



## SEXUAL ABUSE OF CLIENTS: GOVERNMENT TO AMEND RHPA

On November 25th, 1992, the Minister of Health, Frances Lankin, introduced Bill 100, the government's response to the November, 1991, report of a CPSO Task Force on Sexual Abuse. It would amend The Regulated Health Professions Act, 1991 with the aim of preventing the sexual abuse of clients by health care providers. The Minister proposes to achieve this end through a number of changes to the yet-to-be-proclaimed RHPA.

A Discussion Paper preceded the legislative proposal. It was sent to the health care community on October 8th, 1992, with a request for responses by November 6th. The Board replied with a seventeen page brief that strongly endorsed "any proposals that would strengthen the powers of the professional regulatory body to discipline offenders and further its continuing efforts to treat the survivors of sexual abuse with respect and dignity." However, the Board was critical of many of the mechanisms the Minister proposed. The Board stated that the Minister's proposals may actually "accomplish quite the opposite of that intended". The majority of regulatory bodies put forward similar criticisms.

Bill 100, now before the Ontario Legislature, embodies most of the original proposals, some in an even sharper form, and in at least one instance, that of mandatory reporting, extends the proposed provisions in new ways. Four aspects of the proposed Bill are highlighted here.

First, a new ground of professional misconduct is to be legislated. This is "sexual abuse", defined as follows:

*"In this Code [RHPA, Schedule 2], 'sexual abuse' of a patient by a member [of a College] means,*

- (a) sexual intercourse or other forms of physical sexual relations between the member and the patient;*
- (b) touching, of a sexual nature, of the patient by the member; or*

*(c) behaviour or remarks of a sexual nature by the member towards the patient."*

*"... the Council [of the College] may make regulations clarifying or extending what constitutes sexual abuse of a patient or a member."*

The amendments go on to prescribe that a certificate of registration shall be revoked if a member of a College is found guilty of (a) or (b), and possibly (c), if the behaviours are prescribed by the College in regulation as those that would attract the penalty of revocation.

In its response to the Minister's first proposals the Board was critical of an approach that tightly links a described offence with a specific penalty. It argued that a single category of offence should be legislated so as to allow Colleges and their Discipline Tribunals maximum discretion in defining offence, harm, and penalty. As psychologists, members of the Board noted that the harm done by a de-

meaning or inappropriate remark to a person of fragile self-esteem may be as great as that done by inappropriate touching.

Second, under the proposed statute, health professionals would be required to report on members of their College, or members of another College, if there are "reasonable grounds, obtained in the course of practising the profession, to believe a member has sexually abused a patient." This duty to report has been extended beyond the initial proposal to now include reasonable grounds to believe that the member has committed other acts of professional misconduct as defined by regulations made by the Council of that member's College, or is incompetent, or is incapacitated. These obligations to report are extended to operators of facilities and employers of health care professionals.

The Board expressed concern that such a provision about mandatory reporting would be fundamentally

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unworkable, particularly if the client alleged to have been harmed were to be unwilling to allow her or his name to be used in a College proceeding.

The Board is also of the opinion that these provisions would open the way for the Courts to conclude that professional discipline proceedings are truly in the nature of criminal proceedings, thus requiring a greater degree of judicial scrutiny. The Board fears that it may prove increasingly difficult to uphold its Tribunal decisions on appeal, thus frustrating its mandate to protect the public from providers found guilty of misconduct by their peers.

Third, in another amendment the Minister proposes that Discipline Tribunals should have the power to grant complainants the right to participate in a hearing where questions as to the good character, propriety of conduct or competence of the complainant are at issue. A complainant granted such standing would be able to make oral or written submissions, lead evidence, and cross-examine witnesses. It is proposed by the Minister that the same power would also be granted to Tribunals with respect to other persons such as public interest groups. It appears that the Minister intends such groups to apply to Tribu-

nals for standing. The Tribunal would have to decide whether to grant it or not.

The Board had earlier criticised this step. It argued that this would invite "the very effects that the Minister wishes to avoid: re-victimization, and the establishment of an adversarial atmosphere between complainant and College." The Board also feared that such a provision would, again, provide a basis for the successful appeal on procedural grounds of Discipline Tribunal findings.

Fourth, an amendment put forward by the Minister about compensation of the survivors of sexual abuse is of concern to the Board. The Minister proposes that each College establish a program to provide funding to pay for therapy and counselling for persons who have been sexually abused by members of the College. The Board, along with other regulatory bodies, argued that such a requirement would be inequitable. For example, the incidence of sexual abuse varies between professions. It varies with the gender of the professional, and thus the female-dominated professions have lower overall rates. The income generating potential of professions differs widely. The extent to which there is the actual possibility

for sexual abuse differs among professions as a result of practice patterns such as "touch" vs "non-touch", office vs institution practice, and team vs individual service delivery.

The Board also argued that the Colleges would be in at least a perceived conflict of interest as both the bodies that determine guilt and penalty and the bodies that compensate the survivors.

Bill 100 is awaiting Second Reading in the Ontario Legislature. After that it will go to Standing Committee for hearings, probably in the late Spring or early Summer. The Board will continue its attempts to have the legislative amendments be facilitative of the public protection mandate of the regulatory body.

Copies of the Board's response to the Minister's initial proposals on the prevention of sexual abuse may be obtained from the Board office on written request.

The full text of Bill 100 may be obtained from Publications Ontario, 880 Bay Street, Toronto, or can be ordered by telephone: 1-800-668-9938 (in Toronto, 326-5300).

Future BULLETINS will update the progress of the legislative amendments to RHPA with respect to sexual abuse of clients. ■

## UPDATE ON TRANSITION TO RHPA

When the Minister of Health brought the Regulated Health Professions Act, 1991 and the associated professional Colleges Acts (including The Psychology Act, 1991) forward for Third Reading in the Ontario legislature last November, she was confident that the legislation could come into force as early as the Fall of 1992. However, getting the new laws "on line" has proved to be a much more complicated process than anyone in government anticipated.

The Minister has introduced amendments (see separate article) to RHPA to deal with the sexual abuse of clients by health professionals. These amendments are waiting for second reading and committee hearings, expected sometime next Spring. It is considered extremely unlikely that RHPA would be proclaimed without these amendments.

Several of the new-to-regulation professions have only now had Transitional Councils appointed by the government. Thus many professions have not begun the process of writing regulations to accompany the new laws.

The Advisory Council on the health professions, a key group in making the RHPA system work, has only just been appointed by the government, and will not be ready to vet the proposed regulations of the professional Colleges until the Spring.

Thus informed observers are predicting that RHPA and the Colleges will not become law until quite late in 1993.

### **The Board's response to transition**

The RHPA legislation is a framework only. Each regulatory College must create regulations, standards, guidelines, and policies to make the legislation workable in the context of a specific profession.

Registrants will be aware that in January of 1992 the Board, as the Transition Council of the College of Psychologists, struck several working parties to help it draft suitable regulations for the new College. Each working party has specific tasks assigned. Each party has representation from OPA and from OACCPP on it. Details of the terms of reference and member-

ship of the working parties were published in the April, 1992 issue of the BULLETIN (Vol 18, #3)

In this issue of the BULLETIN, some of the working parties report to registrants on proposed regulations. Other working parties are charged with developing policy proposals and procedures for the new College, and their work is also proceeding. The following are capsule summaries of working party progress.

**Elections** has produced proposals for regulations on the election of the Council of the new College, qualifications for election, disqualification of Council members, the composition of statutory committees of the Council, and the qualifications of members of these committees. These are published in this issue of the BULLETIN. The Transition Council has petitioned the Minister for an additional seat on the Council of the College for the first three years after proclamation to represent the holders of the new title of Psychological Associate until their numbers are sufficient for them to elect Council members directly.

**Standards and Guidelines** working party has produced draft regulations on professional misconduct, advertising, and client records, and these are also published in this issue of the BULLETIN. The working party will be continuing work on further regulations, standards, and guidelines.

**Extension of regulation** has been functioning as a liaison group between OPA, OACCPP, and OBEP. It monitors and facilitates the implementation of the Memorandum of Agreement on the extension of regulation to the new title.

**Communications and Information** is charged with developing ways to tell the public, registrants, and employers of psychological services about the new laws and their impact. It was planned that this group would not begin meeting until significant policy positions had been developed for the new College. The first meeting was held in November of 1992, and a schedule of brochures and other publications has been planned for the coming year.

**Specialty Designation** reported its preliminary ideas in the last BULLETIN and sought registrant input. It is now preparing a first draft of a report on the options about specialty designation.

**Diagnosis and Delegation** was charged with developing a guideline on interpreting the controlled act, and with producing advice on the delegation of the controlled act. It has recommended a guideline to Council, and has proposed an addition on delegation to the Standards of Professional Conduct.

**Registration** working party had its policy proposal on entry to the new title accepted by the Transition Council in the summer. This policy reflects the Memorandum of Agreement. Since then the working party has developed new application forms for use under RHPA, and has revised basic forms and procedures to accommodate the new title. It has also made, and had accepted, a proposal to the Transition Council about the development of a new examination on the legal and ethical obligations of Ontario practitioners, to be used, when developed and approved, as part of the registration process under RHPA.

**Client Relations** was formed by the Council recently, and is the group preparing for the establishment of the new statutory committee under RHPA that will focus on the prevention of sexual abuse by members of the College. This working party is currently developing ideas about education programs for registrants, staff, and the public, and is examining the Minister of Health's amendments to RHPA about sexual abuse. ■

## Regulations Proposed Under RHPA

The Board of Examiners in Psychology has made a practice over the years of circulating to registrants all proposed changes to regulations before submitting them to the government for approval. Under the provisions of the Regulated Health Professions Act, 1991, this will be a required practice for all health professions regulatory bodies.

There are 38 sets of regulations to be made under RHPA. The grounds of regulation may be found in the main RHPA procedural code, section 95. Not all are required immediately on proclamation, so the Colleges have been asked by the Ministry of Health to focus first on certain issues such as elections, professional conduct, advertising, and so on.

In this issue of the BULLETIN, several proposals for regulations are published. These would come into force when RHPA is finally proclaimed. Registrants and potential registrants are invited to comment on any aspect of the proposed regulations. Comments should be made **in writing** to the appropriate person, indicated in the preamble to each proposal.

As the lead time for government approval is expected to be quite lengthy, those wishing to comment are asked to do so **by February 15th, 1993 at the latest**. Comments will be forwarded to working parties, and will also be considered at the next meeting of the Transition Council. It is expected that completed regulations will go forward for government approval in the Spring.

