



HEALTH PROFESSIONS REVIEW BOARD 2016 ANNUAL REPORT

**Covering the reporting period from
January 1 – December 31, 2016**



Health Professions Review Board

Suite 900, 747 Fort Street
Victoria British Columbia
Telephone: 250 953-4956
Toll Free: 1-888-953-4986 (within BC)
Facsimile: 250 953-3195
Mailing Address:
PO 9429 STN PROV GOVT
Victoria BC V8W 9V1
Website: www.hprb.gov.bc.ca
Email: hprbinfo@gov.bc.ca

July 31, 2017

The Honourable David Eby
Ministry of Attorney General
Room 232, Parliament Buildings
Victoria, British Columbia V8V 1X4

Dear Attorney General:

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, 2016 to December 31, 2016. As has been our practice in past years we include several excerpts from significant decisions released in the first months of 2017, along with more recent Rule amendments and Practice Directives, to bring these to the attention of readers in a timely way.

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

Enclosure

Table of Contents

| | |
|---|----|
| Message from the Chair | 2 |
| Executive Director’s Report..... | 6 |
| ADDENDUM to Executive Director’s message: new Practice Directive #6 and amendments to Rules 15 and 19..... | 8 |
| About the Review Board..... | 12 |
| The Mandate of the Review Board..... | 13 |
| Review Board Members | 14 |
| The Review Board Office | 15 |
| The Review Process and Activity | 16 |
| Mediation Activity | 18 |
| The Adjudication Process..... | 20 |
| Key Decisions..... | 21 |
| 1. PRELIMINARY AND INTERIM DECISIONS..... | 21 |
| Application for Extension of Time | 21 |
| Registration reviews: preserving the status quo during a review process by ordering a “stay of proceedings” | 24 |
| 2. REGISTRATION DECISIONS | 30 |
| Registration reviews: English Language Proficiency (ELP) policy | 30 |
| 3. COMPLAINT DISPOSITION REVIEW DECISIONS | 32 |
| Hearing on the merits: Understanding the distinction in HPA ss. 32 and 33 between College submissions and reasons of the Registrar or Inquiry Committee | 32 |
| Hearing on the merits - adequacy of investigation - seriousness of complaint | 35 |
| Hearing on the merits - adequacy of investigation - disclosure of information to complainant | 36 |
| Hearing on the merits - adequacy of investigation - duty and necessity to investigate “less serious” complaints | 36 |
| Reasonableness of the disposition: missed issues..... | 39 |
| Reasonableness of the disposition: remedial measures sufficient to protect the public | 39 |
| Reasonableness of the disposition: Past conduct history | 42 |
| Judicial Reviews of Review Board Decisions | 45 |
| Notices of Delay and Notices of Suspension..... | 48 |
| Review Activity Statistics..... | 49 |
| Financial Performance | 52 |

Message from the Chair

COLLEGE REGISTRATION COMMITTEES

Pending registrant licence cancellation and the “stay” remedy

The majority of the Review Board’s workload arises from its review of complaint dispositions issued by College Inquiry Committees. On those reviews, the Review Board assesses whether the dispositions have been preceded by an adequate investigation, and whether the dispositions themselves are reasonable. The legislature has deemed all of this to be in the interest of assisting colleges to better fulfill their most basic duty: to serve and protect the public (*Health Professions Act* - the “Act” - section 16). In these cases, we exercise our specialized jurisdiction by looking at what has already taken place, and hoping that our observations, and any orders made, will not only correct any deficiencies we have found but will also have a salutary effect on the handling of future complaints.

The Review Board’s workload over the past year has however emphasized another part of our work that is lower in volume but often higher in both urgency and impact. It involves our mandate to review certain decisions of the Registration Committee. The College Registration Committee acts as a type of “gatekeeper to the profession” by creating various classes of registrants and attaching requirements and conditions to each class. To use the Physicians and Surgeons as an example, there are precisely delineated paths to be followed to the ultimate goal of licence to practice, for both general practitioners and specialists.

Many practitioners come from other countries with the intention of practicing and living in British Columbia. Typically, they are licensed and qualified to practice in their home country; however they must take the steps specified by the Registration Committee (after individual review of their qualifications) in order to be licensed to practice in BC. Depending on the qualifications they present, they may be permitted to practice with certain restrictions - often in under-served localities and under supervision- while they complete the steps required by the Registration Committee. Their practice registration is referred to in the Act as “provisional.” Provisional registration is normally time limited, and it requires the registrant to satisfy various conditions, which may include the requirement to write and pass an examination or obtain a particular Canadian professional certification before a specified deadline. That deadline may be extended by the Registration Committee in “exceptional circumstances.”

Review Board decisions over the past year have disclosed cases where applicants have applied to the Review Board to challenge Registration Committee decisions refusing to extend the deadline to write and pass a particular examination or obtain a particular certification. In these cases, the Registration Committee’s refusal to extend the deadline was part of a Registration Committee decision cancelling the Applicant’s registration for failing to comply with the deadline. Because these applications for review arise where a cancellation deadline is imminent – where the Applicant will, potentially during the review process itself, lose the right to practice – these cases have required the Review Board, for the first time, to consider how it should exercise its authority to “stay” a College committee decision pending review.

One of the Review Board’s leading decisions in this area is 2016-HPA-195(a) - a stay application made just days before a December 26, 2016, College Registration Committee deadline for licence cancellation. In that case, the adjudicator set out the three criteria for the grant of a stay order as articulated in the case of *RJR-MacDonald Inc. v. Canada (Attorney General)* [1994] 1 SCR311 at 334:

1. Is there a serious issue to be tried?
2. Will the Applicant suffer irreparable harm if the application is refused?
3. Which of the Parties will suffer greater harm from granting or refusing to grant the remedy (the stay) pending a decision on the merits.

