COI? The President, Registrar and legal council are mentioned, but its this a single person deciding (can the President overrule the others?).
Consequences might not be clearly outlined.

Q6

Further comments:

Respondent skipped this question

#14

COMPLETE

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Last Modified: Tuesday, November 30, 2021 10:36:05 AM
Time Spent: 00:00:13
IP Address: 70.30.7.110

Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly describe the eligibility criteria to be a Committee member?

Yes

Q3

Are the by-laws relevant and important to board governance?

Yes

Q4

Are there any eligibility requirements we have missed?

Respondent skipped this question

Q5

Do you have any concerns with the proposed amendments?

Respondent skipped this question

Q6

Further comments:

Respondent skipped this question

COLLEGE OF
KINESIOLOGISTS
OF ONTARIO

DRAFT

Proposed Amendments to By-Law 16 of the College of Kinesiologists of Ontario

The following are proposed amendments to By-Law 16 of the College of Kinesiologists of Ontario.

Background

The provincial government has called for improved openness and transparency in licensing and professional regulation and has directed Ontario health regulators to implement strategies to improve the way they protect the public. The Ontario Ministry of Health has introduced new requirements for health regulatory college governance through the College Performance Measurement Framework (CPMF). The CPMF requires that:

1) All decisions related to a Council's strategic objectives, regulatory processes, and activities are impartial, evidence-informed, and advance the public interest;
2) The Council has a Code of Conduct and Conflict of Interest Policy, accessible to the public, that are periodically evaluated and/or updated;
3) The College defines cooling off periods and enforces through by-law/policy;
4) The College has a conflict of interest questionnaire that all Council members must complete annually, which is periodically evaluated and/or updated. Additionally:
   a. the completed questionnaires are appended to each Council meeting package;
   b. questionnaires include definitions of conflict of interest;
   c. questionnaires include questions based on areas of risk for conflict of interest identified by Council that are specific to the profession and/or College; and
   d. at the beginning of each Council meeting, members must declare any updates to their responses and any conflict of interest specific to the meeting agenda.
5) Member(s) update their questionnaire for each Council meeting based on agenda items; and
6) Meeting materials for Council enable the public to clearly identify the public interest rationale and the evidence supporting a decision related to the College's strategic direction or regulatory processes and actions (e.g., the minutes include a link to a publicly available briefing note).

To that end the College has committed to updating By-Law 16, which pertains to conflict of interest, and has developed a new Council and Committee Member and Volunteer Conflict of Interest Policy. On September 27, 2021, Council approved the proposed By-law 16 amendments for 60-day external consultation. College staff reviewed all feedback received during the consultation, and Council is being provided with final changes and information obtained during the consultation process for Council's consideration at its December 6, 2021 meeting. Once the amendments are approved, staff will communicate these changes to registrants and other stakeholders.

DRAFT

Proposed Changes

The proposed changes are contained in By-law 16; consequently, this is the by-law presented for consideration.

Document Layout

The document is structured in a table that sets out the current by-law provision, the proposed changes (additions are in red, deletions are struck out) and the rationale for the change.

DRAFT

By-Law 16: Conflict of Interest

Current by-law provision	Proposed change	Rationale / Explanation
16.01 Duty to Avoid Conflicts of Interest All Council and committee members have a duty to carry out their responsibilities in a manner that serves and protects the interest of the public. As such, they must not engage in any activities or in decision-making concerning any matters where they have a direct or indirect personal or financial interest. Because the circumstances of each case are unique, it is impossible to define in advance all forms of conflicts of interest. A "real" conflict of interest exists when a reasonable person, knowing all of the circumstances, would believe that the individual's judgment would be influenced by the competing consideration. A potential conflict of interest is where a conflict of interest is not real at the time of the decision, but given the right	**16.01 Duty to Avoid Conflicts of Interest** All Council and committee members have a duty to carry out their responsibilities in a manner that serves and protects the interest of the public. As such, they must not engage in any activities or in decision-making concerning any matters where they have a direct or indirect personal or financial interest. Because the circumstances of each case are unique, it is impossible to define in advance all forms of conflicts of interest. A "real" conflict of interest exists when a reasonable person, knowing all of the circumstances, would believe that the individual's judgment would be influenced by the competing consideration. A potential conflict of interest is where a conflict of interest is not real at the time of the decision, but given the right	

