

1998 BILL 24

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Second Session, 24th Legislature, 47 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 24

MEDICAL PROFESSION AMENDMENT ACT

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THE MINISTER OF HEALTH

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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*Bill 24*

## **BILL 24**

1998

### **MEDICAL PROFESSION AMENDMENT ACT, 1998**

*(Assented to , 1998)*

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

Amends RSA  
1980 cM-12

**1 The *Medical Profession Act* is amended by this Act.**

**2 Section 1 is amended**

**(a) by renumbering clause (a) as clause (a.1) and adding the following before clause (a.1):**

(a) "Appeal Committee" means the Appeal Committee established by section 33.6;

**(b) by adding the following after clause (f):**

(f.1) "Performance Committee" means the Physician Performance Committee established by section 33.1;

**3 Section 31(f) and (g) are repealed.**

**4 Section 32(1)(d) is amended by striking out " , the fees payable by those so registered,".**

## Explanatory Notes

**1** Amends chapter M-12 of the Revised Statutes of Alberta 1980.

**2** Establishes committees.

**3** Section 31(f) and (g) presently read:

*31 The council may make by-laws for*

*(f) the setting of registration fees for any type of registration under this Act, which shall not exceed \$200;*

*(g) the fixing of annual fees.*

**4** Section 32(1)(d) presently reads:

*32(1) The council may make by-laws governing*

**5 The following is added after section 33:**

**PART 2.1**

**PHYSICIAN ACHIEVEMENT  
REVIEW PROGRAM**

Physician  
Performance  
Committee  
established

**33.1** There is hereby established the Physician Performance Committee, the members of which are appointed by the council.

Purpose and  
objectives of  
Performance  
Committee

**33.2** The purpose of the Physician Performance Committee is to establish, develop and administer a program

- (a) to assess the standard of medical care provided by registered practitioners for their patients, and
- (b) to enhance the performance of registered practitioners in the practice of medicine.

Powers and  
duties of  
Performance  
Committee

**33.3(1)** The Performance Committee may, in accordance with the by-laws, conduct a general assessment of the professional performance of each registered practitioner at least once every 5 years.

**(2)** Within 90 days of completing a general assessment of a registered practitioner, the Performance Committee shall prepare a report containing its findings and direct that

- (a) no further specified action be taken,
- (b) the registered practitioner participate in an individual assessment of competence or performance, or
- (c) the registered practitioner undertake further specified action.

**(3)** An individual assessment or further specified action under subsection (2)(b) or (c) must be carried out in accordance with the by-laws.

Individual  
assessment

**33.4(1)** If the Performance Committee directs an individual assessment under section 33.3(2)(b), the members of the Performance Committee may at any reasonable time

- (a) enter and inspect any place of the registered practitioner where the practice of medicine is carried on, and

*(d) the persons or classes of persons who may be registered in the Special Register, the qualifications to be required of those persons, the fees payable by those so registered, and the conditions, limitations and restrictions applicable to those persons;*

**5** Council by-laws for Part 2.1.

- (b) require the registered practitioner to produce any books, records, papers and other documents or things relating to patient care in the possession or control of the registered practitioner.
- (2) The members of the Performance Committee may not enter a private dwelling place or any part of a place that is designed to be used and is being used as a permanent or temporary private dwelling place except with the consent of the occupant of the place.
- (3) Within 90 days of completing an individual assessment of a registered practitioner, the Performance Committee shall prepare a report containing its findings and
  - (a) direct that no further specified action be taken,
  - (b) direct that the registered practitioner undertake further specified action, or
  - (c) refer the matter to the investigation chairman.
- (4) A further specified action under subsection (3)(b) must be carried out in accordance with the by-laws.
- (5) The Performance Committee shall refer a matter to the investigation chairman when the Performance Committee is of the opinion that the registered practitioner
  - (a) may be guilty of unbecoming or criminal conduct, whether in a professional capacity or otherwise,
  - (b) may be incapable of practising or unfit to practise medicine or osteopathy or may be suffering from an ailment, either organic or mental, that might, if the registered practitioner continues to practise, constitute a danger to the public,
  - (c) displays a lack of skill or judgment in the practice of medicine or osteopathy that cannot be or has not been remedied by participation in a program established under this Part, or
  - (d) has contravened a requirement under this Part.

Mandatory  
compliance  
with Part

**33.5** A registered practitioner shall comply with the provisions of this Part.



Appeal from  
Performance  
Committee  
direction

**33.6(1)** There is hereby established the Appeal Committee, the members of which are appointed by the council in accordance with the by-laws.

