

**Canadian Athletic Therapists Association  
Code of Conduct – Procedures**

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## **Canadian Athletic Therapists Association Code of Conduct – Procedures**

### **Introduction**

1. This document sets out the procedures to be followed by the Association where there is a complaint or concern about the conduct of an Athletic Therapist.
2. This document is a guideline only. The failure of the Association or any of its representatives to comply with a requirement set out in the document does not affect the validity of the process or a decision that is made.
3. This document is subject to the by-laws of the Association. To the extent that there is any discrepancy between this document and the by-laws, the by-laws shall take precedence.

### **Interpretation**

4. In this document,
  - a. "Association" means the Canadian Athletic Therapists Association;
  - b. "Committee" includes, where appropriate, a panel of the Committee; and
  - c. "Member" means a person admitted into membership in the Association and can include, if the context so indicates, a suspended or former Member.

### **Mandate**

5. This document applies to a complaint or concern that a Member of the Association has breached the Code of Conduct of the Association.
6. If a complaint or concern arises about a Member who has, to the knowledge of the Association, a primary place of practice in a jurisdiction where there is a Regional Chapter, the Association shall refer the complaint or concern to the Regional Chapter for handling.
7. If a complaint or concern arises about a Member who has, to the knowledge of the Association, no primary place of practice in a jurisdiction where there is a Regional Chapter or where the Regional Chapter does not confirm in writing within thirty days that it will handle the complaint or concern, the Association shall handle the matter in accordance with this document.

8. The Association has jurisdiction over the conduct of a Member during the time he or she was a Member and during any period of suspension of membership.
9. The jurisdiction over a Member continues even though the person is no longer a Member or the person's membership is suspended.
10. No Member may resign or otherwise voluntarily terminate his or her membership in the Association once the Ethics Committee receives a complaint or initiates an investigation of a concern until the matter is finally disposed of.
11. The Ethics Committee may provide clarification to Member about the interpretation of the Code of Conduct if requested to do so. Any such request shall be in writing and shall specify all material facts. The advice is not binding on the Ethics Committee if any material fact was omitted or inaccurately stated in the request.

### **Chairperson and Committees**

#### *Chairperson*

12. The Chairperson of the Ethics Committee shall be elected by the voting membership for a three year term. The position of the Chairperson can be filled by more than one person each of whom will be known as a Co-Chairperson.
13. If the Chairperson is not elected or if for any other reason there is a vacancy in the office, the Board of Directors of the Association shall appoint a Member of the Ethics Committee to act as the Chairperson until the upcoming May 31.
14. The Chairperson shall not serve in any other office or on any other committee of the Association during his or her term of office.
15. If the Chairperson has an appearance of bias or a conflict of interest or is otherwise unable to perform his or her functions in a particular matter, he or she shall appoint another member of the Ethics Committee or, failing that the other members of the Ethics Committee shall select one of their number, to act as Chairperson for that matter.
16. The Chairperson shall not select himself or herself to sit on a Subcommittee or Committee handling a complaint or concern.

### *Ethics Committee*

17. In addition to the Chairperson, the Ethics Committee shall consist of fifteen Certified Members who have maintained their status.
18. Each member of the Ethics Committee shall be elected for a three-year term, with the terms being staggered so that five members are elected to full terms each year.
19. The vacant positions in the composition of the Ethics Committee shall be filled by an election by the voting membership.
20. The Chairperson may nominate persons to fill the vacant positions. With ratification from the Board of Directors.
21. At the request of the Chairperson, if a vacancy is not filled or if for any other reason there is a vacancy in the office, the Board of Directors shall appoint a Certified Member who has maintained their status to be a member of the Ethics Committee until the next Ethics Committee election for the election of a person to complete the remainder of the term, if there is one.

### *Subcommittees and Panels*

22. The Chairperson shall designate nine members of the Ethics Committee as members of the Investigative Subcommittee and the Chairperson shall designate six members as members of the Judicial Subcommittee.
23. Each Subcommittee shall sit in panels of three members selected by the Chairperson.
24. The Chairperson shall select one of the panel members to act as its chair.
25. Two persons of a panel constitute quorum.
26. If there is a vacancy in a panel of a Subcommittee, the Chairperson may select another member to fill the vacancy except, if a hearing has started before a panel of the Judicial Subcommittee, the vacancy shall not be filled.
27. If a panel of a Subcommittee loses quorum, the Chairperson shall select a new panel and a member of the previous panel can serve on the new panel.
28. If a Subcommittee does not have sufficient members who are able and willing to serve on a panel, the Chairperson may select a member of the other Subcommittee to serve on that panel so long as he or she has had no prior involvement in the matter.