set of circumstances, could manifest in the future. An apparent conflict of interest is where real conflict of interest is suspected, even though it does not exist. This impacts the image of the Council or the committee member, and undermines the confidence of the public in the decision, and even more so, the confidence of the public in the College's ability to act in the public interest. In the specific examples discussed below, Council will exercise appropriate discretion to ensure that all circumstances that would meet these tests of conflict of interest are addressed appropriately. An individual has a conflict of interest where: i. a reasonable person could conclude that the personal and/or financial interests of the individual or a related person could influence the individual's judgment in performing his/her duties; ii. the individual is not directly involved with the matter and attempts to influence another individual or College staff who are involved with the matter; iii. there is an actual, potential or perceived use of College information for personal gain; iv. there is an actual, potential or perceived use of the member's position on Council for personal gain, such as employment, appointment or money;	set of circumstances, could manifest in the future. An apparent conflict of interest is where real conflict of interest is suspected, even though it does not exist. This impacts the image of the Council or the committee member and undermines the confidence of the public in the decision, and even more so, the confidence of the public in the College's ability to act in the public interest. The reference to "conflict of interest" refers to all manifestations of the conflict. ~~In the specific examples discussed below, Council will exercise appropriate discretion to ensure that all circumstances that would meet these tests of conflict of interest are addressed appropriately.~~ A~~n~~ member has a conflict of interest where: i. a reasonable person could conclude that the personal and/or financial interests of the member or a related person could influence the ~~individual's~~ member's judgment in performing their ~~his/her~~ duties; ii. the member ~~individual~~ is not directly involved with the matter and attempts to influence another individual or College staff who are involved with the matter; iii. there is an actual, potential or perceived use of College property and/or information for personal gain; iv. there is an actual, potential or perceived use of the member's position on Council or committee for	Clarifies extent of application. Use consistent terms - oscillation between "individual" and "member". iii. Expanded to include property for consistency with subsection 16.09 and Council and Committee Member and Volunteer Conflict of Interest Policy

DRAFT

<table>
<tr>
<td>v. there is an appearance of bias (an appearance of bias being any personal interest or view that could be reasonably seen as precluding a Council member of exercising fair evaluation of all information and objective judgement and decision making); or
vi. the member's position (either present or previous) with another organization affects his/her decision-making abilities.</td>
<td>personal gain, such as employment, appointment or money;
v. there is an appearance of bias (an appearance of bias being any personal interest or view that could be reasonably seen as precluding a Council or committee member of exercising fair evaluation of all information and objective judgement and decision making); or
vi. the member's position (either present or previous) with another organization affects their ~~his/her~~ decision-making abilities.

For a non-exhaustive list of examples of conflict of interest, please refer to the College's Council and Committee Member and Volunteer Conflict of Interest Policy.</td>
<td>Direct reader to non-exhaustive list of examples of conflicts in Council and Committee Member and Volunteer Conflict of Interest Policy for clarity and transparency.</td>
</tr>
<tr>
<td>16.02 Recognition of Conflict
Council and Committee members recognize that a conflict of interest or an appearance of a conflict of interest by a member of Council or its Committees:
i. could bring discredit to the College;
ii. could amount to a breach of the fiduciary obligation of the person to the College; and
iii. could create liability for either the College and /or the person involved.</td>
<td>16.02 Recognition of Conflict
Council and Committee members recognize that a conflict of interest ~~or an appearance of a conflict of interest~~ by a member of Council or its Committees:
i. Could result in a decision or process that is not based on principles that apply universally to everyone;
ii. could result in a decision or process that creates an unfair advantage or disadvantage for a particular group;
iii. could result in a decision or process that does not consider risk of harm and protect the public;
iv. could bring discredit to the College and undermine public confidence in</td>
<td>Clarified extent of application of term "conflict" in 16.01.

