



Health  
Professions  
Review  
Board  
2014  
Annual  
Report

Covering the reporting period from  
January 1 – December 31, 2014





## Health Professions Review Board

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July 29, 2015

The Honourable Terry Lake  
Minister of Health Services  
Parliament Buildings  
Victoria, British Columbia  
V8V 1X4

Dear Minister Lake:

Re: Health Professions Review Board Annual Report

On behalf of the Health Professions Review Board, it is my pleasure to respectfully submit the Annual Report of the Health Professions Review Board for the period January 1, 2014 to December 31, 2014.

This report is submitted as required by Section 50.65(1) of the *Health Professions Act*.

We remain committed to fulfilling the important mandate entrusted to the Review Board to ensure the highest levels of accountability and transparency in BC's health professions.

Yours truly,

J. Thomas English, Q.C., Chair  
Health Professions Review Board

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# Message from the Chair

## Recent News

I will as in past years begin with a qualifier: while this report does cover the activities of the Health Professions Review Board (“Review Board”) for the 2014 calendar year, there are as usual a number of events that have transpired in 2015 worth reporting, the news of which would not be news if we waited a further year for the next Annual Report.

Chief among these was the appointment to the Review Board of a significant number of new and highly qualified members. No less than eight new members had their appointments confirmed – ironically, just days before our Annual Meeting at the end of February. To their great credit, six of the eight were able to clear their calendars on short notice to attend the Annual Meeting. Well done, thank you and welcome to the Review Board!

The Annual Meeting, produced by Executive Director Michael Skinner as a focused two days of training, briefings and discussion among the members, is the centerpiece of the Review Board’s calendar. A highlight this year was superb mediation training from American mediator and educator Nina Meierding. Her long career as a lawyer, mediator and university professor enabled her to deliver a powerful teaching session that had a deep and practical impact on members of the Review Board. Bookending the meeting was what has become a Review Board tradition: the year in review administrative law briefing to members from our legal counsel, which allows members to review and discuss trends and key issues arising from decisions of the Review Board.

## Relationship with the Colleges

Feedback from Colleges has been very positive with respect to the reduction in their legal workload (review hearing submissions) brought about by the Review Board’s adoption of the Stage 1/Stage 2 hearing process. This is another example of the way in which the Review Board has sought to reduce the procedural burden on parties associated with the Review Process. However, when it comes to the content of certain Review Board decisions, it is apparent that on a few occasions there has been a divergence of opinion with certain colleges, expressed by way of judicial review applications. A key issue in these proceedings is the scope and substance of the legal relationship between the Review Board and the inquiry committees of the health colleges as well as the proper relationship between the court and the Review Board. This is a matter that will likely be determined and defined – and refined – by the courts in the coming years.

## Relationship between Complainants and Registrants

The College, as a regulatory entity with a statutory obligation to protect the public, is charged with acting as a neutral third party to the primary disputants, namely the registrant and complainant. The fact that applications for review are initiated may in many instances have little to do with the College’s investigative or reporting performance, since the dispute began and usually remains between the complainant and the registrant. It is for that reason that the Review Board always explores mediation and facilitated discussion between the complainant and the registrant as our first option. We view it as a great success when a matter settles as a result of mediation and we encourage the College to engage

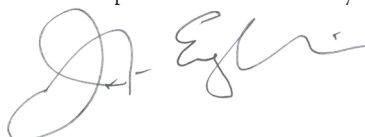
in mediation as their first option so long as the public interest is protected. As indicated later in this annual report often an apology from a registrant will result in settlement.

## Positive Trends

The number of applications the Review Board receives annually is trending downward. I attribute this trend to a number of factors: inquiry committees are doing a better job of involving the complainant in the process by forwarding for comment the responses of the registrant prior to a decision; the provision of complete medical records to a complainant after a complaint has been filed; Review Board case managers are able to avoid the necessity for review applications as a result of their replies and explanations to enquiries; and our reported cases indicate the principles we will be applying on a consistent basis when we adjudicate a complaint. In other words, there is more certainty in the process.

## Thanks once again

Reflecting on the events of the past year causes me to once again express deep gratitude to my colleagues on the Review Board, who serve this province well by ensuring that College activities by inquiry and registration committees meet fully the intent of the *Health Professions Act*. My task as Chair is made immeasurably easier by the outstanding work done by the staff of the Review Board, led by Executive Director Michael Skinner, who also provides consistent support and guidance to Review Board members. Our legal counsel Frank Falzon, Q.C., has continued in challenging times to prove himself as an administrative law advocate and expert without peer. And as always the staff of the Environmental Appeal Board, our “back office,” provide – rain or shine – the essential support and guidance that enable us to keep our doors open for business. Thank you!

A handwritten signature in black ink, appearing to read 'J. English', with a stylized flourish at the end.

J. Thomas English, Q.C., Chair  
Health Professions Review Board

# Executive Director's Report

## Outcome of the LEAN approach

In my last annual message I referred to our internal process review and refinement initiative known in the industrial world as LEAN. That previous message referred to initial team efforts in the “grunt work” phase (outstanding – thank you!), followed by indications of early success in implementation. 2014 marked the first full year of living with the new processes, and the effect has been nothing short of amazing. We went from significant file backlogs with staff overtime (and fairly high stress levels in the office) in 2013 to no backlog in 2014 along with a dramatic reduction in time-based Key Performance Indicators (KPIs), for example, time from initial intake to assignment to case manager – see our KPI graphs at pages 33 to 35. Suffice to say that the LEAN approach has been fully proven at this organization. This office has always had – and I have certainly encouraged – a collegial, continuous improvement mindset. That’s one of the reasons it is such an enjoyable place to work. LEAN provided the missing piece of the puzzle: a disciplined methodology with which to leverage that positive, “can do” attitude.

## Relations with the Colleges on the administrative side

On a similar celebratory theme, my last message congratulated the health colleges of BC for coming together and forming an umbrella society, Health Profession Regulators of BC (HPRBC, found at [www.bchealthregulators.ca](http://www.bchealthregulators.ca)). HPRBC’s purpose is to further the colleges’ duty to protect the public by sharing information and ideas among its members, and speaking with one voice to government on issues affecting the sector. I recently

attended an HPRBC plenary session and was impressed with its evident organizational maturity, in part a product of the leadership skills of its co-Chairs Cynthia Johansen (CEO and Registrar, College of Registered Nurses) and Kathy Corbett (Registrar, College of Occupational Therapists). In a pre-meeting discussion with the Co-Chairs, they said that Colleges generally would appreciate feedback from the Review Board to the question, “how are we doing?”

The answer I can confidently provide to that question is – very well indeed. Recent numbers tell the story: in 2014 approximately 19 out of 20 applications for review of inquiry committee dispositions resulted in confirmation. Additionally, the Review Board saw a dramatic (~20%) reduction in applications for review from 2013 to 2014. The logical explanation, to which this office will adhere until evidence proves otherwise, is that the colleges are doing a better job at the front end of the complaint process, and more complainants are going away feeling that they have truly been heard – even if the outcome was perhaps not exactly what they had hoped for. This explanatory theory lines up nicely with what we see in the adjudication of review applications: in general, college inquiry committees are doing an excellent job, demonstrating sound analytical judgment combined with detailed, compassionate reporting to complainants.

## Our approach to our statutory mandate

Section 50.53 of the *Health Professions Act* (the “Act”) empowers the Review Board to consult with colleges (and any other person or organization) with an aim toward assisting colleges ‘to establish and employ registration, inquiry and discipline procedures

that are transparent, objective, impartial and fair.” The vehicles for accomplishing this goal, referenced in this section of the Act, are recommendations and guidelines (R & G). This office has issued two R & Gs: the first is aimed at ensuring that all applicants for college registration be informed of their right to seek review of a registration decision (which can include an *inferred* registration committee decision, where an individual is denied the opportunity to apply for registration as a result of not satisfying a threshold test).

The second is aimed at encouraging greater involvement for complainants in the college complaint investigation process – the first step being, where appropriate (i.e., the vast majority of cases), making the registrant’s written response to the complaint available to the complainant for review and comment.

The R & G vehicle is useful and effective. However, it is comparatively rare in its appearance, and lends itself primarily to significant policy questions. A more readily accessible vehicle of common application is the member’s decision. Decisions of its

members in their capacity as statutory decision makers reveal the Review Board’s true approach to the fulfilment of its mandate to assist the college inquiry process (and indirectly, the discipline process) to function in an optimal way, respecting the rights of the parties and, echoing the Chair’s message this year, the duty of colleges to protect the public.

The bottom line is that the Review Board’s *raison d’être* is to assist colleges to do a better, fairer, more responsive job in fulfilling their core function: protecting the public. We are all working toward the same goal – we just have different job descriptions.

A handwritten signature in black ink, appearing to read "M. Skinner", with a stylized, flowing script.

Michael T. Skinner, Executive Director  
Health Professions Review Board



# About the Review Board

On March 16, 2009, the Review Board opened its doors and began receiving applications for review, making British Columbia the second province, after Ontario, to establish an independent health professions review body.

The Review Board is an independent quasi-judicial administrative tribunal created by the *Health Professions Act*, R.S.B.C. 1996, c. 183, as amended, (the “Act”) that provides oversight of the regulated health professions of British Columbia. As such, the Review Board is an innovative and integral component of the complex health professions regulatory system in British Columbia. It is a highly specialized administrative tribunal, with a specific mandate and purpose, designed to address a few carefully defined subjects outlined in the Act. The Review Board’s decisions are not subject to appeal and can only be challenged in court (on limited grounds) by judicial review.

The Review Board is responsible for conducting complaint and registration reviews of certain decisions of the colleges of the 22 self-regulating health professions in British Columbia. The 22 health professions designated under the Act and whose decisions are subject to review by the Review Board are listed below:

- Chiropractors
- Dental Hygienists
- Dental Surgeons
- Dental Technicians
- Denturists
- Dietitians
- Massage Therapists
- Midwives
- Naturopathic Physicians
- Nurses (Licensed Practical)
- Nurses (Registered)
- Nurses (Registered Psychiatric)
- Occupational Therapists
- Opticians
- Optometrists
- Pharmacists
- Physical Therapists
- Physicians and Surgeons
- Podiatrists
- Psychologists
- Speech and Hearing Professionals
- Traditional Chinese Medicine Practitioners and Acupuncturists

# The Mandate of the Review Board

Through its reviews, early resolution processes and hearings, the Review Board monitors the activities of the colleges' complaint inquiry committees and registration committees, in order to ensure they fulfill their duties in the public interest and as mandated by legislation. The Review Board provides a neutral forum for members of the public as well as for health professionals to resolve issues or seek review of the colleges' decisions.

The Review Board's mandate is found in s. 50.53 of the Act. Under this section the Review Board has the following two types of specific powers and duties:

## 1. On request to:

- review certain registration decisions of the designated health professions colleges;
- review the timeliness of college inquiry committee complaint dispositions or investigations; and
- review certain dispositions by the inquiry committee of complaints made by a member of the public against a health professional.

The Review Board has broad remedial powers after conducting a review in an individual case. In the case of registration and complaint decisions it can either:

- confirm the decision under review;
- send the matter back to the registration or inquiry committee for reconsideration with directions; or
- direct the relevant committee of the college to make another decision it could have made.

In cases where a review has been requested of the college's failure to complete an investigation within the time limits provided in the Act, the Review Board can either send the matter back to the inquiry committee of the college, with directions and a new deadline, to complete the investigation and dispose of the complaint, or the Review Board can take over the investigation itself, exercise all the inquiry committee's powers, and dispose of the matter.