## Working Party B: Elections

The working party is chaired by Dr. George Phillips (OBEP), and has as members Dr. Phillip Daniels (OBEP), Dr. Eugene Stasiak (OPA nominee) and Mr. John Marai (OACCPP nominee). Staff support for the working party was provided by Dr. Patrick Wesley, Registrar. The working party has met three times since May, 1992.

The Ministry of Health provided an extensive set of templates on issues of regional representation, the composition of statutory committees of the RHPA Colleges, and so forth. The working party has adapted these where appropriate for the proposed College of Psychologists of Ontario.

The Psychology Act, 1991, provides for three classes of members of the Council of the College of Psychologists: members of the College (registrants); lay members (persons appointed by the government); and members of the College (registrants) who are also faculty members of a department of psychology in an Ontario university. The statute provides for a range of numbers of Council members in each category. The working party advised the Transition Council that seven professional members, eight lay members, and two members from universities would be needed. The Council of the College would thus be seventeen persons.

On proclamation of the new legislation the Transitional Council becomes *pro tem* the Council of the College until a first election is held. This first election will be held under the provisions of the first proposed regulation, except for section 4. That section refers to election dates for use in the second and subsequent elections for Council to ensure a staggering of terms on the elected Council.

The working party is continuing its mandate from the Transitional Council by undertaking the preparation of a set of bylaws for the new College.

Comments and suggestions about the following proposed regulations should be sent **in writing** to **Dr. George Phillips** at the OBEP office.

### Proposed regulation made under the authority of section 95(1): Election of Council Members

#### Electoral Districts

1. (1) The following electoral districts are established for the purpose of the election of members to the Council:
  - 1 Electoral District 1 (North) to be composed of the districts and counties of Kenora, Rainy River, Thunder Bay, Cochrane, Algoma, Manitoulin, Nipissing, Sudbury (municipal), Sudbury (District), Timiskaming, Parry Sound, Muskoka;
  - 2 Electoral District 2 (South West) to be composed of the counties of Bruce, Elgin, Essex, Grey, Huron, Kent, Lambton, Middlesex, Oxford, Perth;
  - 3 Electoral District 3 (Central West) to be composed of the counties of Brant, Dufferin, Haldimand and Norfolk, Halton, Hamilton-Wentworth, Niagara, Waterloo, Wellington;
  - 4 Electoral District 4 (East) to be composed of the counties of Frontenac, Hastings, Lanark, Leeds and Grenville, Lennox and Addington, Ottawa-Carleton, Prescott and Russell, Prince Edward, Renfrew, Stormont, Dundas, and Glengarry;
  - 5 Electoral District 5 (Central East) to be composed of the counties of Durham, Haliburton, Northumberland, Peel, Peterborough, Simcoe, Victoria, York;
  - 6 (1) Electoral District 6 (Metro Toronto) composed of Metropolitan Toronto.
- (2) The electoral district in which a member is eligible to vote is the district in which, on 1st January of the calendar year in which the election is to be held the member principally practises, or if the member is not engaged in the practice of psychology in Ontario, the district in which, on that day, the member principally resides.

### Number of members elected

2. The number of members to be elected in each of electoral districts 1, 2, 3, 4 and 5 is one. The number of members to be elected in electoral district 6 is two.

### Terms of office

3. (1) The term of office of a member elected to the Council is three years.
- (2) At the first meeting of the Transitional Council following proclamation, and before the first election for Council, a member of the Transitional Council appointed by the Lieutenant Governor in Council shall draw lots to assign electoral districts to the election years specified in 4(1) to (4) below.

### Election date

4. (1) An election of members to the Council shall be held in the month of June, 1994 and in every third year after that for electoral districts [enter numbers after draw].
- (2) An election of members to the Council shall be held in the month of June, 1995 and in every third year after that for electoral districts [enter numbers after draw].
- (3) An election of members to the Council shall be held in the month of June, 1996 and in every third year after that for electoral districts [enter numbers after draw].
- (4) An election of one member to the Council shall be held in the month of June, 1994 and in every third year after that for electoral district 6.
- (5) An election of one member to the Council shall be held in the month of June, 1996 and in every third year after that for electoral district 6.
- (6) The Council shall set the date in the month for each election of members to the Council.

### Eligibility for election

5. A member is eligible for election to the Council in an electoral district if, on the date of the election,
  - (a) the member is engaged in the practice of psychology in the electoral district for which he or she is nominated, or, if the member is not engaged in the practice of psychology, is resident in the electoral district for which he or she is nominated;
  - (b) the member is not in default of payment of any fees prescribed in this regulation;
  - (c) the member's certificate of registration has not been revoked, suspended, or limited as a result of a disciplinary or incapacity hearing in the three years preceding the date of the election;
  - (d) the member is not an Officer or Board member of a provincial or federal professional association.

### Registrar to supervise nominations

6. The Registrar shall supervise the nomination of candidates.

### Notice of election and nominations

7. No later than ninety days before the date of an election, the Registrar shall notify every member who is eligible to vote of the date, time and place of the election and of the nomination procedure.

### Nomination Procedure

8. (1) The nomination of a candidate for election as a member of the Council shall be in writing and shall be given to the Registrar at least forty five days before the date of the election.
- (2) The nomination shall be signed by the candidate and by at least five members who support the nomination and who are eligible to vote in the electoral district in which the election is to be held.
- (3) A candidate may withdraw his or her nomination for election to the Council by giving notice to the Registrar in writing. Such notice shall be given not less than fifteen days before the date of the election.
- (4) The Registrar shall, at least thirty days before the date of the election, notify every member who is eligible to vote of the nominations received, and shall notify every member that further nominations will be received for the vacancy until fifteen days before the date of the election.

### Acclamation

9. If on the day of the closing of nominations specified in 8(4) the number of candidates nominated for an electoral district is equal to the number of members to be elected in the electoral district, the Registrar shall declare the candidates to be elected by acclamation, and shall notify every member who is eligible to vote in that electoral district of the name of the candidate acclaimed.

### Registrar's electoral duties

10. (1) The Registrar shall supervise and administer the election of candidates and, for the purpose of carrying out that duty the Registrar may, subject to the by-laws,
  - (a) appoint returning officers and scrutineers;
  - (b) establish a deadline for the receiving of ballots;
  - (c) establish procedures for the opening and counting of ballots;
  - (d) provide for the notification of all candidates and members of the results of the election; and
  - (e) provide for the destruction of ballots following an election.
- (2) No later than ten days before the date of an election, the Registrar shall send to every member eligible to vote in an electoral district in which an election is to take place, a list of the candidates in the electoral district, a ballot and an explanation of the voting procedure as set out in the by-laws.

### Number of votes to be cast

11. (1) A member may cast as many votes on a ballot in an election of members to the Council as there are members to be elected to the Council from the electoral district in which the member is eligible to vote.
- (2) A member shall not cast more than one vote for any one candidate.

### Tie votes

12. If there is a tie in an election of members to the Council, the Registrar shall break the tie, by lot.

## Recounts

13. (1) A candidate may require a recount by giving a written request to the Registrar no more than thirty days after the date of an election.
- (2) The Registrar shall hold the recount no more than fifteen days after receiving the request.

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### Proposed regulation made under the authority of regulation 95(3): Disqualification of elected members

#### Disqualification of elected members

1. (1) The Council shall disqualify an elected member from sitting on the Council if the elected member,
  - (a) is found to have committed an act of professional misconduct or is found to be incompetent by a panel of the Discipline Committee;
  - (b) is found to be an incapacitated member by a panel of the Fitness to Practise Committee;
  - (c) fails, without cause, to attend two consecutive meetings of the Council;
  - (d) fails, without cause, to attend two consecutive meetings of a committee of which he or she is a member;
  - (e) ceases to either practise or reside in the electoral district for which the member was elected; or
  - (f) is elected or otherwise becomes an Officer or Board member of a provincial or federal professional association.
- (2) An elected member who is disqualified from sitting on the Council ceases to be a member of the Council.

#### Filling of vacancies

2. (1) If the seat of an elected Council member becomes vacant in an electoral district not more than twelve months before the expiry of the member's term of office, the Council may,
  - (a) leave the seat vacant;
  - (b) direct the Registrar to hold an election in accordance with this Regulation for that electoral district.
- (2) If the seat of an elected Council member becomes vacant in an electoral district more than twelve months before the expiry of the member's term of office, the Council shall direct the Registrar to hold an election in accordance with this Regulation for that electoral district.
- (3) The term of a member elected in an election under clause (1) (b) or subsection (2) shall continue until the time the former Council member's term would have expired.

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### Proposed regulation made under the authority of section 95(1)7: Committee composition

1. (1) The Executive Committee shall be composed of,
  - (a) the President and Vice-President of the Council;
  - (b) one member of the Council who is a member of the College; and

- (c) two members of the Council appointed to the Council by the Lieutenant Governor in Council.
- (2) The President of the Council shall be the chair of the Executive Committee.

2. The Registration Committee shall be composed of,
  - (a) three members of the Council who are members of the College;
  - (b) two members of the Council appointed to the Council by the Lieutenant Governor in Council; and
  - (c) two members of the College.
3. The Complaints Committee shall be composed of,
  - (a) two members of the Council who are members of the College;
  - (b) three members of the Council appointed to the Council by the Lieutenant Governor in Council; and
  - (c) two members of the College.
4. The Discipline Committee shall be composed of,
  - (a) six members of the Council who are members of the College;
  - (b) four members of the Council appointed to the Council by the Lieutenant Governor in Council; and
  - (c) two other members of the College.
5. The Fitness to Practise Committee shall be composed of,
  - (a) two members of the Council who are members of the College;
  - (b) one member of the Council appointed to the Council by the Lieutenant Governor in Council; and
  - (c) two members of the College.
6. The Quality Assurance Committee shall be composed of,
  - (a) two members of the Council who are members of the College;
  - (b) one member of the Council appointed to the Council by the Lieutenant Governor in Council; and
  - (c) two members of the College.
7. The Client Relations Committee shall be composed of,
  - (a) two members of the Council who are members of the College;
  - (b) two members of the Council appointed to the Council by the Lieutenant Governor in Council; and
  - (c) one member of the College.

