

INVESTIGATION AND DISCIPLINE

10.1 Investigation and Discipline Committees

The Board shall appoint Investigation and Disciplinary Committees to deal with any breaches of the Codes of Ethics, the Standards of Practice or the Bylaws of the Association and to enforce same. The Disciplinary Committee will continue after resignation or election, if an ongoing investigation is taking place. A new committee member will not be added to an ongoing case.

10.2 Resolution Procedure

(1) Informal Resolution

The Executive Director shall verify that the complaint involves a MTAS Member.

The Executive Director shall forward verbal complaints to the designated Investigation Chairperson.

For reference purposes, Staff shall maintain a log of verbal complaints resolved informally.

If the issue or concern does not lend itself to informal resolution or is not resolved to the satisfaction of the Complainant, the Complainant will be asked to submit the complaint in writing.

(2) Formal Resolution

No complaint will be investigated, nor Discipline imposed if the complaints not made in writing within 24 months of the occurrence.

To initiate a formal resolution, the Executive Director shall mail to the Complainant:

- A Complaint Investigations form;
- A written explanation of the options available for addressing the complaint and the implications of these options;
- A consent document, which seeks authorization from the Complainant to proceed with Investigation/adjudication of the complaint within 10 days of the request by the Complainant.

Upon receiving a written complaint, the Executive Director shall:

- Provide written notice to the Member who is the subject of the complaint, requesting a written response from the Member within 30 days; and
- Notify the Complainant, in writing, that the allegations contained within the written complaint will be reviewed.
- Refer the file to the Investigation Committee Chairperson.
- In the case where the Executive Director or Board is the complainant, the written form will be signed by the President and Executive Director.

10.3 Investigation Procedures

The Investigation Committee may take the following action, as appropriate:

- (a) Find resolution of the matter with the consent of the Complainant and the Member who is the subject of the investigation;

- (b) Refer the matter to the Executive Director and/or appointed facilitator to mediate between the Complainant and the Member;
- (c) Refer the matter to the Discipline Committee for handling;
- (d) Request any person to answer any questions and to produce any records, notes, books, papers, or any other documents or items in the person's possession or under their control that the Investigation Committee believes may be relevant to the complaint being investigated;
- (e) With the written consent of the person producing them, produce and keep copies of any documents or items that are produced under clause (d); and
- (f) Recommend the complaint not be pursued.

Mediation

- (a) Where the Investigation Committee believes that a complaint can be resolved through mediation and the Member and Complainant agree to participate in such a process, the Executive Director or an approved facilitator may meet with the Complainant and Member and attempt to resolve the dispute to the satisfaction of both parties.
- (b) The Executive Director or an approved facilitator may not engage in any subsequent proceedings or serve on the Disciplinary Committee or Appeal Committee if he/she participates in mediation for that file.
- (c) All communications during the mediation are privileged and shall not be admitted as evidence at any subsequent proceedings.
- (d) If the dispute between the Member and the Complainant is not resolved by mediation, the Investigation Committee may exercise any of the decision-making powers set out below.

10.5 Investigation Committee Authority

The Investigation Committee may recommend to the Board any one or more of the following actions:

- (1) Take no action with respect to the complaint. The Committee shall give the Complainant and the Member notice that it intends to take no action with respect to the complaint if:
The Committee considers a complaint to be frivolous, vexatious, made in bad faith or otherwise an abuse of process;
The Committee believes the Member's conduct meets acceptable standards of practice, code of ethics and scope of practice;
If the Investigation Committee decides to take no action, the Complainant has the right to make written submissions to the Discipline Committee
Appealing the decision, within 30 days after receiving the notice.
- (2) Refer a specified allegation of the Member's professional misconduct or incompetence to the Discipline Committee.
- (3) Where there is danger to the public or to the reputation of the profession or the Association, which cannot await a Disciplinary hearing, refer the Member to the Executive Committee for immediate disciplinary measures.
- (4) Recommend that the Board (or Executive Committee) make an interim order suspending or imposing terms, conditions or limitations on a Member's practice if:

The file is referred to the Discipline Committee, and;

The Investigation Committee believes the alleged conduct of the Member exposes or is likely to expose his or her client to harm or injury. Such an order continues to stay in force until the Disciplinary Committee disposes of the matter.