## 2. On its own initiative the Review Board may:

- develop and publish guidelines and recommendations to assist colleges to develop registration, inquiry and discipline procedures that are transparent, objective, impartial and fair.

This particular power of the Review Board allows for preventive action to be taken, recognizing that while the review function of deciding individual requests for review is important, it may not have the same positive systemic impact as a more proactive authority to assist colleges, in a non-binding process, to develop procedures for registration, inquiries and discipline that are, in the words of the Act, transparent, objective, impartial, and fair.

Further information about the Review Board's powers and responsibilities is available from the Review Board office or the website: <http://www.hprb.gov.bc.ca>.

## Review Board Members

Unlike the colleges, the Review Board is a tribunal consisting exclusively of members appointed by the Lieutenant Governor in Council. This is required by the Act to ensure that the Review Board can perform its adjudicative functions independently, at arm's-length from the colleges and government. This is reinforced by s. 50.51(3) of the Act which states that Review Board members may not be registrants in any of the designated colleges or government employees.

The Review Board consists of a part-time Chair and 26 part-time members. The members of the Review Board, drawn from across the Province, are highly qualified citizens from various occupational fields who share a history of community service. These members apply their respective expertise and adjudication skills to hear and decide requests for review in a fair, impartial and efficient manner. In addition to adjudicating matters that proceed to a hearing, members also conduct mediations and participate on committees to develop policy, guidelines and recommendations.

During the present reporting period the Review Board consisted of the following members:

## Tribunal Members as of March 2, 2015

Member	Profession	From
J. Thomas English, Q.C. (Chair)	Lawyer	Vancouver
Michael J.B. Alexandor	Business Exec./Mediator (Retired)	Vancouver
Kent Ashby	Business Exec./Mediator (Retired)	Victoria
Karima Bawa	Business Executive	Vancouver
Lorianna Bennett	Lawyer/Mediator	Kamloops
Shannon Bentley	Lawyer/Advocate	Bowen Island
Fazal Bhimji	Mediator	Delta
Lorne Borgal	Business Executive	Vancouver
Colleen Cattell, Q.C.	Lawyer/Mediator	West Vancouver
D. Marilyn Clark	Consultant/Business Executive	Sorrento
Douglas S. Cochran	Lawyer	Vancouver
William Cottick	Lawyer	Victoria
Brenda Edwards	Lawyer	Victoria
Leigh Harrison	Lawyer	Rosland
David A. Hobbs	Lawyer	North Vancouver
Robert J. Kucheran	Lawyer	Vancouver
Victoria (Vicki) Kuhl	Consultant/Mediator/Nursing	Victoria
Michael R. Mark	Lawyer	Victoria
Sandra K. McCallum	Lawyer	Victoria
Lori McDowell	Consultant/Lawyer	Vancouver
Robert McDowell	Project Director	Vancouver
John O'Fee	Lawyer/CEO	Kamloops
Thelma O'Grady	Lawyer	Vancouver
Herbert S. Silber, Q.C.	Lawyer	Vancouver
Donald A. Silversides, Q.C.	Lawyer	Prince Rupert
Lorraine Unruh	Hospital Administrator (Retired)	Penticton
Kent Woodruff	Lawyer/Mediator	Kamloops
Deborah Zutter	Lawyer	West Vancouver

## The Review Board Office

The administrative support functions of the Review Board are consolidated with the Environmental Appeal Board/Forest Appeals Commission (EAB/FAC) offices, which also provide administrative services to a number of other tribunals.

The Review Board staff complement currently consists of the following positions:

- Executive Director
- Three Case Managers
- One Intake and Administration Officer
- One Administrative Assistant
- Finance, Administration and Website Support (provided by EAB/FAC)

The Review Board may be contacted at:

### Health Professions Review Board

Suite 900 – 747 Fort Street

Victoria, BC V8W 3E9

Telephone: 250-953-4956

Toll-free number: 1-888-953-4986

Facsimile: 250-953-3195

**Website Address:** [www.hprb.gov.bc.ca](http://www.hprb.gov.bc.ca)

**Email Address:** [hprbinfo@gov.bc.ca](mailto:hprbinfo@gov.bc.ca)

### Mailing Address:

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PO Box 9429 STN PROV GOVT

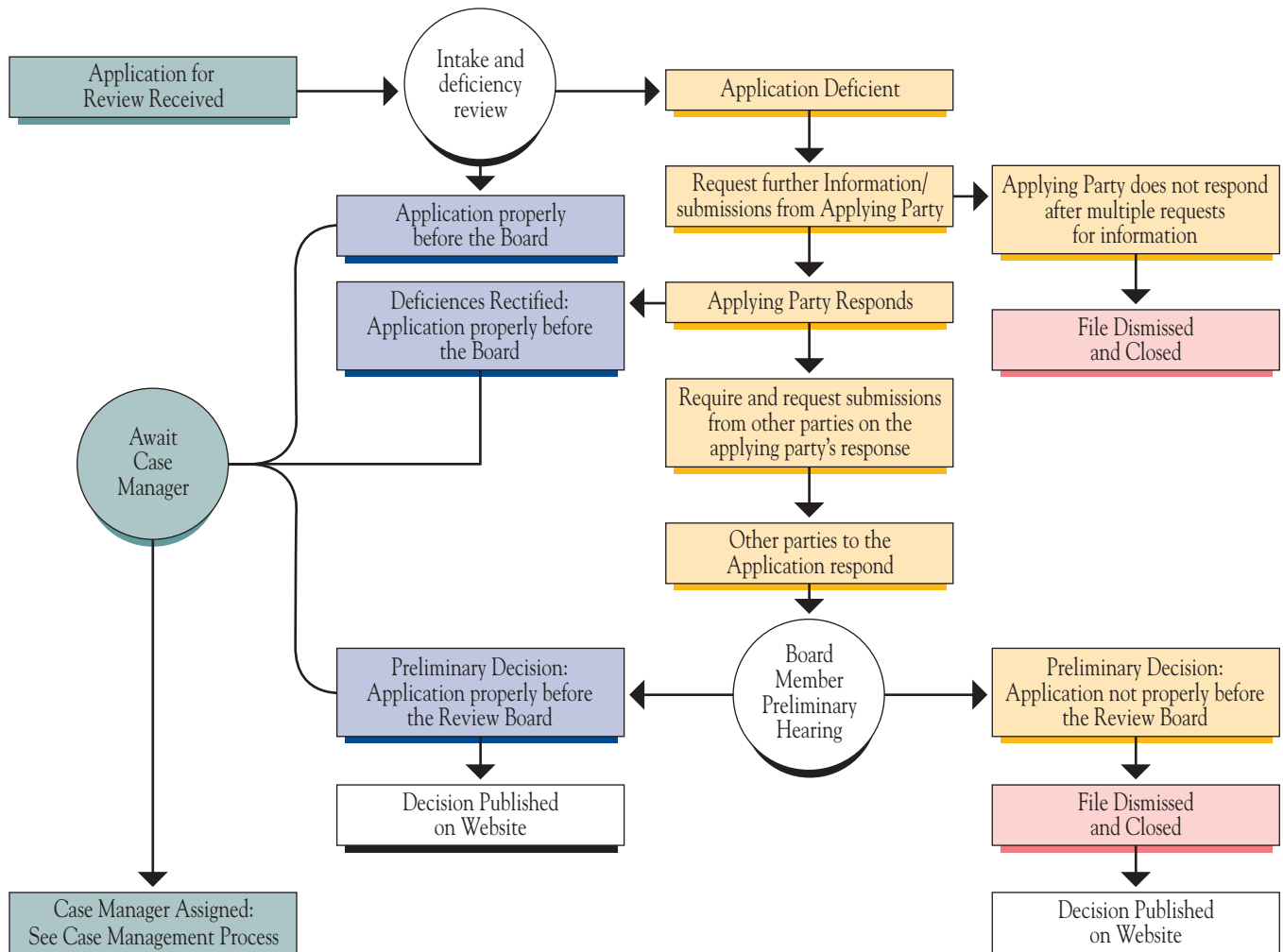
Victoria, BC V8W 9V1

# The Review Process and Activity

The following is a visual overview of the review process. For more detailed information, a copy of the Review Board's Rules of Practice and Procedure and other information can be accessed at the Review Board website or obtained from the Review Board Office.

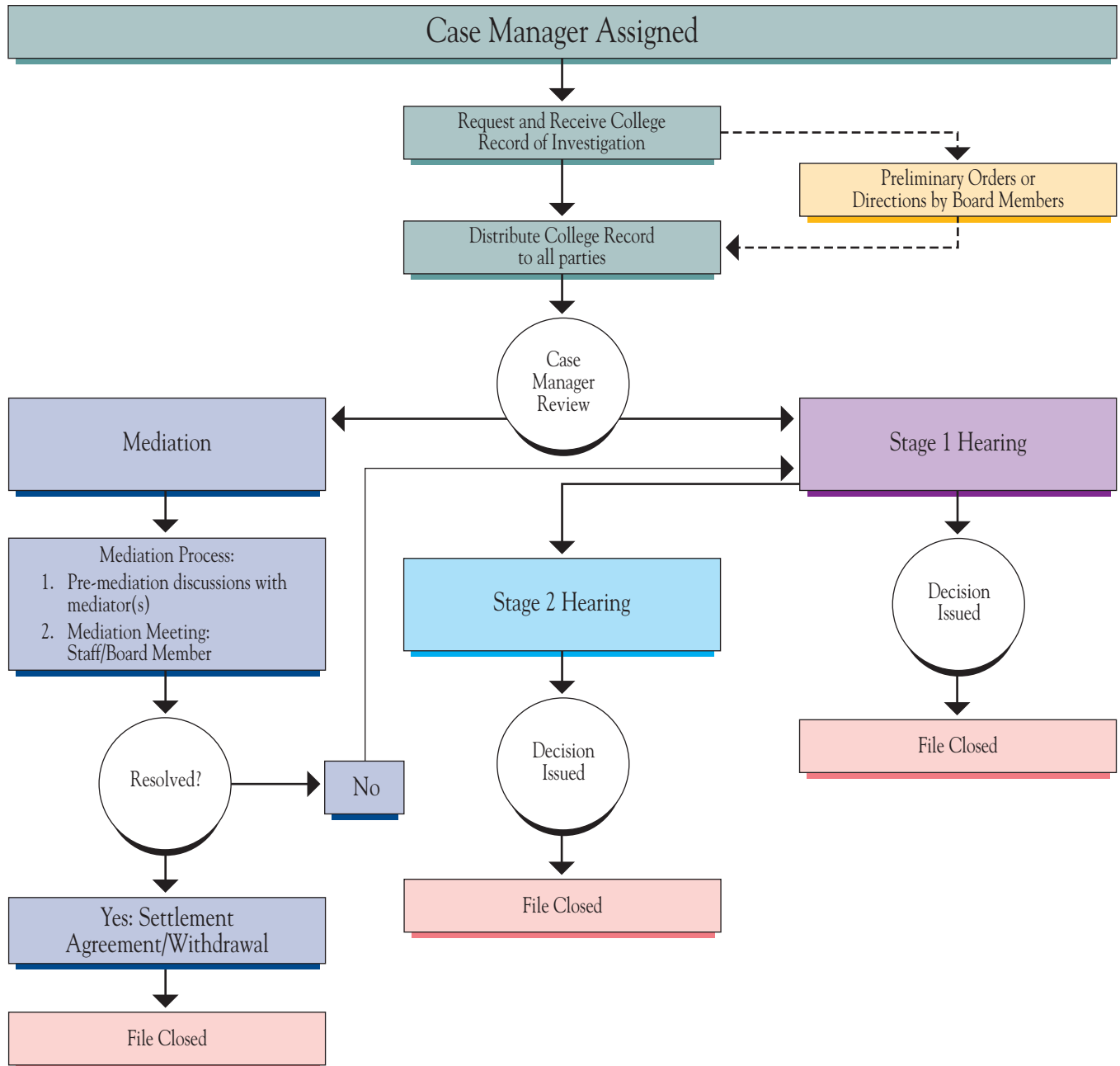
Few applicants who submit applications for review to the HPRB have had any exposure to administrative law or process. For that reason intake staff assists applicants to go through the steps necessary to "perfect" an application so that it meets the requirements of the *Health Professions Act* and the Rules of the Review Board. The chart below illustrates how Review Board staff does that.

