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CHAPTER P-7

PHYSIOTHERAPY ACT

STANDARDS AND DISCIPLINE REGULATIONS

Pursuant to section 4 of the *Physiotherapy Act* R.S.P.E.I. 1988, Cap. P-7, the Council of the Prince Edward Island College of Physiotherapists made, and the Lieutenant Governor in Council approved, the following regulations:

1. In these regulations

Definitions

(a) “Investigation Committee” means the committee appointed under section 29;

Investigation
Committee

(b) “physiotherapist in charge” means the physiotherapist responsible for the management of a clinic in accordance with section 18 of the Act. (EC265/90)

physiotherapist in
charge

PART I

REQUIREMENTS OF A PHYSIOTHERAPIST

2. A physiotherapist shall exercise generally accepted standards of practice and procedures that are, in the judgment of the Council, consistent with a combination of

Acceptable practice

(a) the person’s professional training;

(b) current teaching as given in approved university programs and reflected in professional journals and reports; and

(c) customary practices generally evident among peers in Canada. (EC265/90)

3. The Council may find a physiotherapist guilty of professional incompetence if it concludes, without any negative vote, that a patient suffered demonstrable harm or serious risk of harm which can reasonably be attributed to something the physiotherapist did or failed to do or failed to take into account, which act or omission was inconsistent with generally accepted standards of practice and procedures, and cannot be justified by the physiotherapist to the satisfaction of the Council. (EC265/90)

Incompetence

4. A physiotherapist shall abide by the requirements of sections 21 and 22 of the Authorization Regulations (EC745/88) regarding continuing professional development. (EC265/90)

Continuing
professional
development

- Code of ethics **5.** A physiotherapist shall follow such code of ethics as is produced by the Canadian Physiotherapy Association and adopted by the College. (EC265/90)
- Conflict of interest **6.** It is a conflict of interest for a physiotherapist to place herself in or accept a situation which, in the Council's judgment,
 (a) results, by connection with her physiotherapy practice, in her monetary or other personal gain other than that earned directly from the provision of professional services, or in gain for a person who refers a patient to the physiotherapist as a consequence of the referral; or
 (b) puts her professional integrity or her rendering of services at risk of being controlled or detrimentally influenced by other persons or by factors other than her professional judgment of what is best for the patient. (EC265/90)
- Patient record **7.** A physiotherapist shall record, and keep current during each course of treatment, in each patient record
 (a) pre-treatment information necessary for planning treatment or care;
 (b) the plan for treatment or care;
 (c) the occasions of treatment, the treatments rendered and main instructions given for care;
 (d) patient responses to treatment, progress according to the plan, changed conditions and any adjustments to the plan;
 (e) the main points, essential to care, of communication between the physiotherapist and the patient, health care provider or other person directly involved in the patient's care; and
 (f) the discharge status and follow-up plans. (EC265/90)
- Malpractice insurance **8.** A physiotherapist practising in any setting other than a hospital or other institution that is operated under other statutory regulation or by a department or agency of government shall carry malpractice insurance at a level that is customary, in the Council's opinion, for Prince Edward Island. (EC265/90)
- Misconduct **9.** Without limiting the generality of section 15 of the Act, the Council may find a physiotherapist guilty of professional misconduct for any of the following reasons:
 (a) failing to abide by the terms of her license;
 (b) failing to abide by the code of ethics;
 (c) exceeding the lawful scope of practice, as defined by the Act and amplified by the generally accepted norms of current Canadian professional literature, university teaching, and common practice of peers;
 (d) having a conflict of interest;