### *Appeals Committee*

29. If an appeal is commenced, the Chairperson shall appoint an Appeals Committee from among the Certified Members of the Association in good standing to hear the appeal.
30. While current members of the Board of Directors or the Ethics Committee are not eligible for selection, the Chairperson may select former Chairpersons and former members of the Board of Directors or the Ethics Committee to serve on the Appeals Committee.
31. The Appeals Committee shall consist of three members.
32. The Chairperson shall select one of the members of the Committee to act as its chair.
33. Two members of the Appeals Committee constitute quorum.
34. If there is a vacancy in the Appeals Committee, the Chairperson may select another person to fill the vacancy except, if the hearing of the appeal has started, the vacancy shall not be filled.
35. If the Appeals Committee loses quorum, the Chairperson shall select a new Appeals Committee and a member of the previous Appeals Committee can serve on the new Appeals Committee.

### *Removal and Expiry of Term*

36. The Board of Directors of the Association may remove the Chairperson from his or her office if he or she does not fulfill his or her duties with competence, diligence or integrity.
37. The Chairperson, with the approval of the Board of Directors, may remove a member of a Committee from the Committee if he or she does not fulfill his or her duties with competence, diligence or integrity.
38. If the term of a member of a Committee ends for any reason other than removal for lack of competence, diligence or integrity and the member is dealing with a matter, the member shall be deemed to remain a member of the Committee for the purpose of completing that matter. However, the member shall not be deemed to remain a member of the Committee for any new matters.

### *Appearance of Bias*

39. The Chairperson and the members of a Committee shall not participate in a matter in which he or she had prior involvement.
40. The Chairperson and the members of a Committee shall not participate in a matter in which he or she has an appearance of bias or a conflict of interest unless the parties receive full disclosure of the material facts and waive the appearance of bias or a conflict of interest.
41. Where the Chairperson or a member of a Committee has doubts as to whether he or she has an appearance of bias or a conflict of interest, he or she shall declare the material facts to the parties and receive submissions on the matter.
42. Where a Committee concludes that the Chairperson has an appearance of bias or a conflict of interest and the Chairperson has not disqualified himself or herself from the matter, the Committee may disqualify the Chairperson from acting in the matter and shall select another member of the Ethics Committee to act as Chairperson for that matter.
43. Where a Committee concludes that a member of the Committee has an appearance of bias or a conflict of interest and the member has not disqualified himself or herself from the matter, the Committee may disqualify the Chairperson from acting in the matter.

### *Legal Counsel*

44. The Chairperson and the Investigative Subcommittee may retain legal counsel.
45. The Judicial Subcommittee and the Appeals Committee may retain legal counsel who is not legal counsel to the Chairperson or the Investigative Subcommittee.

## **Investigations**

### *Filing of a Complaint or Concern*

46. A complaint shall be in writing, shall identify the person making the complaint, shall identify the Member and shall identify the conduct in issue.
47. A concern is a written summary prepared or approved by the Chairperson based on information received by him or her that identifies the Member and the conduct in issue.

48. The Chairperson shall select a panel of the Investigative Subcommittee to investigate any complaint or concern filed with him or her.
49. The preparation, approval or filing of a concern by the Chairperson does not constitute an appearance of bias or a conflict of interest.

*Investigation*

50. The Chairperson shall notify the Member in writing within a reasonable time of the following:
  - a. the complaint or concern,
  - b. the Member's right to make submissions in writing to the Investigative Subcommittee about the complaint or concern within thirty days of the sending of the notice,
  - c. the availability of this document, and
  - d. the Member's right to retain legal counsel.
51. The Investigative Subcommittee may decline to investigate a complaint or concern if it concludes that the complaint or concern is frivolous or vexatious or otherwise an abuse of process. The Investigative Subcommittee shall issue a written decision and reasons to the Member and the complainant or the Chairperson if it reaches such a conclusion.
52. Otherwise, the Investigative Subcommittee shall investigate the complaint or concern in a manner that it deems appropriate. The investigation may include the following:
  - a. reviewing the information about the matter held by the Chairperson,
  - b. arranging for the interviewing of the complainant, originator of a concern, the Member or any witness,
  - c. gathering relevant documents,
  - d. permitting either the complainant or the initiator of a concern or the Member to respond to information received by the Investigative Subcommittee,
  - e. retaining a private investigator,
  - f. retaining experts, and
  - g. such other inquiries as may seem appropriate.