## Intake Administrator: Intake Process



The Chart below illustrates the steps in the process for managing a case from assignment of a case manager through to resolution, either by way of a mediated settlement or a decision of a Review Board member following a hearing.

### Case Manager: Case Management Process



# The Adjudication Process

As the Review Board's Rules indicate, mediation may not be appropriate for every case. Mediation may be inappropriate where, for example, an application identifies a broad systemic problem, where a dispute raises an issue of law, policy or interpretation that needs to be determined on the record, where an applicant is proceeding with a vexatious application, or where there are allegations of abuse of power. Each of these situations can raise special concerns that require adjudication and determination within the Review Board's formal decision-making process.

In other cases, even though the parties have entered into mediation in a sincere effort to resolve the issues on the application for review, the application may remain unresolved and must therefore be decided by the Review Board's adjudication (hearing) process.

A formal review before the Review Board is conducted as a "review on the record", subject to any additional information or evidence that was not part of the record that the Review Board accepts as reasonably required for a full and fair disclosure of all matters related to the issues under review. Hearings at the Review Board are primarily conducted in writing using the previously mentioned two-stage process. They can however also be conducted in person (an oral hearing) or by using an electronic format such as video or teleconferencing or by any combination of these formats. Reviews conducted by way of an oral hearing are generally open to the public, unless the Review Board orders otherwise.

If a written hearing is held, the Review Board will provide directions regarding the process and timeframe for the parties to provide their evidence, arguments and submissions to the Review Board in writing. An oral hearing gives the parties an opportunity to present their information, evidence and submissions to the Review Board in person.

The chair of the Review Board will designate one or more members of the Review Board to sit as a Panel for each individual hearing. A member of the Review Board who conducts a mediation will not be designated to conduct a hearing of the matter unless all parties consent. Further, in order to ensure that there is no conflict of interest or reasonable apprehension of bias, a board member who has previously been a registrant of a college or served on a college's board of directors will usually not sit on a panel designated to conduct a hearing in any case involving that particular college, unless all parties consent.

After a written or oral review hearing, the Review Board will issue a written decision and will deliver a copy to each party and post it to the website.

# Mediation Summaries

The very brief mediation summaries that follow are intended to provide a flavour of what has been achieved by Review Board members and staff in the resolution of health practices disputes in 2014. Because of the clear requirement that such resolutions be absolutely confidential, only the most general comments about the nature of the resolution have been provided – no information has been included in this report that would identify the parties, the college, or the nature of the dispute such that the participants in the matter can be identified.

## Some encouraging resolutions in 2014:

- Solo success: sometimes parties are able to resolve matters on their own without the Review Board's involvement – something that the Review Board has encouraged from its inception through its processes and publications. In 2014 this occurred in a number of cases where, after the filing of an application for review, the parties were able to reach an undisclosed resolution resulting in withdrawal of the application.
- Continuing what we have seen in previous years, a number of settlements were achieved when the Complainants received a letter of apology from a Registrant in circumstances where there had been some miscommunication or alleged mistreatment.
- Registration complaint: at issue was an Applicant's eligibility to apply for associate registration under a specific college bylaw. The matter was resolved when the parties agreed the Applicant would provide additional information to the Registration Committee to enable reconsideration of the application.
- Registration complaint: this matter settled when the Applicant agreed to upgrade his knowledge and skills as recommended by the Registration Committee in its decision.
- Inquiry Committee complaint: the Complainants withdrew their complaint after the Registrant empathised with them and acknowledged he could have done things differently.
- Inquiry Committee complaint: This mediation involved the Complainant (who was not the patient), two Registrants and College; it was conducted in person and by video conference. This matter settled when Complainant accepted that Registrants had met if not exceeded their duty of care while both Registrants offered suggestions on how the system could be improved for high need patients. The College offered to share this knowledge in their newsletter to all Registrants.
- Registration complaint: the Complainant (potential registrant) withdrew his complaint after discussion with the College which enabled him to understand how credits for study from other Provinces are awarded; a plan was designed and agreed between complainant and College on steps required to obtain registration.
- Inquiry Committee complaint: after the Complainant filed her application for review the matter was resolved by way of a consent order which referred the matter back to the Inquiry Committee to review documents that were not previously considered.
- Inquiry Committee complaint by third party: a professor of a university made a complaint about what he believed was the inappropriate use by a Registrant of her professional credentials in the context of her advertising products for sale

which he maintained had questionable public health benefits. The matter was settled after the professor determined that providing his submissions directly to the College Board with recommended policy changes on the use of professional credentials was a more appropriate avenue than through the Review Board complaint process.

## Consent matters

While not mediations *per se*, the Review Board does resolve by consent of the parties many procedural issues that arise in the course of a review proceeding. For example:

- At the preliminary stage of a review proceeding there are circumstances where a college may make an application under s. 42 of the *Administrative Tribunals Act* for certain information contained in the Record to be received in confidence by the Review Board, and redacted from the Record prior to disclosure to a certain party – usually the applicant/complainant. For example, Colleges often seek to withhold the name of an individual who provided an expert medical report during an investigation, or in Registration matters they will seek to withhold the professional references concerning an applicant that were provided to the College on the condition of confidentiality. Review Board case managers have in many instances been able to negotiate such redactions to the record by consent of the parties, thus avoiding the need for a separate s. 42 adjudication process.
- Where new evidence arises in the course of a review proceeding such that the inquiry committee considers itself obligated to conduct further investigation, consider additional documents or simply reconsider its original disposition, the Review Board has on many occasions adjourned the original review hearing by consent of the parties. This is on an understanding that the inquiry committee will issue a new disposition, after which the complainant will be asked if he/she wishes to proceed. If the answer is yes, the review continues with a review of the original disposition, the entire record compiled to date, the new disposition, and any supplementary submissions the parties may make in response to the new disposition.

This avoids the time and expense of sending the parties back to “square one” which would be the case if the new disposition was treated as an entirely new, stand-alone decision that required a fresh application for review.



# 2014 Amendments to Rules of Practice and Procedure

The Review Board's procedural rules exist to ensure that participants in Review Board processes are treated fairly, justly and flexibly where circumstances require. In this respect, Rule 1, which sets out the Review Board's guiding principles, is worth quoting in its entirety:

## ■ Rule 1: Guiding principles

1. The purpose of these rules is to make it as easy as possible to resolve matters brought to the review board for resolution.
2. These rules:
  - a) facilitate the fair and just resolution of matters before the review board,
  - b) ensure the conduct of a proceeding is proportional to the complexity of the matter before the review board,
  - c) allow flexibility in the conduct of a review, when fair and just to do so, and
  - d) facilitate the timely resolution of matters.

Over time, Review Board members and staff observe how Rules could be amended to make a process fairer or more flexible. In 2014, the Review Board approved a number of amendments to its Rules to make the Rules more representative of the guiding principles set out in Rule 1. In summary form, here are the amendments and a brief description of each amendment's purpose:

- **Definitions:** additions of "stage 1 hearing" and "stage 2 hearing" to define these new processes with precision – again, the actual text is worth reproducing here for the reader's convenience:

**"Stage 1 Hearing"** means an expedited hearing where the review board considers whether the application for review may be fairly, properly and finally adjudicated based only on the application for review, the college record, and submissions or evidence, if any, from the applicant or complainant. No order to refer the matter back to the college under s. 50.6(8)(b) or (c) of the Act will be made at a Stage 1 Hearing. Reasons are given only if the review board dismisses the complaint. No reasons are given if the review board determines that the matter requires adjudication in a Stage 2 Hearing. (See Rule 46)

**"Stage 2 Hearing"** means a hearing where an adjudication is based on the application for review, the college record, and submissions or evidence, if any, from the applicant or complainant, the college and, where applicable, the registrant (See Rule 46)

- **Rule 9: Amendment and clarification of the summary dismissal process** to provide for early summary dismissal screening, and, where appropriate, deferral of a summary dismissal application until the hearing of a matter at Stage 2. Note that a Stage 1 hearing, while not a summary dismissal proceeding, can perform a similar function if it is evident to the Stage 1 adjudicator that the application for review is frivolous, vexatious or otherwise “bound to fail.”
- **Rule 24:** This amendment allows the **delivery of documents electronically** through the Review Board’s website and by email. Amendments were also made to reduce the number of duplicate copies of submissions received by the review board in order to eliminate unnecessary use of resources.
- **Rule 35: Combining applications for Review** (typically made by one complaint) made against multiple College dispositions involving multiple registrants. This amendment allows the Review Board to make the combining of applications a default process, with the proviso that there will be an opportunity for a party to object within a short time frame. This has saved time as there is no longer a need for the Review Board to issue a separate preliminary decision solely on the combining issue.
- **Rule 36(3): Requirement to participate in a mediation process.** This amendment provides the Review Board with the explicit authority to direct parties to attend one or more mediation meetings with mediators in person or by telephone.
- **Rule 38: Failure to attend mediation.** This amendment of Rule (38)(1) allows confidential discussions to take place where two of the parties are willing to participate in mediation but the third party is not. The other amendments to Rule 38 (3), (4) and (5) provide for meaningful consequences, in the appropriate case, where a party unreasonably refuses to mediate. These amendments to Rule 38 reflect the Review Board’s emphasis on mediation as the first stage in our process.
- **Rule 40: Settlement of an Application.** This amendment reflects the current practice where a matter can be considered settled solely after receipt of a withdrawal from the Complainant without the need for a settlement agreement.
- **Rule 46: Order of presentation.** These amendments introduce Stage 1 and Stage 2 hearings to Review Board processes. They provide an avenue to deal with a significant number of applications in an efficient and fair manner and lessen the burden on the parties by requiring submissions only when there is an identified need. For example, no submissions from the college or registrant are sought in a Stage 1 hearing. No order to refer a matter back to the College under s. 50.6(8) (b) or (c) of the Act will be made after a Stage 1 Hearing. If a matter is referred to Stage 2 (meaning that it cannot be fairly adjudicated at Stage 1 based only on the application, the Record, and the submission, if any, from the applicant or complainant) *then* submissions are sought from college and registrant.
- **Rule 50: Expedited hearing provision repealed.** This rule was not used in practice, and for most purposes is now redundant with the advent of Stage 1 and Stage 2 hearings.