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### Proposed regulation made under the authority of sections 95(4), 95(5), and 95(6): Members of the College on committees

- (1) This section applies with respect to members of a committee of the College who are members of the College but who are not members of the Council.
- (2) The term of office of a committee member is one year.
- (3) A member is eligible for appointment to a committee if, on the date of the appointment,
  - (a) the member is engaged in the practice of psychology in Ontario, or if the member is not engaged in the practice of psychology, is resident in Ontario;
  - (b) the member is not in default of payment of any fees prescribed in this regulation;

- (c) the member's certificate of registration has not been revoked, suspended, or limited as a result of a disciplinary or incapacity hearing in the three years preceding the date of the election.
- (4) The Council shall disqualify a member appointed to a committee under subsection (3) from sitting on the committee if the member,
  - (a) is found to have committed an act of professional misconduct or is found to be incompetent by a panel of the Discipline Committee;

- (b) is found to be an incapacitated member by a panel of the Fitness to Practice Committee;
- (c) fails, without cause, to attend two consecutive meetings of the committee or of a subcommittee of which he or she is a member;
- (d) fails, without cause, to attend a hearing or review of a panel for which he or she has been selected;
- (e) ceases to either practise or reside in Ontario.
- (5) A member who is disqualified under subsection (4) from sitting on a committee ceases to be a member of the committee. ■

## Working Party C: Standards and Guidelines

The working party is chaired by Dr. David Rennie (Board member), and has as members Dr. Brian Ridgley (Chair of OBEP), Dr. Carole Sinclair (OPA nominee), and Mr. Gary Campbell (OACCP nominee). The staff support to the working party is provided by Dr. Catherine Yarrow (Associate Registrar: Professional Affairs), and Ms. Susan Brooks (Assistant Registrar: Complaints and Discipline).

The working party has developed three regulations based on frameworks supplied by the Ministry of Health. These "templates" were supplied to all the proposed RHPA Colleges. One purpose of RHPA is to ensure that the Colleges have a common structure to their regulations so that members of the public can better understand how to deal with the professional regulatory bodies. Thus the working party has had to work with an imposed layout for the proposed regulations.

The working party is revising the Standards of Professional Conduct in the light of new legislation, and is also preparing an annotated list of new standards and guidelines for the RHPA world.

**Comments and suggestions about the following proposed regulations should be sent in writing to Dr. David Rennie at the OBEP office.**

### Proposed model regulation 95(24): defining professional misconduct

The following are acts of professional misconduct for the purposes of clause 51(1)(c) of the Health Professions Procedural Code:

#### The practice of the profession and the care of, and relationship with, clients

1. Contravening a term, condition or limitation imposed on the member's certificate of registration.
2. Failure to maintain the standards of practice of the profession.
3. Doing anything to a client for the purpose of prevention, assessment, diagnosis, intervention or other purpose in a situation in which a consent is required by law, without such a consent.

4. Delegating a controlled act set out in subsection 27(2) of the Regulated Health Professions Act, 1991 in contravention of section \_\_\_\_\_
5. Failing to supervise a person who is under the professional responsibility of the member and who is providing a psychological service.
6. Abusing a client.
7. Practising the profession while under the influence of any substance, illness or other dysfunction which the member knows or ought to know impairs the member's ability to practice.
8. Discontinuing professional services that are needed unless,
  - i. the client requests the discontinuation,
  - ii. alternative services are arranged, or
  - iii. the client is given a reasonable opportunity to arrange alternative services.
9. Providing an unnecessary service.
10. Practising the profession while the member is in a conflict of interest in contravention of section \_\_\_\_\_.
11. Giving information about a client to a person other than the client or his or her representative except with the informed consent of the client or his or her representative or as required or allowed by law.
12. Breaching a significant term of an agreement with a client relating to professional services for the client or fees for such services, unless necessitated by serious and/or unexpected circumstances.
13. Failing to provide a truthful, understandable, and appropriate explanation of the nature of an assessment, intervention, or other service following a client's request to do so.

#### Representations about members and their qualifications

14. Using a term, title or designation in respect of the member's practice, in contravention of section \_\_\_\_\_.
15. Using a term, title or designation indicating a specialization in the profession in contravention of section 95 (18).
16. Failing to identify oneself appropriately as either a psychologist or psychological associate, to a client or employer when providing psychological services.

17. Failing to advise the College promptly of a change in the name used by the member in providing or offering to provide psychological services.
18. Permitting, counselling, or assisting any person who is not a member to represent himself or herself as a member of the College.

#### Record keeping and reports

19. Failing to keep records as required by section 95(19).
20. Making a record, or issuing or signing a certificate, report, or similar document that the member knows or ought to know is false, misleading or otherwise improper.
21. Failing, without reasonable cause, to provide a report or certificate relating to a service performed by the member, within a reasonable time after a client has requested such a report or certificate.

#### Business practices

22. Failing to inform the client, prior to or at the commencement of services of the fees and charges to be levied for the services.
23. Submitting an account or charge for services that the member knows is false or misleading.
24. Charging a fee that is excessive in relation to the service performed.
25. Charging a fee for a service that exceeds the fee set out in the schedule of fees currently published for the profession without informing the client, prior to or at the commencement of services, of the additional amount that will be charged.
26. Receiving or conferring a rebate, fee or other benefit by reason of the referral of a client from or to another person.
27. Charging a fee for services not performed.
28. Charging a fee for an undertaking to be available to provide services to a client unless the client is an organization and the undertaking is to provide a temporary or on-call service.
29. Offering or giving a reduction for prompt payment of an account.
30. Failing to provide an itemized account for professional services, within a reasonable time if requested to do so by the client or the person or agency who is to pay, in whole or in part, for the services.

#### Miscellaneous matters

31. Contravening the Act, the Regulated Health Professions Act, 1991 or the regulations under either of those Acts.
32. Contravening a federal, provincial or territorial law, or a municipal by-law, if
  - i. the purpose of the law, or by-law is to protect public health, or
  - ii. the contravention is relevant to the member's suitability to practise.

33. Influencing a client to change his or her will or other testamentary instrument, in a way that either directly or indirectly benefits the member.
34. Engaging in conduct or performing an act that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.
35. Failing to reply within thirty days to any written communication from the members, officers, employees or agents of the Council of the College.

#### **Proposed model regulation 95(18): respecting the promotion or advertising of the practice of psychology**

1. (1) An advertisement with respect to a member's practice must not contain,
  - (a) anything that is false or misleading;
  - (b) anything that, because of its nature, cannot be verified;
  - (c) any reference that holds the individual out to be a specialist when the individual does not have a designated specialty;
  - (d) an endorsement by an organization other than one known to have expertise relevant to the subject matter of the endorsement;
  - (e) if the client is not an organization, a testimonial by a client or former client or by a friend or relative of a client or former client;
  - (f) a reference to a particular product used to provide professional services;
  - (g) anything that discredits the profession of psychology.
- (2) An advertisement must be readily comprehensible to the persons to whom it is directed.

#### Additional grounds of misconduct related to advertising

1. Advertising or permitting advertising with respect to the member's practice in contravention of Section 1.
2. If the client is not an organization, either contacting or communicating, or causing or allowing any person to contact or communicate in person, or by telephone with potential clients, in an attempt to solicit business.
3. Appearing in, or permitting the use of the member's name in, an advertisement that implies or could be reasonably interpreted to imply, that the professional expertise of the member is relevant to the subject matter of the advertisement. This paragraph does not apply to scholarly reviews, to an advertisement of the member's own practice, or to an advertisement of a non-profit organization if the member receives no consideration for his or her appearance or the use of his or her name.
4. Permitting, counselling or assisting any person who is not a member of the College to promote or advertise himself or herself as a psychologist or psychological associate.

Continued on page 17





# BOARD NOTICES

THE • ONTARIO • BOARD • OF • EXAMINERS • IN • PSYCHOLOGY

## NEW GOVERNMENT BILL WOULD CHANGE RECORDS RETENTION PRACTICES

The Attorney General of Ontario has introduced Bill 99, An Act to revise the Limitations Act. If passed into law, the revisions will have implications for the retention of records by psychologists. The practice of retaining records for six years may have to be changed to ten years. In this issue of the BULLETIN, a proposed regulation on records is published. The retention provisions therein have not been altered as yet. If Bill 99 becomes law, the Board will, of course, review that proposed regulation.

Section 15 of the Bill proposes a ten-year limitation period on the commencement of claims in respect of grounds of action other than sexual assault:

*s.15(4) No proceeding shall be commenced in respect of a claim based on the malpractice or negligent act or omission of a health practitioner after the tenth anniversary of the day on which the malpractice or negligent act or omission took place.*

This ten-year limit does not apply if the person with the claim is incapable of commencing a proceeding because of his or her physical, mental or psychological condition and is not represented by a court-appointed litigation guardian. The ten-year limit also does not apply if the person with the claim is a minor, and is not represented by a court-appointed litigation guardian.

Section 9 of the Bill proposes, in effect, that there be no time limit for the commencement of actions arising from assault or sexual assault:

*s.9(3) Unless the contrary is proved, a person with a claim based on a sexual assault shall be presumed to have been incapable of commencing the proceeding earlier than it was commenced.*

Psychologists are defined as health practitioners for the purposes of this

proposed Act. The proposed Act would apply to all psychologists, not just those in health facilities.

A basic limitation period of two years, up from one year as defined in the Regulated Health Professions Act, 1991, is established for all other claims except those by minors and persons incapable of commencing a proceeding because of their physical, mental or psychological condition.

The Board's current advice about records retention is contained in Standards of Professional Conduct, 7.7:

"7.7 A psychologist must also assume responsibility for the preservation and security of client records maintained by themselves or by those they super-

vised for a period of at least six years after the date of the last entry."

At its meeting on December 4th, 1992, the Board considered the implications of Bill 99 with respect to the retention of client records.

*The Board wishes to advise registrants that, until the fate of Bill 99 is clear, the practice of routinely destroying client records after six years should be suspended. Psychologists should retain all client records of whatever age for the time being.*

The government anticipates passage of Bill 99 sometime in the next session of the legislature, which will begin in the Spring of 1993.

### RELEASE OF MATERIAL IN CLIENT FILES PROVIDED BY OTHERS: MCINEREY VS MacDONALD

The Supreme Court of Canada recently issued a decision on the issue of patient access to medical records. While certain aspects of the case are relevant only to legislation dealing with medical records as such, the rationale of the decision is applicable to the practices of psychologists.

The case in question was *McInerey v. MacDonald*. A patient asked her physician to supply copies of the contents of her medical file. The physician delivered copies of all her own notes but refused to produce copies of consultants' reports obtained from others involved in the care of the patient. The physician suggested the patient should obtain these directly from their authors. Thus the physician was acting generally in accordance with the advice the Board has given to psychologists in the past.

The Supreme Court of Canada now has held that a patient is entitled upon request to examine and copy all information in the medical record

which the physician considered in administering advice or treatment, including records prepared by others but received by the physician.

