



## CONFIDENTIALITY UNDERTAKING

### FOR BOARD AND NON-BOARD COMMITTEE MEMBERS

I, \_\_\_\_\_, have been selected to serve on the Board and/or on a Committee of the College of Physiotherapists of Ontario (the "College").

I have read and understood the confidentiality provisions set out in sections 36 and 40 of the *Regulated Health Profession Act, 1991 (Appendix A)* and sections 83 and 83.1 of the *Health Professions Procedural Code (Appendix B)*, which describe my duty of confidentiality, the situations where disclosure of College information is authorized, and the consequences of a breach of confidentiality.

I agree to keep confidential all information that comes to my knowledge in the course of my duties except as authorized by the *Regulated Health Professions Act*.

In the event that I disclose or attempt to disclose any such confidential information received in the course of my professional relationship with the College, I understand that the College shall be entitled to enforce its legal rights to prevent the disclosure of the information by injunction or otherwise and may bring such further action against me as it considers advisable. I also acknowledge that unauthorized disclosure of College information may be grounds for automatic termination of the relationship with the College as of the time of the breach.

I further acknowledge and agree that my obligations regarding confidentiality continue beyond the expiration of my term as Director of the Board and/or committee member with the College.

Within 20 days after the expiration of my term on the Board and/or my committee appointment, I shall return all of the College's confidential information or, if instructed by the College, shall securely destroy the confidential information and provide a written confirmation of such destruction to the College.

Date the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

Witness Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_



## Appendix A – Confidentiality Provisions, Regulated Health Professions Act

### Confidentiality

**36 (1)** Every person employed, retained or appointed for the purposes of the administration of this Act, a health profession Act or the *Drug and Pharmacies Regulation Act* and every member of a Council or committee of a College shall keep confidential all information that comes to his or her knowledge in the course of his or her duties and shall not communicate any information to any other person except,

- (a) to the extent that the information is available to the public under this Act, a health profession Act or the *Drug and Pharmacies Regulation Act*;
- (b) in connection with the administration of this Act, a health profession Act or the *Drug and Pharmacies Regulation Act*, including, without limiting the generality of this, in connection with anything relating to the registration of members, complaints about members, allegations of members' incapacity, incompetence or acts of professional misconduct or the governing of the profession;
- (c) to a body that governs a profession inside or outside of Ontario;
- (d) as may be required for the administration of the *Drug Interchangeability and Dispensing Fee Act*, the *Healing Arts Radiation Protection Act*, the *Health Insurance Act*, the *Health Protection and Promotion Act*, the *Independent Health Facilities Act*, the *Laboratory and Specimen Collection Centre Licensing Act*, the *Long-Term Care Homes Act, 2007*, the *Retirement Homes Act, 2010*, the *Ontario Drug Benefit Act*, the *Coroners Act*, the *Controlled Drugs and Substances Act (Canada)* and the *Food and Drugs Act (Canada)*;
- (d.1) for a prescribed purpose, to a public hospital that employs or provides privileges to a member of a College, where the College is investigating a complaint about that member or where the information was obtained by an investigator appointed pursuant to subsection 75 (1) or (2) of the Code, subject to the limitations, if any, provided for in regulations made under section 43;
- (d.2) for a prescribed purpose, to a person other than a public hospital who belongs to a class provided for in regulations made under section 43, where a College is investigating a complaint about a member of the College or where the information was obtained by an investigator appointed pursuant to subsection 75 (1) or (2) of the Code, subject to the limitations, if any, provided for in the regulations;
- (e) to a police officer to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (f) to the counsel of the person who is required to keep the information confidential under this section;
- (g) to confirm whether the College is investigating a member, if there is a compelling public interest in the disclosure of that information;
- (h) where disclosure of the information is required by an Act of the Legislature or an Act of Parliament;
- (i) if there are reasonable grounds to believe that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons;
- (j) with the written consent of the person to whom the information relates; or
- (k) to the Minister in order to allow the Minister to determine,



- (i) whether the College is fulfilling its duties and carrying out its objects under this Act, a health profession Act, the *Drug and Pharmacies Regulation Act* or the *Drug Interchangeability and Dispensing Fee Act*, or
- (ii) whether the Minister should exercise any power of the Minister under this Act, or any Act mentioned in subclause (i). 2007, c. 10, Sched. M, s. 7 (1); 2014, c. 14, Sched. 2, s. 10; 2017, c. 11, Sched. 5, s. 2 (1, 2).