- (e) failing to maintain current patient records;
- (f) attempting to deal with a patient's problem which the physiotherapist recognizes or should, according to her qualification, recognize as being beyond the scope of her competence or expertise;
- (g) failing to refer a patient appropriately when the physiotherapist recognizes, or should in the Council's judgment recognize, a condition requiring the attention of another professional;
- (h) permitting, in circumstances within her control, an unauthorized person to perform any of the functions of a physiotherapist except as may be provided under the Act;
- (i) maintaining in her records, signing, issuing or submitting a record, report, certificate, claim or similar document which the physiotherapist knows or should know contains false or misleading information or which, by omitting significant information, may give a misleading impression;
- (j) giving information regarding a patient's condition or treatment to a person other than the patient without the consent of the patient, unless required to do so by law or for a purpose directly related to the patient's care;
- (k) purporting to have a qualification or special expertise which she does not in fact possess and which has not been recognized by Council;
- (l) engaging in practice while ability to perform any professional act is impaired by alcohol or other drug;
- (m) failing to co-operate with an appraisal or investigation duly authorized by the Council;
- (n) failing to explain appropriately to a patient the plan for the patient's treatment or care;
- (o) failing to provide appropriate explanation, instruction or advice when assigning to a patient a regimen of exercise, the use of a piece of equipment or comparable activity that is to be self-administered;
- (p) advertising that is, in the judgment of the Council with reference to such written guidelines as may be developed, improper or misleading;
- (q) failing to explain to a patient, prior to treatment, the nature of any fees to be charged to the patient;
- (r) attempting or carrying out, without previously informing and obtaining the advice of the Council, research based on methods which do not conform to her training or to generally recognized contemporary custom;
- (s) failing to comply with directions issued by the Council in accordance with the Act and regulations;
- (t) performing an act associated with practice which, in the judgment of the Council without any negative vote, would reasonably be

regarded by the vast majority of physiotherapists as dishonourable or seriously offensive to a patient. (EC265/90)

PART II
REQUIREMENTS OF A CLINIC

Application of Part I to clinic	10. The following requirements of Part I apply also, with the necessary changes, to the holder of a permit and the physiotherapist in charge with respect to responsibility for ensuring the proper operation of a clinic and performance of physiotherapist services in the clinic: section 2 (main standard of acceptable practice) and 6 (conflict of interest), and in section 9 (misconduct) clauses (a), (c), (d), (e), (h), (i), (j), (m), (p), (q), (r), (s) and (t). (EC265/90)
Facilities	11. A clinic shall have physical space and facilities, equipment, instruments, aids, materials and supplies that are adequate, in the Council's judgment with reference to the criteria of section 2 concerning accepted standards of practice, to provide effectively the services which the clinic purports to offer. (EC265/90)
Access	12. The patient-service areas of a clinic shall be readily accessible to the patients who use the clinic, including, where applicable, those who use a wheelchair, walker, crutches or other mobility aid, and the physical layout shall allow for safe, unimpeded movement within the patient-service areas. (EC265/90)
Privacy	13. Patient-service facilities in a clinic shall provide for individual privacy and dignity appropriate to the nature of the treatment being given and the reasonable wishes of the patient. (EC265/90)
Fire safety	14. A clinic shall comply with all applicable fire and electrical regulations and with any directions of a fire inspector empowered under the <i>Fire Prevention Act</i> R.S.P.E.I. 1988, Cap. F-11 to prevent or remedy any unsafe condition. (EC265/90)
Electrical outlets	15. Electrical outlets in the hydrotherapy area of a clinic shall be installed with a ground fault circuit interrupter system. (EC265/90)
Equipment	16. Patient-treatment equipment shall, as applicable, (a) conform to Canadian Standards Association or equivalent standards; (b) have and be operated according to the operating manual provided by the manufacturer; (c) be serviced and recalibrated regularly. (EC265/90)
Sanitation and public health safety	17. (1) A clinic shall comply with all applicable public health regulations and with any directions of a public health officer empowered under the

Public Health Act R.S.P.E.I. 1988, Cap. P-30 regarding essential sanitation and public health safety.

(2) A clinic shall be kept weatherproof, dry, free of pests, ventilated, heated, lighted, in a state of good repair and sanitation and otherwise hygienic, to the satisfaction, if the Council so requires, of a public health officer. (EC265/90) *Idem*

18. The permit of a clinic and the license of any physiotherapist working in the clinic shall be prominently displayed in a patient-service area of the clinic. (EC265/90) Authorizations, display

19. Any use of unlicensed staff for the performance of physiotherapy related functions shall be in accordance with the current edition of “Guidelines for the Use of Auxiliary Personnel in Physiotherapy Services” issued by the Canadian Physiotherapy Association and adopted by the Council, and the lines of supervisory responsibility shall be explicitly assigned. (EC265/90) Auxiliaries

20. (1) The patient workload in a clinic shall be so arranged that it does not, as a general pattern over a monthly term, exceed, on average, treatments to five patients per hour per physiotherapist. Workload

