

**CHAPTER R45
THE REGISTERED PSYCHIATRIC NURSES ACT**

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CHAPTER R45

THE REGISTERED PSYCHIATRIC NURSES ACT

(Assented to July 14, 1999)
(Proclaimed August 15, 2001)

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

PART 1

DEFINITIONS

Definitions

1 In this Act,

"**board**" means the board of the college;

"**by-laws**" means the by-laws of the college made under section 52;

"**college**" means the College of Registered Psychiatric Nurses of Manitoba;

"**court**" means the Court of Queen's Bench;

"**executive director**" means the executive director of the college appointed under this Act;

"**graduate psychiatric nurse**" means a person whose name is entered on the register of graduate psychiatric nurses under this Act;

"**member**" means a person registered under this Act;

"**minister**" means the minister appointed by the Lieutenant Governor in Council to administer this Act;

"**psychiatric nursing education program**" means a program approved by the board as a requirement for registration under this Act;

"**public representative**" means a person who is not and never has been registered under this Act and who is not a member of health profession regulated by an Act of the Legislature for which the minister has statutory responsibility;

"**register**" means a register established under this Act;

"**registered psychiatric nurse**" means a person who is registered as a registered psychiatric nurse under this Act;

"**regulations**" means the regulations made under section 51.

PART 2

PRACTICE OF PSYCHIATRIC NURSING

Practice of psychiatric nursing

2 The practice of psychiatric nursing is the application of psychiatric nursing knowledge, skill and judgment to promote mental health, prevent mental illness, minimize the effects of mental illness and developmental challenges and assist individuals, families, groups and communities to achieve an optimal state of health. The practice includes education, administration and research related to psychiatric nursing.

Representation as a registered psychiatric nurse

3(1) No person except a registered psychiatric nurse shall

- (a) represent or hold out, expressly or by implication, that he or she is a registered psychiatric nurse or is entitled to engage in the practice of psychiatric nursing as a registered psychiatric nurse; or
- (b) use any sign, display, title or advertisement implying that he or she is a registered psychiatric nurse.

Use of title "registered psychiatric nurse"

3(2) No person except a registered psychiatric nurse shall use the title "registered psychiatric nurse", a variation or abbreviation of that title, or an equivalent in another language.

Use of title "graduate psychiatric nurse"

3(3) No person except a graduate psychiatric nurse shall use the title "graduate psychiatric nurse", a variation or abbreviation of that title, or an equivalent in another language.

PART 3

COLLEGE OF REGISTERED PSYCHIATRIC NURSES OF MANITOBA

College established

4(1) The Registered Psychiatric Nurses Association of Manitoba is continued as a body corporate under the

name College of Registered Psychiatric Nurses of Manitoba.

Duty to serve the public interest

4(2) The college must carry out its activities and govern its members in a manner that serves and protects the public interest.

Powers

4(3) The college has the capacity and, subject to this Act, the rights, powers and privileges of a natural person.

Membership

4(4) The membership of the college consists of the persons whose names are on a register and who have paid the fees provided for in the by-laws.

Meetings

4(5) A general meeting of the college must be held at least once a year, and special general meetings of the college must be held when the board considers it advisable. On receiving a written request signed by at least 4% of the members of the college entitled to vote, the board shall convene a special general meeting for the purpose specified in the request.

Notice of meetings

4(6) Notice of the time and place of each meeting referred to in subsection (5) must be given to the members in accordance with the by-laws.

Public meetings

4(7) The college shall

- (a) permit members of the public to attend meetings of the college and the board, except where it considers that a private meeting is necessary in order to consider matters of a confidential nature or of a personal nature concerning an individual;
- (b) make its by-laws available to the public; and
- (c) hold public meetings, at the discretion of the board, to explain the role of the college and to invite public comment.

Board

5(1) There is hereby established a governing body of the college called the board.

Board to manage affairs

5(2) The board shall

- (a) manage and conduct the business and affairs of the college; and
- (b) exercise the rights, powers and privileges of the college in the name and on behalf of the college.

Composition of board

6(1) The board is to consist of at least 12 persons who are either members of the college or public representatives.

Public representatives

6(2) At least 1/3 of the members of the board must be public representatives.

By-laws for election and appointment of members

6(3) Members of the board are to be appointed or elected in accordance with the by-laws.

Officers

6(4) The officers of the college are those specified in the by-laws and, except for ex officio officers, are to be elected in the manner and for the terms specified in the by-laws.

Remuneration

6(5) The members of the board and officers of the college shall be paid such remuneration and expenses as the board may determine by by-law.

Executive director and staff

6(6) The board shall appoint an executive director from among the members of the college and may appoint practice auditors and investigators for the purposes of this Act. Subject to the direction of the board, the executive director may appoint any other staff necessary to perform the work of the college.

Committees

6(7) The board shall establish

- (a) a standing committee for the purpose of recruiting and selecting public representatives to serve on the board and committees of the college;
- (b) a standing committee for the purpose of approving psychiatric nursing education programs; and
- (c) any other committee that the board considers necessary.

PART 4

REGISTRATION

REGISTERS

Registers

7 Subject to the direction of the board, the executive director shall maintain the following registers:

- (a) a register of registered psychiatric nurses;

- (b) a register of graduate psychiatric nurses;
- (c) any other registers that are provided for in the regulations.

- (c) meet the other requirements of registration set out in the regulations; and
- (d) pay the fees provided for in the by-laws.

Content of registers

8(1) The register of registered psychiatric nurses and graduate psychiatric nurses must contain

- (a) the name, business address and business telephone number of every registered psychiatric nurse and graduate psychiatric nurse;
- (b) the conditions imposed on every certificate of registration;
- (c) a notation of every cancellation and suspension of a certificate of registration;
- (d) the result of every disciplinary proceeding in which a panel has made a finding under section 42; and
- (e) information that the regulations specify as information to be kept in the register.