### *Disposition*

53. After considering the information gathered in its investigation and considering any written submissions by the Member, the Investigative Subcommittee may do one or more of the following:
  - a. take no action on the complaint or concern,
  - b. refer specified allegations to the Judicial Subcommittee for a hearing;
  - c. provide a written caution or advice to the Member,
  - d. require the Member to attend before the Investigative Subcommittee for a verbal caution or advice, and
  - e. such other action appropriate to the matter that is not inconsistent with this document and the by-laws of the Association.
54. In determining whether a complaint or concern should be referred to the Judicial Subcommittee, the Investigative Subcommittee shall consider the following:
  - a. whether the alleged conduct is serious enough to warrant such a referral, and
  - b. whether there is a reasonable prospect of proving the alleged conduct at a hearing.
55. The Investigative Subcommittee shall issue a decision in writing and, except for a decision to refer specified allegations to a hearing, written reasons for its decision.
56. The decision and any reasons shall be sent to the Member, any complainant and the Chairperson.
57. Decisions of the Investigative Subcommittee shall be by majority vote. If there is a tie vote, the vote most favourable to the Member shall be implemented.

### **Hearing**

#### *Preliminary Steps*

58. If the Investigative Subcommittee refers specified allegations to a hearing, the Chairperson shall select a panel of the Judicial Subcommittee to hear the matter.

59. The Member and the Investigative Subcommittee are the parties to the hearing.
60. The Chairperson shall notify the parties of the composition of the panel of the Judicial Subcommittee. Either party shall raise any objections, including full particulars of any grounds, to the composition of the panel within fifteen days of the sending of the notice. Any objections shall be in writing and served on the other party and filed with the Chairperson. The Chairperson shall consider any objections and any written response to them and may change the members of the panel.
61. The Investigative Subcommittee shall promptly make disclosure to the Member of all of the relevant evidence in its possession that is not protected by a legal privilege.
62. Both parties shall deliver a report from any expert witness who will be called and any documents that will be filed at the hearing to the other party at least thirty days before the start of the hearing.

#### *Pre-hearing Conference*

63. The parties may agree to participate in a pre-hearing conference and shall participate in a pre-hearing conference if directed to do so by the Chairperson.
64. The Chairperson shall select a presiding officer to facilitate the pre-hearing conference if requested to do so by the parties or if it appears expedient to the Chairperson to do so. The presiding officer may be a member of the Ethics Committee who has not been involved in the matter or any other person.
65. The pre-hearing conference shall be conducted on a without prejudice basis and no information revealed at the pre-hearing conference (other than agreements reached by the parties) shall be disclosed to the Judicial Subcommittee or the Appeals Committee.

#### *Form and Notice of Hearing*

66. If a hearing date is not agreed to at any pre-hearing conference, the Chairperson shall fix a hearing date. Where feasible, the Chairperson shall consult with the parties and the members of the Judicial Subcommittee when fixing the hearing date.
67. A hearing may be held in person, electronically or in writing, or a combination of them.

68. If the form of the hearing is not agreed to at any pre-hearing conference, the Chairperson shall fix the form of the hearing. Where feasible, the Chairperson shall consult with the parties and the members of the Judicial Subcommittee when fixing the form of the hearing.
69. Either party shall raise any objections, including full particulars of any grounds, to the date or form of the hearing within fifteen days of being notified of them. Any objections shall be in writing and served on the other party and filed with the Chairperson. The Chairperson shall consider any objections and any written response to them and may change the date or form of the hearing.
70. Once the date and form of the hearing have been set, the Investigative Subcommittee shall deliver to the Member and the Judicial Subcommittee a written notice of hearing setting out the time, place, form and purpose of the hearing and a statement that if a party does not participate the hearing may proceed without them.
71. Hearings are open to the public, including access to documents filed at the hearing, unless the Judicial Subcommittee decides that safety, privacy or similar concerns outweigh the principle of public hearings. Rather than restrict access entirely, the Judicial Subcommittee may decide to limit access to only part of the hearing or documents.
72. The Chairperson may cause public notice to be given (for example, on the Association's website) of an upcoming hearing.