The Board is satisfied, following advice from legal counsel, that the same disclosure obligation now rests upon psychologists. The Supreme Court founded the obligation to disclose in what it said was the fiduciary nature of the physician/patient relationship. The Board is of the opinion that the same fiduciary attributes are present in the psychologist/client relationship.

Psychologists are advised that, on receipt of a properly documented request they may be obliged to provide their clients with copies of their entire file, including their own notes and records and those obtained from others. Psychologists receiving such a request should carefully consider the implications and probable consequences of agreeing to or not agreeing to the release.

Continued on page 10

**MCINERY VS MacDONALD**  
continued from page 9

If the psychologist refuses disclosure of some or all of the file, it is up to the client to initiate proceedings in court to force disclosure. In the court proceedings the onus will be on the psychologist to justify non-disclosure. In such cases the psychologist is advised to seek legal counsel.

The Board wishes to advise psychologists that the obligation to disclose is not absolute, and non-disclosure may be warranted if the psychologist is satisfied on reasonable grounds that there is real potential for harm in the disclosure, either to the client or to a third party. Each case will have to be judged on its merits by the psychologist receiving the request for disclosure.

Over the years, for example, the Board has faced a number of situations in which psychologists were reluctant to disclose test scores because, without an accompanying report, or standing on their own, they may have been misleading. ■

**TEMPORARY REGISTER ADDITIONS**

Additions to the Temporary Register since July, 1992:

Timothy Aubry	Lynda Mainwaring
Leslie Balmer	Margaret Matthews
Catherine Bart	Catherine Millichamp
Patricia Bolla	Judy Oleniuk
Cindy Brooks	Louise Patrick
Bryan Cassells	Marjory Phillips
Francine Chappus	Helen Pigeon-Reesor
Lee Charlton-Case	Andrea Porter
Paul Comper	Diane Potvin
Charlotte Copas	Joanne Rinholm
Pierre Côté	Lois Rosine
Joanne Duma	Yvette Sadaka
Paul Gabel	Ginny Schonfeld
Owen Garrett	Ruth Slater
Allyson Harrison	Moira Somers
Terri-Ann Hewitt	Jeffrey St. Pierre
Heather Higgins	Ross Stockwell
Laurence Hunt	Ursula Stych
Jill Irwin	Ali Uzunoz
Edward Johnson	Carole Vipond
Marjory Kerr	Janis Williams
Krishna Khalsa	Martha Wright
Cynthia Kubu	Percy Wright
Daniel Lavoie	Marna Zinatelli
Marlene Levene	

**NEW PERMANENT REGISTRANTS**

The following candidates were admitted to the Permanent Register at a meeting held on December 4, 1992:

Lea Acker	Elaine MacNiven
Huzur Altay	Dianne Maing
Ronald Baxter	Douglas Misener
Helen Bienert	Dean Mooney
Theresa Casteels-Reis	Catharine Notarfonzo
James Cheston	Michael Paquin
William Colvin	Peter Prior
Karina Davidson	Scot Purdon
Christian de Keresztes	Marcel Roy
Margaret DeCorte	Ilene Rusk
Andre Dessaulles	David Rynard
Peter Ely	Lorna Sandler
Barbara Erskine	Sandra Sangster
Renée-Louise Franche	Lauren Shewfelt
Doreen Gough	Eileen Simon
Sally Grant	Marlene Stern
Robert Heaman	Beverley Terrell-Deutsch
Jennifer Hendrick	Marilyn Van Dieten
Zoe Hilton	Aida Warah
Giorgio Ilacqua	Linda Wilmshurst
Hilary Iversen	Dawn Witherspoon
Peter Judge	Gertie Witte
Ursula Kasperowski	Gerald Young
Lynn Levy	Diane Zanier
Karyl MacEwen	

**LAPSED**

The following are persons whose certificates of registration have lapsed due to unpaid fees and whose names are removed from the register:

Richard Alapack  
David Baxter  
Jane Faily  
Donna Forrest-Pressley  
Riley Hinson  
Carolyn Humphreys  
Barton Jessup  
James Lawless  
Margaret Nikolic  
Kirsten Posehn  
Tomas Tanski

**WRITTEN EXAMINATIONS**

The Examination for Professional Practice in Psychology was administered on October 21, 1992 in London, Ottawa and Toronto. The Board appreciates the assistance of Professor David Bernhardt, Dr. David Evans, Mr. Dayvd James-French, Ms. Dora Kaiser, Ms. Connie Learn, Dr. Rod Martin.

**OBITUARY**

The Board has learned with regret of the death of Ms. Marta Klavins. Marta Klavins was registered in 1965 with certificate number 331, following undergraduate work at the University of Toronto, and graduate work at the University of British Columbia. She worked for many years as an educational psychologist in Toronto, retiring in 1988.

The Board extends its sincere condolences to the family, friends, and colleagues of Ms. Klavins.

**RETIRED**

The following are persons whose certificates of registration have lapsed due to retirement and whose names are withdrawn from the permanent register:

Elizabeth Bull  
Bernice Butler  
Michael Grapko  
Arthur Keating  
Freda Sauder  
Ronald Taber  
Solomon Tanexo

## DISCIPLINARY HEARING

(Publication of this matter was delayed due to an Appeal of the Tribunal's decision)

A hearing of a Discipline Tribunal of the Ontario Board of Examiners in Psychology convened on February 14 and 15, 1990, to hear allegations against Dr. Harley Burke, a registered psychologist.

**The Allegations.** It was alleged that Dr. Burke was guilty of malpractice and professional misconduct in that he failed to maintain the standards of practice of the profession in connection with a letter dated October 26, 1988, prepared for the office of the Official Guardian of Ontario concerning a twelve year old child.

**The Particulars.** In particular it was alleged that:

1. Dr. Burke prepared a report for the Official Guardian of Ontario dated October 16, 1988 in which,
  - (a) his recommendations and conclusions were based on facts for which the reliability and/or validity had not been sufficiently established;
  - (b) his recommendations and conclusions were based on an inadequate investigation and assessment of significant facts and issues;
  - (c) his recommendations and conclusions were made in the absence of sufficient psychological data or evidence and were not based on any accepted psychological theory.
2. He submitted a report in effect recommending a change in custody and access arrangements to a child without,
  - (a) interviewing and/or assessing significant individuals, including:
    - (i) the child's mother and custodial parent;
    - (ii) the child's sister;
    - (iii) the woman currently cohabiting with the child's father.
  - (b) referring to and/or having regard to pertinent psychological and developmental factors, including:

- (i) the effects of separation;
- (ii) relationship ties with significant individuals.

3. He submitted a report to the Official Guardian of Ontario without obtaining corroboration or confirmation of the information provided to him.
4. He submitted a report to the Official Guardian of Ontario without an adequate consideration and/or setting out of the qualifications, insufficiencies or limitations of the said report.

### **Procedural Matters:**

1. **A Motion to exclude expert witnesses.** At the outset of the hearing, counsel for Dr. Burke asked the Tribunal to order that the expert witnesses to be called on behalf of the Board be excluded from the hearing room, so that they would not have the opportunity of hearing the evidence of the mother of the child about whom Dr. Burke submitted his report. Counsel for the Ontario Board of Examiners objected to such an order and asked that the two expert witnesses he intended to call be permitted to remain in the hearing room to hear the evidence of the child's mother.

After considering the submissions of both counsel, the Tribunal decided to permit the expert witnesses to hear the evidence of the of the child's mother. It was the Tribunal's view that the expert witnesses should be entitled to hear the evidence of the child's mother in order to give them as full and as accurate a factual picture as possible upon which to base their expert opinions.

2. **Jurisdiction of the Tribunal.** Counsel for Dr. Burke next argued that the Tribunal lacked jurisdiction to hear the allegations set out in the Notice of Hearing because his client's certificate as a registered psychologist was under suspension as a result of a previous hearing. He took the position that the Tribunal had no jurisdiction over suspended psychologists.

The Tribunal was informed by both counsel that Dr. Burke had been admitted to the register of the Board in 1980. As a result of earlier discipline proceedings against Dr. Burke the Board suspended his certificate of registration effective September 6, 1989 for a period of at least one year. From the information provided, it appeared that Dr. Burke remained a registered psychologist, although his certificate of registration was suspended as a result of earlier discipline proceedings.

The Tribunal heard a good deal of argument from both counsel concerning the effect of the suspension of the certificate of registration. The Tribunal accepted that there is a distinction between "suspension" and "cancellation" of a certificate of registration. The Act and Regulations refer to the Board's power to suspend or cancel a certificate of registration.

The Tribunal concluded that a person who has his certificate of registration suspended is still a "registered psychologist", although he is not able to hold himself out as such during the period of suspension. At the conclusion of the period of suspension Dr. Burke will be eligible for reinstatement of his full rights and privileges as a psychologist. As a consequence, the Tribunal rejected the motion that it did not have jurisdiction to proceed with the discipline hearing involving Dr. Burke.

**The Plea.** Dr. Burke did not attend before the Tribunal at any stage of the proceedings.

In the absence of Dr. Burke, the Tribunal invited his counsel to enter a plea on his behalf. His counsel declined to do so. On behalf of Dr. Burke, the Tribunal entered a plea of not guilty to the allegations as set out in the Notice of Hearing.

**The Decision.** The Tribunal found Dr. Harley Burke to be guilty of professional misconduct under the Psychologists Registration Act and under Regulation 825 in that he failed to maintain the standards of practice of the profession as alleged and particularized in the Notice of Hearing dated January 23, 1990.

*The Reasons for the Decision.* The Tribunal heard evidence from three witnesses; the child's mother, and the two expert witnesses. Counsel acting on Dr. Burke's behalf did not call any evidence at the hearing.

The two expert witnesses that testified on behalf of the Board both reviewed the report of Dr. Burke dated October 26, 1988, in detail. This report to the Official Guardian's office concerned a twelve year old girl. Dr. Burke strongly recommended that the child be allowed to accompany her father out of the country.

Both expert witnesses concluded that Dr. Burke's report constituted a custody and access assessment of the child, and both experts concluded that the report fell substantially below the standard of practice of the profession.

Counsel for Dr. Burke argued that the report was not a custody and access assessment, as custody was not at issue when Dr. Burke saw the child and wrote his report.

For a considerable period of time prior to the report by Dr. Burke, the child's parents had been separated and, except for a few weeks prior to a court order giving the father interim custody, the child had been in the custody of her mother.

On November 3, 1988 an order was made in the Supreme Court of Ontario placing the child in the custody of her father. Dr. Burke's report was used as evidence in that proceeding, and prior to November 3, 1988 the mother had consented to *de facto* custody with the father, as the child had left her mother to live with her father and was then in his care.

