**Proposed Amendments to By-Law 16 of the College of Kinesiologists of Ontario**

The following are proposed amendments to By-Law 16 of the College of Kinesiologists of Ontario.

**Background**

The provincial government has called for improved openness and transparency in licensing and professional regulation and has directed Ontario health regulators to implement strategies to improve the way they protect the public. The Ontario Ministry of Health has introduced new requirements for health regulatory college governance through the College Performance Measurement Framework (CPMF). The CPMF requires that:

1. All decisions related to a Council’s strategic objectives, regulatory processes, and activities are impartial, evidence-informed, and advance the public interest;
2. The Council has a Code of Conduct and Conflict of Interest Policy, accessible to the public, that are periodically evaluated and/or updated;
3. The College defines cooling off periods and enforces through by-law/policy;
4. The College has a conflict of interest questionnaire that all Council members must complete annually, which is periodically evaluated and/or updated. Additionally:
5. the completed questionnaires are appended to each Council meeting package;
6. questionnaires include definitions of conflict of interest;
7. questionnaires include questions based on areas of risk for conflict of interest identified by Council that are specific to the profession and/or College; and
8. at the beginning of each Council meeting, members must declare any updates to their responses and any conflict of interest specific to the meeting agenda.
9. Member(s) update their questionnaire for each Council meeting based on agenda items; and
10. Meeting materials for Council enable the public to clearly identify the public interest rationale and the evidence supporting a decision related to the College’s strategic direction or regulatory processes and actions (e.g., the minutes include a link to a publicly available briefing note).

To that end the College has committed to updating By-Law 16, which pertains to conflict of interest, and has developed a new Council and Committee Member and Volunteer Conflict of Interest Policy. On September 27, 2021, Council approved the proposed By-law 16 amendments for 60-day external consultation. College staff reviewed all feedback received during the consultation, and Council was provided with final changes and information obtained during the consultation process for Council’s consideration at its December 6, 2021 meeting. Council approved proposed amendments in principle pending changes to subsection 16.02.

**Proposed Changes**

The proposed changes are contained in By-law 16; consequently, this is the by-law presented for consideration.

**Document Layout**

The document is structured in a table that sets out the current by-law provision, the proposed changes (additions are in red, deletions are struck out) and the rationale for the change.