Access to information

8(2) During normal business hours, a person may obtain, the following information contained in the registers:

- (a) the information described in clauses (1)(a) and (b);
- (b) the information described in clause (1)(c) relating to a suspension that is in effect;
- (c) the results of every disciplinary proceeding completed within six years before the register was prepared or last updated
 - (i) in which a member's certificate of registration was cancelled or suspended or had conditions imposed on it, or
 - (ii) in which a member was required to pay a fine or attend to be censured;
- (d) information designated as public in the regulations.

Registration as a graduate psychiatric nurse

9(2) To qualify for registration as a graduate psychiatric nurse under this Act, an applicant must

- (a) produce to the executive director satisfactory evidence that he or she has successfully completed a psychiatric nursing education program that is approved by the board;
- (b) provide the executive director with any other information required by the regulations;
- (c) meet the other requirements of registration set out in the regulations; and
- (d) pay the fees provided for in the by-laws.

Conditions

9(3) A registration may be made subject to any conditions that the executive director considers advisable and a member whose registration is subject to conditions shall practice only in accordance with those conditions.

Entry in register

9(4) The executive director shall enter in the appropriate register the name of a person whose application for registration is approved by the executive director.

Application for registration not approved

10 If the executive director does not approve an application for registration as a registered psychiatric nurse or a graduate psychiatric nurse or approves such an application subject to conditions, the executive director shall give notice to the applicant in writing, with reasons for the decision, and shall advise the applicant of the right to appeal the decision to the board.

APPLICATIONS FOR REGISTRATION

Registration as a registered psychiatric nurse

9(1) To qualify for registration as a registered psychiatric nurse under this Act, an applicant must

- (a) produce to the executive director satisfactory evidence that he or she has
 - (i) successfully completed a psychiatric nursing education program or another program that meets the requirements set out in the regulations, and
 - (ii) passed any examination that the board may require;
- (b) provide the executive director with any other information required by the regulations;

APPEAL

Appeal to the board

11(1) A person whose application for registration as a registered psychiatric nurse or a graduate psychiatric nurse is not approved by the executive director, or whose application is approved subject to conditions, may appeal the executive director's decision to the board.

Notice

11(2) An appeal is to be made by filing a written notice of appeal with the board within 30 days after the person receives notice of the executive director's decision under section 10. The notice must specify the reasons for the appeal.

Hearing

11(3) On receiving a notice of appeal, the board shall schedule an appeal, which must be held within 90 days after it receives the notice. The board shall give the applicant a written notice of the date, time and place of the appeal.

Right to appear

11(4) An applicant who appeals a decision of the executive director is entitled to appear with counsel and make representations to the board at the appeal.

Documentation

11(5) The executive director shall provide the board with a copy of the notice sent to the applicant under section 10 and with copies of the documents that he or she considered in reaching the decision being appealed.

Counsel to the board

11(6) The board may retain legal counsel to assist it.

Decision by the board

11(7) The board shall decide the appeal within 90 days after the hearing and may make any decision the executive director could have made.

Notice of decision of appeal

11(8) The board shall give the applicant written notice of its decision within 30 days after deciding the appeal.

Appeal to court

12(1) A person whose application for registration as a registered psychiatric nurse or a graduate psychiatric nurse is refused by the board, or whose application is approved subject to conditions, may appeal the decision to the court by filing a notice of appeal within 30 days after receiving notice of the board's decision under subsection 11(8).

Appeal on record

12(2) An appeal shall be founded on the record of the proceedings before the board.

Copy of documentation

12(3) At the request of the person appealing the board's decision, the executive director shall give the person, at the person's expense, a certified copy of the record of proceedings and any documents that the board considered in making its decision.

Powers of court on appeal

12(4) On hearing the appeal, the court may
(a) make any decision that in its opinion should have been made; or

(b) refer the matter back to the board for further consideration in accordance with any direction of the court.

CERTIFICATE OF REGISTRATION

Certificate of registration

13(1) A member on the register of registered psychiatric nurses or graduate psychiatric nurses shall be issued a certificate of registration on payment of the fees provided for in the by-laws. The certificate of registration must state the type of registration and the date on which it expires, and must refer to any conditions or limitations imposed.

Period of validity of certificate

13(2) Unless sooner cancelled, every certificate of registration issued under subsection (1) is valid only for the period indicated on it, but may be renewed in accordance with the regulations.

CANCELLATION OF REGISTRATION

Registration may be cancelled if fraud

14(1) If the executive director is satisfied on reasonable grounds that a person's registration has been obtained by means of a false or fraudulent representation or declaration, the executive director shall report the matter to the board, and the board may direct the executive director to cancel the person's certificate of registration. The executive director shall then cancel the certificate of registration and give the person written notice of that fact.

Registration may be cancelled if member convicted

14(2) The board may direct the executive director to cancel the certificate of registration of a member who has been convicted of an offence that is relevant to his or her suitability to practise, but it must first notify the member that it intends to do so and give the member an opportunity to make representations.

Appeal

14(3) A member whose certificate of registration is cancelled under this section may appeal the cancellation to the court, in which case section 12 applies, with necessary modifications.

PART 5

CONTINUING COMPETENCE

Continuing competence program

15 The board shall establish a continuing competence program which shall provide for supervision of the

practice of psychiatric nursing by members. The program may provide for, but is not limited to,

- (a) reviewing the professional competence of members;
- (b) conducting practice audits in accordance with this Act; and
- (c) requiring members to participate in programs for ensuring competence.

PART 6 COMPLAINTS

Definitions

16 In this Part,

"conduct" includes an act or omission;

"investigated member" means a member or a former member who is the subject of an investigation or whose conduct is the subject of a hearing under this Part.

INVESTIGATION COMMITTEE

Investigation committee

17(1) The board shall appoint an investigation committee consisting of

- (a) a member of the college who shall be the chair of the committee; and
- (b) other members of the college and public representatives appointed from time to time.