(2) The workload in a clinic may exceed the level prescribed in subsection (1), if the physiotherapist in charge justifies this as acceptable, to the satisfaction of the Council according to the standards of practice established in section 2. (EC265/90) *Idem*

21. (1) A clinic shall have a clinical patient record in a permanent form (written or electronic) for each patient. Patient record

(2) The said patient record shall be stored securely to protect against breach of confidentiality and against loss, and shall be retained for at least seven years after the treatment last rendered to that patient. (EC265/90) *Idem*

22. Any consent required to be given by a patient for the release of personal information related to his care shall be in writing. (EC265/90) Written consent

23. A clinic shall carry liability insurance at a level that is customary, in the Council’s opinion, for Prince Edward Island. (EC265/90) Liability insurance

24. The Council may, if safety is not thereby endangered, relax the application of the requirements of Part II in relation to certain types of permit or in particular cases, where it considers that strict compliance would be unproductive or unrealistic. (EC265/90) Discretionary application

PART III
MAINTENANCE OF STANDARDS

APPRAISAL OF CLINIC

Appraisal	25. (1) The Council may appoint two or more inspectors to carry out an appraisal of a clinic and the general characteristics of its operation, with reference to the prescribed standards.
<i>Idem</i>	(2) Normally such appraisal shall be carried out after a six-month period following the initial granting of a permit, and at such intervals thereafter as the Council considers advisable. (EC265/90)
Co-operation	26. The permit holder and staff of a clinic shall co-operate fully in such an appraisal, including making available all records required by an inspector. (EC265/90)
Report	27. The inspector shall, at the time of the appraisal, inform the permit holder or physiotherapist in charge of the facts he has observed, and shall submit a report of the appraisal to the Council for its consideration. (EC265/90)
Outcome of appraisal	28. The Council shall, as soon as possible, inform the permit holder and physiotherapist in charge of the general results of the appraisal; it shall in writing direct them to remedy any failure to meet the prescribed standards within a time period considered reasonable by the Council, and shall conduct a re-inspection on expiry of the time allowed. (EC265/90)

COMPLAINT AND INVESTIGATION

Complaint	29. (1) When the Council, on its own initiative or as a result of a written complaint to it, determines that there is cause for investigating a particular alleged incident or the practice of a physiotherapist, it shall appoint an Investigation Committee, and shall inform the complainant, if any, of the investigation process and notify him that the appropriate action is being taken.
Investigation Committee	(2) The Investigation Committee shall comprise one physiotherapist and one non-physiotherapist member of the Council, and one physiotherapist who is not a member of the Council, together with such other persons who are not members of the Council as the Council may consider necessary.
Assistance	(3) The Investigation Committee may engage the assistance of such other persons as the Council may authorize. (EC265/90)

- 30.** (1) The Investigation Committee shall conduct a preliminary inquiry to determine whether there is cause for full investigation. Preliminary inquiry
- (2) If the Investigation Committee finds that there is not a sufficient basis for proceeding, it shall recommend to the Council that there be no further action. No basis for action
- (3) If the Investigation Committee finds that there is cause to proceed, it shall inform the affected physiotherapist and carry out such further investigation as it considers appropriate. (EC265/90) Further investigation
- 31.** (1) During the investigation, and at the discretion of the Investigation Committee also during the preliminary inquiry, the Investigation Committee shall ensure that any complainant and the physiotherapist under investigation are each permitted to be heard and to submit evidence. Parties to be heard
- (2) The physiotherapist under investigation shall if required give full co-operation to the Investigation Committee, including the provision of such records as may be requested. (EC265/90) Co-operation
- 32.** The Investigation Committee shall in writing report its findings and conclusions to the Council, which shall provide a copy to the physiotherapist under investigation. (EC265/90) Report

HEARING AND JUDGMENT

- 33.** (1) The Council shall give the physiotherapist under investigation, by ten days written notice of a hearing delivered by hand or registered mail to her last known address, the opportunity to be heard, with legal counsel of both parties present if desired by either. Hearing
- (2) If the physiotherapist under investigation does not take the opportunity or otherwise fails to attend the announced hearing, the Council may nonetheless proceed. (EC265/90) *Idem*
- 34.** The Council shall consider the report of the Investigation Committee and the outcome of the hearing, and shall by vote determine Judgment by Council
- (a) whether to accept the findings of the Investigation Committee;
- (b) whether to accept, reject or modify the conclusions of the Investigation Committee; and
- (c) the remedial or disciplinary action, if any, to be taken. (EC265/90)
- 35.** The Council shall forthwith notify the affected physiotherapist in writing of its decisions, and any requirements of her, specifying the time allotted for compliance and, in the case of a suspension or revocation, Notification of outcome

informing her of her right of appeal under section 16 of the Act. (EC265/90)

