

# The e-Bulletin

THE COLLEGE OF PSYCHOLOGISTS OF ONTARIO  
L'ORDRE DES PSYCHOLOGUES DE L'ONTARIO  
Regulating Psychologists & Psychological Associates

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By-law 22: Professional Liability Insurance**

At the recent meeting of the Council of the College, three amendments to the Liability Insurance by-law were approved to be circulated to the membership for consultation.

Member feedback on the proposed amendments will be accepted until September 10, 2010.

[Read more...](#)

### Quick Links

[College of Psychologists Of Ontario](#)

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### **New President's Message**

At the Council Meeting of June 18, 2010. Ivan McFarlane, Ph.D., was elected President of the College. As Dr. McFarlane takes office as the first public member to be elected College President [he writes...](#)

### **New Executive Committee and Council of the College of Psychologists 2010-2011**

The first order of business at the June 18, 2010 meeting of the College Council was the election of the College President and Executive Committee for the 2010 - 2011 term of office.

[Read more...](#)

### **Statutory and Non-Statutory Committees 2010-2011**

Appointments to the six statutory committees and one non-statutory committee were made on June 18, 2010. Each committee is comprised of professional members of Council (Council), public members of Council (Public) and members of the College who do not sit on the Council (College).

[Committee Membership...](#)

### **Professional Liability Insurance: A Clarification *Must I Now Have "Personal" Coverage?***

A recent article providing some [RHPA updates](#) resulted in some confusion regarding current professional liability insurance requirements. Current requirements remain the same as explained in "*Must I Now Have Personal Coverage?*". [Read more...](#)

### **Discipline Proceedings**

The Discipline Committee of the College holds hearings into allegations of professional misconduct and/or incompetence. A summary of disciplinary proceedings is provided for the information of the public, members of the College and other professionals. This information is on the Register of the College and available in the *Members Search* section of the College website or may be obtained by contacting The College of Psychologists of Ontario. [Recent Discipline Findings...](#)

# President's Message

## Ivan McFarlane, Ph.D.

I am honoured to have been elected College Council President for the coming year. With this privilege comes an awesome responsibility to lead Council in accomplishing the College's mission – *To regulate the provision of psychological services in the public interest by setting the standards for competent and ethical practice.*

This year, 2010, has so far been very exciting. The profession of psychology celebrated half a century of regulation. We, the College, were graced by the presence of the illustrious Dr. Barbara Wand at the eponymous Barbara Wand Seminar.

Council, most ably assisted and advised by Dr. Catherine Yarrow, Registrar and Executive Director, took the measure of challenges posed by the various provincial agreements and legislative amendments, the needs of our members and federated partners, and the expectations of the public.

The future beckons, promising to be more exciting and challenging. In this regard, your Council has established the "Shaping the Future of Psychological Regulation in Ontario" task force to take us there. We have work to do!

I invite all of you to join me and the Council in shaping this future. We are a self regulated College and that means that every one of us has a responsibility to provide services in an ethical manner and to consult the best interests of the College. Get involved.

Take the time to think about and articulate the future. Maintain the energy that Barbara Wand noted in her remarks to our 50<sup>th</sup> Anniversary Reception. All ideas are welcome.

Make sure that the profession continues to be regulated in the service of the public interest.

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# Executive Committee and Council of the College of Psychologists 2010-2011

The first order of business at the June 18, 2010 meeting of the College Council was the election of the College President and Executive Committee for the 2010 – 2011 term of office. We wish to congratulate:

Ivan McFarlane, Ph.D.	President
Milan Pomichalek, Ph.D., C.Psych.	Vice-President
Ian Brown, Ph.D., C.Psych.	Professional Member
Robert Gauthier, M.Ed., C.Psych.Assoc.	Professional Member
Mr. Vincent Lacroix	Public Member
Lise Mercier, Ph.D., C.Psych.	Professional Member

The Executive Committee is joined by the following members of the College and public members as the College Council for 2010-2011.