Public representatives

17(2) At least 1/3 of the persons appointed to the investigation committee must be public representatives.

Complaints against members

18(1) Any person may make a complaint in writing to the executive director about the conduct of a member, and the complaint shall be dealt with in accordance with this Part.

Complaints against former members

18(2) If, after a member's registration is cancelled, suspended or not renewed under this Act,

- (a) a complaint is made about the former member; and
- (b) the complaint relates to conduct occurring before the cancellation, suspension or non-renewal occurred;

the complaint may, notwithstanding the cancellation, suspension or non-renewal, be dealt with within five years from the date of the cancellation, suspension or non-renewal as if the former member's registration were still in effect.

Referral to investigation committee

19 The executive director shall refer to the investigation committee

- (a) a complaint made under section 18; and
- (b) any other matter that the executive director considers appropriate.

Informal resolution

20 On referral of a complaint or other matter to the investigation committee, the investigation committee may attempt to resolve it informally if it considers informal resolution to be appropriate.

Investigation

21(1) Where the investigation committee considers it appropriate or where a matter is not informally resolved to the complainant's satisfaction, the investigation committee shall direct that an investigation into the conduct of a member or former member be held and shall appoint an investigator to conduct the investigation.

Records and information

21(2) An investigator may

- (a) require the investigated member or any other member to produce to the investigator any records, documents and things in his or her possession or under his or her control that may be relevant to the investigation;
- (b) require the investigated member or any other member who may have information relevant to the investigation to attend before the investigator to be interviewed; and
- (c) direct an inspection or audit of the practice of the investigated member.

Failure to produce records

21(3) The college may apply to the court for an order

- (a) directing any member to produce to the investigator any records, documents and things in his or her possession or under his or her control, if it is shown that the member failed to do so when required by the investigator; or
- (b) directing any person to produce to the investigator any records, documents and things that are or may be relevant to the matter being investigated.

Investigation of other matters

21(4) The investigator may investigate any other matter related to the professional conduct or the skill in practice of the investigated member that arises in the course of the investigation.

Report to investigation committee

22 On concluding the investigation, the investigator shall report his or her findings to the investigation committee.

DECISION OF INVESTIGATION COMMITTEE

Decision of investigation committee

23(1) The investigation committee may, after review or investigation,

- (a) direct that the matter be referred, in whole or in part, to the discipline committee;
- (b) direct that no further action be taken;
- (c) censure the member if
 - (i) at least one member of the committee has met with the member and the member has agreed to accept the censure, and
 - (ii) the committee has determined that no action is to be taken against the member other than the censure;
- (d) enter into an agreement with the member or accept an undertaking from the member that provides for one or more of the following:
 - (i) assessing the member's capacity or fitness to practise psychiatric nursing,
 - (ii) counselling or treatment of the member,
 - (iii) monitoring or supervising the member's practice of psychiatric nursing,
 - (iv) the member's completing a specified course of remedial study,
 - (v) placing conditions on the member's certificate of registration;
- (e) accept the voluntary surrender of the member's certificate of registration; or
- (f) take any other action that it considers appropriate in the circumstances and that is not inconsistent with or contrary to this Act or the regulations or by-laws.

Decision served on member and complainant

23(2) The investigation committee shall give the member and the complainant a written notice setting out its decision and the reasons for the decision.

Hearing not required

23(3) Except as required by clause (1)(c), the investigation committee is not required to hold a hearing or to give any person an opportunity to appear or to make

formal submissions before making a decision under this section.

Counsel to the investigation committee

23(4) The investigation committee may retain legal counsel to assist it.

Conditions on registration

24(1) If the investigation committee enters into an agreement with a member or accepts a member's undertaking for conditions on the member's registration under subclause 23(1)(d)(v), those conditions may include the conditions referred to in subsection 26(3).

Costs

24(2) The investigation committee may order the member to pay all or part of the costs incurred by the college in monitoring compliance with conditions imposed on a member's registration under clause 23(1)(d)(v). It may also order the member to pay all or part of the costs of the investigation.

CENSURE

Personal appearance

25(1) The investigation committee may require a member who is censured under clause 23(1)(c) to appear personally to be censured before the committee.

Publication of censure

25(2) The investigation committee may publish the fact that a member has been censured, and publication may include the member's name and a description of the circumstances that led to the censure.

Order for costs

25(3) The investigation committee may order a member who is censured to pay all or part of the costs of the investigation.

VOLUNTARY SURRENDER OF REGISTRATION

Voluntary surrender of registration

26(1) If the investigation committee accepts a voluntary surrender of a member's certificate of registration under clause 23(1)(e), it may direct the member to do one or more of the following to the satisfaction of any person or committee that the investigation committee may determine, before the member's registration may be reinstated:

- (a) obtain counselling or treatment;
- (b) complete a specified course of studies;
- (c) obtain supervised experience.

Order for costs

26(2) The investigation committee may direct the member to pay any costs incurred by the college in monitoring compliance with a direction given under subsection (1) and to pay all or part of the costs of the investigation up to the time that the voluntary surrender takes effect.

Conditions of reinstatement

26(3) A voluntary surrender remains in effect until the investigation committee is satisfied that the conduct or complaint that was the subject of the investigation has been resolved, at which time the investigation committee may impose conditions on the member's entitlement to practise psychiatric nursing, including conditions that the member do one or more of the following:

- (a) limit his or her practice;
- (b) practise under supervision;
- (c) not engage in sole practice;
- (d) permit periodic audits of his or her practice;
- (e) permit periodic audits of records;
- (f) report to the committee or the executive director on specific matters;
- (g) comply with any other conditions that the committee considers appropriate in the circumstances;

and may order the member to pay all or any part of the costs incurred by the college in monitoring compliance with those conditions.

Publication of voluntary surrender

26(4) The investigation committee may publish the fact that a member has voluntarily surrendered his or her certificate of registration, and publication may include the member's name and a description of the circumstances that led to the voluntary surrender of registration.