10.6 Recommendation Process

(1) All Investigation Committee recommendations must be presented to the Board in a written report, at the first normally scheduled Board Members meeting subsequent to the completion of the Investigation Committee Investigation.

(2) The Investigation Committee recommendation(s) must be documented in Board minutes, as must the Board's decision to accept or reject the recommendation(s).

(3) Upon the Board's acceptance or rejection of recommendation(s) from the Investigation Committee, the Investigation Committee shall provide the Member and the Complainant with a copy of the Board's decision.

(4) Failure of the Member to comply with the Board approved recommendation(s), as per Section 10.5 (3) and 10.5 (4) in which the Board or Executive Committee does not suspend the Member will result in suspension of the Member pending decisions of the Disciplinary Committee, or until his/her co-operation is obtained.

(5) Where the Board accepts the recommendation that the file be referred to the Disciplinary Committee, the Investigation Committee shall submit a statement informing of the charges or issues that will be dealt with, to both the Complainant and the Member.

(6) The Investigation Committee Chair shall:

Advise the Complainant and the Member of any rights to request an Appeal to the Disciplinary Committee.

Advise the Complainant of the rights available to the Complainant to pursue other mechanisms for resolving the dispute. (Refer to section 10.11)

10.7 Disciplinary Procedures

(1) The Disciplinary Committee shall give priority to the matter and process the file expeditiously.

(2) With the Complainant's consent, the Committee may examine any confidential information and/or medical records of the complainant related to the alleged offence.

(3) Upon a matter being appealed or referred to the Disciplinary Committee, the Committee shall consider the written submissions of the Member and Complainant and all records and documents it considers relevant to the complaint.

(4) The Disciplinary Committee shall determine whether the matter can be adjudicated solely based on the written materials or whether the matter should proceed to a disciplinary hearing.

(5) When the Disciplinary Committee believes that a file can be adjudicated solely based on the written materials, it may proceed to generate a written decision based upon the written records. The parties shall be:

- Informed that a Discipline Committee has been established;
- Informed of the charge(s) or dispute(s);
- Provided with a copy of the Investigation and Discipline Bylaws;
- Invited, within a time specified by the Committee, to make written submissions of any information or arguments relevant to the deliberations of the Committee; and
- Informed of the findings of the Discipline Committee.

10.8 Disciplinary Hearing Procedures

(1) When the Disciplinary Committee determines that a hearing is required, the Chairperson shall inform both the Complainant and the Member of the following by registered mail, no later than 28 days prior to the date of the hearing:

- A hearing has been deemed necessary;
- A list of the charge(s) or dispute(s) to be heard;
- That both parties have the right to be heard in person;
- That each party may be represented by legal counsel at their own expense;
- That each party may also be accompanied by any other person of the general public, or a MTAS Member in good standing;
- Provided with a copy of the Investigation and Discipline Bylaws;
- Invite, within a time specified by the Disciplinary Committee, written submissions of any additional information or arguments relevant to the deliberation of the Committee; and
- Request that both parties must confirm their attendance or non-attendance for the hearing, at least 7 days prior to the date of the hearing.

(2) On the day of the hearing, when necessary, the Disciplinary Committee, the Complainant or his/her legal representative and the Member or his/her legal representative, has full right to:

- (a) To examine, cross-examine and re-examine all witness testimony in person. However, in cases where there is reasonable evidence that the witness would potentially suffer emotional or psychological stress from a face-to-face meeting with the Member at the hearing, the witness's testimony may be conducted by teleconference or as separate in-person interview; and
- (b) To present evidence in defense and reply.

(3) When a Member fails to attend the hearing, the Discipline Committee may proceed in his or her absence.

(4) When the Complainant fails to attend the hearing and does not provide a just reason, the Discipline Committee may interpret this as a lack of commitment and may have cause to dismiss the complaint.

(5) If, during the course of a hearing, the evidence shows that the accused may be guilty of misconduct different from, or in addition to, any misconduct specified in the charge, the Discipline Committee shall adjourn the hearing for any period that the Committee considers sufficient. This is to give the Member an opportunity to prepare a defense to the amended charge(s), unless the Member consents to continue the hearing.

