

## PROCEDURES FOR DEALING WITH COMPLAINTS OF PROFESSIONAL AND SEXUAL MISCONDUCT

### Complaint

1. A complaint is received at the CNPBC office either as a phone call, an email or in writing. The office staff is to respond in one of the following manners:
  - a. accept the complaint;
  - b. assist the complainant, if necessary, to write the complaint; or
  - c. write a report if the complainant is unwilling to write the complaint.The written complaint is then forwarded to the registrar ([HP Act 32\(1\)](#)). The staff, as the Office of the Registrar, sends a letter of acknowledgement to the complainant.
2. The inquiry committee may, on its own motion, investigate a registrant regarding any of the following matters: ([HP Act 33\(4\)](#))
  - a. a contravention of the HP Act, the regulations or the bylaws;
    - a.1 a conviction for an indictable offence;
  - b. a failure to comply with a limit or condition imposed under the HP Act, the regulations or the bylaws;
  - c. professional misconduct;
    - c.1 unprofessional conduct or unethical conduct;
  - d. competence to practise the designated health profession; and
  - e. a physical or mental ailment, an emotional disturbance or an addiction to alcohol or drugs that impairs his or her ability to practise the designated health profession.
3. The complaint, at this time, is not a public document.

### Office of the Registrar

1. As soon as is practical after receiving a complaint, the registrar must deliver to the inquiry committee chair a copy of the complaint, an assessment of the complaint, and any recommendations of the registrar for the disposition of the complaint. ([HP Act 32\(2\)](#))

### Inquiry Committee

1. If a complaint is delivered to the inquiry committee by the registrar, the inquiry committee must investigate the matter raised by the complainant. ([HP Act 33\(1\)](#))
2. The inquiry committee will appoint one or more investigators based on the nature of the complaint to conduct an investigation into the complaint.
3. If the inquiry committee considers an action necessary to protect the public during the investigation of a registrant, it may ([HP Act 35\(1\)](#))
  - a. set limits or conditions on the practise of the designated health profession by the registrant, or
  - b. suspend the registration of the registrant.
4. If the inquiry committee acts under section 3, it must notify the registrant in writing of its decision, of the reasons for the decision, and of the registrant's right to appeal that decision to the Supreme Court. ([HP Act 33](#))
  - a. If the inquiry committee determines that action taken under section 3 is no longer necessary to protect the public, it must cancel the limits, conditions or suspension and must notify the registrant in writing of the cancellation as soon as possible. ([HP Act 33\(4\)](#))
  - b. A registrant against whom action has been taken under section 3 may appeal the decision to the Supreme Court and, for those purposes, the provisions of section 40 of the HP Act respecting an appeal from a decision of the discipline committee apply to an appeal under this section. ([HP Act 33\(5\)](#))

### Investigation of the Complaint

1. The appointed inspector(s) is to write the registrant to let him or her know a complaint has been lodged against him or her. The inspector is to decide if the name of the complainant and/or nature of the complaint is to be included in the letter.
2. During regular business hours, an inspector may investigate, inquire into, inspect, observe or examine one or more of the following without a court order: (HP Act 28(1))
  - a. the premises, the equipment, and the materials used by a registrant to practise the designated health profession;
  - b. the records of the registrant relating to the registrant's practise of the designated health profession and may copy those records;
  - c. the practise of the designated health profession performed by or under the supervision of the registrant.
3. The inspector will interview the complainant, the registrant, and any other persons with information pertaining to the complaint.
4. The inspector must submit a report of the information found, actions taken, and the findings in writing to the inquiry committee.
5. A person authorized by the inquiry committee may apply to the Supreme Court for a search and seizure order. (HP Act 29 and 30)
6. A person must not obstruct an inspector, or a person acting under HP Act sections 29 or 30 or under an order made under those sections, in the lawful performance of duties or the lawful exercise of powers under this Act, the regulations or the bylaws. (HP Act 31)

### Inquiry Committee Decision

1. After considering all information and evidence provided by the inspector(s) and/or any other interested parties, the inquiry committee shall find that a registrant has committed an act of professional misconduct if,
  - a. the member has been found guilty of an offence that is relevant to the member's suitability to practise;
  - b. the governing body of a health profession in a jurisdiction other than British Columbia has made a finding of incompetence or professional misconduct or a similar finding against the registrant, and the finding is based on facts which would, in the opinion of the inquiry committee, be grounds for a finding of incompetence as defined in the regulations or would be an act of professional misconduct as defined in the CNPBC regulations;
  - c. the registrant has sexually abused a patient; or
  - d. the registrant has committed an act of professional misconduct as defined in the regulations.
2. The inquiry committee's decision must be either:
  - a. reprimand or remedial action; or
  - b. to direct the Registrar to issue a citation for a hearing by the discipline committee.