Expanded list of potential risks associated with failure to disclose/declare to emphasize importance of recognition.</td>
</tr>
</table>

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	the College's ability to govern the profession in the public interest; v. could result in a governance complaint against the member; and/or vi. could create liability for either the College and /or the person involved.	
16.03 Conflicts Relating to Involvement with a Professional Association A member of Council or a committee member shall be perceived to have conflict of interest in a matter and should not serve on Council or its committees at all if he or she holds a responsible position, such as director, owner, board member, officer in or is an employee of any professional association relating to Kinesiology.	**16.03 Conflicts Relating to Involvement with a Professional Association / Certifying Body** A member of Council or a committee member shall be perceived to have conflict of interest in a matter and should not serve on Council or its committees at all if ~~he or she~~ they hold~~s~~ a responsible position, ~~such as~~ including but not limited to being a director, owner, board member, officer in or ~~is~~ an employee of any professional association and/or certifying body relating to Kinesiology.	Expanded to include certifying body related to the profession to be consistent with By-Law 10 and 13.
16.04 Conflicts Relating to Position in Other Organizations A member of Council or a committee member would be perceived to have conflict of interest in a matter and should refrain from participating in any discussion or voting if he or she holds a responsible position such as director, owner, board member, officer in or is an employee of another organization where his or her duties may be seen by a reasonable person as influencing his or her judgment in the matter under consideration by the Council or its committees. For example, an educator should not participate in any decisions relating to the status of the school where he/she teaches, its program(s) or the	**16.04 Conflicts Relating to Position in Other Organizations** A member of Council or a committee member would be perceived to have conflict of interest in a matter and should refrain from participating in any discussion or voting if ~~he or she~~ they hold~~s~~ a responsible position ~~such as~~ including but not limited to being a director, owner, board member, officer in or an employee of another organization/group where ~~his or her~~ their duties may be seen by a reasonable person as influencing ~~his or her~~ their judgment in the matter under consideration by the Council or its committees. For example, an educator should not participate in any decisions relating to the status of the school where	Expanded to "organization/group" for consistency with proposed amendments to By-Laws 10 and 13.

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acceptability for registration of graduates from that school.	~~he/she~~ teaches, its program(s) or the acceptability for registration of graduates from that school. In certain situations, the educator may determine that they should not participate in any deliberation or decision about any educational institutions.	
16.05 Declaration Forms Upon appointment or election, and annually thereafter if requested, every Council and Committee member and every member of a working group shall fully complete and deliver to the Registrar a form, available from the Registrar, declaring his or her current and recent affiliations with professional associations and other organizations to facilitate compliance with the above provisions.	**16.05 Declaration Forms** Upon appointment or election, and annually thereafter ~~if requested~~, every Council and Committee member and every volunteer and member of a working group shall fully complete and deliver to the Registrar a form, available from the Registrar, declaring ~~his or her~~ their current and recent affiliations with professional associations and other organizations to facilitate compliance with the above provisions. In advance of each Council or committee meeting, Council and committee members shall submit a Conflict of Interest Pre-meeting Declaration Form, to the designated staff person by the date identified by the Registrar. The Form will be disseminated with the meeting agenda to ensure members have taken the time to review the meeting materials and ensure that they do not have any conflict of interest with any agenda items. The members' completed Conflict of Interest Pre-meeting Declaration Forms will be included as an appendix in the Council meeting materials as required by the Ontario Ministry of Health's College Performance Measurement Framework.	Expanded to include "volunteer" for consistency with new Council and Committee Member and Volunteer Conflict of Interest Policy. Added provisions to comply with Ontario Ministry of Health's College Performance Measurement Framework requirements.

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	At the beginning of each Council and committee meeting, members must declare any updates to their responses and any conflict of interest specific to the meeting agenda.	
16.06 Interests of Related Persons For the purposes of this by-law, the direct or indirect personal or financial interests of a parent, spouse, child or sibling of a Council or committee member are interpreted to be the interests of the Council or committee member. Here, the term “spouse” includes a common- law spouse and a same-sex partner of the person.	No change.	N/A
16.07 Where a Conflict May Exist Where a Council or committee member believes that he or she may have a conflict of interest in any matter which is the subject of deliberation or action by the Council or its committees, he or she shall: i. consult, as needed, with the President, the Registrar and legal counsel and, if there is any doubt about whether he or she may have or be perceived to have a conflict prior to any consideration of the matter, declare the potential conflict to the Council or the committee and accept Council’s or committee’s direction as to whether there is an appearance of a conflict; ii. where there appears to be a conflict of interest, not take part in the discussion of, or vote on, any question in respect of the matter;	**16.07 Where a Conflict May Exist** Where a Council or committee member believes that they ~~he or she~~ may have a conflict of interest in any matter which is the subject of deliberation or action by the Council or its committees, they ~~he or she~~ shall: ~~i.~~ i. consult, as needed, with the President, the Registrar and legal counsel and, if there is any doubt about whether ~~he or she~~ they may have or be perceived to have a conflict prior to any consideration of the matter, disclose ~~declare~~ the potential conflict to the Council or the committee and ~~accept Council’s or committee’s direction as to whether there is an appearance of a conflict;~~	If there is uncertainty the member would disclose. If it is determined that they are in a conflict of interest the member would declare the conflict.