### **Reports required under Code**

(1.1) Clauses (1) (c) and (d) do not apply with respect to reports required under section 85.1 or 85.2 of the Code. 1993, c. 37, s. 1. 1998, c. 18, Sched. G, s. 7 (2).

### **Definition**

(1.2) *In clause (1) (e),*

“law enforcement proceeding” means a proceeding in a court or tribunal that could result in a penalty or sanction being imposed. 1998, c. 18, Sched. G, s. 7 (2); 2007, c. 10, Sched. M, s. 7 (2).

### **Limitation**

(1.3) No person or member described in subsection (1) shall disclose, under clause (1) (e), any information with respect to a person other than a member. 1998, c. 18, Sched. G, s. 7 (2); 2007, c. 10, Sched. M, s. 7 (3).

### **No requirement**

(1.4) Nothing in clause (1) (e) shall require a person described in subsection (1) to disclose information to a police officer unless the information is required to be produced under a warrant. 1998, c. 18, Sched. G, s. 7 (2); 2007, c. 10, Sched. M, s. 7 (4).

### **Confirmation of investigation**

(1.5) Information disclosed under clause (l) (g) shall be limited to the fact that an investigation is or is not underway and shall not include any other information. 2007, c. 10, Sched. M, s. 7 (5).

### **Restriction**

(1.6) Information disclosed to the Minister under clause (1) (k) shall only be used or disclosed for the purpose for which it was provided to the Minister or for a consistent purpose. 2017, c. 11, Sched. 5, s. 2 (3).

### **Not compellable**

(2) No person or member described in subsection (1) shall be compelled to give testimony in a civil proceeding with regard to matters that come to his or her knowledge in the course of his or her duties. 1991, c. 18, s. 36 (2).



## Evidence in civil proceedings

(3) No record of a proceeding under this Act, a health profession Act or the *Drug and Pharmacies Regulation Act*, no report, document or thing prepared for or statement given at such a proceeding and no order or decision made in such a proceeding is admissible in a civil proceeding other than a proceeding under this Act, a health profession Act or the *Drug and Pharmacies Regulation Act* or a proceeding relating to an order under section 11.1 or 11.2 of the *Ontario Drug Benefit Act*. 1991, c. 18, s. 36 (3); 1996, c. 1, Sched. G, s. 27 (2).

## Offences

40. (1) Every person who contravenes subsection 27 (1), 29.1 (1) or 30 (1) is guilty of an offence and on conviction is liable,

- (a) for a first offence, to a fine of not more than \$25,000, or to imprisonment for a term of not more than one year, or both; and
- (b) for a second or subsequent offence, to a fine of not more than \$50,000, or to imprisonment for a term of not more than one year, or both. 2007, c. 10, Sched. M, s. 12; 2015, c. 18, s. 3.

## Same

(2) Every individual who contravenes section 31, 32 or 33 or subsection 34 (2), 34.1 (2) or 36 (1) is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence. 2007, c. 10, Sched. M, s. 12.

## Same

(3) Every corporation that contravenes section 31, 32 or 33 or subsection 34 (1), 34.1 (1) or 36 (1) is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence. 2007, c. 10, Sched. M, s. 12.



## Appendix B - Confidentiality Provisions, Health Professions Procedural Code

### Confidentiality of information

**83** (1) Except as provided in section 80.2 and in this section, the Quality Assurance Committee and any assessor appointed by it shall not disclose, to any other committee, information that,

- (a) was given by the member; or
- (b) relates to the member and was obtained under section 82. 1991, c. 18, Sched. 2, s. 83 (1); 2007, c. 10, Sched. M, s. 59 (1).

#### *Exception if member gave false information*

(2) Where relevant to a proceeding before a committee, information described in subsection (1) may be disclosed to that committee for the purpose of showing that the member knowingly gave false information to the Quality Assurance Committee or an assessor. 2007, c. 10, Sched. M, s. 59 (2).

(3) Repealed: 2007, c. 10, Sched. M, s. 59 (3).