The threshold for “serious issue to be tried” is low. Unless the facts of the application fail to set out a plausible concern, the adjudicator should proceed to the second and third parts of the test. “Irreparable harm” asks whether a refusal to grant a stay of the decision *could so adversely affect the Applicant’s interests that the harm could not be remedied* if the eventual decision on the merits is different than the conclusion reached in the decision being reviewed. In other words, if no measure of success when the review is ultimately concluded could make up for the damage suffered from the failure to grant a stay, then the irreparable harm test is met.

The final part of the test is the balance of convenience criterion, sometimes called the “balance of inconvenience” - in basic terms, who will suffer more if the stay order is granted, or not granted? In decision 2016-HPA-195, the Review Board granted a stay of the Registration Committee’s decision, finding in all the circumstances that the applicant raised a serious issue, that he would suffer irreparable harm if a stay were not granted, and that the harm he suffered (and that his many patients would suffer) outweighed the harm to the College by allowing him to continue practising while his application for review was heard and decided.

Each case must be decided on its own facts, and thus the stay for an applicant in a certain case should not be taken as an indication that all applications for stays will be successful. The Review Board has recently denied certain stay applications for failing to meet the criteria set out above. If an applicant has not made a solid case that they will be harmed irreparably if the stay is not granted, and that there is a reasonable case to be made that the overall outcome will not be different if the stay is granted, then the Review Board will not grant the stay as a discretionary remedy. In the right circumstances, however, it is a powerful and flexible tool to ensure the proper administration of justice.

Note that the Review Board has responded to the increase in number of registration and stay of proceeding matters by issuing a Practice Directive (#6) that will guide both the Review Board and participating parties in handling the logistics and legal requirements associated with these processes. We have also refined several of our Rules of Practice and Procedure related to registration matters to ensure that the Rules provide clear and unambiguous guidance. Review Board Executive Director Michael Skinner provides further details in his Message following, to which the text of Practice Directive #6 is appended.

COLLEGE INQUIRY COMMITTEES

Past conduct history

The Inquiry Committee is responsible for assessing the validity of complaints brought against members of the College (“Registrants”). Following the Inquiry Committee’s review of a complaint, it has several options. These include taking no action, making comments that are “critical” of the Registrant’s practice or conduct, setting out its “expectations” for the future, requesting that the Registrant consent to a reprimand or other remedial action or issuing a Citation, a document that refers the matter to a formal hearing before the Discipline Committee.

It is fundamental to the proper functioning of the Inquiry Committee that it have adequate, relevant information before it in order to appropriately assess the complaint brought against the

Registrant, and particularly to assess what appropriate remedial disposition it ought to make if it finds problems with the Registrant's practice or conduct.

The Act recognizes that where the College has previously taken action respecting a Registrant, the Inquiry Committee may consider that previous action as part of its decision-making. This is explicitly provided for in s.39.2:

Consideration of past action

39.2 (1) Before taking any action respecting a registrant under the following provisions, the registrar, inquiry committee or discipline committee may consider any action previously taken under Part 3 respecting the registrant:

- (a) in the case of the registrar or the inquiry committee, section 32, 32.2 or 32.3;
- (b) in the case of the inquiry committee, section 33 or sections 35 to 37.1;
- (c) in the case of the discipline committee, section 38 (8), 39 (2), (5), (8) or (9) or 39.1 (1).

(2) The registrar, inquiry committee or discipline committee may, in applying subsection (1), consider

- (a) any action under Part 3 respecting the registrant that occurred or was recorded before the coming into force of this section, or
- (b) any action, similar to an action that may be taken under Part 3, that was taken by the governing body for a health profession under a former enactment regulating the health profession.

While s.39.2 states that an Inquiry Committee "may" consider any action previously taken under Part 3 respecting a Registrant, it appears to give the Inquiry Committee a measure of judgment in how to go about doing that.

I note that in Ontario, the situation is different. Section 26(2) of the *Health Professions Procedural Code* (Schedule 2 to the *Regulated Health Professions Act* of Ontario) states:

Prior decisions

(2) A panel of the Inquiries, Complaints and Reports Committee shall, when investigating a complaint or considering a report currently before it, consider all of its available prior decisions involving the member, including decisions made when that committee was known as the Complaints Committee, and all available prior decisions involving the member of the Discipline Committee, the Fitness to Practise Committee and the Executive Committee, unless the decision was to take no further action under subsection (5). 2007, c. 10, Sched. M, s. 30.

As you can see, the language here is "shall." The Ontario equivalent of a British Columbia Inquiry Committee is under a positive duty to review all prior decisions of the College concerning a particular Registrant.

There is a strong case to be made that the British Columbia legislature should follow the Ontario lead. The Ontario statute recognizes that the Inquiry Committee needs to have the "prior decisions" information before it in order to make a determination about relevance, consequences and possible escalation of penalties.

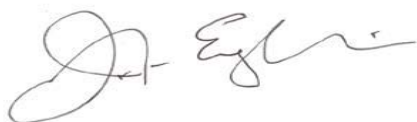
In British Columbia, issues regarding the use (or non-use) of past conduct history by Colleges will continue to be assessed by the Review Board on a case by case basis under the rubric of the “adequacy of the investigation” and the “reasonableness of the disposition.” In the meantime, I have written a letter to the BC health colleges’ umbrella organization – the BC Health Regulators - which letter is posted on the Review Board’s website, encouraging the College to review the issue of how past conduct history should be considered in their inquiry committee decision-making. As I stated in that letter:

In my respectful view, the time has come, in the public interest, for a systematic review of the issue of how “past conduct history” is employed by the health professions colleges. While the Review Board cannot fetter its own statutory mandate to develop guidelines and recommendations for the colleges, there is merit in the perspective that your organization should be given a reasonable period of time in the first instance to develop its own framework before the Review Board considers, in May 2018, whether it is necessary for the Review Board to issue any guidelines or recommendations on the issue under s. 50.53(1)(d) of the *Act*.