After reviewing the various letters and orders put in evidence before the Tribunal and after hearing the evidence of the mother, the Tribunal concluded that the custody of the child was in issue when Dr. Burke wrote his report of October 26, 1988.

In addition, both expert witnesses stated that Dr. Burke's report made a very strong recommendation about custody and that his report should comply with the standards used for judging the adequacy of such reports. No evidence was called on behalf of Dr. Burke to the contrary.

Both experts provided the Tribunal with their opinion that Dr. Burke's report of October 26, 1988 failed to meet the standards of the profession for such an assessment because:

- (a) the child was seen for only one full session;
- (b) the mother was not interviewed and thus the report constituted a one-sided assessment.

Dr. Burke failed to interview significant others in the child's life. In addition to the mother, these included:

- (a) the child's sister;
- (b) the child's teacher;
- (c) the current female partner of the father.

Not interviewing these people constituted a serious failure by Dr. Burke to establish the reliability and validity of his findings, conclusions and recommendations. More specifically, the statements made about the mother's environment, e.g. "it would appear that her mother's environment was oppressive, restrictive, emotionally volatile and essentially unsatisfying", were based on the observation of a twelve year old made during a single session. The Tribunal found this to be inadequate and well below the standards of practice of the profession.

Dr. Burke's failure to interview significant others in the child's life led to a failure to consider the effects of separation from her mother and sister, and the effects on the child of breaking relationship ties with these significant individuals in her life.

In addition, his failure to interview others involved in the child's life, and the reliance on a single, rather than multiple sources, led the Tribunal to conclude that Dr. Burke's recommendations and conclusions were based on facts of unknown reliability and validity, and further that the investigation and assessment of significant facts and issues involved in the child's life were inadequate.

The Tribunal did not hear any evidence to suggest that Dr. Burke's observations and conclusions came about as a result of accepted psychological theory. The Tribunal found that the recommendations and conclusions made by Dr. Burke were

without sufficient psychological data (i.e. based on an interview with the father and an interview with the child) and were not related or justified by any known theory. The Tribunal found the assertions made about the child in Dr. Burke's report to be confusing and conflicting, and generally inadequate by any standard.

The report that was submitted to the Official Guardian, made conclusions about the mother's environment and made a strong recommendation about custody. No evidence was given to indicate that Dr. Burke attempted to obtain corroboration or confirmation of the information on which these conclusions and recommendations were based. From the report itself and from the evidence of the mother the Tribunal could only conclude that no such attempt was made by Dr. Burke.

In the BULLETIN published by the Board in April 1988, the Board informed the profession of the standards expected of registered psychologists when preparing custody and access assessments. The Board had this to say:

*Inadequate Assessments. Two frequently cited principles of custodial assessments are those of verification and fairness. Verification refers to the evaluation of assertions and opinions by the search for supporting evidence or consistency from several sources of information. Sometimes verification requires that permission be obtained to seek information from teachers, physicians or others. In some instances the confirmatory material may be sought in the results of psychological testing. Where inferences from psychological testing give rise to significant conclusions about the child or parents, confirmation in the form of consistency of test findings, or where possible, by verification from interview or observation, or from reports of others, represent attempts to find verification. Failure to seek verification of information or inferences that play a key role in custody recommendation is incompetent and also suggests the likelihood of bias or prejudice.*

*By fairness it is understood that*

the investigative procedures employed, and the processing of the information obtained, will be dealt with in an even-handed manner with respect to both parties in the dispute. For example, the interviews, testing, and situational observations carried out for one party should be carried out in a comparable way for the other party. Similarly, attempts to verify assertions made by, and about, parents should be comparable if fairness and competence is to be judged.

In instances where one of the parents refuses to participate in the assessment procedures there is the issue of whether a report, or any testimony, should be offered to the court. Professional opinion appears to favour professional withdrawal from the litigation process. If appraisal of the participant parent is carried out, any report or testimony submitted to the Court should carry the explicit recognition that is incomplete and inadequate as a custody and access assessment.

The expert witnesses also pointed the Tribunal to similarly stated and well accepted principles that describe the standard of practice expected of psychologists performing custody and access assessments.

For example, in no circumstances should psychologists ever provide evaluative statements or opinions concerning parties not directly assessed. Whereas it is not inappropriate for psychologists to report what an examinee says about another who is not present (e.g. "Mr. Smith stated that he believed his wife is not able to maintain adequate discipline with the children"), such statements must be recognized merely as one person's perception of another. Psychologists must clarify to the court that whereas they may be reporting such perceptions and statements, the statements remain "hearsay" and no judgement can be made about their veracity, nor can the psychological functioning or behaviour of the unseen party be assessed with them. The same restraint is necessary when psychologists infer from children's interviews or test responses that children have certain feelings about or perceptions of their parents. Psychologists must never even speculate to the court

that the parents actually possess the particular psychological attributes or have engaged in particular behaviours suggested by the testing without performing a direct assessment of the parents in question. The children's responses must be identified as suggestive only of the children's psychological experiences of the parents. *Psychology and Child Custody Determinations* Lois A. Weithorn (Ed.) (1987), p. 164-165

Counsel for Dr. Burke argued that his report included sufficient qualifications or limitations. His counsel pointed to the following paragraph found at page 1 of Dr. Burke's report:

*It is important to point out that no comprehensive psychological testing or evaluation was conducted on (the child). Her father... simply requested that I speak with his daughter to determine if I noted any disturbance or distress which needed either further examination or counselling follow-up.*

The Tribunal found that, in light of the conclusions made about the mother's environment and in light of the strong recommendation for custody of the child by the father, the statement quoted above from Dr. Burke's report was not an adequate statement of the insufficiencies and limitations of his report.

**Procedural Matters Regarding Penalty** At the conclusion of the hearing on February 15, 1990, and after its deliberations, the Tribunal found Dr. Burke guilty of professional misconduct. The Tribunal then asked his counsel if he was prepared to make submissions with respect to penalty. Dr. Burke's counsel indicated that he was not prepared to do so until he had had an opportunity to review the Tribunal's reasons. He did indicate that he felt submissions (concerning the appropriate penalty) could be made by the parties in writing.

The Tribunal directed the parties to determine between them, as soon as possible, whether or not the submissions with respect to penalty could be dealt with in writing. The Tribunal requested that if the parties were prepared to deal with the issue of penalty in this fashion, they should present their submissions as soon as possible,

and in any event within three weeks of the date of receipt of the written reasons. Otherwise, the parties were instructed to inform the Registrar to schedule a hearing in order to permit the parties to make representations with respect to penalty.

**Submissions Regarding Penalty.** The Discipline Tribunal reconvened on July 11, 1990 and again on September 26, 1990 to hear submissions concerning penalty. Written submissions dated June 6, 1990 from counsel for the Board of Examiners in Psychology, were presented to the Tribunal prior to the hearing on July 11, 1990. These written submissions argued for cancellation of Dr. Burke's Certificate of Registration as a specific deterrent, a general deterrent, and for the protection of the public. Dr. Burke attended the proceedings with new counsel on July 11 and September 26, 1990. His new counsel argued for leniency of penalty due to mitigating circumstances. He submitted that his client had been misled and misrepresented by the lawyer who had earlier represented him at the previous hearing of the Board, and who had represented Dr. Burke from the beginning of the present hearing, up to the submissions made for penalty, at which time he began to act for Dr. Burke.

**New Charges.** On September 26, 1990, an additional Notice of Hearing dated September 24, 1990 was presented to the Tribunal. Dr. Burke pleaded guilty to an additional charge of representing himself as a psychologist during the period of time when his certificate of registration had been suspended by the Board of Examiners in Psychology (from September 6, 1989 to June 30, 1990). Particulars of these allegations were set out in the Notice of Hearing dated September 24, 1990.

**The Penalty** The Tribunal imposed on Dr. Burke a penalty of a suspension of his certificate of registration for a period of one year for the offence of professional misconduct, for the matters for which the Tribunal found Dr.

Continued on page 16

**MINTZ & PARTNERS**  
Chartered Accountants



**AUDITORS' REPORT**

To the Members of The Board:

We have audited the balance sheet of The Ontario Board of Examiners in Psychology as at May 31, 1992 and the statements of revenue, expenses and surplus, stabilization fund and changes in financial position for the year then ended. These financial statements are the responsibility of the organization's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these financial statements present fairly, in all material respects, the financial position of the organization as at May 31, 1992 and the results of its activities and the changes in its financial position for the year then ended in accordance with generally accepted accounting principles.

Toronto, Ontario  
August 13, 1992

*Mintz & Partners*

CHARTERED ACCOUNTANTS

THE ONTARIO BOARD OF EXAMINERS IN PSYCHOLOGY

BALANCE SHEET

AS AT MAY 31, 1992

	1992	1991
<b>ASSETS</b>		
Cash	\$ 111,996	\$ -
Short-term investments	489,654	970,205
Sundry assets	20,489	21,911
Fixed assets (Notes 2 & 3)	113,922	-
	<u>\$ 738,064</u>	<u>\$ 991,216</u>

**LIABILITIES**

Bank indebtedness	\$ -	\$ 74,712
Accounts payable and accrued liabilities	36,803	108,024
Registration fees received in advance	147,380	650,280
	<u>424,383</u>	<u>832,916</u>

**ACCUMULATED SURPLUS**

Stabilization fund - Note 3	36,000	36,000
Surplus	277,701	320,200
	<u>313,701</u>	<u>356,200</u>
	<u>\$ 738,064</u>	<u>\$ 991,216</u>

Approved on Behalf of the Board:

*[Signature]*

*[Signature]*

See accompanying Notes

THE ONTARIO BOARD OF EXAMINERS IN PSYCHOLOGY

STATEMENT OF STABILIZATION FUND

FOR THE YEAR ENDED MAY 31, 1992

	1992	1991
BALANCE - Beginning of Year	\$ 36,000	\$ 36,000
Transfer from surplus	-	12,600
BALANCE - End of Year	<u>\$ 36,000</u>	<u>\$ 36,000</u>