APPEAL BY COMPLAINANT

Appeal by complainant to the board

27(1) When the investigation committee makes a decision under clause 23(1)(b), (d), (e) or (f), the complainant may appeal the decision to the board.

Notice

27(2) An appeal is to be made by mailing a written notice of appeal, including reasons for the appeal, to the executive director within 30 days after the date the complainant is notified of the investigation committee's decision under subsection 23(2).

Power on appeal

27(3) On an appeal under this section, the board shall do one or more of the following:

- (a) make any decision that in its opinion ought to have been made by the investigation committee;
- (b) quash, vary or confirm the decision of the investigation committee;
- (c) refer the matter back to the investigation committee for further consideration in accordance with any direction that the board may make.

Notice of decision

27(4) The board shall give the member and the complainant a written notice setting out its decision and the reasons for its decision.

Hearing not required

27(5) The board is not required to hold a hearing or to afford to any person an opportunity to appear or to make oral submissions before making a decision under this section, but the board shall give the investigated member and the complainant an opportunity to make a written submission.

SUSPENSION OF REGISTRATION PENDING DECISION

Suspension of registration pending decision

28(1) Notwithstanding anything in this Act, the investigation committee may, when there is a question that a member's conduct exposes or is likely to expose the public to serious risk, direct the executive director to suspend the member's certificate of registration, or to place conditions on his or her registration, pending the outcome of proceedings under this Part.

Notice of suspension or conditions

28(2) On receiving a direction under subsection (1), the executive director shall promptly serve a notice of the suspension or the conditions of practice on the member and, where appropriate, the member's employer.

Appeal of suspension or conditions

29(1) A member whose certificate of registration is suspended or has conditions of practice placed on it under subsection 28(1) may, by notice in writing to the executive director, appeal the suspension or imposition of conditions to the board.

Hearing by board

29(2) The board shall hold a hearing within 30 days after receiving the notice of appeal from the executive director.

Right to appear and be represented

29(3) The college and the member may appear and be represented by counsel at a hearing before the board, and the board may have counsel to assist it.

Powers on appeal

29(4) On an appeal under this section, the board shall decide whether the suspension or conditions of practice are to be quashed, varied or confirmed, and may make an order as to any costs that may arise from its decision.

Application for stay

29(5) The member may, by filing an application with the court and serving a copy on the executive director, apply for an order of the court staying a decision of the board to confirm the suspension of the member's certificate of registration or the imposition of conditions of practice under subsection (4) pending the outcome of proceedings under this Part.

MISCELLANEOUS

Referral to discipline committee

30 Notwithstanding any other action it may have taken, with the exception of a censure, the investigation committee may at any time refer conduct or a complaint that was the subject of an investigation to the discipline committee for a hearing.

Disclosure of information to authorities

31 Notwithstanding any other provision of this Act, the investigation committee may disclose to a law enforcement authority any information respecting possible criminal activity on the part of a member that is obtained during an investigation into the member's conduct.

DISCIPLINE COMMITTEE

Discipline committee

32(1) The board shall appoint a discipline committee consisting of

(a) a member of the college who is a registered psychiatric nurse who is to be the chair; and
(b) other members of the college, former members of the college, public representatives and other persons appointed from time to time.

Public representatives

32(2) At least 1/3 of the persons appointed to the discipline committee must be public representatives.

Selection of panel

33(1) On referral of a matter to the discipline committee, the chair shall select a panel from among the members of the discipline committee to hold a hearing.

Composition

33(2) A panel is to be composed of at least three members, one of whom must be a public representative.

Exclusion from panel

33(3) No person may be selected for a panel who has taken part in the review or investigation of what is to be the subject matter of the panel's hearing.

Effect of member being unable to continue

33(4) If a hearing has begun and a member of the panel is unable to continue to sit as a member, the panel may complete the hearing if at least three members remain and one of them is a public representative.

HEARING

Hearing

34(1) When a panel is selected, it shall hold a hearing.

Date of hearing

34(2) Unless the investigated member consents in writing to a later date, a date for the hearing must be set within 60 days after the date the matter is referred to the discipline committee, but the hearing itself need not commence within that time.

Notice of hearing

34(3) At least 30 days before the date of the hearing, the executive director shall serve a notice of hearing on the investigated member and the complainant stating the date, time and place of the hearing and identifying in general terms the complaint or matter about which the hearing will be held.

Public notice of hearing

34(4) The executive director may issue a public notice of the hearing in any manner that he or she considers appropriate, but the notice must not include the name of the investigated member.

Right to appear and be represented

35(1) The college and the investigated member may appear and be represented by counsel at a hearing, and the panel may have counsel to assist it.

Adjournments

35(2) The chair of a panel may adjourn a hearing from time to time.

Recording of evidence

35(3) The oral evidence given at a hearing must be recorded.

Member may examine documentary evidence

36(1) Before the day of the hearing, an investigated member must be given an opportunity to examine any written or documentary evidence that will be produced and any report the contents of which will be given in evidence at the hearing.

Member to provide documentary evidence

36(2) If the investigated member intends to rely on any written or documentary evidence or any report at the hearing, he or she shall provide a copy of that evidence or report to the college before the day of the hearing.

Evidence of expert without report

36(3) If either the investigated member or the college intends to call an expert as a witness at the hearing and there is no report from the expert, a summary of the expert's intended evidence, including his or her findings, opinions and conclusions, must be provided to the other party before the day of the hearing.

Failure to provide summary

36(4) If the summary is not provided in accordance with subsection (3), the expert may testify at the hearing only with the leave of the panel.

Evidence of other matters

37 A panel may receive evidence and hear any other matter concerning the professional conduct or the skill in practice of the member that arises in the course of proceedings, but in that event the panel shall declare its intention to hear evidence on that other matter and it shall permit the member sufficient opportunity to prepare a response.