Abena Buahene	Public Member
Mary Ann Evans, Ph.D., C.Psych.	Professional Member (Academic)
Allyson Harrison, Ph.D., C.Psych.	Professional Member
Mohammed Hossain	Public Member
Mustaq Khan, Ph.D., C.Psych.	Professional Member
Jane Ledingham, Ph.D., C.Psych.	Professional Member (Academic)
William Peter McKegney	Public Member
Adrienne Perry, Ph.D., C.Psych.	Professional Member (Academic)
Cheryl Rampersad	Public Member
Dalia Slonim, Psy.D., C.Psych.	Professional Member
Ethel Teitelbaum	Public Member
Glenn Webster, M.Ed., C.Psych.Assoc.	Non-Voting Psychological Associate

# Statutory and Non-Statutory Committees 2010-2011

At the meeting of the College Council held on June 18, 2010, the new Executive Committee was elected from the members of the Council. Appointments to the remaining six statutory committees and one non-statutory committee were also made. Each committee is comprised of professional members of Council, public members of Council, and members of the College who do not sit on the Council. The committee composition of the statutory committees is defined in [By-law 21: Committee Composition](#).

The appointments made to the following Committees are available in the *About the College* section of the College website or can be accessed at: [College Committees](#)

## Statutory Committees

Client Relations Committee  
Discipline Committee  
Executive Committee  
Fitness to Practice Committee  
Registration Committee  
Inquiries, Complaints and Reports Committee (ICRC)  
Quality Assurance Committee

## Non-Statutory Committee

Jurisprudence and Ethics Examination Committee

# Notice of Proposed By-law Amendments: By-law 22: Professional Liability Insurance

In early June, the College distributed an [RHPA Update](#) to members regarding changes to *The Regulated Health Professions Act, 1991 (RHPA)*. One of the provisions discussed under the heading “Provisions Not Yet Proclaimed” (page 3) was a statutory change with respect to the coverage requirements for professional liability insurance. The article noted that, when this section of the RHPA is proclaimed, “. . . each member will be required to be personally insured, against professional liability.”

**Note: This provision has not been proclaimed and therefore is not yet in force.** See “Professional Liability Insurance: A Clarification, *Must I Now Have “Personal” Coverage?* in this issue of the *e-Bulletin*.

This statutory change will require an amendment to [By-law 22: Professional Liability Insurance](#). This is included in the proposed changes to this By-law which the College Council has approved for circulation to the membership.

## Notice of Proposed By-Law Amendments

The *Health Professions Procedural Code (Code)* of the *Regulated Health Professions Act, 1991 (RHPA)* permits the Council of the College to make by-laws, “requiring members to have professional liability insurance that satisfies the requirements specified in the by-laws or to belong to a specified association that provides protection against professional liability and requiring members to give proof of the insurance or membership to the Registrar in the manner set out in the by-laws;” [94(1)(y)]. At the meeting of June 18, 2010, the Council of the College approved, for circulation to the membership, amendments to *By-Law 22: Professional Liability Insurance*. According to the *Code*, these proposed by-law amendments must be circulated to the membership at least 60 days before it is approved for implementation.

There are three main amendments being proposed: a) that a member be personally insured against professional liability; b) that the minimum coverage be raised \$2,000,000 per occurrence; and, c) that confirmation to the College of insurance coverage be acceptable in other than formal written notice.

**These changes are proposed to be effective June 1, 2011.**

### a) Personal Coverage

Changes to *The Regulated Health Professions Act, 1991*, when proclaimed, will require each member “to be personally insured, against professional liability.” This change means that coverage through one’s employer, which is currently acceptable, will no longer be sufficient. In anticipation of this, Council has proposed to amend the By-law to reflect this legislative change. This by-law amendment will come into force at the beginning of the next membership year, 2011-2012, by which time it is anticipated that this section of the RHPA will be proclaimed.