See accompanying Notes

THE ONTARIO BOARD OF EXAMINERS IN PSYCHOLOGY

STATEMENT OF REVENUE, EXPENSES AND SURPLUS

FOR THE YEAR ENDED MAY 31, 1992

	1992	1991
<b>REVENUE</b>		
Registration fees	\$ 749,122	\$ 604,899
Examination fees	47,035	52,300
Interest and miscellaneous income	57,682	88,634
	<u>853,840</u>	<u>745,833</u>
<b>EXPENSES</b>		
Salaries	304,795	248,165
Legal and investigation fees	182,670	203,494
Travel and meetings - Board members	92,402	78,395
Rent and occupancy costs	67,397	64,190
Printing and distribution costs	46,748	48,368
General and office expenses	46,283	35,072
Employee benefit costs	45,758	34,690
Examination costs	39,500	44,384
Committees and councils	28,184	-
Directory advertising	13,817	13,238
Telephones	6,354	5,291
Audit fees	3,801	5,224
Office furniture and equipment	-	18,225
Depreciation	25,140	-
	<u>886,139</u>	<u>796,271</u>
DEFICIENCY OF REVENUE OVER EXPENSES	(42,499)	(50,638)
SURPLUS - At beginning of year	320,200	382,828
	977,701	332,200
Less: Transferred to stabilization fund	-	12,600
SURPLUS - At end of year	<u>\$ 277,701</u>	<u>\$ 320,200</u>

See accompanying Notes

THE ONTARIO BOARD OF EXAMINERS IN PSYCHOLOGY  
STATEMENT OF CHANGES IN FINANCIAL POSITION  
FOR THE YEAR ENDED MAY 31, 1992

	1992	1991
<b>OPERATING ACTIVITIES</b>		
Deficiency of revenue over expenses	\$ (142,499)	\$ (50,478)
Add: Non-cash outlay		
Depreciation	26,140	-
	(116,359)	(50,478)
Decrease (increase) in sundry assets	542	(2,084)
(Decrease) increase in accounts payable and accrued liabilities	(51,221)	37,851
(Decrease) increase in registration fees received in advance	(82,700)	41,857
	<u>(151,738)</u>	<u>26,986</u>
<b>INVESTING ACTIVITIES</b>		
Purchase of fixed assets	(140,095)	-
	<u>(140,095)</u>	<u>-</u>
CASH (DECREASE) INCREASE	(291,833)	26,986
CASH - Beginning of Year	897,697	868,507
CASH - End of Year	<u>\$ 605,864</u>	<u>\$ 895,493</u>
<b>CASH CONSISTS OF:</b>		
Short-term investments	\$ 489,664	\$ 970,205
Bank balance (indebtedness)	116,198	(74,712)
	<u>\$ 605,862</u>	<u>\$ 895,493</u>

See accompanying Notes

THE ONTARIO BOARD OF EXAMINERS IN PSYCHOLOGY  
NOTES TO FINANCIAL STATEMENTS  
MAY 31, 1992

**SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

(a) Fixed Assets

Rates and basis of depreciation applied to write off the cost of fixed assets over their estimated useful lives are as follows:

Furniture and equipment	5 years straight-line
Computer equipment	4 years straight-line
Leasehold improvements	10 years straight-line

(b) Dues Income

In accordance with the regulations of the organization, annual registration fees cover a period of twelve months commencing June 1, of each year. Registration fees received prior to May 31, 1991 covering the subsequent period from June 1, 1991 to May 31, 1992 have been deferred.

**2. FIXED ASSETS**

	Cost	Accumulated Depreciation	Net Book Value
Furniture and equipment	\$ 81,945	\$ 26,389	\$ 55,556
Computer equipment	12,905	3,224	9,679
Leasehold improvements	55,263	4,222	51,041
	<u>\$ 150,113</u>	<u>\$ 33,835</u>	<u>\$ 116,278</u>

**3. STABILIZATION FUND**

In order to fulfil its mandate the Board must be able to carry out its regulatory responsibilities at all times. Certain costs incurred in carrying out disciplinary investigations and hearings can vary significantly and consequently cannot always be accurately predicted and budgeted for in advance. Accordingly the Board has instituted a stabilization fund to finance future legal costs significantly in excess of those budgeted. The maintenance of this fund is also intended to stabilize the level of fees charged to licensees over time. The executive committee of the Board has determined that no transfer of funds is required in the current fiscal year.

(Continued)

THE ONTARIO BOARD OF EXAMINERS IN PSYCHOLOGY  
NOTES TO FINANCIAL STATEMENTS  
MAY 31, 1992

**4. COMMITMENTS**

Under the terms of a lease expiring February 28, 2002, the Board is liable for the following minimum annual rental payments:

1993	\$ 35,060
1994	35,060
1995	42,068
1996	42,068
1997	30,536

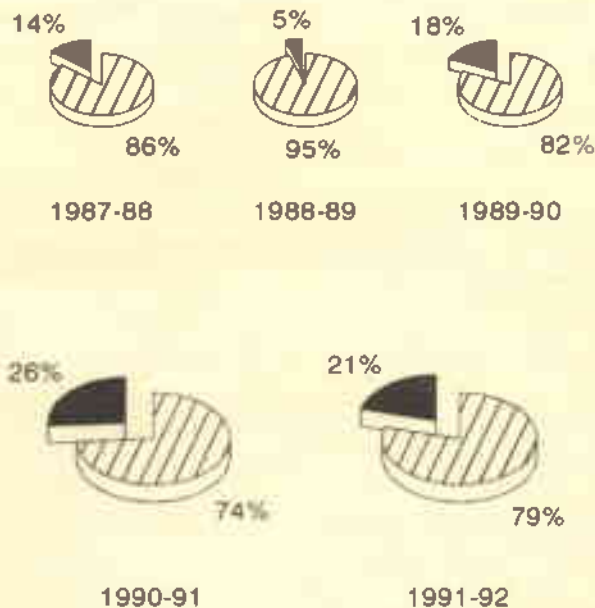
In addition the company is liable for its proportionate share of operating costs.

**5. CHANGE IN ACCOUNTING POLICY**

In prior years, the cost of furniture and equipment purchased was fully expensed in the year of acquisition. Commencing this year, fixed assets acquired will be depreciated in accordance with the policy stated in Note 1(a). Due to the immateriality of the amounts affecting prior years, it has been determined that no restatement of prior years' figures is necessary.

Chart Prepared by OBEP Office

**OBEP Legal Costs vs Other Expenses: 1987 - 1992**



(Raised slice = Legal and Investigation Costs)

**DISCIPLINARY HEARING**  
continued from page 13

Burke guilty as set out in The Notice of Hearing dated January 23, 1990, and an additional one year suspension for the offence of representing himself as a psychologist while his certificate of registration was suspended as alleged and particularized in The Notice of Hearing dated September 24, 1990, the two periods of suspension to be consecutive.

The Tribunal ordered Dr. Burke's certificate of registration to be reinstated by the Board of Examiners on the condition that, at the end of the two one year periods of suspension, Dr. Burke must demonstrate to the Board that he is willing and able to maintain the standards of practice of the profession.

The Tribunal ordered that its decision be published in the BULLETIN of the Ontario Board of Examiners in Psychology with Dr. Burke's name.

**Reasons for the Penalty.** In reaching its decision concerning penalty, the Tribunal was mindful of the impact that Dr. Burke's report to the Official Guardian had on the child involved and on her mother. The Tribunal was aware also of the impact on the lawyers, and the clients of these lawyers,

caused by Dr. Burke's offence of holding himself out as a psychologist while his certificate of registration was suspended.

Counsel for Dr. Burke presented witnesses and letters of reference to indicate that his client had an excellent reputation amongst some members of the legal profession. With one exception these testimonials were not from psychologists.

Dr. Burke's counsel submitted that Dr. Burke had already suffered significant punishment for the bad legal advice that he received from his previous lawyer. He submitted that Dr. Burke's practice had diminished considerably. Counsel for the defence argued that his client was remorseful, that he admitted to errors and poor judgement, and that he was confused from a legal point of view due to bad advice from his previous lawyer.

The Tribunal examined carefully the letters of reference filed on Dr. Burke's behalf, and the statements made by the witnesses who appeared on his behalf. The Tribunal considered the arguments made about alleged poor legal advice. The Tribunal took Dr. Burke's remorse into account. The Tribunal concluded that in spite of alleged poor legal representation, Dr. Burke is and must be held

responsible for his own actions as a psychologist and for his failure to maintain the standards of practice of the profession. The Tribunal concluded that Dr. Burke had failed in his obligation to be aware of and to maintain these standards of his profession, as shown in the reasons for the decision in this matter. The Tribunal found that Dr. Burke had seriously failed in his responsibility to the public and to his own profession.

**Further Developments.** The Tribunal's decision was appealed by Dr. Burke. The appeal was scheduled to be heard by the Divisional Court on November 27, 1992. Prior to the appeal date, Dr. Burke abandoned his appeal and consented to its dismissal. On December 17, 1992, the appeal was formally dismissed by the Court and on that day Dr. Burke's suspension took effect.

**Summary of Dr. Burke's Status.** In addition to the penalty imposed in the hearing discussed above, Dr. Burke continues to be suspended as a result of a previous hearing as he has not yet met the conditions for reinstatement ordered in that hearing, a summary of which was published in the July 1990 BULLETIN. ■