For the full text of the Review Board Rules of Practice and Procedure, see [http://www.hprb.gov.bc.ca/process/rules\\_February\\_2014.pdf](http://www.hprb.gov.bc.ca/process/rules_February_2014.pdf)

# Noteworthy Decisions

The Review Board conducted 166 hearings in 2014, and selections of significant decisions are summarized below. The Review Board process, which finds its authority in Part 4.2 of the *Health Professions Act* and in the provisions of the *Administrative Tribunals Act* (the “ATA”), is codified in the Review Board’s *Rules of Practice and Procedure*. These Rules provide for the efficient adjudication of questions arising at the beginning of a Review Board proceeding, such as:

- Does the Review Board have jurisdiction (legal authority) to hear this particular complaint?
- Is this complaint clearly without merit? (i.e., is it frivolous, vexatious, or trivial)
- Was the complaint not filed in time, and should an extension of time for filing be granted?
- Should certain confidential or sensitive third party information in a health college record of investigation be withheld from an applicant?

When a complaint about a health college’s inquiry committee investigation proceeds to a Review Board hearing, the Review Board will focus on two primary questions:

1. Was the investigation adequate?
2. Was the disposition (reasoning, conclusion and outcome) reasonable?

The reader will note that final hearings “on the merits” are listed below under the headings of “Adequacy” and “Reasonableness.” Note also that some decisions from the 2015 calendar year have been included, for the reason that the decisions are noteworthy and should not wait to be described in next year’s Annual Report.

## Preliminary issue: Jurisdiction

**No jurisdiction where Inquiry Committee disposition made prior to the reforms; letter from legal counsel reiterating the disposition does not change that**

**2013-HPA-271(a), February 24, 2015, The College of Physicians and Surgeons of British Columbia**

Preliminary application for summary dismissal granted. The application for review was dismissed according to s. 31(1)(a) of the ATA. The College and the Registrant both filed applications for summary dismissal under s. 31 of the ATA.

The Complainants complained to the College about the treatment of their son by the Registrant physician up until he died of cancer in 2005. The initial disposition of the College was made in 2005 prior to the time the Review Board came into existence in 2009 and as a result the Review Board had no jurisdiction to review that initial disposition. That issue was settled by the Review Board in Decision No. 2010-HPA-0005(a) involving the Complainants. The Complainants acknowledged in their current application that they were seeking a review of a letter written by counsel of the College summarizing the proceedings which was not an Inquiry Committee disposition. As there was no Inquiry Committee disposition the Review Board determined it had no jurisdiction to deal with the Complainants’ application. The Review Board concluded that if the Initial Disposition was before the Review Board and it had jurisdiction for the reasons set out in the analysis the disposition would have been confirmed.

## Preliminary issue: Jurisdiction

### No jurisdiction where relief sought not within Review Board's mandate

2013-HPA-073(a), April 15, 2014, The College of Dental Surgeons of British Columbia

Preliminary application for summary dismissal granted. The Complainant's application for review was dismissed under s. 31(1)(a) of the ATA. The Complainant sought relief from a billing practice by the Registrant dentist that she believed amounted to double billing. As a remedy to her complaint the Complainant requested an apology letter, a charitable donation and removal of a dismissal letter which are all beyond the authority of the Review Board to order. The Review Board was satisfied that the College investigated the complaints and all parties acknowledged that neither the College nor the Review Board have authority over billing disputes between a patient and a Registrant. The Complainant submitted that she came to the Review Board, in part, because it is too expensive to pursue this matter through Small Claims Court. The Review Board determined that it would be unacceptable to grant relief where it lacks jurisdiction.

## Preliminary issue: Jurisdiction

### Review Board has jurisdiction to entertain application from child of deceased parent even when child is not executor and does not have authority from executor to access deceased's medical records

2013-HPA-152(a), July 16, 2014, The College of Physicians and Surgeons of British Columbia

The Review Board conducted a review regarding jurisdiction under s. 31(1)(a) of the *Administrative Tribunals Act* (the "ATA"). Consideration for summary dismissal due to a lack of jurisdiction: application for review of an inquiry committee disposition accepted. The Review Board determined that it has

jurisdiction to review the application as the Complainant, while neither the patient of record, nor the executor of the patient's estate is considered a person with standing under section 32(1) of the *Health Professions Act* (the "Act"). If the College has jurisdiction to receive the complaint under s. 32(1) of the Act, the Review Board must have jurisdiction to review it. The Review Board's authority under s. 50.53(1)(c) of the Act to review a complaint disposition cannot be narrower than the authority of a college to investigate a complaint under s. 32(1).

## Preliminary issue: Extension of Time

### 5-part test for determining whether an extension is warranted does not necessarily limit the consideration of other criteria relevant in the circumstances

2014-HPA-078(a), August 12, 2014, The College of Registered Nurses British Columbia

The Complainant's application pursuant to s. 50.61(4) of the Act to extend the time for filing an application for review is allowed, and the Application for Review is accepted. The fact that the Review Board has recognized five circumstances as special in the past cannot fetter the Board's ability to fully apply the discretion conferred on it by the Legislature in s. 50.61(4) of the Act. In this case the Review Board cannot restrict the jurisdiction established by the legislation by establishing itself, narrower criteria. The Review Board must examine each case in accordance with the legislation and in light of its unique fact pattern. In previous cases the Review Board has emphasized that the onus is on the Complainant to establish "special circumstances." This case is unusual in that the special circumstances are out of the control of the Complainant. By creating a new Two Stage process and by consolidating the other three previous claims and holding them in abeyance pending the outcome of this application, in essence the Review Board has created the special circumstances on which the Complainant can rely to bring her within s. 50.61(4) of the Act. The interests of justice will be better served by hearing a consolidated case of all four Registrants rather than excluding one on a technicality of an out of time application.

## Preliminary issue: Section 42 application for non-disclosure of certain information

### College authorized to withhold from Complainant identity of the expert used by Inquiry Committee

2012-HPA-205(a), January 29, 2014, The College of Physicians  
and Surgeons of British Columbia

The College's preliminary application to withhold information under s. 42 of the ATA was granted. The inquiry committee was not provided with the name of the third party expert (the "Expert") retained by the College to evaluate the Complainant's complaint against the Registrant. The Review Board determined that the general principle of full disclosure for the Complainant must be balanced against the countervailing privacy interest of the Expert. The non-disclosure of limited personal information would not appear to hinder the Complainant in advancing his case while at the same time it would protect the legitimate privacy interests of the Expert. The College demonstrated that justice is better served by non-disclosure of this information. Therefore, the personal information of the Expert should not be provided to the Complainant.

## Preliminary issue: Section 42 application for non-disclosure of certain information

### Application to withhold registrant's performance evaluation dismissed

2013-HPA-038(a), January 14, 2014, The College of Registered  
Nurses of British Columbia

Preliminary application by the Registrant under s. 42 of the ATA to receive part of the record in confidence to the exclusion of the Complainant – dismissed. The Registrant sought to withhold from the Complainant a Performance Review on which she relied in her submissions to the College during its investigation. The Review Board held that a pre-hearing application is not the appropriate forum to decide the relevancy of evidence that the Complainant has not had the opportunity to test because she has not had access to it. The Performance Review is not particularly sensitive or prejudicial and does not meet the test in s. 42. The Registrant's s. 42 application is dismissed. The Performance Review is to be disclosed to the Complainant as part of the Record.

# Adequacy of the Investigation

## Hearing on the merits: 2013-HPA-050(a)

**Obligation of Inquiry Committee to keep proper minutes and to follow up on external information sources when appraised of their existence**

March 27, 2014, The College of Chiropractors of British Columbia

The Act s. 50.6 – Application allowed – Inquiry committee disposition returned to the Committee for further consideration with directions. The Complainant requested a review of the College's decision to dismiss his complaint against the chiropractor who treated him for neck pain. The obligation of the College is to act in the public interest in a transparent, objective, impartial and fair manner. It is a fundamental requirement that a committee must meet, investigate, deliberate and decide. In this case there are no minutes, no resolutions, and no record of reasons issued by the committee that indicate whether the full Committee did these things. In the records there is only a single notation on a flow sheet and one on a "case cover sheet" to indicate that a decision was made and none that show that the committee met or reviewed the evidence. An adequate investigation requires that key information that is subject to interpretation of what a Complainant thought or meant must be put to the Complainant for comment and evidence, otherwise it is not diligent or procedurally proper. Claiming the only source of evidence is the clinical records is a blinkered view of sources of evidence. The Complainant had substantial and key information that could have an impact upon the outcome of the matter and the investigation was not sufficiently

probing. The result is that the Committee did not avail itself of sufficient information to make a defensible decision. The decision is returned to the College's Inquiry Committee under s. 50.6 (8)(c) with seven specific directions.

## Hearing on the merits: 2013-HPA-004(a)

**College does have duty to investigate allegations of unprofessional conduct, but “adequacy of investigation” will be examined in the circumstances of the case**

March 10, 2014, The College of Physicians and Surgeons of British Columbia

Application dismissed – Inquiry Committee disposition confirmed. This matter involved a longstanding difficult dispute between two physicians, and raises a question of the interplay between alleged breaches of the CMA Code of Ethics, specifically the duty to treat one's colleagues with dignity and respect, and the College's duty to investigate unprofessional conduct arising out of a breach of ethics. The Complainant alleged that the Registrant did not honour business commitments he made, was rude and disrespectful to staff, patients and fellow health care professionals, misdiagnosed patients, did not meet standards of hygiene and refused to participate in academic studies to assess his surgical results. The College dismissed the complaint. The Review Board determined that the College decision to focus their resources more pointedly on the medical practice issues rather than



the interpersonal conflicts (which might, given different facts or context, have supported a complaint of unprofessional conduct) was appropriate in the circumstances as there were other avenues available for the resolution those aspects of their dispute including the hospital administration, the health authority and the courts. The Review Board found that the investigation was adequate and the disposition of the Inquiry Committee was supported by its analysis of the evidence, was reasonable and fell within the range of possible acceptable outcomes.

## Hearing on the merits: 2013-HPA-008(a)

### College investigative failure to ask Registrant for response

**January 15, 2015, The College Psychologists of British Columbia**

The Act s. 50.6 – Decision returned to Inquiry Committee with directions. Stage 2 hearing. The complaint to the College arose from the Complainant's court ordered referral to the Registrant for a psychological assessment. The Complainant, who suffers from a mental illness, alleged inappropriate care and unprofessional unethical conduct by the Registrant. The College Inquiry Committee determined a response from the Registrant was not needed as they found the complaint to be vexatious, made in bad faith and did not constitute a serious matter and dismissed it under s. 32(3) of the Act. The College claimed that s. 32(3) authorises it to forego a request for a response from a registrant as long as the preliminary investigation is adequate. The Record showed the Complainant to be a difficult patient who reacts to real or perceived slights in a way that has caused some individuals to fear for their safety. However, there is not a lower threshold for an investigation involving a difficult complainant and being a difficult complainant does not mitigate against the right for due process as set forth in the Act. A degree of diligence was expected given the nature of the harm alleged and the ease with which the College could have requested a response from the Registrant. In this case a request for a response from the Registrant is required to meet the minimum threshold of investigative adequacy.