### b) Minimum Coverage

The Council has proposed that the minimum coverage per occurrence be raised from \$1,000,000 to \$2,000,000. The current amount has been in place since this By-law was first introduced 11 years ago, in 1999. The Council believes the increase to be necessary to ensure adequate protection of clients in the event of a professional liability finding given rising costs over the past decade.

### c) Notice to College

Members are required to confirm to the College that adequate insurance coverage is in place at annual renewal or at initial registration or reinstatement of registration. With the availability of electronic methods for providing this confirmation, the proposed amendment would permit the College to accept other than formal written notice of this confirmation.

Members wishing to provide comments regarding the changes to By-law 22 may do so by e-mail ([insurance@cpo.on.ca](mailto:insurance@cpo.on.ca)), fax (416-961-2635), or by writing to the College. Please provide your response by Friday, September 10, 2010 to ensure it is included in the information provided to Council when this matter is considered for final approval.

An annotated version of *By-Law 22: Professional Liability Insurance* is reproduced below with ~~deletions struck out in red~~ and insertions underlined in blue.

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## BY-LAW 22: PROFESSIONAL LIABILITY INSURANCE

[Approved by Council December 1999; amended March 2001, September 2007]

Proposed Bylaw Amendments	Annotation
<p><b><u>NOTE: Effective June 1, 2011 By-law 22: Professional Liability Insurance approved September 2007 is revoked and the following substituted:</u></b></p> <p>This by-law is made under the authority of the Regulated Health Professions Act, 1991 as amended and the Psychology Act, 1991 as amended.</p> <p>22.1 Subject to section <u>56</u>, each member of the College registered with a certificate of registration authorizing autonomous practice, interim autonomous practice or supervised practice shall <u>be personally insured against professional liability under a hold, or otherwise be covered by,</u> professional liability insurance <u>policy or belong to a specific association that provides members with personal protection against professional liability of not less than \$1,000,000.</u></p> <p><u>22.2 The amount of insurance coverage shall be no less than \$2,000,000.</u></p> <p><u>22.3 The insurance shall have no deductible.</u></p> <p><u>22.34 On or before June 1 of each year, every member described in section 1 shall confirm to the College, <u>in writing,</u> normally through the <u>Annual Update</u></u></p>	By-law effective June 1, 2011
	Requirement for personal coverage or through specific association as will be required by RHPA. Insurance minimum moved to separate section.
	Minimum increased.
	No changed except for renumbering.
	New wording regarding

<p><u>Form</u>annual renewal process:</p> <p>(a) that the member has valid existing <u>professional</u> liability insurance in place <u>that personally insures the member</u>; and</p> <p>(b) the name of the insurer providing the liability insurance.</p> <p><u>22.45</u> Each member upon being registered for the first time or whose certificate of registration has been reinstated shall, within 30 days <u>or of registration or reinstatement</u>, confirm to the College, <u>in writing</u>: <u>in a manner required by the College</u>:</p> <p>(a) <u>that the member has valid existing</u> professional liability insurance in place <u>that personally insures the member</u>; and</p> <p>(b) the name of the insurer providing the liability insurance.</p> <p><u>22.56</u> Exemptions from the requirement under section 1 apply only to:</p> <p>(1) Any member who resides outside of Ontario and who provides no psychological services within Ontario at any time during the registration year, nor supervises anyone in the provision of psychological services in Ontario.</p> <p>(2) Any member who holds academic status and who provides no psychological services within Ontario at any time during the registration year, nor supervises anyone in the provision of psychological services in Ontario.</p> <p>(3) Any member who holds retired status and who provides no psychological services within Ontario at any time during the registration year, nor supervises anyone in the provision of psychological services in Ontario.</p> <p>(4) Any member who attests that:</p> <p>(a) the member has provided no direct services to individuals or families, nor conducted psychological research with individuals or families within Ontario during the preceding registration year; and,</p> <p>(b) the member has provided no supervision to anyone in the provision of such services nor the conduct of such research in Ontario during the preceding registration year; and,</p> <p>(c) the member will not be providing such services, conducting such research nor providing such supervision in the current registration year.</p> <p><u>22.67</u> If required to do so by the Registrar, a member must provide proof of insurance coverage within 30 days. <u>A signed attestation from the member's employer or the employer's insurer indicating coverage that meets the College's minimum insurance requirements will be accepted as proof the member has met his/her insurance obligation.</u></p>	confirmation and (a) changed to reflect requirement noted in 22.1 as will be required by RHPA.  New wording regarding confirmation and (a) changed to reflect requirement noted in 22.1 as will be required by RHPA.  No changed except for renumbering.  Wording deleted as employer coverage will not be acceptable as per RHPA changes.
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## Professional Liability Insurance: A Clarification **Must I Now Have “Personal” Coverage?**