In the coming year we will be discussing this issue with the health college sector, and look forward to reporting the results in the next Annual Report.

Thank you!

As always, my heartfelt gratitude to those key players who do the heavy lifting at the Review Board: our Order In Council appointed members who pour themselves into the task of conducting ever-more-complex hearings and mediations, our legal counsel Frank Falzon, Q.C. (who we have kept busier than ever this past year), the “back office” financial and administrative support provided by the ever-helpful staff of the Environmental Appeal Board, and last but by no means least, Executive Director Michael Skinner and his highly competent team of case managers and administrators at the Review Board’s Victoria office. Quietly and without fanfare (almost like an electric vehicle) they move our organization forward!

A handwritten signature in black ink, appearing to read "J. English". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

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

Executive Director's Report

2016 marked another year of new developments, perhaps chief of which was the emergence of registration issues to take a place of prominence (as opposed to a peripheral position, based on volume) in the work of the Review Board. This has been ably described in this year's Chair's Message from Review Board Chair Tom English, QC.

The other trend of a continuing, incremental nature has been the increasing complexity of the Review Board's work and processes. I have noted in the past that the life cycle of a typical tribunal is marked by increasing complexity, which is generally a product of the adversarial system of litigation. As parties, often represented by legal counsel, advance increasingly detailed and novel arguments in support of a position, issues arise that may not previously have been foreseen. This, combined with unique circumstances, may reveal a need for the refinement of procedural rules in order to ensure the fairness to all parties that the rules were intended to provide.

Rule refinements

So it has been with our Rule 35 and its application to fact patterns involving complainants with multiple files; in one case we had multiple complainants with similar complaints against one Registrant - rare, but not unheard of. For consistency of approach, these files were assigned to one member to be heard consecutively. The effect of this particular fact pattern was to reveal that Rule 35 could benefit from some subtle but significant refinements to clarify in what circumstances evidence from one file can be used in another. The result is the following text of the new sub-section (7) added to Rule 35:

7. Where the review board has made a direction in respect of two or more applications for review under subsection (1), information or evidence from one review file must not be considered by the hearing panel in respect of another review unless:
 - (a) the review applications are ordered to be combined or heard together under Rule 35(1)(a) or (b), taking into account the factors in subsection (4) or (5), depending on the nature of the review, or,
 - (b) the review board has issued an order specifying the extent to which the information or evidence from one review may be used in the other review(s) and any other terms related to the use of such evidence.

While this new sub-section for the most part codifies our existing practice, it does provide additional procedural clarity to parties, and particularly to legal counsel, who are the ones most inclined to be concerned about how their client's evidence is handled.

Rules re Registration matters

As Tom English has pointed out in his Chair's Message, it has been a busy time for the Review Board in the area of Registration reviews, and related stay of proceedings applications. The volume of work in this area, and the legal complexity attaching to it, has demonstrated a need for clear and concise guidance, which the Review Board is providing in two ways:

1. The introduction of Practice Directive #6 to provide guidance on how the Review Board approaches applications for stays of proceedings, and what a party needs to do to properly pursue this type of application, and,

2. Refinements to Rules 15 and 19 to guide Colleges with respect to making section 42 applications (or not having to make such applications, in certain cases) in the context of registration reviews.

Practice Directive #6 is appended to this message. It addresses the requirement that a stay application be made in writing, what documentation the College must produce and in what time frame, how the Review Board may proceed if the College takes no position on the application or opposes it, and confirms the authority of the Review Board to modify the process set out in the Practice Directive in order to deal with urgent or complex applications.

As a necessary complement to Practice Directive #6, the Review Board has recently amended Rules 15 (reference to s.42 removed) and 19 (specific redactions permitted without s.42 application). These amendments provide more detailed guidance on the situations in which a College must, or may not be required to, apply for an order under s.42 of the *Administrative Tribunals Act* permitting it to withhold certain documents - in particular references obtained as part of the applicant's application for registration with the College. As with Practice Directive #6, the amendments to Rules 15 and 19 are presented in an addendum to this message.

All of this, we trust, will provide useful guidance to the parties to a registration review, whether or not legal counsel are involved, in what is invariably a complex and stressful time in the life of the applicant.

More thanks

One of the great benefits of being a small organization is the speed with which we can respond to urgent or complex matters. This office, in my view, has done an outstanding job in responding to the unanticipated influx of urgent, complex, high-stress registration applications. At the same time, as a learning organization it has taken the lessons of its experience and used them to craft in a very efficient manner the documents and amendments referred to above. Review Board staff have been key to the refinement of these efforts, finding potential deficiencies and proposing elegant solutions. Thank you!

At the same time it would be hard to overstate the contribution made by our legal counsel Frank Falzon, Q.C. Always there when we need him (and the need has been almost constant), and always proposing solutions that come from an encyclopedic knowledge of administrative law.

Lastly, my perennial thanks to Alan Andison and his staff at the Environmental Board, whose back office administrative functions performed with timeliness and precision keep us on track and open for business. Thank you all!