Hearings open to public

38(1) A hearing shall be open to the public unless the panel is satisfied that

- (a) matters involving public security may be disclosed;
- (b) financial or personal or other matters may be disclosed at the hearing that are of such a nature that the desirability of avoiding public disclosure of those matters in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that meetings be open to the public;
- (c) a person involved in a criminal proceeding or a civil suit or proceeding may be prejudiced; or
- (d) the safety of a person may be jeopardized.

No reporting of identity

38(2) Notwithstanding subsection (1), there shall be no reporting in the media of anything that would identify the investigated member, including the member's name or location of practice, unless and until the panel makes a finding under section 42.

Exclusion of public

38(3) If the panel is satisfied that the hearing is required to be closed, it may make an order that the public be excluded from the hearing or any part of it, and it may make other orders it considers necessary to prevent the public disclosure of matters disclosed at the hearing, including orders banning the publication or broadcasting of those matters.

Public information may be disclosed

38(4) No order shall be made under subsection (3) that prevents the publication of anything that is contained in the register and available to the public.

Exclusion of public during certain motions

38(5) The panel may make an order that the public be excluded from the part of a hearing dealing with a motion for an order under subsection (3).

Orders with respect to matters in submissions

38(6) The panel may make any order necessary to prevent the public disclosure of matters disclosed in the submissions relating to any motion described in subsection (5), including prohibiting the publication or broadcasting of those matters.

Reasons for excluding the public to be available

38(7) The panel shall ensure that any order it makes under subsection (3) and its reasons are either given orally at the hearing or are available to the public in writing.

Oral and affidavit evidence

39(1) Evidence may be given at a hearing of a panel either orally or by affidavit or both, but a member's registration cannot be suspended or cancelled on affidavit evidence alone.

Oral evidence

39(2) The oral evidence of witnesses at a hearing must be taken on oath or affirmation, and the parties shall have the right to cross-examine witnesses and call evidence in defence and reply.

Witnesses

40(1) Any person, other than the investigated member, who in the opinion of the panel has knowledge of the complaint or matter being heard is a compellable witness in any proceeding before the panel.

Notice to attend and produce records

40(2) The attendance of witnesses before the panel and the production of records may be enforced by a notice issued by the executive director requiring the witness to attend and stating the date, time and place at which the witness is to attend and the records, if any, that the witness is required to produce.

Executive director to provide notices

40(3) On the written request of the member or his or her counsel or agent, the executive director shall provide any notices that the member requires for the attendance of witnesses or the production of records.

Witness fees

40(4) A witness, other than the member, who has been served with a notice to attend or a notice for production of records under this section is entitled to be paid the same fees in the same manner as a witness in an action in the court.

Failure to attend or give evidence

40(5) Proceedings for civil contempt of court may be brought against a witness

- (a) who fails to attend before the panel in compliance with a notice to attend;
- (b) who fails to produce any records in compliance with a notice to produce them; or
- (c) who refuses to be sworn or to affirm or to answer any question he or she is directed to answer by the panel.

Hearing in absence of investigated member

41 The panel, on proof of service on the investigated member of the notice of hearing, may

- (a) proceed with the hearing in the absence of the member or his or her agent; and
- (b) act, decide or report on the matter being heard in the same way as if the member were in attendance.

DECISION OF PANEL

Findings of panel

42 If, at the conclusion of a hearing, the panel finds that the member

- (a) is guilty of professional misconduct;
- (b) has contravened this Act, the regulations, the by-laws or the code of ethics of the college;
- (c) has been found guilty of an offence that is relevant to the member's suitability to practice;
- (d) has displayed a lack of knowledge or lack of skill or judgment in the practice of psychiatric nursing;

- (e) has demonstrated an incapacity or unfitness to practise psychiatric nursing;
- (f) is suffering from an ailment that might, if the member continues to practise, constitute a danger to the public; or
- (g) is guilty of conduct unbecoming a member; it shall deal with the member in accordance with this Act.

Orders of panel

43(1) If the panel makes any of the findings described in section 42, it may make one or more of the following orders:

- (a) reprimand the member;
- (b) suspend the member's certificate of registration for a stated period;
- (c) suspend the member's certificate of registration until he or she has completed a specified course of studies or obtained supervised experience, or both, to the satisfaction of any person or committee that the panel may determine;
- (d) suspend the member's certificate of registration until the member has obtained treatment or counselling and has demonstrated that any disability, addiction or problem can be or has been overcome to the satisfaction of any person or committee that the panel may determine;
- (e) impose conditions on the member's entitlement to practice psychiatric nursing, including conditions that he or she
 - (i) practice under supervision,
 - (ii) permit periodic inspections of his or her practice by a person authorized by the panel to carry out inspections,
 - (iii) permit periodic audit of records,
 - (iv) report to the investigation committee or the executive director on specified matters,
 - (v) not engage in sole practice,
 - (vi) limit his or her practice,
 - (vii) complete a particular course of studies or obtain supervised clinical experience, or both, to the satisfaction of any person or committee that the panel may determine.
 - (viii) obtain treatment for a disability or addiction or undertake counselling until such time as the person can demonstrate that a disability, addiction or problem can be or has been overcome to the satisfaction of any person or committee that the panel may determine;
- (f) direct the member to waive, reduce or repay money paid to the member that, in the opinion of the panel, was unjustified for any reason;
- (g) cancel the member's certificate of registration.

Panel may consider censure

43(2) To assist the panel in making an order under this section, the panel may be advised of any censure or order previously issued to the member and the circumstances under which it was issued.

Ancillary orders

43(3) The panel may make any ancillary order that is appropriate or is required in connection with an order mentioned in subsection (1), or may make any other order that it considers appropriate in the circumstances, including an order that

- (a) a further or new investigation be held into any matter; or
- (b) a panel be convened to hear a complaint without an investigation.

Costs when conditions imposed

43(4) If the panel imposes conditions on a member's entitlement to practise psychiatric nursing under clause (1)(e), it may also order the member to pay all or any part of the costs incurred by the college in monitoring compliance with those conditions.