In early June, the College distributed an [RHPA Update](#) to members regarding changes to *The Regulated Health Professions Act, 1991 (RHPA)*. These included a notation that one of the provisions which was not yet proclaimed (page 3) was a statutory change with respect to the coverage requirements for professional liability insurance. This change, when proclaimed, would require each member to be personally insured, against professional liability.

Following the distribution this update, the College and the liability insurer received numerous calls from members asking if they are now required to purchase personal liability coverage, rather than relying on the insurance provided by their employer. **To clarify, at this time, the section of the Act related to professional liability insurance has not been proclaimed.** Therefore, members may continue to rely upon insurance provided by their employer so long as this insurance meets the minimum requirements of the College as outlined in By-law 22: Professional Liability Insurance.

The text of the pending amendment to the *Regulated Health Professions Act, 1991\** regarding Professional Liability Insurance states:

*Note: On a day to be named by proclamation of the Lieutenant Governor, Schedule 2 is amended by adding the following section:*

**Professional liability insurance**

**13.1 (1) No member of a College in Ontario shall engage in the practice of the health profession unless he or she is personally insured against professional liability under a professional liability insurance policy or belongs to a specified association that provides the member with personal protection against professional liability.** 2009, c. 26, s. 24 (13).

**Insurance requirements**

**(2) A member mentioned in subsection (1) shall comply with the requirements respecting professional liability insurance or protection against professional liability specified by the College and prescribed in the regulations made under the health profession Act governing the member’s health profession or set out in the by-laws.** 2009, c. 26, s. 24 (13).

**Professional misconduct**

**(3) In addition to the grounds set out in subsection 51 (1), a panel of the Discipline Committee shall find that a member has committed an act of professional misconduct if the member fails to comply with subsection (1) or (2).** 2009, c. 26, s. 24 (13).

\* *The Regulated Health Professions Statute Law Amendment Act, 2009, c. 26, ss. 24 (13), 27 (2).*

# Discipline Proceedings

*The Discipline Committee of the College holds hearings into allegations of professional misconduct and/or incompetence. A summary of disciplinary proceedings is provided for the information of the public, members of the College and other professionals. This information is on the Register of the College and available in the [Members Search](#) section of the College website or may be obtained by contacting The College of Psychologists of Ontario.*

## **Paul Johnston, Ph.D., C.Psych.**

A hearing of the Discipline Committee was held on April 21, 2009 into allegations of professional misconduct against Dr. Johnston.

### **Established Facts:**

In an Agreed Statement of Facts, Dr. Johnston acknowledged that:

- He provided psychological services to Ms. X in relation to problems of depression, alcohol abuse, the decomposition of her marriage and recurrent suicidal ideation. In describing her mental health issues to Dr. Johnston Ms. X also indicated that she had suffered sexual abuse by her step father and that there were then current legal proceedings in respect of that abuse
- Prior to the passage of two years from the date of his last provision of psychological services, he engaged with Ms. X in social interaction and the discussion about the possibility of commencing a sexual relationship as soon as two years had passed after the cessation of professional services to her, when he should have reasonably believed that she was susceptible to his influence as her former psychologist
- Shortly after the passage of two years from the last provision of psychological services, he commenced a sexual relationship with Ms. X

### **Decision:**

The panel accepted Dr. Johnston's plea of guilty to the allegations made against him in an Amended Notice of Hearing and found that he had committed professional misconduct.