### Reprimand or remedial action by consent

1. If the inquiry committee decides upon reprimand or remedial action, it must: (HP Act 34(1))
  - a. report to the board regarding its decision and the results of its investigation, and
  - b. in the case of an investigation by a complainant, notify the complainant in writing of its decision.
2. The board may, on its own motion after considering the report from the inquiry committee:
  - a. direct the inquiry committee to recommend reprimand or remedial action, or
  - b. direct the registrar to issue a citation for a hearing by the discipline committee.

3. The penalties which may be imposed for professional misconduct on a present or former registrant found guilty of professional misconduct are:
  - a. censure and reprimand;
  - b. suspension of license,
    - i) wholly, for a fixed period of time;
    - ii) wholly, except to the limited extent required for the registrant to successfully complete a course of retraining;
    - iii) wholly, until the registrant successfully completes a course of therapy or treatment prescribed by the inquiry committee;
    - iv) partially, until the registrant successfully completes a course of retraining in the area to which the suspension applies;
    - v) partially, for a specified period;
  - c. limitation of the license to a specified area or type of practise;
  - d. revocation of license;
  - e. annulment of license or registration;
  - f. limitation on registration or issuance of any further license;
  - g. a fine not to exceed a hundred thousand dollars upon each specification of charges of which the respondent is determined to be guilty;
  - h. a requirement that a licensee pursue a course of education or training; or
  - i. the inquiry committee may stay such penalties in whole or in part or place the registrant on probation with or without imposition of one of the penalties provided pursuant to this section.
4. If a registrant refuses to give consent to the action imposed by the inquiry committee, or if a registrant fails to comply with an undertaking or consent given in response to the request, the inquiry committee may direct the registrar to issue a citation for a hearing by the discipline committee regarding the matter.
5. A complainant who is dissatisfied with a decision of the inquiry committee may appeal the decision to the board within 14 days after receiving notification of that decision. On such an appeal, the board may:
  - a. refuse the appeal,
  - b. direct the inquiry committee to impose a reprimand or remedial action on the registrant, or
  - c. direct the registrar to issue a citation for a hearing by the discipline committee regarding the matter.

#### Consent orders (Bylaws Part 5 Section 64)

1. In this section, "consent order" means the record of an undertaking or a consent given under section 36 of the Act or a deemed order under section 37.1 of the Act.
2. A consent order must
  - a. include any consent to a reprimand or to any other action made by the registrant under section 36 or 37.1 of the Act,
  - b. include any undertaking made by the registrant under section 36 of the Act,
  - c. specify the length of time that an undertaking specified in paragraph (b) is binding on the registrant,
  - d. specify the procedure that the registrant may follow to be released from an undertaking specified in paragraph (b), and
  - e. specify which terms of the consent order may be disclosed to the public.

#### Mediation (Bylaws Part 5 Section 65)

1. The inquiry committee may recommend under section 33 (6) (b) of the Act that a complaint be mediated if
  - a. the inquiry committee determines that the issuance of a citation under section 37 of the Act is not warranted, and
  - b. the complainant and the registrant agree to mediation.
2. Following a recommendation under subsection (1), the inquiry committee must appoint a mediator who is acceptable to the complainant and the registrant.

3. The mediator must conduct the mediation process in accordance with the terms of a written mediation contract executed by the complainant and the registrant.
4. If an agreement between the complainant and the registrant is reached through mediation, the terms of the agreement may be approved by the inquiry committee.
5. If a term of an agreement between the complainant and the registrant reached through mediation requires the registrant to undertake or consent to an action referred to in section 36 (1) of the Act, the inquiry committee may request the registrant to make such an undertaking or consent if the inquiry committee considers the undertaking or consent to be appropriate in the circumstances.
6. If an agreement is approved by the inquiry committee under subsection (4), the inquiry committee must report the resolution of the matter to the board and must retain a copy of the agreement on file.
7. If an agreement is not reached through mediation, the mediator must refer the matter back to the inquiry committee and may recommend that the inquiry committee take one or more actions under section 36 of the Act.