**Proposed model regulation 95(19): prescribing records with respect to members' practices**

1. (1) A member shall, in relation to his or her practice, take all reasonable steps necessary to ensure that records are kept in accordance with this Part.
  - (2) Reasonable steps under subsection (1) shall include verification by the member, at reasonable intervals, that the records are kept in accordance with this Part.
  - (3) Records to be maintained include: daily appointment record, equipment service record, a financial record and a client record as prescribed in Sections 2, 3, 4 and 5.
  2. A daily appointment record shall be kept that sets out the name of each client to whom the member renders any service.
  3. An equipment record shall be kept that sets out the servicing for every piece of equipment, which if malfunctioning could cause harm, when used to examine, treat or render any service to clients.
  4. (1) A financial record shall be kept for each client.
  - (2) The financial record must contain the name of the person providing the service, the date of each client related service, the nature of the service, the amount of time spent on the service, the charges, services charged for, payments received, and source of payment.
  5. (1) A client record shall be kept for each client.
  - (2) If the client is not an organization, the client record must include the following:
    - 1 The client's name, address, telephone number, if available, and date of birth.
    - 2 The date, time and duration of each contact with the member, by the client and/or an agent of the client.
    - 3 The name and address of any referring agent.
    - 4 A history of the client and a description of the presenting problem.
    - 5 Particulars of every procedure performed by the member and particulars of every clinical finding, assessment, and diagnosis made by the member.
    - 6 Particulars of every request or order made by the member for examinations, tests, consultations, or interventions to be performed by any other person.
    - 7 Every written report received by the member with respect to examinations, tests, consultations or interventions performed by other professionals.
    - 8 Particulars and results of all interventions, including advice, and where the intervention is given to a person other than the client, a record of the name and address of the person to whom it was given.
    - 9 Particulars of every controlled act, within the meaning of Section 4 of the Psychology Act, 1991 and subsection 27(2) of the Regulated Health Professions Act, 1991, performed by the member.
    - 10 Particulars of every delegation of a controlled act within the meaning of Section 4 of the Psychology Act, 1991 and subsection 27 (2) of the Regulated Health Professions Act, 1991, delegated by the member including the name of the person to whom the act was delegated.
    - 11 Particulars of every referral of the client by the member to another professional.
    - 12 Particulars of every fee or other amount charged by the member.
    - 13 Any reasons a client may give for cancelling an appointment.
    - 14 Particulars of every procedure that was commenced but not completed, including reasons for the noncompletion.
    - 15 A copy of every written consent.
    - 16 A copy of each report that is prepared by the member in respect of the client.
    - 17 The name, address and telephone number of a person to be contacted in an emergency.
    - 18 Every client record shall be retained for at least six years following,
      - (a) the client's last contact; or
      - (b) if the client was less than eighteen years old at the time of his or her last contact, the day the client became or would have become eighteen years old.
  - (3) If the client is an organization, then the client record must include the following:
    - 1 The name, address and telephone number of the organization, and the name and position of the primary contact person.
    - 2 The date, time, nature and duration of each service provided to the organization.
    - 3 A copy of all agreements and correspondence exchanged with the organization.
    - 4 Particulars of every fee or other amount charged by the member.
    - 5 Particulars of all interventions, including advice given by the member.
    - 6 A copy of each report that is prepared by the College member with respect to the organization and/or to its members.
    - 7 Every client record shall be retained for at least six years following the client's last contact.
  - (4) If services are provided to individual members of an organization, then Section 5 (2) applies.
  - (5) Every part of a client record must have an identifier that establishes the part as belonging to the client record.
  - (6) Every entry in the client record must be dated and must include the name of the person making the entry.
6. (1) The following are acts of professional misconduct for the purposes of clause 51(1)(c) of the Health Professions Procedural Code:
    - 1 Allowing any person to examine a client record or giving any information or copy of a thing from a client record to any person except as required or allowed either by law or by this section.

- 2 Failing to provide within a reasonable time copies from a client record for which the member has primary responsibility, as required by this section.
- (2) If the client is not an organization, a member shall provide copies from a client record for which the member has primary responsibility to any of the following persons on written request:
- 1 The client.
  - 2 A personal representative who is authorized by the client to obtain copies from the record.
  - 3 If the client is dead, the client's legal representative.
  - 4 If the client lacks capacity to give an authorization described in paragraph 2,
    - i. a committee of the client appointed under the Mental Incompetency Act,
    - ii. a person to whom the client is married,
    - iii. A person of the opposite or same sex, with whom the patient is living in a conjugal relationship outside marriage if the client and the person,
      - (a) have cohabited for at least one year,
      - (b) are together the parents of a child, or
      - (c) have together entered into a cohabitation agreement under section 53 of the Family Law Act.
    - iv. the client's son or daughter,
    - v. the client's parent.
- (3) A member may provide copies from a client record for which the member has primary responsibility to any person authorized by a person to whom the member is required to provide copies under subsection (2).
- (4) A member may allow a professional to examine the client record or give a professional any information, copy or thing from the record only if:
- (a) the requesting professional provides services for the same organization or project and has a need to know in order to serve the client;
  - (b) the release of the record or information will be in the expected best interests of the client;
  - (c) the client has been informed that the records and information are shared by professionals in the organization with respect to subsections (a) and (b) and (d) the record or information is presented in a form which, in the judgement of the member, is clear and not likely to be misunderstood by the recipient.
- (5) A member may provide information or copies from a client record to a person if,
- (a) the information or copies are to be used for administration or planning or research or epidemiological studies, and anything that could identify the client is removed from the information or copies.
  - (b) the use of the information or copies is in the public interest as determined either by the Minister of Health or by the Minister under whose jurisdiction the service was provided and anything that could identify the client is removed from the information or copies.
7. (1) It is an act of professional misconduct for the purposes of clause 51 (1)(c) of the Health Professionals Procedural Code for a member to fail to take reasonable steps, before resigning as a member, to ensure that for each client record for which the member has primary responsibility:
- (a) the record is transferred to another member whose identity is made known to the client and to the College;
  - or
  - (b) the client is notified that the member intends to resign and that the client can obtain copies of the client record.
- (2) If a member assumes responsibility for a client record by virtue of transfer from another member, in relation to that record, the acts of professional misconduct prescribed in this regulation apply to the accepting member, from the date of transfer. ■

## Working Party G: Diagnosis and Delegation

The working party is convened by the Registrar, and has as members Dr. Marjorie Whitney (OBEP), Dr. David Reid (OBEP nominee), Dr. Anthony Thompson (OBEP nominee), Dr. Lynne Beal (OPA nominee), Dr. Warren Neilson (President Elect, OPA), and Dr. Dorothy Cotton (OACCPP nominee).

Between May and November the working party had six full day meetings. It submitted two reports with draft guidelines to the Transition Council, which approved the second submission for circulation to registrants and potential registrants for comment.

**Comments and suggestions about the proposed Guideline, proposed Standard, and proposed Regulations should be sent in writing to the convenor of the working party, Dr. Patrick Wesley, at the OBEP office.**

### REPORT

The task of this working party has been complex. There was no template provided for regulations about controlled acts. No template was provided with respect to delegation of a controlled act. No other profession has had to contend with what proved to be the particularly delicate issues of defining a controlled act without seriously altering the working practices of unregulated practitioners or of the holders of the new title.

In addition, everyone has a definition of "diagnosis" in their head. The definition in the minds of the legislators bears little if any resemblance to that in common use in the profession. Thus the working party found itself spending considerable time teasing out the "statutory" or legal definitions from the "clinical" or practice definitions.

After exploring a number of abstractions, and as many blind alleys, it became clear that the point at which the concerns of the legislators met the concerns of the profession was in the area of communication of the "diagnosis", rather than in the definition of "diagnosis" per se. There are three main components of the controlled act: "communication", "identification of a cause", and "circumstances in which the client places trust in the professional".

The controlled act must be defined in such a way that it meets statutory requirements and provides a clear interpretation for misconduct or incompetence hearings by the regulatory body. By shifting to the first necessary condition for the controlled act, that of "communication", rather than focusing on abstract definitions of "diagnosis", such regulatory-oriented questions as (1) did the act occur? (2) was the relationship such that the communication would be relied upon? (3) was there an adequate data base for the content of the communication? may be raised.

Late in the work of the group it became evident that when it set out to write a guide to a statute it had to guard against prescribing the clinical practice of the profession in specific situations. A regulatory body should not, the working party believes, be drawn into specifying "best practice", only "minimally acceptable practice". Within the ethical and regulatory boundaries drawn by the statute and the regulations, the profession - training institutions,

actual practitioners, researchers, and so on - should determine what is the best or most appropriate treatment or procedure in a given situation.

Thus the working party has not provided detailed guidelines about the controlled act in various practice settings. It believes that the professional associations are the legitimate bodies to do this, and that they are also better equipped to do it. For example, in the educational setting in which psychological services may be provided, it is the practitioners, researchers, and program developers who can identify best practice, and who can take the statutory interpretation of the controlled act and adapt it to the circumstances of practice. It is they who can best determine whether a diagnosis of a "learning disorder", is in fact a diagnosis of a "neuropsychological disorder" within the meaning of the statute. For the regulatory body to decide would be for it to "freeze" practice in place, not allowing for developments in the field.

### Interpreting the Controlled Act

The working party has produced the following Guideline to the interpretation of the language of the statutes.

It chose the Guideline form for two reasons. First, the discretion of Discipline Tribunals to interpret the statutes in each particular situation should be preserved. Specifying an interpretation in a Regulation or Standard would invite persons accused of professional misconduct to argue that the Regulation or Standard did not cover their particular use of the terms of the controlled act.

Second, the range of practice situations in psychology is considerably wider than that of other regulated health professions. As a consequence, the focus should be on the responsible professional interpreting the broad provisions in his or her particular practice setting, rather than having some interpretation that forced very different practitioners into a common mold.

### Delegating the Controlled Act

The working party recommends an addition to the Standard of Professional Conduct for the delegation of the controlled act. It chose a Standard in this instance because delegation has much less to do with the content of practice and much more to do with clear lines of responsibility, authority, and accountability.

### Regulations about the Controlled Act

The working party was asked to draft regulations to embody the status of the two titles under RHPA with respect to the controlled act as that status will be at the proclamation of RHPA. Provisions about the assignment of the controlled act are contained in the Memorandum of Agreement between OBEP, OPA, and OACCPP.

Two regulations have been drafted: one assigns the controlled act to those members of the College holding the title "psychologist" at proclamation; the other provides for the delegation of the controlled act only within the membership of the College. In respect of the latter, the working party was of the opinion that the delegation of the controlled act outside the membership of the College would not be in the public interest.

# GUIDELINE: INTERPRETING THE CONTROLLED ACT, RHPA, 1991: SECTION 27(2)1; PSYCHOLOGY ACT, 1991: SECTION 4

*This guideline has been prepared to assist members of the College of Psychologists of Ontario to interpret the statutes that describe the "controlled act" assigned to the regulated practice of the profession of psychology.*

The Regulated Health Professions Act, 1991 section 27, controls the risks of health care services by designating "controlled acts". These are acts that, if performed by an untrained person, would likely involve a risk of harm to a patient or client. The performance of controlled acts is limited to members of regulated health professions and persons to whom those members delegate the performance of controlled acts. The acts are largely "procedures": setting or casting a fracture of a bone; administering a substance by injection; managing labour and conducting delivery; and so forth. The first controlled act, assigned in its broadest form to medicine, in a somewhat less broad form to psychology, and in a very restricted form to four other professions, is the act of:

"communicating to an individual or his or her personal representative a diagnosis identifying a disease or disorder as the cause of symptoms of the individual in circumstances in which it is reasonably foreseeable that the individual or his or her personal representative will rely on the diagnosis." [Regulated Health Professions Act, 1991, s.27(2)1]

The profession-specific acts assign versions of the controlled acts to the professions. The Psychology Act, 1991 describes the controlled act assigned to psychology in the context of the practice of psychology:

"In the course of engaging in the practice of psychology, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to communicate a diagnosis identifying, as the cause of a person's symptoms, a neuropsychological disorder or a psychologically-based psychotic, neurotic or personality disorder." [Psychology Act, 1991, s.4]

Members of the College of Psychologists who hold the title of "Psychologist" are permitted, subject to any terms, conditions and limitations on their certificate of registration, to perform the controlled act as defined in the Psychology Act, 1991, s.4. Members of the College who hold the title of "Psychological Associate" are permitted to perform the profession-specific controlled act when it is delegated to them by another member of the College who has the authority to perform the controlled act.