The Panel accepted a Joint Submission on Penalty and Ordered that the following terms, limitations and conditions be placed on Dr. Johnston's Certificate of Registration:

- Dr. Johnston shall continue to attend therapy with a specified therapist, at his own expense, with quarterly reports to the Registrar, with the therapist informing the Registrar if she has any concerns about the safety of Dr. Johnston's patients
- The quarterly reports to the Registrar must demonstrate the regular attendance of Dr. Johnston for therapy, failing which he will be deemed to be in breach of the order, which shall be deemed to be professional misconduct
- Dr. Johnston will attend an objective assessment on or before December 1, 2010, or at such earlier time, by a therapist selected by the College, with costs of the assessment shared equally between the College and Dr. Johnston
- The condition on Dr. Johnston's certificate will be terminated if, in the opinion of the assessor, it is no longer required

**Panel's Reasons:**

- No concerns had been raised about Dr. Johnston's clinical work and consequently, the professional misconduct should be understood as an isolated event
- The relatively remote community in which Dr. Johnston offered services would not be well served by having access to scarce services further curtailed through suspension of Dr. Johnston's license
- Dr. Johnston readily accepted that he had performed an act of Professional Misconduct, cooperated fully with the investigation and proactively sought assistance through his regular participation in counseling sessions at his own cost
- The penalty effectively achieves three important goals: protecting the interest of the public; sending a general message to the profession with respect to the standards of practice; and providing a specific deterrent to Dr. Johnston that was fashioned by the College- appointed assessor based on his individual assessment of Dr. Johnston's needs

The terms, conditions and limitations which were imposed upon Dr. Johnston's Certificate of Registration as a result of the hearing on April 21, 2009 were removed after the assessor provided an opinion that they were no longer required.

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**Antoinetta Mantini-Atkinson, Ph.D., C.Psych.**

A hearing was held January 11, 2010 into allegations of Professional Misconduct referred by The Executive Committee of the College.

**Established Facts:**

The following is a summary of the conduct which was described in a Statement of Agreed Facts:

- Dr. Mantini-Atkinson admitted that she violated a previous order of the Discipline Committee by working while under a suspension in that matter;
- By violating that order, she failed to comply with the regulatory authority of the College; and
- In doing so, engaged in conduct or performed an act, in the course of practicing the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional

**Decision:**

Based upon the Statement of Agreed and Uncontested Facts, a panel of the Discipline Committee found that Dr. Mantini-Atkinson had committed professional misconduct.

**Penalty:**

The panel ordered:

- A suspension of Dr. Mantini-Atkinson's certificate of autonomous practice as a psychologist for six months beginning on March 01, 2010, during which she is not to provide any psychological services
- An oral reprimand

**Panel's Reasons:**

- The misconduct was deliberate and substantial;

- The suspension order which had been violated resulted from the third finding of professional misconduct against Dr. Mantini-Atkinson in less than five years;
  - In 2005, she had breached specifically imposed restrictions on her license which had been imposed in 2002 by an earlier panel of the Discipline Committee;
  - The present misconduct of Dr. Mantini-Atkinson is a repetition of the same kind of earlier misconduct- disobeying an order of a panel of the Discipline Committee; and
  - Dr. Mantini-Atkinson's deliberate flouting of the previous three month suspension imposed by her professional regulator is a serious matter and the seriousness of her misconduct must be brought home to her and to other members of the profession
- 

### **Harry Potaznik, Ed.D., C.Psych.**

A hearing was held on October 14 and 15, 2009 into allegations against arising from two complaints.