Contravention of order

43(5) If the board is satisfied that a member has contravened an order made under subsection (1), it may, without a further hearing, cancel the member's registration.

Suspension or cancellation of registration

43(6) If a member's registration is suspended or cancelled by an order under subsection (1), the member shall not practise psychiatric nursing during the period of the suspension or cancellation.

Costs and fines

44(1) The panel may, in addition to or instead of making an order under section 43, order that the member pay to the college, within the time set by the order,

- (a) all or part of the costs of the investigation, hearing and appeal;
- (b) a fine not exceeding \$10,000; or
- (c) both the costs under clause (a) and the fine under clause (b).

Nature of costs

44(2) The costs referred to in subsection (1) may include, but are not limited to,

- (a) all disbursements incurred by the college, including
 - (i) fees and expenses for experts, investigators and auditors whose reports or

- attendances were reasonably necessary for the investigation or hearing,
- (ii) fees, travel costs and reasonable expenses of any witnesses required to appear at the hearing,
- (iii) fees for retaining a reporter and preparing transcripts of the proceedings, and
- (iv) costs of service of documents, long distance telephone and facsimile charges, courier delivery charges and similar miscellaneous expenses;

- (b) payments made to members of the panel or the investigation committee; and
- (c) costs incurred by the college in providing counsel for the college and the panel, whether or not counsel is employed by the college.

Failure to pay costs and fines by time ordered

44(3) If the member is ordered to pay a fine or costs or both under subsection (1) or under subsection 43(4) and fails to pay within the time ordered, the executive director may immediately suspend the member's registration until payment is made.

Filing of order

44(4) The college may file an order made under subsection (1) in the court, and on filing the order may be enforced in the same manner as a judgment of the court.

Written decision

45(1) The panel shall, within 90 days following completion of a hearing, make a written decision on the matter consisting of the reasons for its decision and a statement of any order made by it.

Decision forwarded to executive director

45(2) The panel shall forward to the executive director

- (a) the decision; and
- (b) any record of the proceedings and all exhibits and documents.

Service of decision

45(3) On receiving the decision and record, the executive director shall serve a copy of the decision on the member and on the complainant.

Copies of transcript

45(4) The member may examine the record of the proceedings before the panel, and is entitled to receive, on payment of the cost of providing it, a transcript of the oral evidence given before the panel.

Publication of decision

46 Notwithstanding that any proceeding or part of a proceeding under this Part may have been held in private, the college may, after the expiration of any appeal period, publish the name of a member in respect of whom an order is made under section 43 or 44 and the general circumstances relevant to the findings.

APPEAL TO COURT OF APPEAL

Appeal to Court of Appeal

47(1) A member in respect of whom a finding or order is made by a panel under section 42, 43 or 44 may appeal the finding or order to The Court of Appeal.

Commencement of appeal

47(2) An appeal must be commenced

- (a) by filing a notice of appeal; and
- (b) by giving a copy of the notice of appeal to the executive director;

within 30 days after the date on which the decision of the panel is served on the member.

Appeal on record

47(3) An appeal must be founded on the record of the hearing before the panel and the decision of the panel.

Powers of Court on appeal

48 On hearing the appeal, the Court of Appeal may

- (a) make any finding or order that in its opinion ought to have been made;
- (b) quash, vary or confirm the decision of the panel or any part of it; or
- (c) refer the matter back to the panel for further consideration in accordance with any direction of the Court of Appeal.

Stay pending appeal

49 The decision and any order of the panel remains in effect pending an appeal unless the Court of Appeal, on application, stays the decision and any order pending the appeal.

REINSTATEMENT

Reinstatement

50 The board may, on application by a person whose registration has been cancelled for reasons other than non-payment of fees, direct the executive director to reinstate the person's name in the register, subject to any conditions that the board may impose, and may

order the person to pay any costs arising from the imposition of such conditions.

PART 7

REGULATIONS, BY-LAWS AND CODE OF ETHICS

Regulations

51(1) The board may make regulations

- (a) respecting registration under Part 4, including establishing the qualifications, experience and other requirements to be met by applicants for registration and for renewal of registration, conversion of registration, and reinstatement of registration;
- (b) respecting the establishment, content and maintenance of registers under this Act and for the purpose of clause 8(2)(d), designating information contained in a register that may be made public;
- (c) respecting the cancellation of a member's registration for non-payment of fees and the reinstatement of a member's registration when outstanding fees are paid;
- (d) defining by education, experience or otherwise general or specialized areas of the practice of psychiatric nursing;
- (e) respecting standards for the practice of psychiatric nursing;
- (f) respecting standards for psychiatric nursing education programs;
- (g) respecting continuing competence programs;
- (h) requiring registered psychiatric nurses and graduate psychiatric nurses to carry professional liability protection and governing the coverage required to be carried;
 - (i) respecting the conditions under which, in special circumstances, registration under this Act may not be required and fees may not be payable.

Consultation with members

51(2) Before making a regulation under subsection (1), the board shall

- (a) provide a copy of the proposed regulation to members for their review and comment; and
- (b) review and consider the comments received.

Approval of regulations by Cabinet

51(3) A regulation made by the board under subsection (1) does not come into force until it is approved by the Lieutenant Governor in Council.