## Hearing on the merits: 2014-HPA-162(a)

### College investigative failure to ask Registrant for response

**February 3, 2015, The College of Physicians and Surgeons of British Columbia (Stage 1 hearing)**

Inquiry Committee disposition confirmed. The Complainant complained about medical treatment she received from the Registrant. In particular, she asked to not be required to take medicine prescribed by the Registrant, to be released from hospital where she was confined involuntarily and to be able to work with her General Practitioner. She also objected to having male nurses attend to her while she was showering. The Inquiry Committee investigated and had no criticism of the care provided by the Registrant. On reviewing the Record, the Review Board found that the Inquiry Committee had failed to request the Registrant's response to the complaint; however, the consequences of that failure do not warrant returning the matter to the Inquiry Committee. Given the nature of the complaint and the seriousness of the harm alleged, the investigation was adequate. The Review Board lacks authority to grant the relief sought by the Complainant. The additional information submitted by the Complainant did not support her position. The disposition was reasonable having met the fundamental requirements of being transparent, intelligible and justified.

## Hearing on the merits: 2013-HPA-146(a)

### Failure to adequately investigate

**May 30, 2014, The College of Chiropractors of British Columbia (Judicial Review Pending)**

Matter referred back to the Inquiry Committee with directions. The Complainant alleged to the College that the Registrant did not conduct an examination before treating her and failed to obtain prior consent, recognize the consequences and damage caused by the treatment or adequately explain the complications. Upon receipt of the Application for Review, the

College issued a supplementary disposition detailing the reasons for its initial decision. The Review Board determined that the additional information submitted by the Complainant was relevant, and held that the Inquiry Committee abdicated its obligations to investigate and assess the allegations under a transparent, objective, impartial and fair process conducted in the public interest by only considering the information provided by the Registrant. It did not consider whether the Registrant provided an inappropriate treatment technique to the Complainant; nor did it assess the competency of the Registrant. An adequate investigation requires more information to support a sufficiently detailed assessment of the appropriateness of the treatment. The matter was sent back to the Inquiry Committee with directions to obtain information from the other medical professionals who treated the Complainant for their assessment of her injury, and to obtain and review information from the Registrant regarding his expertise to assess and treat patients with the Complainant's symptoms and to produce a new disposition detailing its consideration of the additional evidence supplied by, referred to or available through the assistance of the Complainant.

## Hearing on the merits: 2012-HPA-004(e); 2012-HPA-005(e)

### Allegation of failure to employ investigators, and to consider relevant documents

September 9, 2014, The College of Physicians and Surgeons of British Columbia

The Complainant complained to the College about two College registrant "panel physicians" designated by the US government to perform medical and psychiatric examinations of individuals applying to travel to the United States. The Complainant made numerous allegations against the First Registrant, including that the First Registrant sought to fraudulently charge her \$4000 for a psychiatric examination, was involved in unlawful fee-sharing arrangements with an Ontario panel physician, was dishonest with her following her discussion with him in order to address the matter, filed a frivolous complaint about her to the RCMP, breached College bylaws concerning a

business name, address and telephone number, and misrepresented himself and his credentials to the College. The allegations against the Second Registrant included the allegation that the Second Registrant behaved inappropriately by declining to provide her with clearance when the Second Registrant had previously told her she would do so, and withheld pertinent information and documentation concerning a patient in an effort to protect her employer. The Inquiry Committee investigated the complainant's allegations in a process that included interviews with the Chief of the Non-Immigrant Visa Unit at the US Consulate in Vancouver, an Officer of the Ontario Provincial Police, and an American lawyer who had written letters on the complainant's behalf. In a 19 page decision, the Inquiry Committee found that the qualifications and conduct of the two panel physicians did not support any of the allegations made against them. The record of investigation consisted of 1,974 pages, including 795 pages of communications from the Complainant to the College. On review, the Review Board Adjudicator found that the Inquiry Committee investigation was adequate and that its disposition was reasonable.

With respect to the adequacy of the investigation, the Adjudicator held that the Inquiry Committee considered extensive documentation, obtained responses from the Registrants that were full and complete and interviewed several individuals whom the Complainant quoted in support of her complaints who knew or who ought to have known about the matters complained of. The Adjudicator found that those interviews did not support the allegations of improper conduct made against the Registrants by the Complainant. The Adjudicator rejected the allegation that the Inquiry Committee did not review most of the material she submitted, and held that the identity of a College investigator is not relevant as long as the methods used are lawful and the investigation is adequate.

The Adjudicator also upheld the reasonableness of the Inquiry Committee's substantive disposition concerning the attack on the First Registrant's credentials, the allegations relating to the alleged Bylaw violations and the allegation that the Registrants improperly refused to provide her with her medical records. The Adjudicator noted that the Complainant had repeatedly referred to documents which she alleged showed proof of fraud, criminal activity and other misconduct by the Registrants. The Adjudicator held: "Upon a careful reading of that material, however, none of the



documents contained any such evidence. The only statements sent to the College by the Complainant which did contain allegations of such fraud, other criminal conduct, deceit or improper conduct were statements made by the Complainant herself.” The Adjudicator concluded the Decision with a quotation from one of the Complainant’s submissions, directed at the Adjudicator, as an example of the Complainant’s conduct during the review.

# Reasonableness of the Disposition

## Hearing on the merits: 2014-HPA-068(a)

### Review Board's role in defining and applying "reasonableness" standard

December 3, 2014, The College of Physicians and Surgeons of British Columbia

Stage 1 hearing of an application for review of a complaint inquiry committee disposition under s. 50.6 of the Act – Inquiry Committee disposition confirmed. The Complainant alleged to the College that the Registrant was responsible for the discomfort experienced by the Complainant during a procedure for which he had declined sedation. The Review Board's review of the Record showed that, aside from obtaining a statement from the attending nurse, the Inquiry Committee examined all other relevant evidence. The Inquiry Committee's investigation, while not perfect, was adequate and the disposition was reasonable. The Registrant's competence was not in question since the procedure was carried out without any medical repercussions. Section 50.63(1) of the Act makes clear that the Review Board has exclusive jurisdiction to define and apply "reasonableness" within the context of reforms whose purpose is to ensure an appropriate degree of college accountability. The "range of acceptable and rational solutions" and what is "sufficient" justification, transparency and intelligibility is a question to be determined by the Review Board on a case by case basis, applying its expertise and specialized role.

## Hearing on the merits: 2014-HPA-021(a)

### Reasonableness and Proportionality

December 16, 2014, The College of Occupational Therapists of British Columbia

Stage 1 hearing of an application for review of a complaint Inquiry Committee disposition under s. 50.6 of the Act– Inquiry Committee disposition confirmed. The Complainant complained to the College about the Registrant Occupational Therapist who was involved in her rehabilitation program and provided an assessment of her condition to WorkSafe BC. The Complainant alleged that the Registrant engaged in unprofessional conduct, made an inadequate assessment of her condition, and provided erroneous information to WorkSafeBC. The College engaged the services of an independent investigator who reported that the Registrant was not meeting expected standards in several ways which in turn resulted in a remedial consent order directing changes in the Registrant's practices. The Complainant was not satisfied with this outcome and sought additional disciplinary measures. The Review Board found that the Inquiry Committee took significant steps to properly investigate, took the matter seriously, and the investigation was adequate. The investigation revealed shortcomings in the practice of the Registrant that needed to be promptly remedied. The Review Board determined that the Inquiry Committee applied a reasonable and proportionate response to these issues while making it clear that further problems would have more significant consequences.

## Hearing on the merits: 2012-HPA-225(a)

### Reasonableness and deference to medical expertise

February 25, 2014, The College of Physicians and Surgeons of British Columbia

Application for review of a complainant inquiry committee disposition under s. 50.6 of the Act – Inquiry Committee disposition confirmed. The Complainant complained to the College that the vision in his right eye was worse after the cataract surgery performed by the Registrant and he alleged this was caused by the Registrant using the wrong size replacement lens. The College concluded the cataract surgery by the Registrant was appropriate and had been performed competently. Before disposing of the complaint the Registrar received responses from seven other physicians and the complete records of the hospital relating to the cataract surgery. None of the medical professionals who provided responses suggested that the Registrant used the wrong replacement lens, and the Complainant did not provide any evidence to support his allegation. The Review Board found that the investigation of the complaint was appropriate, thorough and adequate. Based on objective data compiled during the investigation the disposition of the Inquiry Committee was determined by the Review Board to be reasonable and defensible based on the information available and the applicable law.

## Hearing on the merits: 2013-HPA-128(a)

### Reasonableness and deference to Inquiry Committee's assessment of whether registrant met practice standards

June 6, 2014, The College of Dental Surgeons of British Columbia

Stage 1 hearing of an application for review of a complaint inquiry committee disposition under s. 50.6 of the Act – Inquiry Committee disposition confirmed. The Complainant alleged to the College that the Registrant discriminated against her approximately four years earlier, did not record certain details

and unfairly referred her for a second opinion. The Record showed that the Complainant declined the College investigator's invitation to participate in a teleconference. The investigator concluded that the Registrant's records clearly showed his examination protocol was thorough, the treatment plan set out in the consult letter sent to the Complainant's dentist was rational and appropriate, and there was no evidence to support the Complainant's allegations. The Inquiry Committee decided to take no further action and closed the file after reviewing the complaint and the investigator's findings. Although invited to file a submission for the Review Board hearing, the Complainant chose not to do so. The Review Board held that it does not have authority to disagree with the Inquiry Committee's conclusions that the Registrant met all applicable practice standards. The investigation was adequate and the disposition was reasonable.

## Hearing on the merits: 2014-HPA-123(a)

### Reasonableness and response proportional to seriousness of matter at issue

December 30, 2014, The College of Occupational Therapists of British Columbia

Stage 1 hearing of an application for review of a complaint inquiry committee disposition under s. 50.6 of the Act – Inquiry Committee disposition confirmed. The complaint to the College arose from acrimonious relationships between the Complainants and the Registrant. Initially the Inquiry Committee had no criticism of the Registrant but when she later admitted she had lied, the Inquiry Committee reopened its investigation and was critical of the Registrant's misconduct. The Registrant entered into a Consent Order listing 13 terms including a reprimand, remedial courses, a fine and temporary suspension. The Record shows that the inspector appointed by the Inquiry Committee gathered the evidence and prepared a report to which the Complainants responded. The Complainants did not submit that the investigation was inadequate. The Review Board held that consent order was an intelligently proportional response to a fairly serious matter that compelled a substantive reaction from the Inquiry Committee. The investigation was adequate and the disposition reasonable.

## Hearing on the merits: 2012-HPA-213(a)

### Resolution agreed between College and Registrant was unreasonable

March 4, 2014, The College of Dental Surgeons of British Columbia

Application for review of a complaint inquiry committee disposition under s. 50.6 of the Act – referred back to the Inquiry Committee with directions to change the disposition. The Complainant complained to the College about his dissatisfaction with the dental work performed by the Registrant. After investigation, the College decided that no further action was necessary and closed the file. The Review Board determined that the Record showed that the Registrant provided two different written Treatment Plans; provided what he asserted to be the conclusive Treatment Plan with two significantly different options; obtained no written indication of agreement from the Complainant in regard to an agreed upon treatment plan; asserted that he writes in two different hand writing styles; asserted that he occasionally refers to himself in the third person when making notations and had documentation that he agreed could lead to confusion. The Review Board held that the investigation was adequate, but the disposition was not reasonable: the Inquiry Committee should have required the Registrant to undertake to take some form of remedial education or refresher course to address the acknowledged inadequacies in patient communication and record-keeping. The matter was referred back to the Inquiry Committee with directions to select a more appropriate disposition under s. 36(1) of the Act to fulfill the College's duty to protect the public.