Michael Skinner, Executive Director
Health Professions Review Board

ADDENDUM to Executive Director’s message: new Practice Directive #6 and amendments to Rules 15 and 19

**PRACTICE DIRECTIVE #6
APPLICATIONS FOR REVIEW AND STAY APPLICATIONS FROM COLLEGE
REGISTRATION DECISIONS
CONCERNING PROVISIONAL REGISTRANTS**

This Practice Directive sets out the case management procedures the review board will follow upon receipt of applications for review under s. 50.54 of the *Health Professions Act* (the “Act”) challenging registration decisions to cancel an applicant’s provisional registration and licensure, including where the applicant applies for a stay of the registration decision:

1. An application to review a registration decision cancelling a provisional registration and licensure will normally be processed on an expedited basis.
2. Upon receipt of the application for review, the applicant will be notified of s.50.62 of the Act which provides that “the commencement of a review under this Part does not operate as a stay or suspend the operation of the decision, investigation or disposition under review unless the review board orders otherwise.” In this Practice Directive, an application under s.50.62 is referred to as a “Stay Application.”
3. A Stay Application must be made in writing, and may be communicated as part of the application for review or in a separate document, including an email communication.
4. If the applicant applies for a stay, the review board will require the college to do the following within 7 days from the date of the review board’s communication:
 - (a) Advise the review board and the applicant whether it consents, opposes or takes no position on the Stay Application;
 - (b) Provide the review board with a copy of the applicant’s:
 - i) immediately past Certificate of Licensure (if applicable); and
 - ii) current Certificate of Licensure (if applicable); and
 - (c) Provide the review board with a copy of the registration committee’s decision or decisions relevant to the cancellation of the provisional registration.
5. If the college consents, the stay will be granted and the review board will either proceed with a mediation process or proceed directly to its Stage 1 and/or Stage 2 hearing process, in accordance with any directions issued by the review board or agreed to by the parties concerning the timing and conduct of the review.
6. If the college takes no position on the Stay Application, the review board may:

- (a) Decide the Stay Application if it concludes that it has sufficient information upon which to do so, or
- (b) Decide the Stay Application after taking one or both of the following steps:
 - i) Requiring the applicant to provide to the review board, within 7 days from the date of the review board's communication, a written submission explaining why the stay should be granted.
 - ii) Requiring the college to provide to the review board, within 14 days from the date of the review board's communication, three copies of the college record in accordance with Rules 13 and 15, a copy of which record the review board will provide to the applicant. If the college intends to make an application under s. 42 of the *Administrative Tribunals Act* requesting that the review board receive certain record material to the exclusion of the applicant, the college must provide the review board with three clean copies and two redacted versions of the record pending the review board's decision on the s.42 application.¹ Pending the section 42 decision, the review board will provide the redacted version to the applicant for the purpose of the Stay Application.

7. If the college opposes the Stay Application, the review board will decide the Stay Application after communicating to the parties one or more of the following requirements, subject to any modifications that the review board considers necessary in the circumstances:

- (a) Requiring the applicant to provide to the review board, within 7 days from the date of the review board's communication, a written submission explaining why the stay should be granted.
- (b) Requiring the college:
 - (i) To provide to the review board, within 14 days from the date of the review board's communication, three copies of the college record in accordance with Rules 13 and 15, a copy of which the review board will provide to the applicant; and
 - (ii) To provide to the review board and the applicant its written submission explaining why it opposes the stay.

¹Note: The College may, without making a section 42 application, redact from the version of the Record provided to the Applicant completed reference forms the College obtained from a referee in confidence about the applicant during the registration process prior to the Applicant's commencement of work in a BC health authority. However, the College must ensure that the withheld reference forms are included in the unredacted record directed to the Review Board on the review.

Note: If the college intends to make an application under s. 42 of the *Administrative Tribunals Act* requesting that the review board receive certain record material to the exclusion of the applicant, the college must provide the review board with three clean copies and two redacted versions of the record pending the review board's decision on the s. 42 application (see footnote 1). Pending the section 42 decision, the review board will provide the redacted version to the applicant for the purpose of the Stay Application.

- (c) Requiring the applicant to provide to the review board, within 5 days from the date the review board distributes the record, any reply that the applicant wishes to make to the college's submission (the "applicant's reply").

8. The review board member assigned to decide the Stay Application will in the ordinary course issue the decision on the Stay Application (with reasons, or with reasons to follow) within 10 days from the date of the expiry of the applicant's reply. As part of or following the review board's decision on the Stay Application, the member will issue directions concerning the timing and conduct of the review, subject to any mediation process conducted by the review board.

9. Based on the urgency or complexity of an application, the review board may modify the process set out in this Practice Directive, or may establish any other process it considers appropriate, including a direction that a conference call be established on a specified date to hear oral evidence and submissions from the parties.

Note: Applicants should be aware that even if a stay is granted, a stay does not determine the ultimate outcome of the review. As a result, applicants are advised to continue to keep in mind key deadlines, including examination deadlines, set by the registration committee. A stay or an application for a stay should also not be taken as relieving a requirement or replacing any other action or steps that an applicant may, or should, take.



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

RULE CHANGES CONSEQUENTIAL TO PRACTICE DIRECTIVE #6

1. Amend Rule 15(3) to delete the reference to section 42 of the ATA

15(3) Before the college produces the record to the review board, the college may sever from the record the home address, home phone number or private email account and identification or billing number or similar personal identifiers of a witness expert or party (unless, in the case of a party, the party has used that information as contact information for the review process). The college is to notify the review board in its covering letter if such severances have been made.

2. Add a sentence to Rule 15(5) to cross reference Rules 18 and 19

15(5) Before the college produces the record, the college may consult with the registrant and/or the complainant where the college believes that particular information or a particular document may raise an issue for that party under s. 42 of the ATA¹. See also Rules 18 and 19.