(2) A registered practitioner who receives a direction from the Performance Committee under section 33.3(2) or 33.4(3) may appeal to the Appeal Committee by filing a notice of appeal with the registrar within 30 days of the date of service of the direction on the registered practitioner.

(3) A notice of appeal under subsection (2) must

(a) be in writing, and

(b) set out the grounds for the appeal.

(4) On receipt of a written notice of appeal forwarded from the registrar, the Performance Committee shall prepare a report and shall forward to the Appeal Committee the report and a statement of any directions given to the registered practitioner.

(5) Section 55(1) applies, with all necessary modifications, to the proceedings of the Appeal Committee under this section.

(6) The Appeal Committee may

(a) confirm, reverse or vary the direction appealed and make any direction that the Performance Committee could have made, and

(b) make any further order the Appeal Committee considers necessary for the purposes of carrying out the direction.

(7) The registered practitioner shall comply with a direction or any further order of the Appeal Committee under subsection (6).

Membership of  
Performance  
Committee  
and sub-  
committees

**33.7(1)** The Performance Committee shall have at least 5 members and not more than 9 members consisting of

(a) members from the classes of registered practitioners prescribed under the by-laws, and

(b) one member of the public who is not a physician.

(2) The council shall designate annually a member of the Performance Committee to act as chair.





Conduct of  
Committee

(3) Where the Performance Committee establishes a subcommittee under section 33.8(2) to conduct an individual assessment under section 33.3(2)(b), at least one member of the subcommittee must possess medical knowledge respecting the area of medical practice under assessment.

**33.8(1)** The Performance Committee may adopt the by-laws of the council for the conduct of its business or, with the approval of the council, establish its own rules and procedures.

(2) The Performance Committee may establish one or more subcommittees consisting of one or more persons who are not members of the Performance Committee to perform any duties and functions and exercise any powers of the Performance Committee.

(3) Any decision or other action made or taken under this Part by a subcommittee of the Performance Committee is the decision or action of the Performance Committee.

(4) Members of the Performance Committee or a subcommittee established under subsection (2) shall be paid fees for attendance and reasonable travelling expenses in accordance with the by-laws.

(5) The Performance Committee may from time to time appoint one or more persons having special technical or other knowledge to inquire into and report to the Performance Committee in respect of any matter.

Confidentiality

**33.9(1)** A member of the Performance Committee, its subcommittees or the Appeal Committee, or the investigation chairman or any person appointed under section 33.8(5) shall not publish, release or disclose in any manner information obtained in the course of carrying out any powers, duties and functions under this Part except as is necessary to carry out those powers, duties and functions.

(2) Information obtained by a registered practitioner under this Part shall not be published, released or disclosed by the registered practitioner in any manner unless the information is

- (a) published, released or disclosed in accordance with a direction of the Performance Committee, or
- (b) released or disclosed to the legal representative of the registered practitioner in connection with proceedings under this Part.



(3) Notwithstanding subsection (1), the investigation chairman may release or disclose to an investigating committee the following information obtained from the Performance Committee:

- (a) the name of the registered practitioner;
- (b) the grounds for referral under section 33.4(5).

(4) Notwithstanding subsection (1), information obtained by the Performance Committee under this Part may be provided or published by the Performance Committee in summarized or statistical form if the information is provided or published in such a manner that it is not possible to relate the information to any particular identifiable person.

(5) A person who knowingly publishes, releases or discloses information contrary to this section is guilty of an offence and liable to a fine of not more than \$10 000.

By-laws

**33.91** The council may make by-laws

- (a) governing the appointment of members to the Performance Committee and the Appeal Committee, including, without limitation, the designation of classes of members, the method of appointment of members, the terms of office of members and the filling of vacancies and the remuneration to which members are entitled;
- (b) respecting the proceedings of the Performance Committee and the Appeal Committee and the powers and duties of those Committees;
- (c) respecting the development, implementation and administration of a program for the assessment of registered practitioners;
- (d) governing the conduct of a general assessment or an individual assessment of a registered practitioner;
- (e) specifying the types of and the manner of carrying out further action for the purposes of section 33.3(3) or 33.4(4);
- (f) respecting the contents of a report prepared by the Performance Committee under section 33.6(4);
- (g) respecting the costs that may be attributed to proceedings under this Part, and the powers and duties of the Performance Committee or the Appeal



Committee, as the case may be, in making orders under this Part against a registered practitioner for the payment of all or part of those costs.