## Hearing on the merits: 2013-HPA-146(a)

### Failure to investigate “relevant collateral sources” results in unreasonable disposition

May 30, 2014, The College of Chiropractors of British Columbia (Judicial Review pending – see Judicial Review section of this report)

See case summary on page 21 under heading: “Failure to adequately investigate.”

## Hearing on the merits: 2013-HPA-050(a)

### If basis for decision is not intelligible, disposition is unreasonable

March 27, 2014, The College of Chiropractors of British Columbia

See case summary on page 20 under heading:  
“Obligation of Inquiry Committee to keep proper minutes.”

# Registration Decisions

## Hearing on the merits: 2013-HPA-175(a) to 183(a) and 209(a)

### College breached *Health Professions Act* by prohibiting professional school graduates from writing an exam

December 2, 2014, The College of Traditional Chinese Medicine  
of British Columbia

The Act s. 50.54 Application for review of a registration decision – Application Allowed – Matter referred back to Registration Committee for reconsideration with directions. The application concerned ten applicants, all graduates of Chinese medicine and/or acupuncture education programs recognised by the College, deemed not eligible to write the a national competency examination. The Registration Committee had determined that to be eligible to write the national examination an applicant must have met the educational requirement under Bylaw s. 48(1)(a.1). The Review Board found the Registration Committee made an error in its interpretation of Bylaw s. 48 and, in particular, its application of Bylaw s. 48(1)(a.1) to deny eligibility to write the national examination. There is no College Bylaw that establishes a condition or requirement for eligibility to write the national examination. The educational requirements under Bylaw s. 48(1)(a.1) are the requirements for registration, not the requirements for eligibility to write the examination. The ten matters were referred back to the Registration Committee for reconsideration. Successful completion of the examination is a factor to be weighed by the

Registration Committee when exercising its discretion under Bylaw s. 48(4). Deference is extended to the Registration Committee in context of all other relevant factors as part of assessing the applicant's knowledge skills and abilities which would include the respective education requirements under s. 48(1)(a.1).

### Practice Point: Registration Decisions

Registration committees should specify in their reasons the section of the Act under which they are making the decision. In that way the Review Board will be able to determine at the intake level whether it has jurisdiction to proceed with an application for review of the registration committee's decision. *The Review Board has no jurisdiction to hear applications for review of registration committee decisions made under s. 20(2.1) of the Act.* For a decision on this point, see Review Board Decision No. 2014-HPA-202(a).

## Hearing on the merits: 2013-HPA-242(a)

Review board cannot hear registration review  
where competency proceeding before college in  
another jurisdiction has not been resolved

March 5, 2014, The College of Physicians and Surgeons of  
British Columbia

Preliminary application for summary dismissal granted;  
the Applicant's application for review of a Registration Committee  
decision (Act s. 50.54), was dismissed under s. 31(1)(a) of the  
ATA. The Applicant is not an "applicant" for purposes of applying  
for review of the Decision and the Decision is not a "registration  
decision" as defined in s. 50.5 and s. 50.54(2) of the Act. Therefore,  
the Review Board lacks jurisdiction to review the Decision.

Copies of these decisions are available from the Review Board  
office or website.

# Judicial Reviews of Review Board Decisions

Just as the Review Board was created to ensure that College decision-making is accountable, the Review Board is accountable for its decisions in British Columbia Supreme Court, in a process known as judicial review. Where a Review Board decision is challenged on judicial review, the court considers whether the Review Board acted within its authority, whether its substantive decision was patently unreasonable, and whether its process was fair and impartial.

## Cases decided since last Annual Report

### ***Moore v. Health Professions Review Board*, 2014 BCCA 466**

This decision arose from the Review Board's appeal of the BC Supreme Court's decision, reported at 2013 BCSC 2081, from Review Board Decision No. 2010-HPA-108(b).

In July 2009, the Complainant, an inmate, complained to the College alleging that the Registrant breached his ethical duty to the Complainant by terminating a required medication (Lyrica) on the basis of an institutional directive rather than the patient's medical needs. The College Registrar dismissed the complaint.

On October 20, 2011, the Review Board set aside the College's decision and remitted the matter to the Inquiry Committee on the basis that the investigation was inadequate. The Review Board held that the Inquiry Committee, not the Registrar, should have made the decision, and directed the Inquiry Committee to review the file and interview the Registrant with regard to several evidentiary discrepancies identified in the Decision concerning the reason the Lyrica prescription was terminated. The Registrant applied to Court for judicial review.

On November 18, 2013, the Supreme Court set aside the Review Board's decision on the basis that the Review Board failed to give the College sufficient deference with regard to the extent of its investigation, and further held that the remedy ordered by the Review Board would serve no useful purpose on the facts of the case.

On November 21, 2014, the Court of Appeal dismissed the Review Board's appeal from the Supreme Court's decision for the reasons given by the Supreme Court.

On June 4, 2015, the Supreme Court of Canada denied the Review Board's application for leave to appeal the Court of Appeal's decision.

### ***College of Dental Surgeons v. Health Professions Review Board*, 2014 BCSC 1841**

This decision arose on judicial review by the College from Review Board Decision No. 2009-HPA-0090(b).

On February 15, 2008, the Complainant complained to the College of Dental Surgeons alleging substandard dental work by her dentist. On November 16, 2009, the College Inquiry Committee wrote to the Complainant advising that the complaint "could not be conclusively supported" and advising that "no further action" would be taken on her complaint.

On September 27, 2012, the Review Board issued an order remitting the complaint to the Inquiry Committee, with the direction that "it may only dispose of the matter pursuant to s. 33(6)(a) of the Act if it is satisfied that the Registrant's conduct or competence in the specific matter of the insertion of the crown and the insertion of the bridge work were satisfactory."

The judicial review petition was argued April 1–3, 2014.

On October 1, 2014, the Court set aside the Review Board decision. While the Court rejected various arguments by the College that the Review Board decision should be reviewed on a correctness standard, the Court set aside the Review Board's decision on the basis that the Review Board "misunderstood its review role by failing to apply a reasonableness standard of review to the disposition, both in terms of interpretation of the legislation and assessment of the evidence."

On October 27, 2014, the Review Board filed an appeal from the Supreme Court's decision, which appeal has since been withdrawn.

## Petitions outstanding

### *TM v. Health Professions Review Board* (Petition filed June 20, 2012)

This judicial review petition, commenced by a complainant, applied to set aside Review Board Decision No. 2012-HPA-004(a); 2012 HPA-005(a) (The College of Physicians and Surgeons of British Columbia, April 20, 2012).

**Summary:** The Review Board Decision under judicial review held that special circumstances did not exist to grant an extension of time to file the application for review.

**Status:** Following the filing of the Petition, the Review Board determined that the application for review had in fact been filed in time. As such, the Review Board continued with the application for review and on September 9, 2014, rendered its final decision: Review Board Decision No. 2012-HPA-004(e); 2012-HPA-005(e). The Petitioner has taken no steps on the Petition since the issuance of the September 2014 decision.

### *Ouimet v. Health Professions Review Board* (Amended Petition filed December 24, 2013)

**Summary:** The Complainant commenced judicial review from a Review Board decision [Review Board Decision No. 2012-HPA-080(a)] dismissing an application to set aside a decision of the College of Dental Surgeons. The original complaint alleged that the Registrant provided substandard advice regarding certain dental issues. The College dismissed the complaint, finding that the Registrant had not engaged in substandard practice. The Review Board held that the College's investigation was adequate and its disposition was reasonable.

**Status:** On January 17, 2014, the Review Board filed a Response to Petition. The Petitioner has taken no steps on the Petition since the filing of the Review Board's Response to Petition.

### *College of Chiropractors of British Columbia v. Health Professions Review Board* (Petition filed July 29, 2014)

**Summary:** This Petition challenges Review Board Decision No. 2013-HPA-146(a) (May 30, 2014), arising from a College disposition dismissing a complaint alleging substandard chiropractic treatment. The Review Board remitted the investigation to the Inquiry Committee on the ground that the College's investigation was inadequate. The College's judicial review petition identifies various grounds alleging that the Review Board decision is patently unreasonable.

**Status:** The Petition is scheduled for hearing in British Columbia Supreme Court on August 26–27, 2015.



# Trends of Note: Notices of Delay and Notices of Suspension

Upon receipt of an application from a party, the Health Professions Review Board has the authority to review the issue of a delayed investigation – that is, the failure of a College to dispose of a complaint within the time required in the Act. This is specific to complaint files, which are files before the Inquiry Committee.

If the College took all of the time allotted to it under the legislation to complete an investigation, it should be completed within 255 days from the date the Registrar is notified of the complaint or the date the college commences an investigation where it has done so on its own initiative. If by this time the investigation has not yet been completed by the College, a right

of review to the Review Board arises with respect to that delayed investigation.

The Review Board has provided guidance for this process on our website in the following Memorandum, found online:

- Applying the Prescribed Time Periods: [http://www.hprb.gov.bc.ca/process/prescribed\\_time.pdf](http://www.hprb.gov.bc.ca/process/prescribed_time.pdf)

The Review Board notes the following increasing trend, indicative of strained investigative resources at the College level, in the number of Notices of Delay and Notices of Suspension it has received since it began tracking such issues in 2009:

**Figure 1: Number of Notices of Delay, or Suspension copied to the Review Board by Year**

	2009	2010	2011	2012	2013	2014
<b>Total Notices Received</b>	29	382	395	580	1504	1526

## Legislation Links for Reference:

- Health Professions General Regulations: section 7: Prescribed periods – disposition of complaints and investigations:  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/17\\_275\\_2008#section7](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/17_275_2008#section7)
- Health Professions Act: section 50.55: Timeliness of inquiry committee investigations:  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_96183\\_01#section50.55](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96183_01#section50.55)
- Health Professions Act: section 50.57: Review – delayed investigation:  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_96183\\_01#section50.57](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96183_01#section50.57)