(6) The Discipline Committee may accept any evidence that it considers appropriate and is not bound by rules of law concerning evidence, and testimony may be given unsworn.

(7) The Discipline Committee may consider the written report of the Investigation Committee in whole or in part or may call the Investigating Committee as witness to present the report.

(8) The Discipline Committee may conduct the hearing or any part of the hearing in private.

(9) The deliberations of the Discipline Committee shall be conducted in private. No person who is not a Member of the Committee shall be present.

(10) The Discipline Committee shall give the findings of the hearing and provide reasons for its decisions and for any sanction ordered. This hearing report shall be sent to the Board for execution.

(11) Copies of the hearing report shall be provided to both the Complainant and the Member.

(12) The Disciplinary Committee shall advise the Member of any rights to request an Appeal.

10.9 Disciplinary Committee Authority

(1) The Disciplinary Committee may make any one or more of the following recommendations:

- (a) Dismiss the complaint;
- (b) Reprimand the Member, with warning as to his/her future conduct;
- (c) Suspend the Member for a defined period of time. If the Member is suspended, this shall be noted

in the Membership register and Membership rights and privileges shall be removed during the period of suspension;

(d) Expel the Member from the Association and so order the following:

- (i) Notice shall be sent to all Members of MTAS, insurance benefit providers, Massage Therapy Colleges and Associations, and relevant intergovernmental agencies.
- (ii) The Member's name and license number shall be removed from the Membership register and cancel his/her Membership rights and privileges;
- (iii) Ensure that Member is ineligible to serve in any function within the Association or attend any Association activity.

(2) In cases where the Member has been found to have committed an act of professional misconduct or is found incompetent, he/she may be ordered to pay all, or part of the Association's costs incurred in investigating the matter and conducting the hearing.

(3) Where there is evidence, which leads the Disciplinary Committee to the conclusion that there is danger to the public, or danger to the reputation of the profession or the Association, the Member shall be immediately suspended until the matter is resolved.

(4) Specify conditions under which the Member may continue to practice, including some or all of the following:

- Discontinue use of specific treatment procedures or modalities;
- Successfully complete any upgrading, retraining or education that the Disciplinary Committee may specify, within any time period the Disciplinary Committee may specify;
- Obtain counselling, medical or other relevant treatment the Board Committee may specify, within any time period the Disciplinary Committee may specify;
- Any other reasonable condition the Disciplinary Committee considers fair.

(5) The Disciplinary Committee may also order a second visit by Members of the Investigation Committee after a lapse of a specific period of time, to ensure that the Disciplinary Committee's requirements have been implemented.

(6) Failure to comply with the requirements of the Disciplinary Committee will result in suspension of the Member until his/her compliance is obtained.

(7) A written report documenting any amended orders or recommendations must be sent to the Board.

10.10 Deference to Other Authorities

Where the Chairperson of the Investigation Committee or the Chairperson of the Discipline Committee believes that the Member whose conduct is being investigated may be guilty of a criminal offence, that person shall refer the matter to an appropriate authority.

10.11 Dispersal of Evidence

All original documents and items put into evidence at the hearing shall be returned by the Disciplinary Committee to the person who produced them, on request, within a reasonable time after the hearing has concluded.

10.12 Appeal Process

(1) The Member and the Board have the right to Appeal decisions or any order of the Discipline Committee, by serving a written notice of Appeal to the Appeal Committee within 14 days of receipt of the decision or order where:

- (a) The Discipline Committee has found the Member guilty of misconduct;
- (b) The Member is subject to an order imposed by the Discipline Committee or the Executive Committee;
- (c) The Complainant can demonstrate just cause for Appeal, provided that an Appeal can only be filed if the Appeal involves a question of jurisdiction, or if it is alleged that the Disciplinary Committee erred in its interpretation of the charges, the policies or Bylaws of the Association; or the application of the imposed Discipline. The Member or the Complainant has the right to Appeal the nature of the Discipline.

(2) The written notice shall state the grounds of Appeal. An administration fee as determined by the Board, must accompany any formal request for an Appeal.

(3) The Appeal Committee shall review all aspects of the file.