3. Add a proposed new Rule 19(5) for registration reviews

19(5) Despite subsections (1)-(4), the college is not required to make a s.42 application to redact from the version of the record provided to the applicant reference forms the College obtained from a referee about the applicant during the registration process prior to the applicant's commencement of work in a BC health authority. However, the college must identify the redaction in the record index, and ensure that any withheld reference forms are included in the unredacted record provided to the review board on the review.

¹ Section 42 of the ATA states: The tribunal may direct that all or part of the evidence of a witness or documentary evidence be received by it in confidence to the exclusion of a party or parties or any interveners, on terms the tribunal considers necessary, if the tribunal is of the opinion that the nature of the information or documents requires that direction to ensure the proper administration of justice.

About the Review Board

On March 16, 2009, the Health Professions Review Board (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 potentially 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 section 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 25 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 December 31, 2016

| Member | Profession | From |
|---------------------------------|--------------------------------|-----------------|
| J. Thomas English, Q.C. (Chair) | Lawyer | Vancouver |
| Michael J.B. Alexandor | Business Exec./Mediator (Ret.) | Vancouver |
| Kent Ashby | Lawyer | 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 |
| D. Marilyn Clark | Consultant/Business Executive | Sorrento |
| Douglas S. Cochran | Lawyer (Ret) | Vancouver |
| William Cottick | Lawyer | Victoria |
| Brenda Edwards | Lawyer | Victoria |
| Leigh Harrison | Lawyer (Ret) | Rossland |
| David A. Hobbs | Lawyer | North Vancouver |
| Roy Kahle | Lawyer (Ret) | Kamloops |
| Robert J. Kucheran | Lawyer | Vancouver |
| Victoria (Vicki) Kuhl | Consultant/Mediator/Nursing | Victoria |
| Sandra K. McCallum | Lawyer (Ret) | Victoria |
| Robert McDowell | Project Director | Vancouver |
| John O'Fee, Q.C. | Lawyer/CEO | Kamloops |
| John M. Orr, Q.C. | Lawyer | Victoria |
| Herbert S. Silber, Q.C. | Lawyer | Vancouver |
| Donald A. Silversides, Q.C. | Lawyer | Prince Rupert |
| Lorraine Unruh | Hospital Administrator (Ret.) | Penticton |
| Kent Woodruff | Lawyer/Mediator | Kamloops |
| Deborah Zutter | Mediator | 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: <http://www.hprb.gov.bc.ca>

Mailing Address:

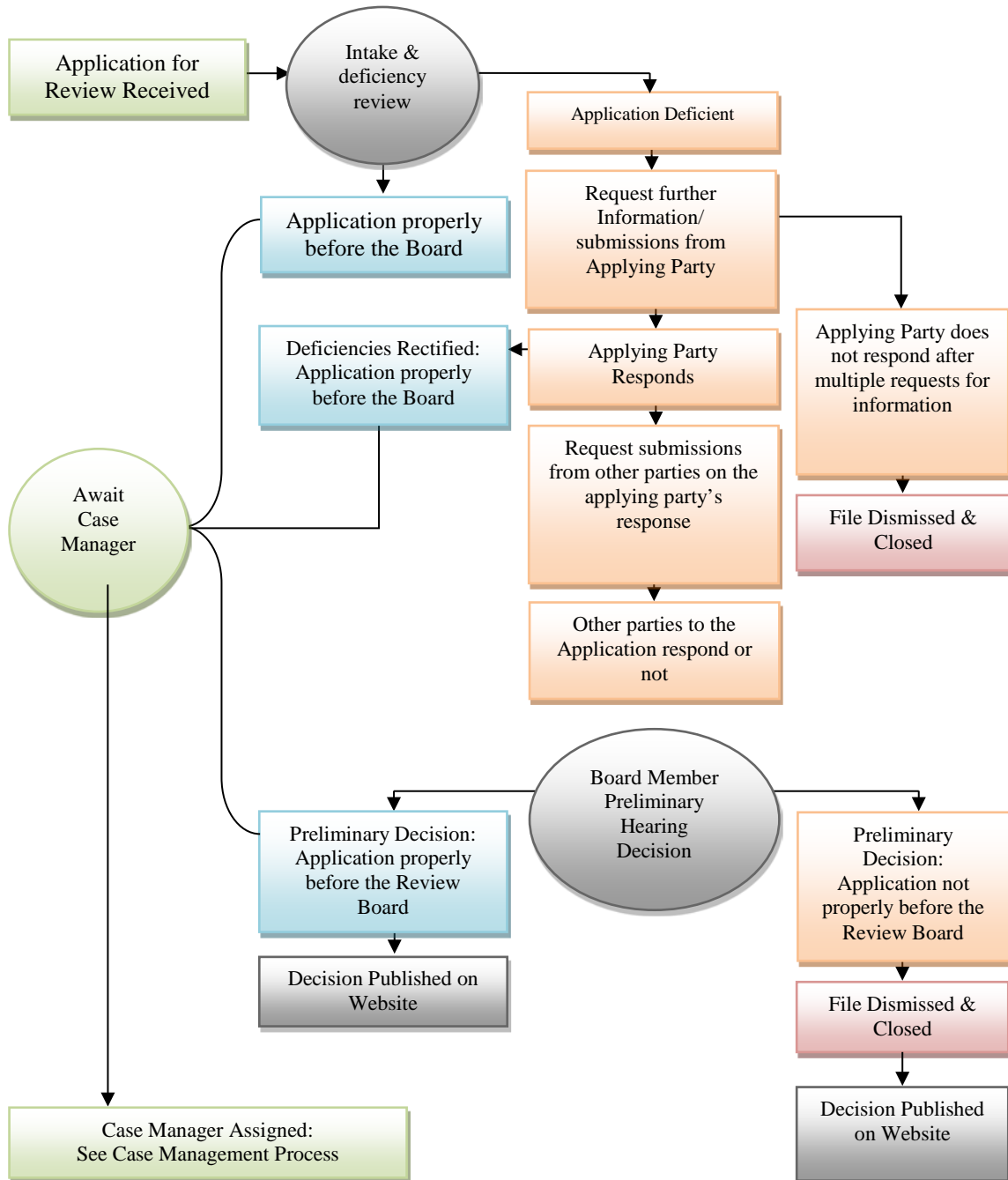
Health Professions Review Board
PO Box 9429 STN PROV GOVT
Victoria, BC V8W 9V1