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iii. where there appears to be a conflict of interest, absent himself or herself from the portion of any meeting relating to the matter; and iv. where there appears to be a conflict of interest, not attempt in any way to influence the voting or do anything that might be perceived as attempting to influence the decision of other members on the matter.	~~ii. where there appears to be a conflict of interest, not take part in the discussion of, or vote on, any question in respect of the matter;~~ ~~iii. where there appears to be a conflict of interest, absent himself or herself from the portion of any meeting relating to the matter; and~~ iv. ~~where there appears to be a conflict of interest, not attempt in any way to influence the voting or do anything that might be perceived as attempting to influence the decision of other members on the matter~~. ii. if it is determined that there is a conflict of interest, make a declaration of conflict; and iii. where a declaration of conflict of interest has been made, a. not take part in the discussion of, or vote on, any question in respect of the matter; b. absent themselves from the portion of any meeting relating to the matter; and c. not attempt in any way to influence the voting or do anything that might be perceived as attempting to influence the decision of other members on the matter. Where a Council or committee member believes that another member may have a conflict of interest in any matter which is the subject of deliberation or action by the Council or its committees, they shall:	

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	i. where possible, consult with the member and alert them that they may have a conflict prior to any consideration of the matter with respect to the conflict; and ii. if this does not resolve the matter they shall consult with the Chair of the Committee or President of Council or the Registrar about the matter; and iii. the Chair of the Committee or President of Council shall take such action as they deem appropriate, including but not necessarily limited to raising the matter before the full Council or Committee; and iv. where a declaration of conflict of interest has been made the member shall, a. not take part in the discussion of, or vote on, any question in respect of the matter; b. absent themselves from the portion of any meeting relating to the matter; and c. not attempt in any way to influence the voting or do anything that might be perceived as attempting to influence the decision of other members on the matter.	Added provision that sets out procedures to address situations when a Council or committee member believe that another member may have a conflict of interest.
16.08 Conflicts Recorded in Minutes Every declaration of a conflict of interest shall be recorded in the minutes of the meeting together with a description of the nature of the conflict.	**16.08 Conflicts Recorded in Minutes** Every declaration of a conflict of interest shall be recorded in the minutes of the meeting together with a general description of the nature of the conflict.	

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16.09 Use of College Information or Property A member of Council or a committee member shall not use College property or information of any kind to advance his or her own interests, direct or indirect.	No change.	N/A
16.10 Staff Positions A member of Council or a committee member may not hold any other position, contract or appointment with the College while serving as a member of Council or its committees. There is a one-year waiting period before the individual may apply for a staff or consultant position with the College. This includes, but is not limited to, positions as peer assessor, investigator, inspector, examiner or staff	No change.	N/A

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COLLEGE OF
KINESIOLOGISTS
OF ONTARIO

Consultation Report:
Proposed Amendments to By-Law 16

December 1, 2021

About the College

The College is a regulatory body that oversees kinesiologists working in the province. The College receives its authority from the *Kinesiology Act, 2007* and the *Regulated Health Professions Act, 1991*.

The College regulates kinesiologists and protects the public by:

- setting requirements to enter the profession so that only qualified individuals can practise kinesiology;
- maintaining on its website a list of individuals qualified to practise kinesiology, known as the public register, or Find a Kinesiologist;
- developing rules and guidelines for kinesiologists' practice and conduct, including a code of ethics;
- investigating complaints about kinesiologists and disciplining when necessary; and
- requiring kinesiologists to participate in a program that helps ensure that their knowledge and skills are up to date, and monitoring that participation.