A Standard adopted by the College outlines the responsibilities and obligations of members with respect to the delegation of the controlled act.

## Interpretations:

*The controlled act has three key components: "communication" to a client; "a diagnosis identifying a cause"; and "circumstances" that entail the client placing trust in the communicated conclusions of the provider. The Regulated Health Professions Act states that the controlled act occurs*

*when a "diagnosis" is communicated "in circumstances in which it is reasonably foreseeable that the individual or his or her personal representative will rely on the diagnosis." [RHPA, 1991, s.27(2)1]. All three components would have to be present for the controlled act to have been performed.*

*The Council of the College will rely on these interpretations in hearing allegations of misconduct or incompetence against members. The Council will be concerned with the understanding shown by the member of the College of the controlled act and the inherent risks in its performance.*

*The College will use these interpretations in any legal processes involving questions about whether a member was or is performing the controlled act, or whether an unregulated provider was or is performing the controlled act.*

*Therefore, within the framework of the statutory definitions listed above, the following interpretations are offered to assist in understanding the controlled act and its components. Members of the College are reminded to read these interpretations within the context of the statutory language of section 4 of The Psychology Act, 1991.*

## 1 Communication

For the performance of the "controlled act", the first component, that of a communication, has to have occurred. "Communication" occurs when certain information is conveyed in any way to a client, or to his or her personal representative, about the client's psychological condition.

## 2 Diagnosis

The second component of the controlled act is "diagnosis". In the statute, the term "diagnosis" means an identification of the cause of a person's symptoms as being a disorder within one or more of four categories: a neuropsychological disorder, or a psychologically-based psychotic, neurotic, or personality disorder.

The intent of the legislation is to caution practitioners that these are diagnoses that can have profound consequences for an individual to whom they are given, and that these are diagnoses whose misuse or misapplication carries inherent risk of serious harm to the individual.

## 3 Circumstances of inherent risk

The third component of the controlled act involves the relationship of trust and reliance between provider and client.

The "circumstances" within which a communication is made about one or more of the statutory diagnoses may be understood to include all those in which a professional relationship exists between the provider and the individual or his or her personal representative, or a client organization or its representative(s).

These include, but are not limited to, the following relationships:

- ones in which the individual is a client of the professional;
- ones in which the professional has been asked for a professional opinion or consultation by the individ-

ual or his or her personal representative, or an organisation or its representative, or by a third party;

- ones in which the professional is a member of a multidisciplinary team serving the individual or the organisation. ■

## PROPOSED ADDITION TO STANDARDS: DELEGATING THE CONTROLLED ACT, [RHPA, 1991: SECTION 28]

### Preliminary Notes:

Under the Regulated Health Professions Act, communicating a diagnosis that identifies a disease or disorder as the cause of an individual's symptoms in circumstances in which it is foreseeable that reliance will be placed on the communication, is a "controlled act". Under the Psychology Act and Regulations under that Act, certain members of the College are authorized, subject to any conditions, terms or limitations imposed upon their certificates of registration to communicate a diagnosis which identifies a "neuropsychological disorder or a psychologically-based psychotic, neurotic or personality disorder" as the cause of symptoms.

A member of the College authorised to perform the controlled act may delegate this controlled act to another member of the College as outlined in the Psychology Act and defined in regulations. In the context of this standard, delegation refers to the act of designating another member of the College of Psychologists to perform the specific function of the controlled act. That is, the delegator appoints the delegatee to perform a particular controlled act or a series of controlled acts.

The delegation of the act may range from the delegation of the authority to perform the act in one specific case to the delegation of the authority to perform the act in respect of certain types of clients, types of presenting problems, specific populations, populations in a specific institution or location, and so on.

"Delegation" differs from "supervision" in as much as delegation refers to a highly delineated set of functions, whereas supervision refers to the overseeing or direction of a broad range of an individual's activities. In "supervision" situations one person is responsible *in toto* for the other's actions. In "delegation" the responsibility is for ensuring that the delegatee is competent and capable of performing the specific controlled act or acts during the period of time for which the delegation is authorised.

Both *delegation* and *supervision* are terms used with reference to the provision of services within the scope of practice of psychology. These functions should, in turn, be differentiated clearly from the administrative management or direction that occurs within the circumstances of employment, and which define reporting relationships in an institution or agency.

### Principle (X)

*A member of the College authorised to perform the controlled act shall delegate it to another member of the College with due care and attention to the abilities, preparation, and capacity to perform the controlled act of the person to whom it is delegated.*

*Without restricting the generality of the foregoing, the following interpretations are given.*

- 1 **Qualifications.** Members of the College will only delegate the controlled act to an individual in situations in which they themselves are competent and qualified to perform it.

Members of the College will ensure that the person to whom they delegate has appropriate preparation and ability to perform competently the diagnostic elements of the act within the scope to be delegated. Members of the College will take into account the previous experience with the controlled act of the person to whom the act is to be delegated. Persons designated to perform the delegated acts must be formally identified by the delegating member of the College as having received the appropriate preparation or training.

- 2 **Written Statement of Delegation.** A written statement of delegation which outlines the specific range of activities and/or limitations and the length of time the delegation is to be in effect will be provided and should be signed by both the delegating member of the College and the person to whom the act will be delegated. The *Statement of Delegation* will normally contain provision for specific reviews of the performance of the controlled act by the person it has been delegated to so that the delegator may be assured of the continuing appropriateness of the delegation.

- 3 **Non-transferability.** Delegation of the controlled act is made within specific institutional or other working conditions. If either the delegatee or the delegator changes employment or if the working relationship changes significantly, delegation is not transferred. It is the responsibility of the delegator to inform the delegatee of this limitation. Normally these conditions will be contained within the *Statement of Delegation*.

- 4 **Proximity of Delegating Member of the College.** The delegating member of the College will normally work in the same physical setting as the person to whom he/she has delegated the controlled act.

Members of the College who are delegating to persons who are not in the same work setting should carefully consider the nature and amount of contact they would need, and the circumstances of the contacts.

- 5 **Responsibility.** Once the controlled act has been delegated according to the provisions of this Standard, the delegatee becomes fully responsible for the quality of the controlled act services he or she provides. However, the delegating member of the College remains responsible to ensure that delegation, when it continues, remains appropriate for that individual.

- 6 **Withdrawal of Delegation.** The conditions under which delegation may be withdrawn will be made clear to the delegatee by the delegating member of the College, and will be set out in the *Statement of Delegation*. These conditions would normally include such eventualities as the delegating member of the College leaving the work setting, incompetent performance of the act

by the delegatee, etc. Denial of appropriate delegation or withdrawal of delegation for malicious or other reasons not connected with professional competence or performance is considered to be a violation of the Standards of Practice and hence subject to disciplinary action.

- 7 **Fees.** Members of the College will not charge a fee or request remuneration of any type in association with the act of delegation.

**Notes:**

Situations may arise in which members of the College who have delegated the controlled act, and members of the College who have performed the delegated controlled act, may be required respectively to account for the manner in which they have done so. It is therefore imperative that both parties clearly understand the above standard and their specific responsibilities. Copies of the *Statement of Delegation* may be requested by the College of Psychologists as part of its fulfilment of the statutory duty of public protection.

This standard does not bind any individual or institution to permit or require delegation of the controlled act when delegation is deemed inappropriate. ■

## Addendum to the report of the working party on Diagnosis and Delegation Flow Chart of Statutory Language

For illustrative purposes the actual language with respect to the controlled act of the two relevant statutes has been laid out in a flow-chart form. This chart represents the elements and processes involved in performing the controlled act assigned to psychology. The wording and steps in the chart come from the two relevant statutes: The Psychology Act, 1991, s.4, and The Regulated Health Professions Act, 1991, s.27(2)1.

### THE CONTROLLED ACT

- **IN THE COURSE OF** ENGAGING IN THE PRACTICE OF PSYCHOLOGY (as defined in The Psychology Act, 1991, s.3)
- **AND SUBJECT TO THE TERMS, CONDITIONS AND LIMITATIONS** IMPOSED ON THE CERTIFICATE OF REGISTRATION (at Registration, or by Discipline or Fitness to Practice Committees)
- **TO COMMUNICATE** TO AN INDIVIDUAL, OR HIS OR HER PERSONAL REPRESENTATIVE (RHPA s.27(2)1)
- **AN IDENTIFICATION OF THE CAUSE OF A PERSON'S SYMPTOMS**
- **AS BEING ONE OF THE FOLLOWING DIAGNOSES:**
  - 1 NEUROPSYCHOLOGICAL DISORDER
  - 2 PSYCHOLOGICALLY-BASED NEUROTIC DISORDER
  - 3 PSYCHOLOGICALLY-BASED PSYCHOTIC DISORDER
  - 4 PSYCHOLOGICALLY-BASED PERSONALITY DISORDER
- **IN CIRCUMSTANCES DEFINED AS** THOSE IN WHICH IT IS REASONABLY FORESEEABLE THAT THE INDIVIDUAL OR HIS OR HER PERSONAL REPRESENTATIVE WILL RELY ON THE DIAGNOSIS (RHPA s.27(2)1)

The Memorandum of Agreement between OBEP, OACCPP, and OPA assigns the performance of the controlled act to: "those members [of the College] entering regulation by the route of doctoral-level program preparation, and using the title "psychologist" (Memorandum of Agreement, November, 1991, page 3)

A regulation is recommended to establish at proclamation of RHPA this aspect of the agreement on the extension of regulation, and is to be found in Box A.

The statutes provide for the setting of limits on the delegation of controlled acts. A regulation is recommended to establish that delegation may occur only between members of the College, and is shown in Box B.

#### A

Proposed regulation made under the authority of RHPA, 1991, s.95(1)8

- 1 The controlled act defined by the Regulated Health Professions Act, 1991, section 27(2)1, and by the Psychology Act, 1991, section 4, is assigned to those members authorised to use the regulated title: "psychologist"

#### B

Proposed regulation made under the authority of RHPA, 1991, s.28(1) & (2)

- 1 Any member of the College authorised, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to perform the controlled act defined by the Regulated Health Professions Act, 1991, section 27(2)1, and by the Psychology Act, 1991, section 4, may delegate the controlled act to any other member of the College, subject to the terms, conditions and limitations imposed on the certificate of registration of the member to whom the performance of the controlled act is delegated.

## THE BULLETIN

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