The Review Process and Activity

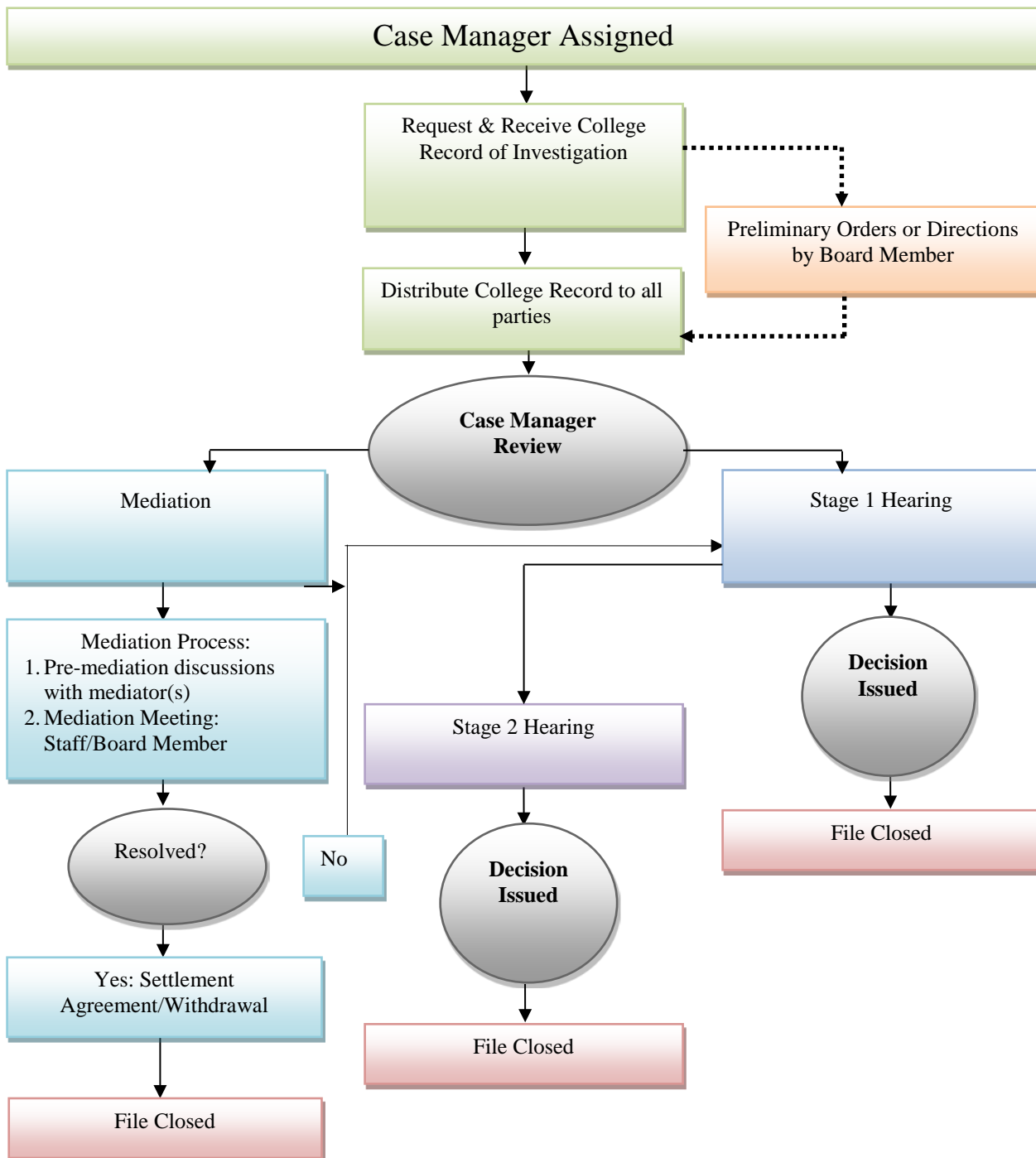
The following is a visual overview of the review process. For more detailed information, a copy of the Review Board’s Rules of Practice and Procedure and other information can be accessed at the Review Board website or obtained from the Review Board Office.

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.



Mediation Activity

In past years we have presented extremely brief snapshots of mediated outcomes to provide what we referred to as “a flavour of what has been achieved in the resolution of health practices disputes.” This is because of the clear requirement that such resolutions be absolutely confidential – no information can be included that would enable identification of the parties.

Nonetheless, within that requirement for absolute confidentiality we can provide glimpses into both processes and outcomes. One member of the Review Board offers this perspective on non-adversarial dispute resolution, followed below by a Review Board Case Manager’s reflections on technology-assisted mediation:

The Power of Apology

Many appeals before us result from inadequate communications between patient and professional. College dispositions rightly focus on Registrant performance in their profession. Complainant patients can be left dissatisfied about the softer inter-personal issues in their experience, and feel that they have not been heard.