#### **Established Facts:**

The following is a summary of the conduct described in an Agreed Statement of Facts:

- Dr. Potazsnik offered and, in one case, provided back dated receipts for therapy sessions which did not take place, so that the client could claim payment of these services through the unused portion of his insurance coverage for the previous year;
- Dr. Potazsnik accepted responsibility for offering and providing false receipts and apologized;
- Dr. Potazsnik billed one client's insurer for sessions which did not take place. Dr. Potazsnik returned these funds to the insurer shortly before the Pre Hearing conference.

The panel heard evidence with respect to conduct which Dr. Potazsnik did not admit. The panel found Dr. Potazsnik guilty of abuse by attempting to pressure one of the complainants to become a private patient and to return the false receipts by threatening to inform his employer that he was using illegal drugs if he did not agree to become a private patient.

The found Dr. Potazsnik NOT guilty of allegations that he left messages on that client's answering machine demanding payment for sessions, attempted to pressure that client to obtain money from his father to satisfy the cost of the sessions, and spoke in a derogatory and insulting tone towards him.

#### **Decision:**

The Panel found Dr. Potazsnik guilty of the following counts of professional misconduct:

- Failing to meet the standards of the profession;
- Engaging in conduct, or performing an act, in the course of practicing the profession that, having regard to all of the circumstances would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and
- Abusing a client

#### **Penalty:**

At a penalty hearing on December 15, 2009, the panel accepted the following joint submission on penalty:

- A reprimand
- A \$1000 fine

- A two month suspension, to begin on December 15, 2009
- The imposition of a term, limitation or condition on Dr. Potazsnik's certificate of registration requiring him to undergo 12 months of mentorship at his expense, to begin at some time between February 1 and February 15, 2009. The terms of the mentorship include:
  - meeting for at least two hours every two weeks
  - a focus on boundary and billing issues
  - quarterly reports from the mentor to the Registrar of the College, who may investigate any issue or concern identified by the mentor

**Reasons:**

- Dr. Potazsnik acknowledged that he back-dated receipts and encouraged a client to submit them to his insurance company; although the amount was small, it is nonetheless insurance fraud and is particularly serious since Dr. Potazsnik involved a vulnerable client, putting him at risk of getting caught committing such fraud and did not consider this possibility
- Dr. Potazsnik also minimized his actions and this was an important context in which to consider the disputed evidence
- The panel found many significant internal inconsistencies, implausible statements and improbabilities in Dr. Potazsnik's testimony; although there were also inconsistencies in the testimony of the client who was examined at the hearing, they were not nearly as significant or as troubling as those that were manifest in Dr. Potazsnik's testimony
- Applying the balance of probabilities test, the panel preferred the client's testimony and found it to be clear, cogent and convincing
- In particular, it found the client to be reliable and truthful when he testified that Dr. Potazsnik left threatening messages
- The panel believed that more likely than not, Dr. Potazsnik would have been worried and panicked about the fact that the client had false receipts in his possession and was not returning to therapy and that it is more likely than not that in this state of panic, Dr. Potazsnik made the threatening phone calls to the client
- The panel opined that it is implausible that Dr. Potazsnik's intentions were entirely altruistic and that he surely knew what he did was wrong by submitting claims for sessions after he knew client would not return
- When considering Dr. Potazsnik's credibility, the panel considered that Dr. Potazsnik admitted to lying previously, i.e. submitting false receipts, attempting to have a client submit false receipts and submitting false records to the EAP provider, enticing a vulnerable client to commit insurance fraud with no acknowledgement that this put the man at risk and minimizing his own admitted dishonesty by characterizing it as a mere error in judgment
- The panel accepted a joint submission on penalty and emphasized that although the amount of the fine was greater than the amount of the fraud in this case, it appropriately underscores the seriousness of the offense but is not unduly harsh. It also believes that the rehabilitative focus of the mentorship will serve the public interest.