



Health Professions Review Board

Recommendation and Guideline No. 2 – HPA s. 50.53(1)(d)

Re: Enhancing fairness of Investigative Process through greater Complainant involvement

Colleges can enhance the quality and fairness of their investigations by providing the Complainant with a copy of the Registrant’s response to the College, and an opportunity to comment on that response while the investigation is ongoing. This will provide greater process transparency and improve Complainant satisfaction with College investigative processes.

Purpose:

This is the second recommendation and guideline document issued by the Health Professions Review Board (Review Board) under s. 50.53(1)(d) of the *Health Professions Act*, R.S.B.C. 1996, c. 183 (the Act):

50.53 (1): the review board has the following powers and duties:

(d) to develop and publish guidelines and recommendations for the purpose of assisting colleges to establish and employ registration, inquiry and discipline procedures that are transparent, objective, impartial and fair.

This guideline is about complaint investigation procedures. It recommends, subject to limited exceptions, that Colleges allow the Complainant to review and comment on the registrant’s response to the College’s section 33(5) letter, prior to the College issuing a notice of disposition.

Complaint Inquiry Dispositions

Under section 32(1) of the *Act* anyone can make a complaint against a registrant upon delivering a complaint in writing to the registrar of the College. Upon receipt of the complaint the College will initiate an investigation, a requirement of which under section 33(5) is to seek a response from the Registrant prior to issuing a notice of disposition under section 34 of the *Act*, which includes notice to the Complainant of the right to apply under section 50.6 for a review by the Review Board of the College’s disposition.

Discussion

Part 3 of the *Act* (Inspections, Inquiries and Discipline) sets out the powers, duties and responsibilities of a College in responding to complaints about registrants. The *Act* maps out a process leading from initial complaint to discipline committee hearing. While it sets out the authority of a college to respond to a complaint, the *Act* does not, apart from a general framework in section 33, provide precise guidance on the steps a College should follow in investigating a complaint.

The introduction of the Review Board process in 2009 provided - for the first time - full access for the complainant to the investigative record that documents the College's investigative efforts. The result is that more complainants have begun to ask why, as the person who experienced directly the conduct that gave rise to the complaint (or observed closely, as with the case of a family member or friend making a complaint on behalf of another), they can not be more involved in providing evidence to the College, particularly in reply to statements made to the College by the Registrant when responding to the complaint allegations.

The absence of such opportunities has led some complainants to describe College investigations as "black box" processes, referring to two points of contact: a letter of complaint at the beginning, and a response at some later date. Not knowing what goes on between those two events can result in a feeling of alienation or exclusion from the investigative process that even a brilliantly detailed disposition letter may not be able to overcome.

This desire by complainants to be heard not just as the instigator of the complaint but as a participant in an adjudicative process is consistent with what other fairness authorities, in particular the Office of the Ombudsperson, have said about fair investigations, advocating that "[t]hose affected by a decision have a chance to give information and evidence to support their position." (<http://www.ombudsman.bc.ca/home/fairness-checklist>)

It also appears clear that if a Complainant sees the Registrant's response, comments on it during the investigation, and sees in the disposition letter some evidence that those comments were considered in the College's deliberations, he/she will be more likely to feel they have been heard. This may lead to fewer requests for review by the Review Board, and less work for Colleges.

Possible Exceptions and Cautions

Circumstances can arise where it appears that disclosure of the Registrant's response to the Complainant may be counterproductive or dangerous. Such circumstances may include evidence of threats by the Complainant against the Registrant, such that physical safety of the Registrant becomes an issue. Or the Complainant may face mental health issues that could involve the possibility of self-harm triggered by information about the Complainant from the Registrant. Understanding the content of the record, along with any history of conflict, or the presence of unique issues faced by the Complainant (or Registrant), is key to the common sense consideration of what will be exceptions to the normal practice.

As part of the section 33(5) communication process with Registrants, it would be wise for Colleges that intend to disclose the Registrant's response to the complainant, to advise the Registrant that this will be done, unless the Registrant raises a compelling argument for non-disclosure of all or part of the response. Note that in any event the Registrant's response will form part of the record and be disclosed on a subsequent review by the Review Board unless an application for non-disclosure succeeds under section 42 of the *Administrative Tribunals Act*.

Recommendation

In accordance with the spirit and intent of the Act, the Review Board recommends that prior to issuing a disposition letter under section 34 of the Act, Colleges disclose to the Complainant, as part of the investigation, the registrant's response to the complaint. The complainant's comment on that response should be considered in the course of the College's adjudicative deliberations. Certain colleges do this already as part of their investigative practice. We recommend that all health colleges consider adopting this practice.