Background and Context

The provincial government has called for improved openness and transparency in licensing and professional regulation and has directed Ontario health regulators to implement strategies to improve the way they protect the public. The Ontario Ministry of Health has introduced new requirements for health regulatory college governance through the College Performance Measurement Framework (CPMF). The CPMF requires that:

1) All decisions related to a Council's strategic objectives, regulatory processes, and activities are impartial, evidence-informed, and advance the public interest;
2) The Council has a Code of Conduct and Conflict of Interest Policy, accessible to the public, that are periodically evaluated and/or updated;
3) The College defines cooling off periods and enforces through by-law/policy;
4) The College has a conflict of interest questionnaire that all Council members must complete annually, which is periodically evaluated and/or updated. Additionally:
    a. the completed questionnaires are appended to each Council meeting package;
    b. questionnaires include definitions of conflict of interest;
    c. questionnaires include questions based on areas of risk for conflict of interest identified by Council that are specific to the profession and/or College; and
    d. at the beginning of each Council meeting, members must declare any updates to their responses and any conflict of interest specific to the meeting agenda.
5) Member(s) update their questionnaire for each Council meeting based on agenda items; and
6) Meeting materials for Council enable the public to clearly identify the public interest rationale and the evidence supporting a decision related to the College's strategic direction or regulatory processes and actions (e.g., the minutes include a link to a publicly available briefing note).

To that end the College has committed to updating By-Law 16, which pertains to conflict of interest.

The purpose of this consultation was to obtain feedback on the proposed amendments to By-law 16.

Consultation process

On September 30, 2021, the College emailed its registrants and stakeholders a notice of the consultation and its process. A dedicated webpage was created on the College's website to promote the consultation, and anyone with comments was invited to submit feedback via Survey Monkey or email. The consultation concluded on November 30, 2021.

What we heard

Feedback from Survey

During the consultation period, a survey was available on the College's website to gather feedback on the proposed by-law amendments. Twelve respondents completed the survey: 11 respondents were registered kinesiologists and one respondent was an academic.

The survey asked respondents to indicate their agreement and provide comments on the following questions:

- Do the by-law amendments clearly define conflict of interest?
- Do the by-law amendments clearly outline the process and procedures for avoiding, and where not possible managing conflict of interest?
- Are the by-laws relevant and important to board governance?
- Do you have any concerns with the proposed amendments?

Respondents were given the opportunity to provide written comments throughout the survey. For more information about the survey responses, view the attached summary and individual response reports.

Analysis of feedback and how the feedback was used

Among the highlights of the survey:

- Most respondents (91.67%) felt that the by-law amendments clearly define conflict of interest.
- All respondents (100%) felt that the by-laws amendments clearly outline the process and procedures for avoiding, and where not possible managing conflict of interest.
- Most respondents (91.67%) felt that the by-laws are relevant and important to board governance.

Below is a table capturing themes in the feedback and revisions made in response.

Comment	Change	Note
It was suggested that COI disclosures include equipment sales, enrollment, profit sharing, stock or portfolio and be included in a cross-checking process.	No change.	These examples may be added to the new Council and Committee Member and Volunteer Conflict of Interest Policy table of examples, and COI declaration forms.

It was suggested that the definition of COI include examples of what is and what is not a COI.	No change.	The Policy provides a detailed table of examples of COI. Common practice to define what it is, rather than what it is not.