#### *Conducting the Hearing*

73. The parties are entitled to file relevant and reliable documents and make written submissions at the hearing. If the hearing is not just a written hearing, the parties may also call and examine witnesses and may, if permitted to do so by the Judicial Subcommittee, make oral submissions.
74. The procedure at the hearing shall be informal. The Judicial Subcommittee shall direct the parties in the conduct of the hearing in any manner that permits the parties to fairly present its case.
75. The Judicial Subcommittee may admit any evidence that it finds to be relevant and reliable even if the evidence might not be admissible in a court of law except that evidence that is protected by a legal privilege is not admissible.
76. The Judicial Subcommittee shall record any oral evidence given at the hearing.

*Decisions*

77. The Judicial Subcommittee shall first determine the following:
  - a. whether the factual allegations are admitted or have been proved on a balance of probabilities based on clear, cogent and convincing evidence consistent with the seriousness of the matter and
  - b. whether the facts admitted or proved constitute a breach of the Code of Conduct.
78. If the Judicial Subcommittee determines that there has been a breach of the Code of Conduct, it shall then hear any evidence or submissions on penalty and determine the appropriate penalty.
79. The Judicial Subcommittee may order one or more of the following penalties:
  - a. cancellation of membership in the Association,
  - b. non-renewal of membership in the Association,
  - c. suspension of membership in the Association,
  - d. payment to Association of a fine of not more than \$25,000,
  - e. terms and conditions under which the Member may continue as a Member of the Association,
  - f. deferral of the commencement of some or all of the penalties on specified terms and conditions, and
  - g. payment to the Association of a reasonable amount to reimburse the Association for the costs incurred by it in the investigation and prosecution of the matter in question.
80. In considering the appropriate penalty, the Judicial Subcommittee shall give due consideration to any early admission in writing before the Investigative Subcommittee of the allegations by the Member.
81. Decisions of the Judicial Subcommittee shall be by majority vote. If there is a tie vote on an allegation, it shall be deemed not to have been proved. If there is a tie vote on the penalty, the penalty most favourable to the Member shall be imposed.
82. The Judicial Subcommittee shall deliver a written decision and reasons to the parties and the Chairperson.

## Appeals

### *Initiation*

83. Either party may appeal a decision of the Judicial Subcommittee by delivering a written notice of appeal to the other party and filing a copy with the Chairperson within thirty days of the issuing of the written decision and reasons by the Judicial Subcommittee.
84. The notice of appeal shall set out the grounds of the appeal and the order sought from the Appeals Committee.
85. The Chairperson shall select an Appeals Committee promptly after the filing of the notice of appeal.

### *Materials for the Appeal*

86. Within ten days of filing the notice of appeal, the appealing party shall order the transcript including filing a deposit with the Judicial Subcommittee's transcription service.
87. The appealing party shall not delay or cancel the order of the transcript and shall pay for it as soon as it is ready.
88. Within ten days of the transcript being ready, the appealing party shall deliver a copy of the transcript and the exhibits and other record from the hearing to the responding party and shall file four copies of them with the Appeals Committee.
89. No party shall file with the Appeals Committee evidence that was not before the Judicial Subcommittee without the prior written permissions of the Appeals Committee.
90. The Appeals Committee shall not permit additional or fresh evidence to be filed unless the additional or fresh evidence:
  - a. is apparently credible,
  - b. if admitted it would probably have an important influence on the result, and
  - c. it could not have been obtained by reasonable diligence at the time of the hearing before the Judicial Subcommittee.
91. Within thirty days of the transcripts, exhibits and other record being filed, the appealing party shall deliver written submissions to the other party and shall file four copies with the Appeals Committee and one copy with the Chairperson.

92. Within thirty days of the appealing party filing its written submissions, the responding party shall deliver written submissions to the other party and shall file four copies with the Appeals Committee and one copy with the Chairperson.