**By-Law 16: Conflict of Interest**

|  |  |  |
| --- | --- | --- |
| **Current by-law provision** | **Proposed change** | **Rationale / Explanation** |
| **16.01 Duty to Avoid Conflicts of Interest**  All Council and committee members have a duty to carry out their responsibilities in a manner that serves and protects the interest of the public. As such, they must not engage in any activities or in decision-making concerning any matters where they have a direct or indirect personal or financial interest.  Because the circumstances of each case are unique, it is impossible to define in advance all forms of conflicts of interest. A “real” conflict of interest exists when a reasonable person, knowing all of the circumstances, would believe that the individual’s judgment would be influenced by the competing consideration. A potential conflict of interest is where a conflict of interest is not real at the time of the decision, but given the right set of circumstances, could manifest in the future. An apparent conflict of interest is where real conflict of interest is suspected, even though it does not exist. This impacts the image of the Council or the committee member, and undermines the confidence of the public in the decision, and even more so, the confidence of the public in the College’s ability to act in the public interest.  In the specific examples discussed below, Council will exercise appropriate discretion to ensure that all circumstances that would meet these tests of conflict of interest are addressed appropriately.  An individual has a conﬂict of interest where:   1. a reasonable person could conclude that the personal and/or financial interests of the individual or a related person could inﬂuence the individual’s judgment in performing his/her duties; 2. the individual is not directly involved with the matter and attempts to inﬂuence another individual or College staff who are involved with the matter; 3. there is an actual, potential or perceived use of College information for personal gain; 4. there is an actual, potential or perceived use of the member’s position on Council for personal gain, such as employment, appointment or money; 5. there is an appearance of bias (an appearance of bias being any personal interest or view that could be reasonably seen as precluding a Council member of exercising fair evaluation of all information and objective judgement and decision making); or 6. the member’s position (either present or previous) with another organization affects his/her decision-making abilities. | **16.01 Duty to Avoid Conflicts of Interest**  All Council and committee members have a duty to carry out their responsibilities in a manner that serves and protects the interest of the public. As such, they must not engage in any activities or in decision-making concerning any matters where they have a direct or indirect personal or financial interest.  Because the circumstances of each case are unique, it is impossible to define in advance all forms of conflicts of interest. A “real” conflict of interest exists when a reasonable person, knowing all of the circumstances, would believe that the individual’s judgment would be influenced by the competing consideration. A potential conflict of interest is where a conflict of interest is not real at the time of the decision, but given the right set of circumstances, could manifest in the future. An apparent conflict of interest is where real conflict of interest is suspected, even though it does not exist. This impacts the image of the Council or the committee member and undermines the confidence of the public in the decision, and even more so, the confidence of the public in the College’s ability to act in the public interest. The reference to “conflict of interest” refers to all manifestations of the conflict.  ~~In the specific examples discussed below, Council will exercise appropriate discretion to ensure that all circumstances that would meet these tests of conflict of interest are addressed appropriately.~~  A~~n~~ member has a conﬂict of interest where:   1. a reasonable person could conclude that the personal and/or financial interests of the member or a related person could inﬂuence the ~~individual’s~~ member’s judgment in performing their ~~his/her~~ duties; 2. the member ~~individual~~ is not directly involved with the matter and attempts to inﬂuence another individual or College staff who are involved with the matter; 3. there is an actual, potential or perceived use of College property and/or information for personal gain; 4. there is an actual, potential or perceived use of the member’s position on Council or committee for personal gain, such as employment, appointment or money; 5. there is an appearance of bias (an appearance of bias being any personal interest or view that could be reasonably seen as precluding a Council or committee member of exercising fair evaluation of all information and objective judgement and decision making); or 6. the member’s position (either present or previous) with another organization affects their ~~his/her~~ decision-making abilities.   For a non-exhaustive list of examples of conflict of interest, please refer to the College’s Council and Committee Member and Volunteer Conflict of Interest Policy. | Clarifies extent of application.  Use consistent terms - oscillation between “individual” and “member”.  iii. Expanded to include property for consistency with subsection 16.09 and Council and Committee Member and Volunteer Conflict of Interest Policy  Direct reader to non-exhaustive list of examples of conflicts in Council and Committee Member and Volunteer Conflict of Interest Policy for clarity and transparency. |
| **16.02 Recognition of Conflict**  Council and Committee members recognize that a conflict of interest or an appearance of a conflict of interest by a member of Council or its Committees:   1. could bring discredit to the College; 2. could amount to a breach of the fiduciary obligation of the person to the College; and 3. could create liability for either the College and /or the person involved. | No change. |  |
| **16.03 Conflicts Relating to Involvement with a Professional Association**  A member of Council or a committee member shall be perceived to have conflict of interest in a matter and should not serve on Council or its committees at all if he or she holds a responsible position, such as director, owner, board member, officer in or is an employee of any professional association relating to Kinesiology. | **16.03 Conflicts Relating to Involvement with a Professional Association / Certifying Body**  A member of Council or a committee member shall be perceived to have conflict of interest in a matter and should not serve on Council or its committees at all if ~~he or she~~ they hold~~s~~ a responsible position, ~~such as~~ including but not limited to being a director, owner, board member, officer in or ~~is~~ an employee of any professional association and/or certifying body relating to Kinesiology. | Expanded to include certifying body related to the profession to be consistent with By-Law 10 and 13. |
| **16.04 Conflicts Relating to Position in Other Organizations**  A member of Council or a committee member would be perceived to have conflict of interest in a matter and should refrain from participating in any discussion or voting if he or she holds a responsible position such as director, owner, board member, officer in or is an employee of another organization where his or her duties may be seen by a reasonable person as influencing his or her judgment in the matter under consideration by the Council or its committees. For example, an educator should not participate in any decisions relating to the status of the school where he/she teaches, its program(s) or the acceptability for registration of graduates from that school. | **16.04 Conflicts Relating to Position in Other Organizations**  A member of Council or a committee member would be perceived to have conflict of interest in a matter and should refrain from participating in any discussion or voting if ~~he or she~~ they hold~~s~~ a responsible position ~~such as~~ including but not limited to being a director, owner, board member, officer in or an employee of another organization/group where ~~his or her~~ their duties may be seen by a reasonable person as influencing ~~his or her~~ their judgment in the matter under consideration by the Council or its committees. For example, an educator should not participate in any decisions relating to the status of the school where ~~he/she~~ they teach~~es~~, its program(s) or the acceptability for registration of graduates from that school. In certain situations, the educator may determine that they should not participate in any deliberation or decision about any educational institutions. | Expanded to “organization/group” for consistency with proposed amendments to By-Laws 10 and 13. |