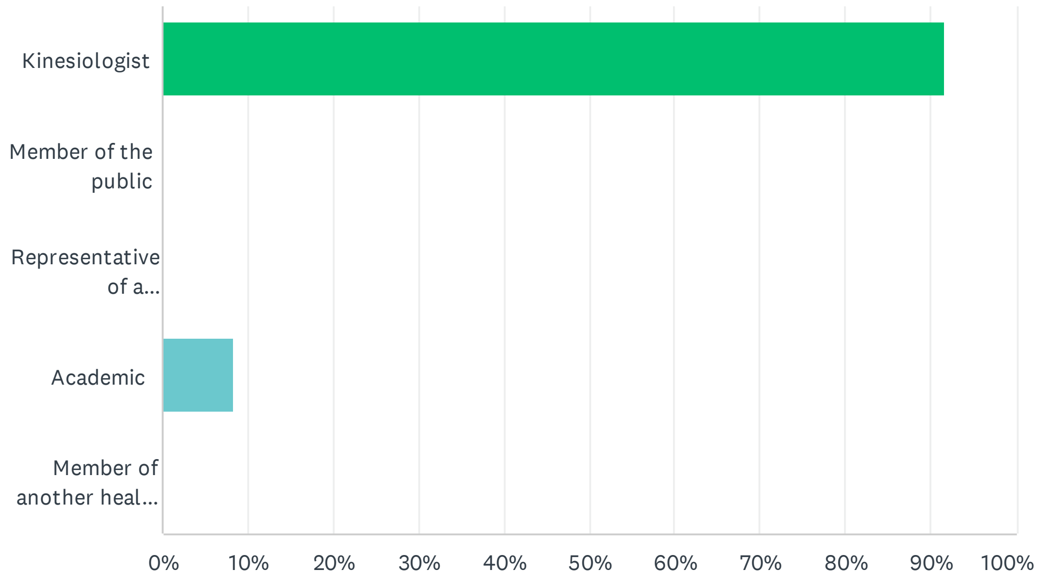
Consultation feedback reports

The following are attached:

- Summary responses to online feedback survey
- Individual responses to online feedback survey

Q1 I am a/an:

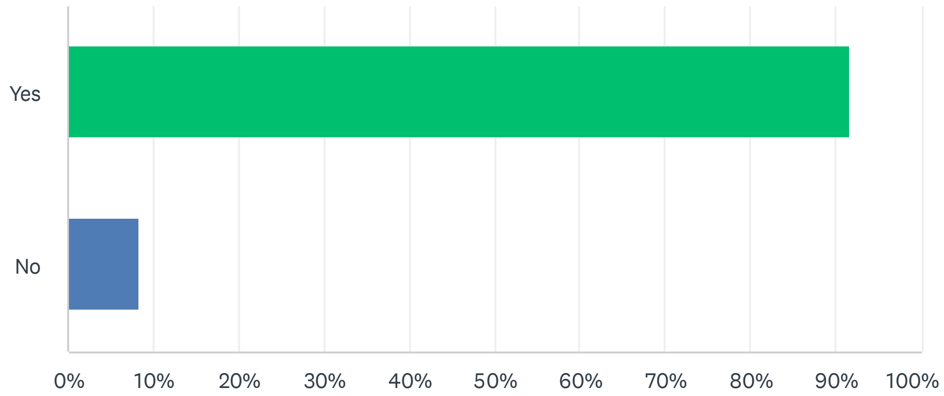
Answered: 12 Skipped: 0



ANSWER CHOICES	RESPONSES	
Kinesiologist	91.67%	11
Member of the public	0.00%	0
Representative of a professional association	0.00%	0
Academic	8.33%	1
Member of another health profession	0.00%	0
TOTAL		12

Q2 Do the by-law amendments clearly define conflict of interest?

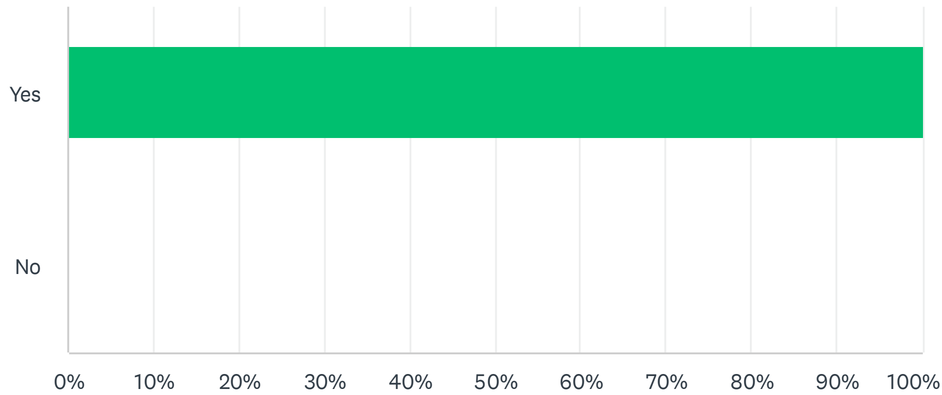
Answered: 12 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	91.67%	11
No	8.33%	1
TOTAL		12

Q3 Do the by-law amendments clearly outline the process and procedures for avoiding, and where not possible managing conflict of interest?