#### Citation for a hearing by the discipline committee

1. The inquiry committee or the board may direct the registrar to issue a citation for a hearing by the discipline committee that: [\(HP Act 37\)](#)
  - a. names the affected registrant as respondent,
  - b. describes the nature of the complaint or other matter that is to be the subject of the hearing, including the particulars of any evidence in support of that subject matter,
  - c. specifies the date, time, and place of the hearing, and
  - d. advises the respondent that the discipline committee is entitled to proceed with the hearing in his or her absence.
2. The registrar must have the citation either delivered to the respondent by personal service or sent by registered mail to the respondent at the last address for the respondent recorded in the CNPBC register not fewer than 30 days before the date of the hearing.
3. If the subject matter of the citation originated from a complaint, the registrar must notify the complainant in writing of the date, time, and place of the hearing not fewer than 14 days before the date of the hearing.
4. The inquiry committee or the board may direct the registrar to cancel a citation that has been issued on its direction if the inquiry committee or board afterwards determines that a hearing by the discipline committee is not required. The registrar must then cancel the citation and notify the respondent and the complainant, if any, of the cancellation.
5. If the inquiry committee considers it necessary to take extraordinary action to protect the public pending a hearing of the discipline committee, it may: [\(see HP Act 35 for details\)](#)
  - a. set limits or conditions on the practise of the designated health profession by the registrant, or
  - b. suspend the registration of the registrant.
6. If the inquiry committee determines that action taken under section 5 is no longer necessary to protect the public, it must cancel the limits, conditions or suspension and must notify the registrant in writing of the cancellation as soon as possible.
7. A registrant against whom action has been taken under section 5 may appeal the decision to the Supreme Court and, for those purposes, the provisions of HP Act section 40 respecting an appeal from a decision of the discipline committee, apply to an appeal under this section.

## **Discipline Committee**

### Discipline committee hearing (HP Act 37 and 38)

1. The discipline committee must hear and determine a matter set for hearing by citation issued by the registrar under direction of the inquiry committee or the board.
2. Details of a hearing of the discipline committee are listed in the Health Profession Act Section 38.
3. If the respondent does not attend, the discipline committee may:
  - a. proceed with the hearing in the respondent's absence on proof of receipt of the citation by the respondent, and
  - b. without further notice to the respondent, take any action that it is authorized to take under the HP Act, the regulations or the bylaws.
4. The discipline committee may order a person to attend at a hearing to give evidence and to produce records in the possession of or under the control of the person.
5. On application by the discipline committee to the Supreme Court, a person who fails to attend or to produce records as required by an order (section 4), is liable to be committed for contempt as if he or she was in breach of an order or judgement of the Supreme Court.
6. If the discipline committee considers the action necessary to protect the public between the time a hearing is commenced and the time it makes an order or decision, the discipline committee may set limits or conditions on the practise of the designated health profession by the registrant or may suspend the registration of the registrant and, for those purposes, HP Act section 35 applies.
7. Consent orders are permitted to be made at any time prior to the conclusion of a discipline committee hearing.

### Action by discipline committee (HP Act 39)

1. On completion of a hearing, the discipline committee may, by order, do one or more of the following:
  - a. dismiss the matter;
  - b. reprimand the respondent;
  - c. impose limits or conditions on the practise of the designated health profession by the respondent;
  - d. suspend the registration of the respondent;
  - e. cancel the registration of the respondent;
  - f. fine the respondent in an amount not exceeding the maximum fine established under HP Act section 19(1)(w); and
  - g. assess costs or part of the costs of the hearing against the respondent.
2. An order of the discipline committee must be in writing and must be delivered to the respondent and to the complainant, if any.

### Appeal of discipline committee decision to Supreme Court (HP Act 40)

1. A person aggrieved or adversely affected by an order of the discipline committee may appeal or the board may appeal the order to the Supreme Court.
2. An appeal under this section must be commenced within 30 days after the date of the decision.
3. An appeal under this section must be an originating application commenced by filing a petition in any registry of the Supreme Court, and the Rules of Court respecting originating applications apply to the appeal but Rule 49 does not apply.
4. The petition commencing an appeal under this section must be served on the college, effected by service on the registrar, within 14 days of its filing in the court registry.

5. The petition commencing an appeal under this section must also be served on the parties to the discipline committee proceeding in which the order being appealed was made and, if the matter relates to a complaint, on the complainant.
6. The persons required to be served under section 4 or 5 may be parties to an appeal under section 1.
7. On request by a party to an appeal under section 1 and on payment by the party of any disbursements and expenses in connection with the request, the registrar must provide that party with copies of part or all, as requested, of the record of the proceeding before the discipline committee.
8. An appeal under section 1:
  - a. must be a new hearing if there is no transcript of the proceeding in which the decision being appealed was made, or
  - b. must be a review of the transcript and proceeding if there is a transcript, unless the court is satisfied that a new hearing or the admission of new evidence is necessary in the interests of justice.
9. On the hearing of an appeal under this section, the court may:
  - a. confirm, vary or reverse the decision of the discipline committee,
  - b. refer the matter back to the discipline committee, with or without directions, or
  - c. make any other order it considers appropriate in the circumstances.
10. A decision of the Supreme Court on an appeal under section 1 may be appealed to the Court of Appeal if leave to appeal is granted by a justice of the Court of Appeal.

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\*\* The original complaint becomes a public document only after the matter has been completely resolved.