Compliance **36.** Subject to the appeal provisions of section 16 of the Act, the physiotherapist against whom remedial or disciplinary action is taken shall comply with the Council's directions, and if she fails to do so within the specified time, the Council may apply an additional requirement or penalty. (EC265/90)

Re-instatement **37.** The Council may, upon application and payment of the fee prescribed for re-issuance of a lapsed authorization, re-instate a person whose authorization has been suspended or revoked, according to such terms and conditions as it considers appropriate for protecting the public interest. (EC265/90)

REMEDIAL MEASURES AND PENALTIES

Remedy or penalty **38.** Where it finds the holder of an authorization guilty of professional misconduct, incompetence, or failure to abide by the prescribed standards or other requirements of the Act or regulations, the Council shall determine a measure of remedy or penalty which it considers appropriate to the nature and degree of the failure. (EC265/90)

Measures available **39.** (1) Without limiting the generality of section 38, disciplinary measures may include

- (a) a reprimand, whether oral or written;
- (b) a fine, to a maximum of \$5,000;
- (c) direction that the person fulfil a continuing professional education requirement;
- (d) direction that the person complete a rehabilitative treatment program;
- (e) a term or condition imposed on the authorization, limiting the scope or independence of practice;
- (f) suspension of the authorization, for a fixed period of time or until a condition has been fulfilled;
- (g) revocation of the authorization;
- (h) a combination of such measures.

Idem (2) As part of the discipline, the Council may require a person found guilty to pay the cost or part of the cost of the investigation and hearing. (EC265/90)

Criteria **40.** (1) The criteria for the Council's assessment of the nature and severity of the penalty or remedial measure shall include

- (a) the extent of the person's awareness of the fault;
- (b) the degree of risk or harm to the patient;

- (c) the potential further risk to the public;
- (d) the potential effect upon the public;
- (e) the likely effect upon the disciplined person's ability to earn her livelihood;
- (f) any restitution or remediation voluntarily undertaken by the person herself.

(2) Wherever possible the Council shall seek, by the disciplinary action it takes, an approach and outcome of remedy or positive improvement rather than mere penalization. (EC265/90) *Idem*

41. (1) The Council shall, in all but unusual cases, keep secret any investigation and disciplinary or remedial measures unless otherwise requested by the physiotherapist affected; however, the Council may reveal such matters in any report on its operation, so long as this is done in such a way that the parties involved cannot be identified. Confidentiality

(2) In unusual cases where it appears necessary for protecting the welfare of the public, the Council may choose as part of the penalty or remedy applied to reveal the nature of the case and its outcome, including the identity of the person at fault, to the complainant, the Minister, the College, employers, other health professionals, regulatory bodies, law enforcement officials and the courts, or the general public. Outcome made public

(3) Where an authorization is suspended or revoked, the Council shall so inform employers, regulatory bodies and others as may be applicable in order to prevent unauthorized practice. (EC265/90) Notification of employers, etc.

MISCELLANEOUS

42. Investigation and disciplinary measures with respect to a permit holder shall be conducted, with the necessary changes, in accordance with the procedures prescribed therefor with respect to a physiotherapist. (EC265/90) Application to permit holder

43. A Council member shall withdraw from any official involvement as a Council member in any investigation or disciplinary matter of which she is herself the subject. (EC265/90) Council member disqualified

44. No action lies against the Investigation Committee, its members or persons acting in accordance with its directions, for any thing done in good faith with respect to its functions under these regulations. (EC265/90) Liability of Investigation Committee

45. (1) The Council may compile and publish statistical information with regard to the volume and nature of manpower, professional services, patient utilization and comparable subjects related to patterns of service Statistical information

need and performance, in such form that individuals are not identifiable without their consent.

Idem

(2) The holder of an authorization shall provide to the Registrar such information as may be requested by the Council for purposes of this section. (EC265/90)