Above all, patients want to be heard. Often, the remedy for poor communication is good communication. Mediation can provide a bridge to closure through a communication process that is self-directed, consensual and confidential. A letter of apology from the professional that is sincere, and to which the Complainant responds by filing a notice of withdrawal (thus ending the review process), is a satisfactory resolution for all parties. One Review Board member reports settlement of three cases in the past year with this approach. To give and accept an apology is a powerful tool of respect.

Note: The British Columbia *Apology Act* provides legal protection to individuals who offer an apology - that apology cannot be used in court as an admission of liability or in any legal determination of liability, as set out in section 2 of the *Apology Act*:

2. (1) An apology made by or on behalf of a person in connection with any matter

(a) does not constitute an express or implied admission of fault or liability by the person in connection with that matter,

(b) does not constitute an acknowledgement of liability in relation to that matter for the purposes of section 24 of the *Limitation Act*,

(c) does not, despite any wording to the contrary in any contract of insurance and despite any other enactment, void, impair or otherwise affect any insurance coverage that is available, or that would, but for the apology, be available, to the person in connection with that matter, and

(d) must not be taken into account in any determination of fault or liability in connection with that matter.

(2) Despite any other enactment, evidence of an apology made by or on behalf of a person in connection with any matter is not admissible in any court as evidence of the fault or liability of the person in connection with that matter.

Must mediation always be face to face?

No. Mediation is a flexible process by which people make contact with one another with the assistance of a mediator who facilitates the process, and ensures that participants respect the ground rules, including courteous communication.

Having said that, there are circumstances in which face to face communication, even in a well-structured mediation environment, is either impractical (because of time or distance, or both) or too stressful for the parties. When that is the case, other mechanisms can be employed, as described by a Review Board case manager in these examples:

Complaint - Settled by asynchronous (different times) email exchange. The complaint was regarding the manner by which the registrant contacted the complainant at home. The parties resolved the matter by asynchronous communication, directed through the assigned staff mediator, without any direct contact with each other. The result was a formal written agreement that included acknowledgement of the impact of the registrant's actions upon the complainant.

Complaint - Mediation conducted by combination telephone conference call and in person meeting. Both parties, located in a remote northern town met face-to-face and the mediator attending by telephone. The pre-mediation work assisted in creating a respectful environment that allowed for the complainant and the health care provider to meet in person and resolve the matter with the mediator facilitating by way of telephone conference call.

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.

The Review Board process, which finds its authority in Part 4.2 of the *Health Professions Act* (the "Act" or "HPA") and in the provisions of the *Administrative Tribunals Act* ("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?

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, deliver a copy to each party and post it to the website.

Key Decisions

The Review Board conducted 137 hearings in 2016, and a selection of significant decisions is summarized below. Several decisions released in the first months of 2017 are also included to bring them to the attention of readers in a timely way.

Registration reviews typically examine whether the Registration Committee's decision was reasonable and in compliance with the Act. In contrast, Inquiry Committee dispositions are examined on the basis of two statutory review criteria:

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

1. PRELIMINARY AND INTERIM DECISIONS

Application for Extension of Time

DECISION No. 2016-HPA-008(b), December 29, 2016, Physicians and Surgeons

In *Decision No. 2016-HPA-008(b)* (December 29, 2016), the Review Board reconsidered whether it had appropriately required a complainant to apply for an extension of time. In that case, the College disposition was dated November 24, 2015 and the application for review was filed on January 8, 2016. Based on the five day "deemed delivery" rule, the application for review was 4 days late, and required an extension of time.

After describing the complex sequence of events that led the Review Board to reconsider its previous decision concluding that an extension of time was necessary and refusing to grant an extension of time (Decision No. 2016-HPA-008(a)), the panel (L. McDowell) concluded that an application for an extension of time was not necessary, and that the complainant's appeal should proceed:

[27] The disposition was not sent by registered mail or even regular mail directly to the Complainant's residence. As described by the Complainant, the disposition took a lengthy route first to the nearest city post office where a notification was then mailed to the rural postal outlet and left in the Complainant's mailbox. In effect, there are two mailings before correspondence is deposited in the Complainant's mailbox. The Complainant then has to travel to the city post office to retrieve the mail. The Complainant has also been able to show that the Review Board mail itself has not met the 5 day deemed delivery rule.

[28] I would like to make two further observations about Rule 27(3). First, it is arguable that the Rule has no application to a mailing between the College and a complainant before the matter has even come before the Review Board. The Rules facilitate the procedures of matters before the Review Board. I question whether they apply to the delivery of a disposition that occurred before an application for review was ever commenced. Second, and most importantly, the Rule cannot displace the HPA. Section 50.6(2) of the HPA is the governing law. No rule can override the statutory right of a complainant to in fact file his application for review within the 30 day period. At most, Rule 27(3) is a guideline that is always subject to the actual facts of a particular case.

[29] The Complainant has offered evidence that he lives in a remote area, without regular home or even local mail delivery, is disabled and must travel to pick up his

mail at a central location when he is able. He has also been able to demonstrate that mail delivery from the Review Board is often only available for pick up outside the deemed 5 day mail delivery period. It would be unfair and inappropriate to strictly adhere to the deemed delivery period.

[30] I find that the application for review was submitted within the requisite 30 day period. As a result, an application for an extension of time to file was not necessary. The standard Review Board case management process will now ensue with further directions to be issued shortly.

Decision No. 2016-HPA-008(b) makes clear that the question as to whether an application for review is “in time” is ultimately an adjudicative decision that must be made by the Review Board. Thus, even if the assignment is referred as an extension of time application, it is ultimately for the member to assess (and if necessary receive submissions) on the question whether the application for review was filed in time.