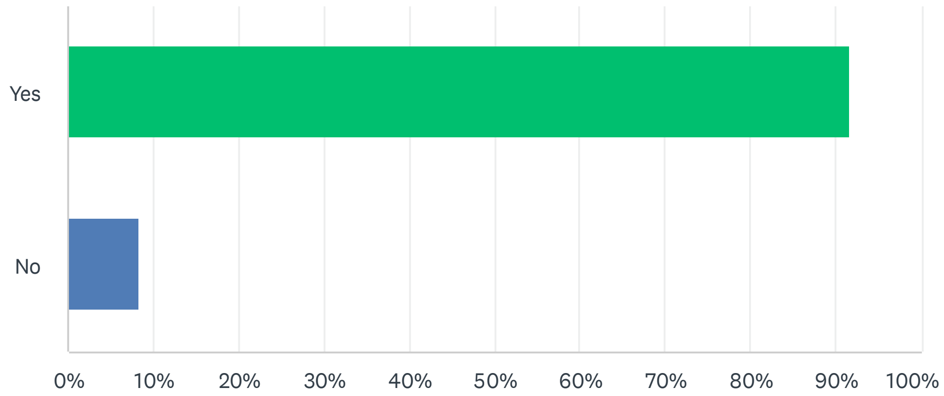
Answered: 12 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	100.00%	12
No	0.00%	0
TOTAL		12

Q4 Are the by-laws relevant and important to board governance?

Answered: 12 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	91.67%	11
No	8.33%	1
TOTAL		12

Q5 Do you have any concerns with the proposed amendments?

Answered: 5 Skipped: 7

Q6 Further comments:

Answered: 1 Skipped: 11

#1

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Thursday, September 30, 2021 3:44:14 PM
Last Modified: Thursday, September 30, 2021 3:46:25 PM
Time Spent: 00:02:11
IP Address: 72.136.112.76

Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly define conflict of interest?

Yes

Q3

Do the by-law amendments clearly outline the process and procedures for avoiding, and where not possible managing conflict of interest?

Yes

Q4

Are the by-laws relevant and important to board governance?

No

Q5

Do you have any concerns with the proposed amendments?

Once again the government and college clearly want changes to places where changes are not required. How about focusing on malicious and false claims that clearly are out to harm our members and not protect any public!

Q6

Further comments:

Respondent skipped this question

#2

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Thursday, September 30, 2021 8:30:25 PM
Last Modified: Thursday, September 30, 2021 8:30:43 PM
Time Spent: 00:00:18
IP Address: 72.136.107.180

Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly define conflict of interest?

Yes

Q3

Do the by-law amendments clearly outline the process and procedures for avoiding, and where not possible managing conflict of interest?

Yes

Q4

Are the by-laws relevant and important to board governance?

Yes

Q5

Do you have any concerns with the proposed amendments?

Respondent skipped this question

Q6

Further comments:

Respondent skipped this question

#3

COMPLETE

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Started: Friday, October 01, 2021 9:59:39 AM
Last Modified: Friday, October 01, 2021 10:03:09 AM
Time Spent: 00:03:30
IP Address: 99.244.79.90

Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly define conflict of interest?

Yes

Q3

Do the by-law amendments clearly outline the process and procedures for avoiding, and where not possible managing conflict of interest?

Yes

Q4

Are the by-laws relevant and important to board governance?

Yes

Q5

Do you have any concerns with the proposed amendments?

Disclosure of such as: equipment sales, enrollment, profit sharing, stock or portfolio and be included in a cross checking process.

Q6

Further comments:

Respondent skipped this question

#4

COMPLETE

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Started: Wednesday, November 17, 2021 2:52:30 PM
Last Modified: Wednesday, November 17, 2021 2:52:41 PM
Time Spent: 00:00:10
IP Address: 65.94.118.86

Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly define conflict of interest?

Yes

Q3

Do the by-law amendments clearly outline the process and procedures for avoiding, and where not possible managing conflict of interest?

Yes

Q4

Are the by-laws relevant and important to board governance?

Yes

Q5

Do you have any concerns with the proposed amendments?

Respondent skipped this question

Q6

Further comments:

Respondent skipped this question

#5

COMPLETE

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Started: Wednesday, November 17, 2021 2:55:28 PM
Last Modified: Wednesday, November 17, 2021 2:55:40 PM
Time Spent: 00:00:12
IP Address: 142.116.140.111

Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly define conflict of interest?