## A snapshot of Health College activity on a sectoral basis

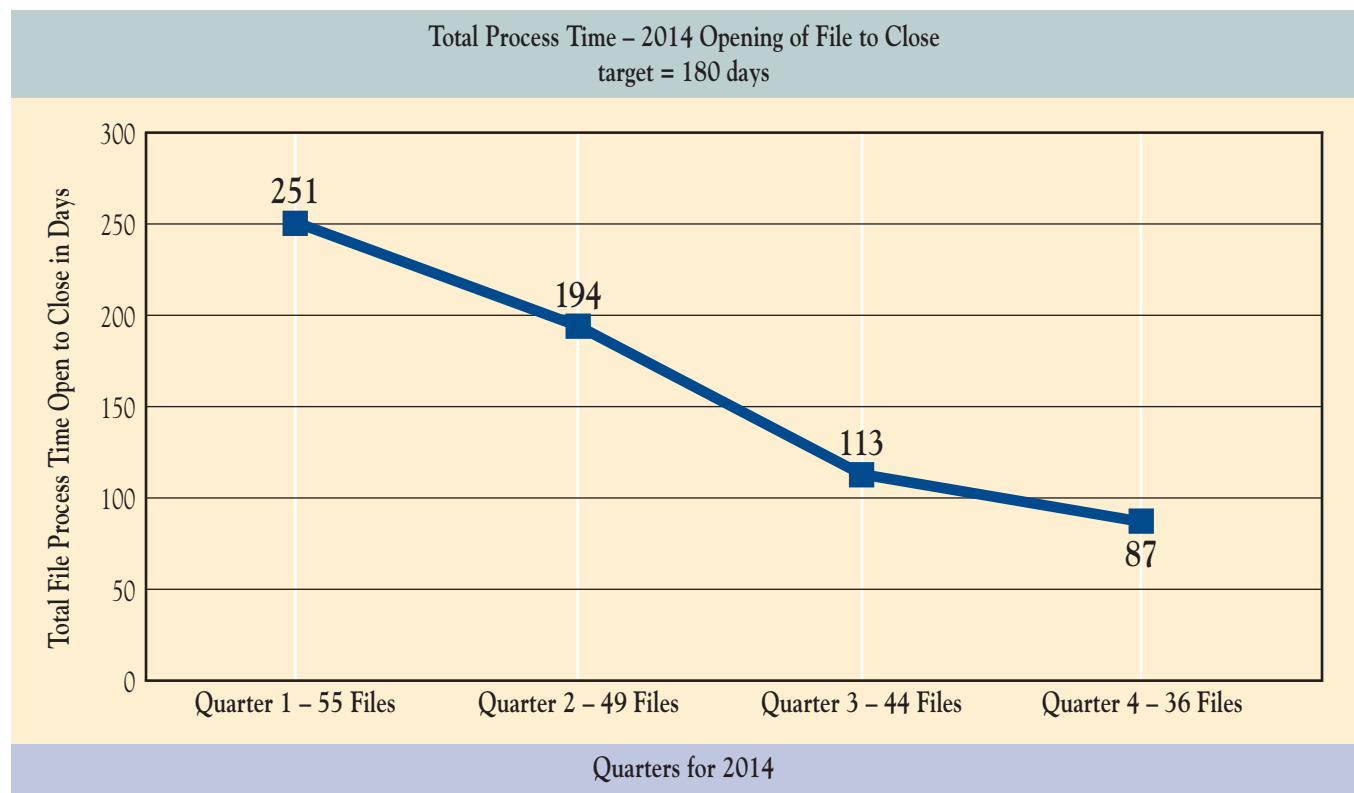
At the end of 2014 the Review Board asked British Columbia's health colleges to report the numerical responses to a number of questions, the cumulative results of which are shown on the summary table excerpt below. Of note is the – cyclical? – ebb and flow of complaint numbers to colleges, and the steady growth of the health professions as indicated by the number of practising registrants. The apparent inverse relationship between the two as evidenced in the 2014 data is, we trust, a healthy sign.

Data query	Year	2009	2010	2011	2012	2013	2014
Number of complaints received – all colleges		1325	1764	1859	1990	2020	1881
Complaints disposed of by registrar		272	605	529	684	745	692
Complaints disposed of by Inquiry Committees		558	753	854	1156	1037	814
Number of s. 36 requests (resolutions) by Inquiry Committees		252	331	434	466	513	443
Number of practising registrants at end of reporting period		87,536	94,229	99,247	99,732	98,718	101,417

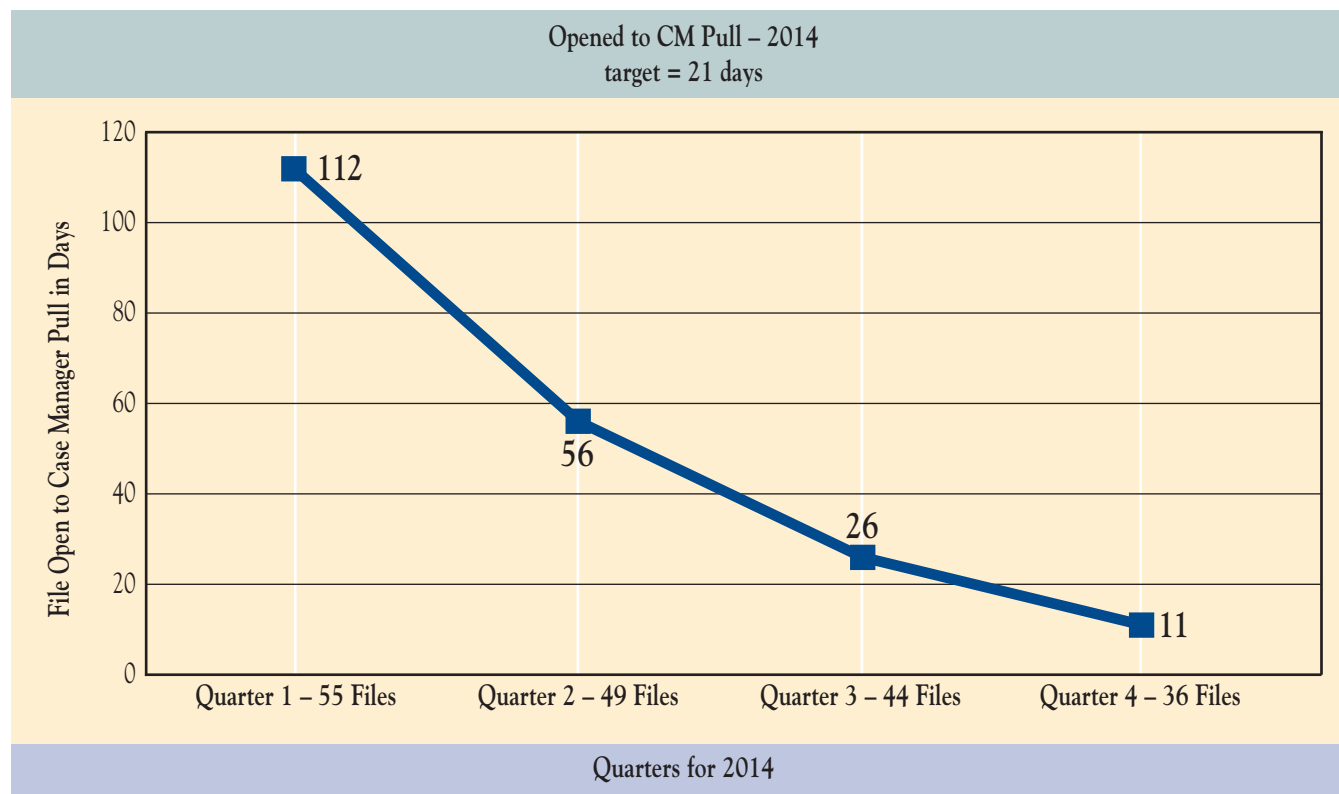
# Key Performance Indicators

As we put into practice our Lean process, Case Managers kept track of Key Performance Indicators with regards to files processed through our office. The following Charts demonstrate calculations that were compiled (and that demonstrate dramatic performance improvements) from those Key Performance Indicators:

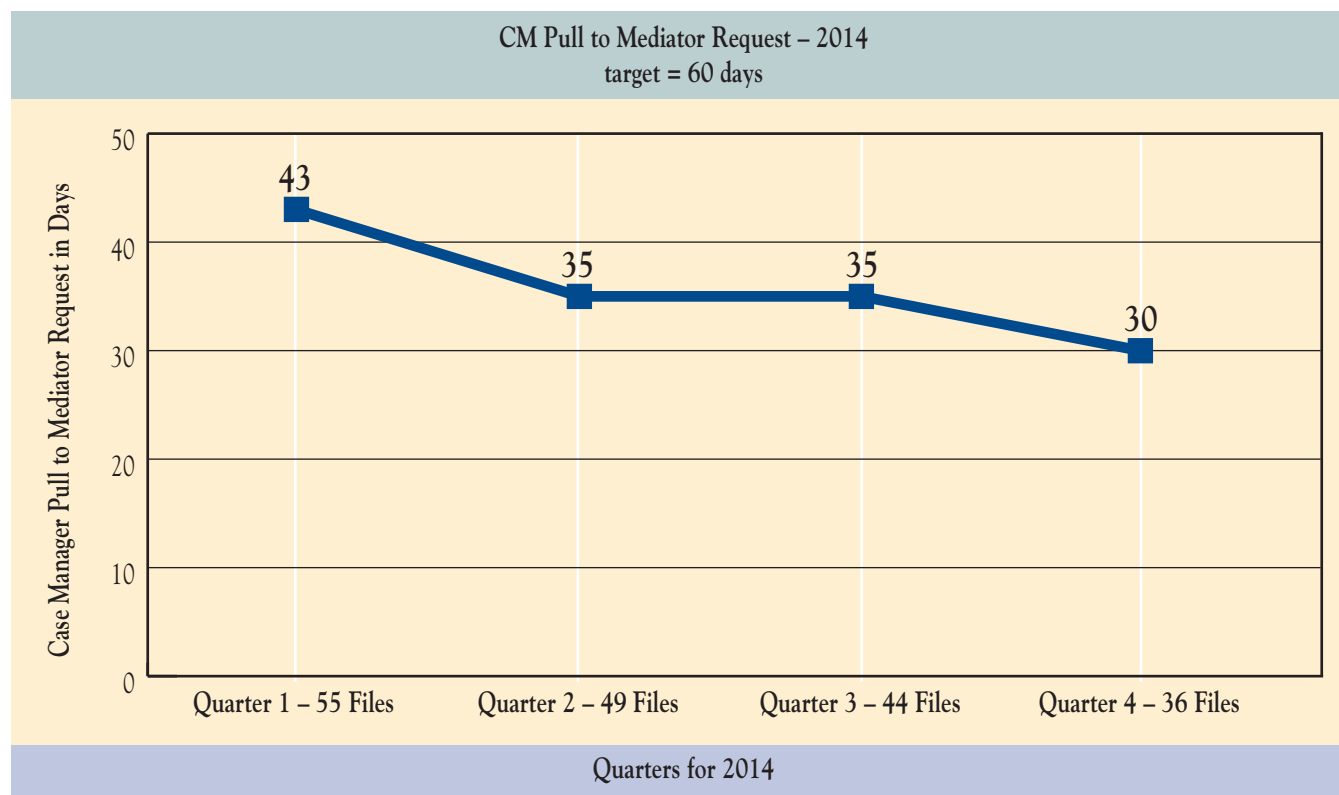
## How long does it take a file to move through our system?