#### *Date and Form of the Appeal*

93. After the responding party has filed its written submissions, or at such other time as seems appropriate, the Chairperson shall fix an appeal date. Where feasible, the Chairperson shall consult with the parties and the members of the Appeals Committee when fixing the appeal date.
94. An appeal may be held in person, electronically (e.g. to include web casting or satellite broadcasting) or in writing, or a combination of them.
95. If the form of the appeal is not agreed to, the Chairperson shall fix the form of the appeal. Where feasible, the Chairperson shall consult with the parties and the members of the Appeals Committee when fixing the form of the appeal.
96. Either party shall raise any objections, including full particulars of any grounds, to the date or form of the appeal within fifteen days of being notified of them. Any objections shall be in writing and served on the other party and filed with the Chairperson. The Chairperson shall consider any objections and any written response to them and may change the date or form of the appeal.
97. Once the date and form of the appeal have been set, the Judicial Subcommittee shall deliver to the Member and the Appeals Committee a written notice of hearing of appeal setting out the time, place, form and purpose of the appeal and a statement that if a party does not participate the appeal may proceed without them.
98. Appeals are open to the public, including access to documents filed on the appeal, unless the Appeals Committee decides that safety, privacy or similar concerns outweigh the principle of public appeals. Rather than restrict access entirely, the Appeals Committee may decide to limit access to only part of the appeal or documents.
99. The Chairperson may cause public notice to be given (for example, on the Association's website) of an upcoming appeal.

#### *Powers of the Appeals Committee*

100. The Appeals Committee shall only grant an appeal if the Judicial Subcommittee made an error of law or procedure that made the hearing

substantially unfair or if the Judicial Subcommittee made an unreasonable decision.

101. If the Appeals Committee decides that a ground of appeal should succeed, the Appeals Committee can vary or reverse the decision of the Judicial Subcommittee, and the Appeals Committee has all of the powers of the Judicial Subcommittee.
102. The Appeals Committee may order a party to pay a reasonable amount to reimburse the other party for the costs incurred by the successful party in the appeal.

#### *Decision and Reasons*

103. Decisions of the Appeals Committee shall be by majority vote. If there is a tie vote on a ground of appeal, it shall be deemed not to have been established. If there is a tie vote on varying or reversing the decision of the Judicial Subcommittee, the one that is most favourable to the Member shall be imposed.
104. The Appeals Committee shall deliver a written decision and reasons to the parties and the Chairperson.
105. The decision of the Appeals Committee is final and no party shall appeal, challenge or seek a further review of it.

#### **Enforcement**

106. The Board of Directors shall implement a final decision of the Judicial Subcommittee or the Appeals Committee.
107. If a Member's membership is suspended, the Board of Directors shall notify the Member that he or she is not eligible for the following:
  - a. to hold office at any level of the Association,
  - b. to serve as a member of a committee,
  - c. to serve as a certification examiner,
  - d. to represent the Association in any capacity. This applies especially to selection for National or International teams,
  - e. to attempt the certification examination, and
  - f. to count practical hours toward certification.

108. The Association shall publish a copy or a summary of the final decision of the Judicial Subcommittee or the Appeals Committee in the Association's newsletter and on the Association's website. If a finding was made against the Member, the Member shall be identified in the publication.

### **Confidentiality**

109. The Association shall preserve confidentiality of all information obtained in the course of handling a complaint or concern unless:
- a. disclosure is desirable for the purpose of handling the matter;
  - b. disclosure is permitted by this document;
  - c. disclosure is desirable to protect the health or safety of a person or a group of persons; or
  - d. disclosure is permitted or required by law.
110. The Chairperson and the members of the Ethics Committee and the Appeals Committee shall return all of their files to the head office of the Association when they have completed their term of office or, in the case of the Appeals Committee, appeal and shall securely destroy all copies, including electronic copies, of the files.
111. The staff of the Association shall maintain these files in a confidential manner and may securely destroy the files after fifteen years.

### **Amendment of This Document**

112. The Board of Directors shall approve of any changes to the Code of Ethics, the Code of Conduct and this document after receiving any comments of the Ethics Committee. Changes will be presented to the general membership through the Association's newsletter or its website or both and shall be reported to the Annual General Meeting.