Yes

Q3

Do the by-law amendments clearly outline the process and procedures for avoiding, and where not possible managing conflict of interest?

Yes

Q4

Are the by-laws relevant and important to board governance?

Yes

Q5

Do you have any concerns with the proposed amendments?

Respondent skipped this question

Q6

Further comments:

Respondent skipped this question

#6

COMPLETE

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IP Address: 99.237.14.107

Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly define conflict of interest?

Yes

Q3

Do the by-law amendments clearly outline the process and procedures for avoiding, and where not possible managing conflict of interest?

Yes

Q4

Are the by-laws relevant and important to board governance?

Yes

Q5

Do you have any concerns with the proposed amendments?

Respondent skipped this question

Q6

Further comments:

Respondent skipped this question

#7

COMPLETE

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Started: Wednesday, November 17, 2021 6:07:18 PM
Last Modified: Wednesday, November 17, 2021 6:07:40 PM
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IP Address: 69.158.143.228

Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly define conflict of interest?

Yes

Q3

Do the by-law amendments clearly outline the process and procedures for avoiding, and where not possible managing conflict of interest?

Yes

Q4

Are the by-laws relevant and important to board governance?

Yes

Q5

Do you have any concerns with the proposed amendments?

No

Q6

Further comments:

Respondent skipped this question

#8

COMPLETE

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Last Modified: Wednesday, November 17, 2021 6:25:28 PM
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IP Address: 72.137.226.18

Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly define conflict of interest?

Yes

Q3

Do the by-law amendments clearly outline the process and procedures for avoiding, and where not possible managing conflict of interest?

Yes

Q4

Are the by-laws relevant and important to board governance?

Yes

Q5

Do you have any concerns with the proposed amendments?

No

Q6

Further comments:

Amendments seem better worded to clarify intent and purpose of by-law.

#9

COMPLETE

Collector: Web Link 1 (Web Link)
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Last Modified: Thursday, November 18, 2021 10:06:33 AM
Time Spent: 00:08:52
IP Address: 70.27.147.60

Page 1

Q1

I am a/an:

Academic

Q2

Do the by-law amendments clearly define conflict of interest?

No

Q3

Do the by-law amendments clearly outline the process and procedures for avoiding, and where not possible managing conflict of interest?

Yes

Q4

Are the by-laws relevant and important to board governance?

Yes

Q5

Do you have any concerns with the proposed amendments?

I'd just like to suggest that the definition of conflict of interest include examples both of what is AND what is not a COI.

Q6

Further comments:

Respondent skipped this question

#10

COMPLETE

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Last Modified: Thursday, November 18, 2021 11:13:26 AM
Time Spent: 00:00:22
IP Address: 69.159.8.50

Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly define conflict of interest?

Yes

Q3

Do the by-law amendments clearly outline the process and procedures for avoiding, and where not possible managing conflict of interest?

Yes

Q4

Are the by-laws relevant and important to board governance?

Yes

Q5

Do you have any concerns with the proposed amendments?

Respondent skipped this question

Q6

Further comments:

Respondent skipped this question

#11

COMPLETE

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Last Modified: Monday, November 22, 2021 6:17:19 PM
Time Spent: 00:00:41
IP Address: 68.55.122.93

Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly define conflict of interest?

Yes

Q3

Do the by-law amendments clearly outline the process and procedures for avoiding, and where not possible managing conflict of interest?

Yes

Q4

Are the by-laws relevant and important to board governance?

Yes

Q5

Do you have any concerns with the proposed amendments?

Respondent skipped this question

Q6

Further comments:

Respondent skipped this question

#12

COMPLETE

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Last Modified: Tuesday, November 30, 2021 10:39:22 AM
Time Spent: 00:00:12
IP Address: 70.30.7.110

Page 1

Q1

I am a/an:

Kinesiologist

Q2

Do the by-law amendments clearly define conflict of interest?

Yes

Q3

Do the by-law amendments clearly outline the process and procedures for avoiding, and where not possible managing conflict of interest?

Yes

Q4

Are the by-laws relevant and important to board governance?

Yes

Q5

Do you have any concerns with the proposed amendments?

Respondent skipped this question

Q6

Further comments:

Respondent skipped this question