By-laws

- 52(1)** The board may make by-laws
- (a) for the government of the college and the management and conduct of its affairs;
 - (b) respecting the calling and conduct of meetings of the college and of the board;
 - (c) respecting the nomination, election, appointment and number of board members and officers of the college, the filling of vacancies on the board, and prescribing the term of office and the duties and functions of board members and officers of the college;
 - (d) respecting the appointment of ex officio members of the board and ex officio officers and prescribing the duties and functions of those ex officio members and officers;
 - (e) providing for the procedures for the election of members to the board, including qualifications to vote in elections;
 - (f) providing for the division of the province into districts and prescribing the number of board members to be elected from each district;
 - (g) establishing classes of members and governing the rights, privileges and obligations of each class;
 - (h) governing the number of members that constitute a quorum at meetings of the college and the board;
 - (i) governing the establishment, operation, proceedings and quorums of committees of the board, the appointment and revocation of members and ex officio members, the procedures for filling vacancies on committees, and prescribing the terms of office, duties and functions of members and ex officio members;
 - (j) setting remuneration, fees and expenses payable to officers, members of the board or of committees established under this Act, the regulations or the by-laws for attending to the business of the college;
 - (k) prescribing the fees payable by members for the periodic renewal of registration or the manner of determining such fees;
 - (l) prescribing administrative or other fees related to registration payable by members and by applicants for registration or the manner of determining such fees;
 - (m) authorizing the board or the executive director to prescribe the form of a certificate of practice and any other form or document that may be required for the purposes of this Act, the regulations or the by-laws;
 - (n) respecting the holding of votes on any matter relating to the college, including voting by mail or any other method;
 - (o) authorizing the college to confer honorary memberships that do not entitle the recipient to engage in the practice of psychiatric nursing.

Consultation with members

- 52(2)** Before making a by-law under subsection (1), the board shall
- (a) provide a copy of the proposed by-law to members for their review and comment; and
 - (b) review and consider the comments received.

Period of effectiveness

- 52(3)** A by-law under clause (1)(c), (e), (f) or (k) is effective only until the next general or special meeting of the college, and ceases to have effect unless it is confirmed or varied by a majority of the members present and voting at the meeting.

Code of ethics

- 53** The college may, by resolution passed at an annual or special general meeting, adopt a code of ethics governing the conduct of members.

PART 8**GENERAL PROVISIONS****PRACTICE AUDITORS****Appointment of practice auditors**

- 54(1)** The board may appoint one or more practice auditors for the purposes of this Act and the regulations and by-laws.

Audit of member

- 54(2)** The practice auditor may review a member's practice and shall report his or her findings to the executive director at the conclusion of each audit.

Entry of premises and inspection of records

- 55(1)** For the purpose of enforcing and administering this Act and the regulations, a practice auditor may at any reasonable time, and when requested, upon presentation of an identification card issued by the board,

- (a) without a warrant, enter any place where a member engages in practice and make such inspections as may be reasonably required to determine compliance with this Act and the regulations;
- (b) require the production by the member of any record that the practice auditor reasonably considers necessary for the purpose of enforcing this Act and the regulations;
- (c) inspect and, upon giving a receipt, remove records or things relevant to the inspection for the purpose of making copies or extracts; and

(d) remove substances and things for examination or test upon giving a receipt.

Admissibility of copies

55(2) A copy of a record made under clause (1)(c) and certified to be a true copy by the practice auditor is, in the absence of evidence to the contrary, admissible in evidence in any proceeding or prosecution as proof of the original record and its contents.

Entry with order

55(3) When a justice is satisfied by information under oath that there are reasonable grounds for believing that it is necessary for a practice auditor to enter a building, vehicle or other place for the enforcement of this Act or the regulations and

- (a) a reasonable, unsuccessful effort to effect entry without the use of force has been made; or
- (b) there are reasonable grounds for believing that entry would be denied without a warrant; the justice may at any time, and if necessary upon application without notice, issue an order authorizing the practice auditor and such other persons as may be named in the order, with such peace officers as are required to assist, to enter the building, vehicle or other place and to take such action as a practice auditor may take under subsection (1).

Obstruction of practice auditor

55(4) No person shall obstruct a practice auditor or withhold from a practice auditor or conceal or destroy any records, documents, substances or things relevant to an audit.

SERVICE OF DOCUMENTS

Service of documents

56(1) A notice, order or other document under this Act or the regulations is sufficiently given or served if it is

- (a) delivered personally; or
- (b) sent by registered mail, or by another service that provides the sender with proof of delivery, to the intended recipient at that person's last address appearing in the records of the college.

Deemed receipt

56(2) A notice, order or other document sent by registered mail is deemed to be given or served five days after the day it was sent.

Proof of service

56(3) Proof of service of a notice, order or other documents under this Act may be by affidavit or statutory declaration.

EXECUTIVE DIRECTOR'S CERTIFICATE

Executive director's certificate

57 A certificate purporting to be signed by the executive director and stating that a named person was or was not, on a specified day or during a specified period,

- (a) a member of the college; or
- (b) an officer, investigator or a practice auditor of the college or a member of the board or of a committee established under this Act, the regulations or the by-laws;

is, in the absence of evidence to the contrary, admissible in evidence in all courts and tribunals as proof of the facts stated in it without proof of the executive director's appointment or signature.

PROOF OF CONVICTION

Proof of conviction

58 For the purpose of proceedings under this Act, a certified copy under the seal of the court, or signed by the convicting judge or a clerk of The Provincial Court, of the conviction of a person for any crime or offence under the *Criminal Code* (Canada) or under any Act or regulation is conclusive evidence that the person has committed the crime or offence stated, unless it is shown that the conviction has been quashed or set aside.

OFFENCES

Offence

59(1) A person who contravenes a provision of this Act or the regulations, other than section 63 of this Act, is guilty of an offence and is liable on summary conviction

- (a) for a first offence, to a fine of not more than \$5,000; and
- (b) for a subsequent offence, to a fine of not more than \$15,000.

Offence

59(2) A person who contravenes section 63 is guilty of an offence and is liable, on summary conviction, to a fine of not more than \$50,000.

Fraudulent representation on application for registration

59(3) A person who obtains, or attempts to obtain, registration as a member of the college under this Act by making a false or fraudulent representation or declaration, either orally or in writing, and any person who knowingly assists in making such a representation or declaration, is guilty of an offence

and is liable on summary conviction to a fine of not more than \$10,000.

Offence by employer

59(4) If the employer of a member knowingly permits the member to fail to comply with a condition of the member's registration, the employer is guilty of an offence and is liable on summary conviction to a fine of not more than \$10,000.

