

## **Capacity to Practise**

*Improved Public Interest*

To better protect the public, APEGA must have the ability to quickly suspend or restrict a Member's licence if a Member is unable to provide professional services in a safe and competent manner due to an impaired health condition.

### Background

- Sometimes mental health issues, substance addictions, or physical illnesses and disorders can impair a Member's ability to provide professional services in a safe and competent manner. This is referred to as a Member's incapacity or fitness to practise.
- Currently, the Discipline Committee may review a Member's incapacity or fitness to practise but only after a complaint, full investigation, and hearing, which can be a lengthy process.
- Currently, the Investigative Committee may suspend a Member pending a preliminary investigation or disciplinary hearing, but a complaint must be received first.

### Why this is important

- The management of a Member's fitness to practise is a matter of public protection. It is not a matter of discipline or punishment.
- APEGA needs to be able to respond quickly in a respectful and confidential manner to protect the public and to help the individual.
- The question of a Member's or applicant's fitness to practise might arise from sources other than a formal complaint. To adequately protect the public, APEGA needs to be able to respond quickly and appropriately.

Proposed  
legislative  
change

It is recommended the Act be amended to expressly authorize the Registrar to require a Member or applicant to undergo independent, third-party mental or physical examinations to assess the person's fitness to practise if there are reasonable grounds to believe a registrant or applicant are incapacitated.

If the Registrar has grounds to believe that a Member is incapacitated, whether or not a complaint has been made, the Registrar may direct the Member to submit to specified physical or mental examinations, or both, by a person or at a facility specified by the Registrar and request the person or facility to report to the Registrar and the Member within a time specified by the Registrar.

On receipt of the results of any mental or physical examination, and if recommended by the person or facility the Registrar may direct the Member to submit to treatment by a person or at a facility specified by the Registrar.

The Registrar may request that the results of the treatment be provided by the person or facility to the Registrar and the Member within the time specified by the Registrar.

The Registrar may direct that the Member cease providing professional services until a report on their mental or physical condition is received, or if a direction is made with regards to treatment, cease providing professional services until the Registrar is satisfied that the Member is no longer incapacitated and the Registrar must notify the Registrar of the direction to cease providing professional services.

If the Member does not comply with a direction of the Registrar to submit to physical or mental examinations; submit to treatment, or cease providing professional services while incapacitated,

- the Registrar must continue with the investigation process if a complaint was previously made with respect to a matter that arose because of the alleged incapacity, and
- the Registrar may treat the non-compliance as a complaint and act on it if no complaint has been previously made with respect to a matter that arose because of the alleged incapacity.

If a complaint has been made against a Member, and the Registrar

- is satisfied that the matter complained of arose because of the

incapacity of the Member,

- has made directions with regards to examinations or treatment, and
- is satisfied that the Member is complying with the directions to receive treatment,

the Registrar may, at any time before the matter has been referred to the hearings director, suspend any proceedings with respect to the complaint for a period of time that the Registrar considers appropriate.

If a matter has been suspended and the Registrar is satisfied that the Member is no longer incapacitated, the Registrar may decide to suspend the proceedings indefinitely, with or without conditions.

Despite a suspension of proceedings the Registrar may, at any time direct that the proceedings with respect to the complaint be resumed.

If the Registrar suspends proceedings, the Registrar must within 14 days notify the complainant in writing of the suspension and the reasons for it.

Effect of the  
proposed  
change

- It authorizes APEGA to proactively request a medical assessment of a Member's or applicant's fitness to practise if there are reasonable and probable grounds to believe the individual is incapacitated.
- It authorizes APEGA to suspend or restrict an individual's licence to practise in these cases.
- It places the authority to act at the most responsive and appropriate level of the organization.
- It aligns the legislation with other modern, self-regulatory associations in Alberta and Canada.