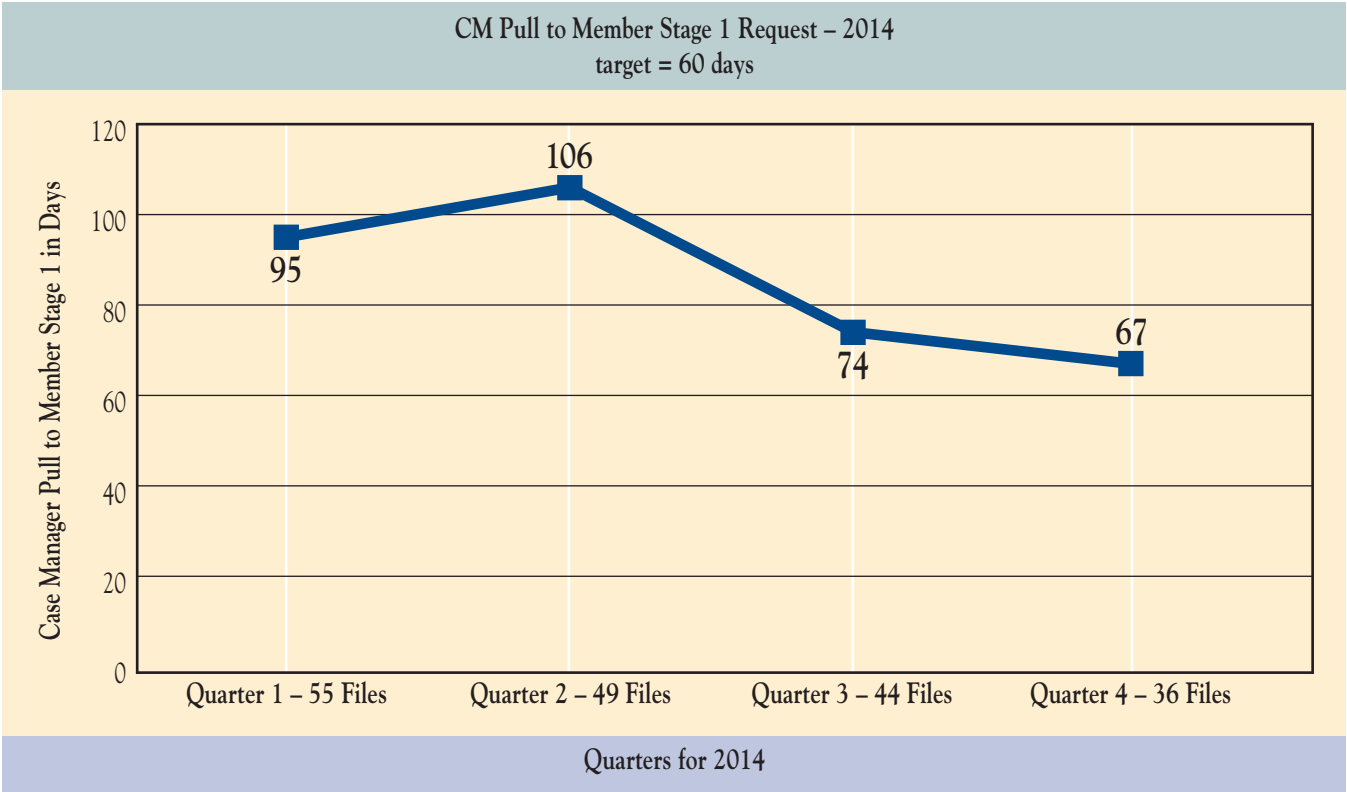
## How soon does a new file get assigned to a case manager?



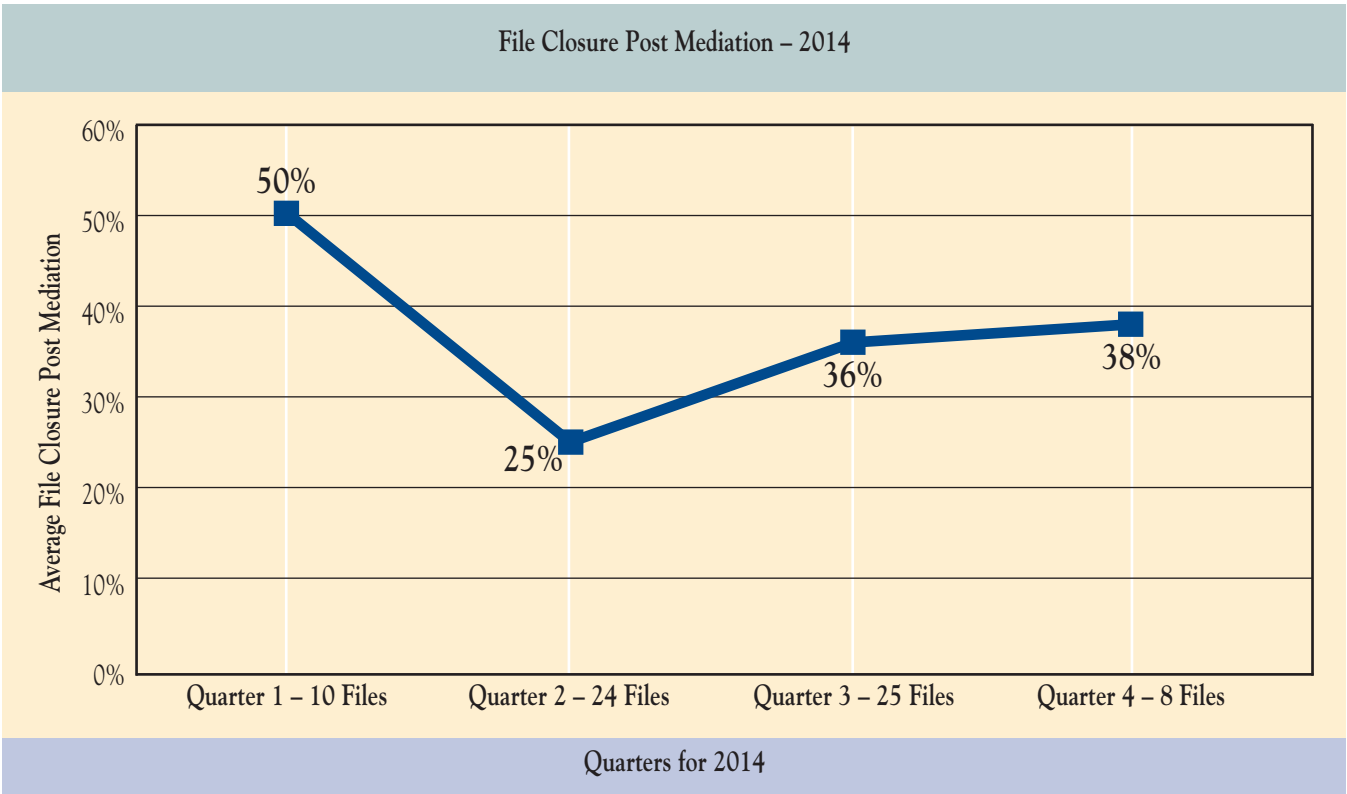
## How long does it take for a case manager to get a mediator assigned to a file?



### How long does it take a case manager to get a file to a Stage 1 hearing?



### What percentage of mediations are successful (resulting in file closure)?



# Review Activity Statistics

For the reporting period from January 1, 2014 –  
December 31, 2014

**Figure 2: Number of Applications, by type and month**

Month	Complaint Dispositions	Delayed Investigations	Registration Decisions	Total Number of Applications	%
January	14	1	3	18	8%
February	21	3	5	29	13%
March	13	1	3	17	8%
April	17	0	4	21	10%
May	13	3	4	20	9%
June	15	2	3	20	9%
July	9	3	1	13	6%
August	16	2	3	21	10%
September	11	1	9	21	10%
October	6	0	2	8	4%
November	10	1	3	14	6%
December	14	1	1	16	7%
Total				218	
% of Total Applications					100%

Figure 3: Total Applications for Review, classified by respondent College

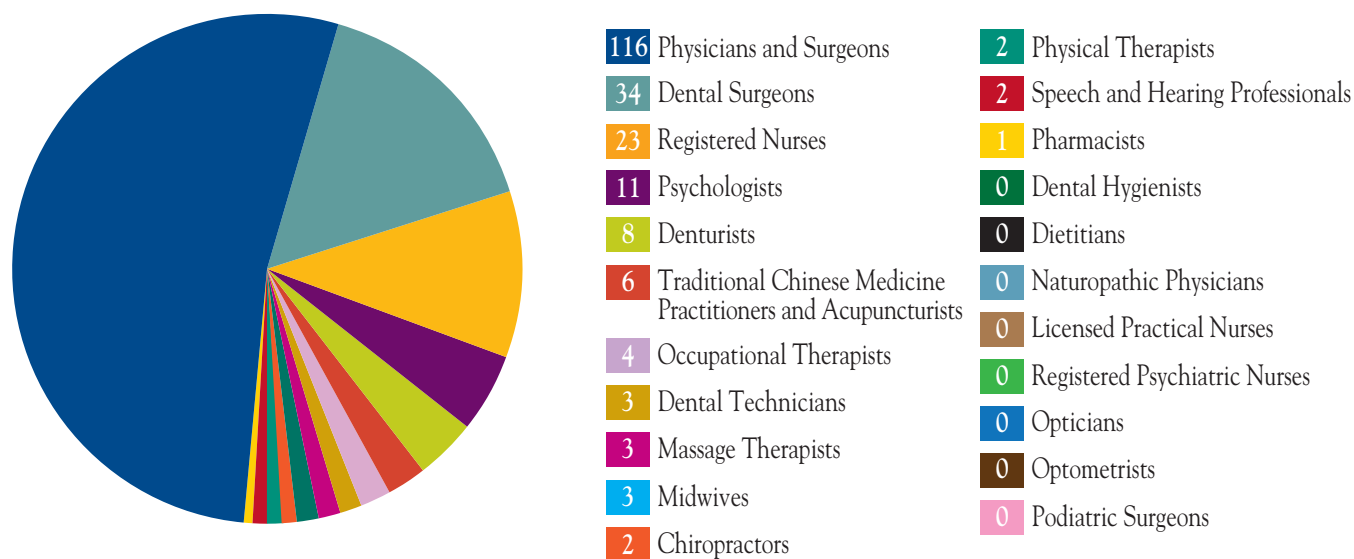


Figure 4: Applications for Review, by college and type

Respondent College	Complaint Dispositions	Delayed Investigations	Registration Decisions	Total Number of Applications	%
Chiropractors	1		1	2	1%
Dental Hygienists				0	0%
Dental Surgeons	25	9		34	16%
Dental Technicians			3	3	1%
Denturists	2		6	8	4%
Dietitians				0	0%
Massage Therapists		2	1	3	1%
Midwives	3			3	1%
Naturopathic Physicians				0	0%
Licensed Practical Nurses				0	0%
Registered Nurses	6		17	23	11%
Registered Psychiatric Nurses				0	0%
Occupational Therapists	4			4	2%
Opticians				0	0

Figure 4: Applications for Review, by College and type (continued)

Respondent College	Complaint Dispositions	Delayed Investigations	Registration Decisions	Total Number of Applications	%
Optometrists				0	0%
Pharmacists	1			1	0%
Physicians and Surgeons	108	6	2	116	53%
Physical Therapists	2			2	1%
Podiatric Surgeons				0	0%
Psychologists	6	1	4	11	5%
Speech and Hearing Professionals	1		1	2	1%
Traditional Chinese Medicine Practitioners and Acupuncturists			6	6	3%
Total				218	
% of Total Applications					100%

Figure 5: Applications for Review – by status

Applications for Review	Number
Number of applications open at January 1, 2014 (Case Management in Progress)	245
Number of applications for review received in 2014	218
Applications closed in 2014	252
Number of applications open at December 31, 2014 (Case Management in Progress)	147



# Financial Performance

## 2014 Year Expenditures

This reporting period covers the 2014 fiscal year of operation for the Review Board.

Following is a table showing the expenditures made by the Review Board during its 2014 fiscal year.

### Health Professions Review Board

Operating Costs – April 1, 2014 – March 31, 2015	
Salary and Benefits	\$ 499,438
Operating Costs	\$ 807,790
Other Expenses	\$ 0
<b>Total Operating Expenses</b>	<b>\$ 1,307,228</b>

## Shared Services Administrative Support Model

Administrative support for the Health Professions Review Board is provided by the office of the Environmental Appeal Board and the Forest Appeals Commission.

This shared services approach takes advantage of synergy and keep costs to a minimum. This has been done to assist government in achieving economic and program delivery efficiencies allowing greater access to resources while, at the same time, reducing administration and operational costs.

In addition to the Health Professions Review Board, the office for the Environmental Appeal Board and the Forest Appeals Commission provides administrative support to other appeal tribunals.