Limitation on prosecution

59(5) A prosecution under this Act may be commenced within two years after the commission of the alleged offence, but not afterwards.

Prosecution of offence

59(6) Any person may be a prosecutor or complainant in the prosecution of an offence under this Act, and the government may pay to the prosecutor a portion of any fine recovered, in an amount that it considers appropriate, towards the costs of the prosecution.

Stay of proceedings

59(7) When the college is the prosecutor of an offence under this Act, it may apply for a stay of proceedings in the prosecution, and the court shall grant the stay.

Single act of unauthorized practice

60 In any prosecution under this Act, it is sufficient to prove that the accused has done or committed a single act of unauthorized practice, or has committed on one occasion any of the acts prohibited by this Act.

PROTECTION FROM LIABILITY

Protection from liability

61 No action lies against the college, the board, the executive director, a person conducting an investigation, a practice auditor, a member of a committee established under this Act or the regulations or the by-laws, or any employee, officer or person acting on the instructions of any of them for anything done in good faith in the performance or intended exercise of any power under this Act, the regulations or the by-laws or for any neglect or default in the performance or exercise in good faith of such a duty or power.

Limitation period for members

62 No member is liable in any action for negligence or malpractice by reason of professional services requested or rendered, unless the action is commenced within two years from the date when, in the matter complained of, those professional services terminated.

CONFIDENTIALITY OF INFORMATION

Confidentiality of information

63 Every person employed, appointed or retained for the purpose of administering this Act, and every member of the board or a committee of the board, shall preserve secrecy about 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 the information is available to the public under this Act;
- (b) in connection with the administration of this Act, including, but not limited to, the registration of members, complaints about members, allegations of members' incapacity, unfitness, incompetence or acts of professional misconduct, or the governing of the profession;
- (c) to a body that governs the practice of a health profession pursuant to an Act of the Legislature, to the extent the information is required in order for that body to carry out its mandate under the Act; or
- (d) to a body that governs the practice of registered psychiatric nurses in a jurisdiction other than Manitoba.

INJUNCTION

Injunction

64 The court, on application by the college, may grant an injunction enjoining any person from doing any act that contravenes Part 2, notwithstanding any penalty that may be provided by this Act in respect of that contravention.

DUTY OF MEMBERS TO REPORT

Duty of members to report

65(1) A member who believes that another member is suffering from a physical or mental condition or disorder of a nature or to an extent that the member is unfit to continue to practise or that the member's practice should be restricted, shall inform the executive director of that belief and the reasons for it.

Exemption from liability for disclosure

65(2) A member who discloses information under subsection (1) is not subject to any liability as a result, unless it is established that the disclosure was made maliciously.

EMPLOYER'S RESPONSIBILITY

Employer's responsibility to ensure registration

- 66(1)** No person shall knowingly employ or continue to employ a person to perform the practice of psychiatric nursing unless the person is a registered psychiatric nurse or a graduate psychiatric nurse registered under this Act.

Annual review

- 66(2)** Every person who employs registered psychiatric nurses shall review their registration status annually.

Responsibility to report misconduct

- 66(3)** An employer who suspends or terminates the employment of a registered psychiatric nurse or graduate psychiatric nurse for alleged professional incompetence or professional misconduct shall promptly report the suspension or termination to the executive director, in writing, setting out the grounds of the alleged incompetence or misconduct.

Referral to investigation committee

- 66(4)** On receiving a report from an employer, the executive director may refer the matter to the investigation committee.

ANNUAL REPORT

Annual report

- 67(1)** The college shall submit an annual report to the minister within four months of the end of each fiscal year.

Contents of report

- 67(2)** The report must include the following information for the year for which the report is submitted:
- (a) a description of the structure of the college, including its committees and their functions;
 - (b) the names of the members of the board and committees;
 - (c) a copy of the by-laws or amendments to by-laws that were made;
 - (d) the number of applications for registration that were received and their disposition;
 - (e) the number of complaints that were received and their disposition;
 - (f) the number of members disciplined, the reasons for the discipline and the sanctions imposed;
 - (g) the number of practice audits conducted and the results of the audits;
 - (h) the methods used to assure the continuing competence of members;
 - (i) a financial report on the operation of the college;
 - (j) any other information the minister requires.

PART 9

TRANSITIONAL, REPEAL AND COMING INTO FORCE

"Former Act" defined

- 68(1)** In this section, "**former Act**" means **The Registered Psychiatric Nurses Act, R.S.M. 1987, c P170**.

Registration continued

- 68(2)** A person who is a member under the former Act on the day this Act comes into force is deemed to be registered under this Act.

Annual certificate continued

- 68(3)** An annual certificate issued under the former Act to a person entitled to have her or his name entered on a register under this Act is deemed to be a certificate issued under this Act, valid for the period indicated on the certificate and subject to the same conditions as are indicated on the certificate.

Application for registration continued

- 68(4)** An application for registration made under the former Act, but not concluded before the coming into force of this Act, shall be dealt with under this Act.

Board continued

- 68(5)** The members of the board and officers of the association under the former Act are deemed to be members of the board and officers of the college under this Act, elected or appointed for the same period and holding the same office.

Complaints under former Act: no referral to discipline committee

- 68(6)** A complaint that was made or an investigation that was commenced under the former Act and which was not referred to the discipline committee before the coming into force of this Act shall be dealt with under this Act.

Complaints under former Act: referral to discipline committee

- 68(7)** A matter that was referred to the discipline committee before the coming into force of this Act shall be concluded under the former Act as though this Act had not come into force.

Repeal

- 69** *The Registered Psychiatric Nurses Act, R.S.M. 1987, c.P170, is repealed.*

C.C.S.M. reference

- 70** This Act may be referred to as chapter R45 of the *Continuing Consolidation of the Statutes of Manitoba*.

Coming into force

71 This Act comes into force on a day fixed by proclamation.