| **16.05 Declaration Forms**  Upon appointment or election, and annually thereafter if requested, every Council and Committee member and every member of a working group shall fully complete and deliver to the Registrar a form, available from the Registrar, declaring his or her current and recent affiliations with professional associations and other organizations to facilitate compliance with the above provisions. | **16.05 Declaration Forms**  Upon appointment or election, and annually thereafter ~~if requested~~, every Council and Committee member and every volunteer and member of a working group shall fully complete and deliver to the Registrar a form, available from the Registrar, declaring ~~his or her~~ their current and recent affiliations with professional associations and other organizations to facilitate compliance with the above provisions.  In advance of each Council or committee meeting, Council and committee members shall submit a Conflict of Interest Pre-meeting Declaration Form, to the designated staff person by the date identified by the Registrar. The Form will be disseminated with the meeting agenda to ensure members have taken the time to review the meeting materials and ensure that they do not have any conflict of interest with any agenda items.  The members’ completed Conflict of Interest Pre-meeting Declaration Forms will be included as an appendix in the Council meeting materials as required by the Ontario Ministry of Health’s College Performance Measurement Framework.  At the beginning of each Council and committee meeting, members must declare any updates to their responses and any conflict of interest specific to the meeting agenda. | Expanded to include “volunteer” for consistency with new Council and Committee Member and Volunteer Conflict of Interest Policy.  Added provisions to comply with Ontario Ministry of Health’s College Performance Measurement Framework requirements. |
| **16.06 Interests of Related Persons**  For the purposes of this by-law, the direct or indirect personal or financial interests of a parent, spouse, child or sibling of a Council or committee member are interpreted to be the interests of the Council or committee member. Here, the term “spouse” includes a common- law spouse and a same-sex partner of the person. | No change. | N/A |
| **16.07 Where a Conflict May Exist**  Where a Council or committee member believes that he or she may have a conflict of interest in any matter which is the subject of deliberation or action by the Council or its committees, he or she shall:   1. consult, as needed, with the President, the Registrar and legal counsel and, if there is any doubt about whether he or she may have or be perceived to have a conflict prior to any consideration of the matter, declare the potential conflict to the Council or the committee and accept Council’s or committee’s direction as to whether there is an appearance of a conflict; 2. where there appears to be a conflict of interest, not take part in the discussion of, or vote on, any question in respect of the matter; 3. where there appears to be a conflict of interest, absent himself or herself from the portion of any meeting relating to the matter; and 4. where there appears to be a conflict of interest, not attempt in any way to influence the voting or do anything that might be perceived as attempting to influence the decision of other members on the matter. | **16.07 Where a Conflict May Exist**  Where a Council or committee member believes that they ~~he or she~~ may have a conflict of interest in any matter which is the subject of deliberation or action by the Council or its committees, they ~~he or she~~ shall:   1. i. consult, as needed, with the President, the Registrar and legal counsel and, if there is any doubt about whether ~~he or she~~ they may have or be perceived to have a conflict prior to any consideration of the matter, disclose ~~declare~~ the potential conflict to the Council or the committee and ~~accept Council’s or committee’s direction as to whether there is an appearance of a conflict;~~ 2. ~~where there appears to be a conflict of interest, not take part in the discussion of, or vote on, any question in respect of the matter;~~ 3. ~~where there appears to be a conflict of interest, absent himself or herself from the portion of any meeting relating to the matter; and~~ 4. ~~where there appears to be a conflict of interest, not attempt in any way to influence the voting or do anything that might be perceived as attempting to influence the decision of other members on the matter~~.   ii. if it is determined that there is a conflict of interest, make a declaration of conflict; and  iii. where a declaration of conflict of interest has been made,   * 1. not take part in the discussion of, or vote on, any question in respect of the matter;   2. absent themselves from the portion of any meeting relating to the matter; and   3. not attempt in any way to influence the voting or do anything that might be perceived as attempting to influence the decision of other members on the matter.   Where a Council or committee member believes that another member may have a conflict of interest in any matter which is the subject of deliberation or action by the Council or its committees, they shall:  i. where possible, consult with the member and alert them that they may have a conflict prior to any consideration of the matter with respect to the conflict; and  ii. if this does not resolve the matter they shall consult with the Chair of the Committee or President of Council or the Registrar about the matter; and  iii. the Chair of the Committee or President of Council shall take such action as they deem appropriate, including but not necessarily limited to raising the matter before the full Council or Committee; and  iv. where a declaration of conflict of interest has been made the member shall,  a. not take part in the discussion of, or vote on, any question in respect of the matter;  b. absent themselves from the portion of any meeting relating to the matter; and  c. not attempt in any way to influence the voting or do anything that might be perceived as attempting to influence the decision of other members on the matter. | If there is uncertainty the member would disclose. If it is determined that they are in a conflict of interest the member would declare the conflict.  Added provision that sets out procedures to address situations when a Council or committee member believe that another member may have a conflict of interest. |
| **16.08 Conflicts Recorded in Minutes**  Every declaration of a conflict of interest shall be recorded in the minutes of the meeting together with a description of the nature of the conflict. | **16.08 Conflicts Recorded in Minutes**  Every declaration of a conflict of interest shall be recorded in the minutes of the meeting together with a general description of the nature of the conflict. |  |
| **16.09 Use of College Information or Property**  A member of Council or a committee member shall not use College property or information of any kind to advance his or her own interests, direct or indirect. | No change. | N/A |
| **16.10 Staff Positions**  A member of Council or a committee member may not hold any other position, contract or appointment with the College while serving as a member of Council or its committees. There is a one-year waiting period before the individual may apply for a staff or consultant position with the College. This includes, but is not limited to, positions as peer assessor, investigator, inspector, examiner or staff | No change. | N/A |