#### *Use in other Committees*

(4) Information that was disclosed contrary to subsection (1) shall not be used against the member to whom it relates in a proceeding before the Discipline or Fitness to Practise Committees. 1991, c. 18, Sched. 2, s. 83 (4).

(5) Repealed: 2004, c. 3, Sched. B, s. 11 (1).

#### *Quality assurance and other information*

**83.1** (1) In this section,

“disclose” means, with respect to quality assurance information, to provide or make the information available to a person who is not,

- (a) a member of the Quality Assurance Committee,
- (b) an assessor appointed by the Committee, a person engaged on its behalf such as a mentor or a person conducting an assessment program on its behalf, or
- (c) a person providing administrative support to the Committee or the Registrar or the Committee’s legal counsel,

and “disclosure” has a corresponding meaning; (“divulguer”, “divulgation”)

“proceeding” includes a proceeding that is within the jurisdiction of the Legislature and that is held in, before or under the rules of a court, a tribunal, a commission, a justice of the peace, a coroner, a committee of a College under the *Regulated Health Professions Act, 1991*, a committee of the



Board under the *Drugless Practitioners Act*, a committee of the College under the *Social Work and Social Service Work Act, 1998*, an arbitrator or a mediator, but does not include any activities carried on by the Quality Assurance Committee; (“instance”)

“quality assurance information” means information that,

- (a) is collected by or prepared for the Quality Assurance Committee for the sole or primary purpose of assisting the Committee in carrying out its functions,
- (b) relates solely or primarily to any activity that the Quality Assurance Committee carries on as part of its functions,
- (c) is prepared by a member or on behalf of a member solely or primarily for the purpose of complying with the requirements of the prescribed quality assurance program, or
- (d) is provided to the Quality Assurance Committee under subsection (3),

but does not include,

- (e) the name of a member and allegations that the member may have committed an act of professional misconduct, or may be incompetent or incapacitated,
- (f) information that was referred to the Quality Assurance Committee from another committee of the College or the Board, or
- (g) information that a regulation made under this Code specifies is not quality assurance information and that the Quality Assurance Committee receives after the day on which that regulation is made; (“renseignements sur l’assurance de la qualité”)

“witness” means a person, whether or not a party to a proceeding, who, in the course of the proceeding,

- (a) is examined or cross-examined for discovery, either orally or in writing,
- (b) makes an affidavit, or
- (c) is competent or compellable to be examined or cross-examined or to produce a document, whether under oath or not. (“témoin”) 2004, c. 3, Sched. B, s. 11 (2).

### *Conflict*

(2) In the event of a conflict between this section and a provision under any other Act, this section prevails unless it specifically provides otherwise. 2004, c. 3, Sched. B, s. 11 (2).

### *Disclosure to Quality Assurance Committee*

(3) Despite the *Personal Health Information Protection Act, 2004*, a person may disclose any information to the Quality Assurance Committee for the purposes of the committee. 2004, c. 3, Sched. B, s. 11 (2).

### *Quality assurance information*

(4) Despite the *Personal Health Information Protection Act, 2004*, no person shall disclose quality assurance information except as permitted by the *Regulated Health Professions Act, 1991*, including this Code or an Act named in Schedule 1 to that Act or regulations or by-laws made under



the *Regulated Health Professions Act, 1991* or under an Act named in Schedule 1 to that Act. 2004, c. 3, Sched. B, s. 11 (2).

*Non-disclosure in proceeding*

(5) No person shall ask a witness and no court or other body conducting a proceeding shall permit or require a witness in the proceeding to disclose quality assurance information except as permitted or required by the provisions relating to the quality assurance program. 2004, c. 3, Sched. B, s. 11 (2).

*Non-admissibility of evidence*

(6) Quality assurance information is not admissible in evidence in a proceeding. 2004, c. 3, Sched. B, s. 11 (2).

*Non-retaliation*

(7) No one shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage a person by reason that the person has disclosed information to the Quality Assurance Committee under subsection (3), but a person may be disciplined for disclosing false information to the Committee. 2004, c. 3, Sched. B, s. 11 (2).

*Immunity*

(8) No action or other proceeding may be instituted against a person who in good faith discloses information to a Quality Assurance Committee at the request of the Committee or for the purposes of assisting the Committee in carrying out its functions. 2004, c. 3, Sched. B, s. 11 (2).