**6 Section 36 is amended**

**(a) in subsection (2) by striking out “or” at the end of clause (c), by adding “or” at the end of clause (d) and by adding the following after clause (d):**

(e) is alleged to have contravened a requirement under Part 2.1.

**(b) by adding the following after subsection (3):**

**(4) In the case of a review under subsection (2)(e), on completing the review the investigation chairman shall**

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

(b) direct that the matter be dealt with by an investigating committee.

**7 Section 56(2)(b) is repealed and the following is substituted:**

**(b) that the registered practitioner pay, in an amount and within the time fixed by the council, all or a portion of any or all of the following:**

(i) the costs of the investigation;

(ii) the costs of the proceedings before the investigating committee;

(iii) the costs of the proceedings before the council;

6 Section 36(2) presently reads:

*(2) The investigation chairman shall review any matter brought to his attention by the registrar or in any other manner, whether a complaint is made or not, where a registered practitioner*

- (a) either before or after he is registered has been convicted of an offence punishable by more than one year's imprisonment,*
- (b) is alleged to be guilty of unbecoming or criminal conduct, whether in a professional capacity or otherwise,*
- (c) is alleged to be incapable or unfit to practise medicine or osteopathy or to be suffering from an ailment, either organic or mental, which might, if he continues to practise, constitute a danger to the public, or*
- (d) is alleged to display a lack of skill or judgment in the practice of medicine or osteopathy.*

7 Section 56(2) presently reads:

*(2) The council may, in addition to an order under subsection (1), make all or any of the following orders:*

- (a) that the registered practitioner pay, for each allegation proved against him, a penalty of not more than \$1000 to the College, within the time fixed by the order;*
- (b) that the registered practitioner pay all or any portion of
  - (i) the costs of the investigation,*
  - (ii) the costs of the proceedings before the council or the investigating committee, or*
  - (iii) both the costs of the investigation and the costs of the proceedings before the council or the investigating committee**in an amount and within the time fixed by the council;**
- (c) that the registered practitioner be suspended in default of paying any penalty or costs ordered to be paid until the penalty or costs are paid.*

**8 Section 74(b) is repealed.**

**9 The following is added after section 87:**

Protection  
from liability

**87.1(1)** No action lies against any of the following in respect of anything done in good faith pursuant to this Act, the by-laws or any direction of the council:

- (a) the College or a person who is or was an officer, employee or agent of the College;
- (b) a person who conducts an investigation under Part 3;
- (c) the council or a person who is or was a member of the council or a member of a committee established by or under this Act;
- (d) a person who acts on the instructions of, or under the supervision of, a person referred to in clauses (a) to (c).

(2) No action for defamation may be founded on a communication regarding the conduct of a registered practitioner if the communication is published to or by a person within any of the classes of person enumerated in subsection (1), in good faith and in the course of any proceedings under this Act or the by-laws relating to that conduct.

(3) Subsections (1) and (2) do not operate to restrict or abrogate any immunity or protection that is otherwise provided by law to a person within any of the classes of person enumerated in subsection (1) or to any other person.

(4) Notwithstanding any other Act or law, no person who is or was within any of the classes of person enumerated in subsection (1) shall be required in any proceedings, other than proceedings under this Act or the by-laws or a prosecution under Part 5, to give evidence relating to any matter that arose in any proceedings under this Act or the by-laws, or to produce any record or thing adduced in evidence in proceedings under this Act or the by-laws or forming part of the records of the College that relate to the conduct of a registered practitioner.



**8** Section 74(b) presently reads:

*74 The council may make by-laws*

*(b) fixing the fees payable to the College for the issuance of permits and the fees payable annually by professional corporations;*

**9** Protection from liability.

By-laws re  
fees

**10 The following is added after section 96:**

**97 The council may make by-laws governing fees**

- (a) for any type of registration and annual fee under this Act or the by-laws;
- (b) payable by professional corporations to the College for the issuance of permits and annual permits;
- (c) payable for accreditation of, as annual fees for, or for inspections of diagnostic and treatment facilities;
- (d) payable by a registered practitioner
  - (i) for certification as a specialist by the council under this Act or the by-laws, or
  - (ii) for approval of complementary therapies authorized by the council under the by-laws;
- (e) for late payment of any fee required to be made under the by-laws;
- (f) for any review or service provided by the council under this Act or the by-laws.

**11 This Act comes into force on Proclamation.**

**10** Fees to be set by council by-laws.

**11** Coming into force.