(4) On hearing an appeal, the Appeal Committee may:

- (a) Dismiss the Appeal;
- (b) Quash the finding of guilt;
- (c) Direct further inquiries by the Investigation Committee or appoint a new Investigation Committee to reinvestigate the file;
- (d) Direct a new hearing or further inquiries by the Discipline Committee or appoint a new Discipline Committee to re-examine the file;
- (e) Increase or decrease any penalty imposed by the Disciplinary or Executive Committees.

(5) The costs associated with an unsuccessful Appeal shall be the responsibility of the Appellant.

10.13 Review by the Board

(1) A Member may Appeal the decision or any order of the Discipline Committee by serving the Executive Director with a notice of Appeal within 30 days after the decision of order where;

- (a) The Member has been found guilty of professional misconduct or professional incompetence by the Discipline Committee; or
- (b) The Member is subject to an order made pursuant to a criminal conviction.

(2) The Appeal process shall be conducted in accordance to the Bylaws.

An appellant shall set out the grounds of Appeal in the notice of Appeal mentioned in subsection 1. On receipt of a notice of Appeal, the Executive Director shall file with the Board a true copy of:

- (a) The formal complaint sent, and notice served or the report of the Investigation Committee;
- (b) The transcript of the evidence presented to the Discipline Committee; and the decision and order of the Discipline Committee.

The appellant or the appellant's solicitor or agent may obtain from the Executive Director a copy of the documents filed pursuant to subsection (3) on payment of the cost of producing them.

(3) On hearing the Appeal, the Board of Directors may:

- Dismiss the Appeal;
- Quash the finding of guilt;
- Direct a new hearing or further inquiries by the Discipline Committee;
- Vary the order of the Discipline Committee

(4) The Board may make any order as to costs that it considers appropriate.

(5) The Member of the Board appointed pursuant to section 9.1 who is a Member of the Investigation or Discipline Committees or has received a report from these Committees or has a conflict of interest shall not participate in the hearing of an Appeal pursuant to this section.

10.14 Reinstatement

(1) Subject to the Bylaws, on receipt of an appeal application, the Board shall:

Review the application; and
Investigate the application by taking steps it considers necessary.

On completion of its investigation, the Board may:

Where it is satisfied that the person subsequent conduct and any other facts warrant reinstatement, order that the person be reinstated as a Member on any terms and conditions that the Board considers appropriate; or

By order, refuse to reinstate the person.

Where, on an appeal application the Board refuses to reinstate a person as a Member, the person, within 30 days after the date of the order, may appeal the order of the Court, and the Court may allow or disallow the Appeal.

A person who has been expelled may apply to the Board for reinstatement. Such an application must state reasons for reinstatement and any information that justifies reasons for reinstatement.

Subject to the Bylaws, on receipt of a reinstatement request, the Board shall review the application and, if in the opinion of the Board the application disclosed information, which may justify reinstatement, the Board may investigate the application by taking any steps it considers necessary

A person whose application for reinstatement is refused may make a second applicant for reinstatement, based on new information not presented in the first request, any time 30 days after the completion of the initial reinstatement review.

10.15 Conflict of Interest or Bias

(1) In the event that any Member of an Investigation, Discipline or Appeal Committee has a conflict of interest or is biased, that person shall declare the conflict or bias and the Chairperson of that Committee shall appoint, upon Board approval, a replacement.

(2) In the event of a conflict of interest on the part of a Board Member, that Director shall not participate in any discussion or action of the Board related to this file.

(3) No Board Member shall participate in the hearing of an Appeal if the Board Member has, or appears to have, a conflict of interest or bias as described in the MTAS code of ethics.

10.16 Records and Use of Decisions

The Association shall maintain a record of all decisions of the Investigation and Discipline Committees, and of all decisions of the Board and Appeal Committee.

The Discipline Committee and Board may consider the decisions of previous Discipline Committees and Boards but are not bound by the precedent.

Decisions of Discipline Committee and decisions of the Appeal Committee are matters of public interest and shall be publicly available.

If the Discipline Committee or Board decides that making the decision publicly available will unduly violate the privacy of any person, the Committee or Board may direct that the decision or part of the decision should be kept confidential.