DECISION No. 2016-HPA-214(a), February 15, 2017, Physicians and Surgeons

Decision No. 2016-HPA-214(a) sought to clarify how the 30 day rule should be administered in light of the practical difficulties arising from the absence of any objectively verifiable delivery method by the colleges.

In that case, the disposition letter was dated October 6, 2016 and the complainant filed her application for review on November 15, 2016. The complainant alleged that she did not “receive” the application until November 7, 2016 as she was out of the country. In that context, the decision states as follows:

[8] The Review Board Office treated this application for review on the basis that an extension of time was required. However, there is, in my view, a genuine question as to whether that is so. Because issues like this are likely to arise on other applications, I propose to identify the practical problems that cases such as this present on extension of time applications:

- (a) While the College’s disposition is dated October 6, 2016, there is no evidence before the Review Board about when it was actually mailed by the College. I do not think it would be appropriate to simply presume, without evidence, that the College invariably mails its dispositions, or mailed the disposition in question, on the same date as the letter. It would helpful on applications such as these for the College response to clearly state the date on which the envelope was mailed.*
- (b) In the absence of such information, it is in my view reasonable for the Review Board to adopt a working presumption that the College mailed its disposition 2 business days after the letter date. That presumption could be rebutted by the Complainant or the College satisfying the Review Board that the envelope had a different post mark.*
- (c) The date the letter was mailed is only the first step. This does not answer the question as to when it was physically delivered to the complainant’s address. Since it does not appear that the College sends its disposition letters by any means requiring proof of delivery, the Review Board is still left uncertain as to when the package was actually “delivered” to the complainant’s mailing address, particularly in a case like this where the complainant was away.*

- (d) *In the past, the Review Board appears to have relied on Review Board Rule of Practice and Procedure 27(3) which states “(3) A document or communication that is sent by mail is deemed delivered on the fifth day after it is mailed, excluding a Saturday, Sunday or public holiday.” The problem is that Rule 27(3), which applies to communications mailed once the matter is at the Review Board, is of questionable application when the issue is about College communications to the complainant before the matter ever came to the Review Board. What “deliver” means in s. 50.6(2) of the HPA must be considered on its own terms.*
- (e) *One practical approach to addressing this is for the Review Board to adopt an operating presumption that can be rebutted by the parties. Since the College uses mail, one helpful approach would be to presume that mailed packages are delivered in accordance with the Canada Post Delivery Standards, subject to a complainant or the College providing evidence that displaces the presumption. The Canada Post Delivery Standard for packages delivered locally within the lower mainland is four business days. The delivery standard obviously varies depending on where the complainant lives.*
- (f) *If I apply the presumptions in (b) and (e), I find that the letter likely arrived at the Complainant’s mailing address on Friday October 14, 2016.*

Having concluded that the package likely arrived on October 14, 2016 (which would still make it late by one day), Member Unruh went on to consider the argument that it had not been “delivered” because the complainant had not “received” it until November 7 due to her absence from the country:

[11] For certain, “deliver” cannot be interpreted so broadly as to allow a complainant’s negligence or avoidance to prevent the 30 day clock from starting after the mail has arrived. The question is what “deliver” means in situations where the complainant could not reasonably have been expected to see the notice that was mailed to his address. Given the positions of the College and Registrant, and in the interests of efficiency, I have not requested submissions on whether deliver can mean “actual receipt.” This is an issue that a different panel can address in the appropriate case with reference to case law (see for example, Kennedy v. Canada, 2016 FC 628, dealing with email communications). Without deciding the issue I will proceed here on the basis that where a complainant has given the College a mailing address for delivery and the package has arrived at his mailing address, the notice has been “delivered”, and the complainant bears the risk involved in not taking all necessary steps to ensure that the mail is promptly brought to his or her attention when it arrives. If there are extenuating circumstances, these should be considered by the Review Board in deciding whether to grant an extension of time.

On the facts of that case, the panel held that special circumstances had been shown and granted the extension of time:

[18] In all the circumstances, I conclude that the Complainant clearly intended to file on time and that her absence from the country was an understandable explanation for her application being late. I cannot conclude that the College or the Registrant, who take no position on this application, would suffer any prejudice by extension of time. Based on the information available to me, and in view of the positions of the College and Registrant, I am also unable to find that this

application, which arises from a College disposition on a complaint about a procedure conducted on a newborn without consent, is so obviously lacking in merit as to justify a refusal of an extension of time. In all of the circumstances, it is in the interests of justice to grant the extension of time.

In the absence of a change in College practice regarding the method by which dispositions are issued, or a statutory change authorizing the Review Board to create a “deemed delivery” rule that applied to an event that took place before the matter came to the Review Board, the best the Review Board can do is to adopt the “working presumptions” identified in *Decision No. 2016-HPA-214(a)*.

Registration reviews: preserving the status quo during a review process by ordering a “stay of proceedings”

DECISION NO.2016-HPA-195(a), December 23, 2016, Physicians and Surgeons

Review Board Chair Tom English, QC, described this case (2016-HPA-195(a)) in his Chair’s Message at the beginning of this Annual Report. Here are some additional background details of the stay of proceedings decision, and the adjudicator’s analysis of the key elements that must be present for the granting of a stay:

Background as ascertained from the Applicant’s applications to the Review Board

[9] The Applicant is a physician who immigrated to Canada from abroad and applied for registration and licensure with the College on or about 2012.

[10] The Registration Committee met and passed a resolution granting the Applicant eligibility for registration and licensure in the Provisional; General Family Practice class on December 13, 2012, and stipulated that the subsequent extension of licensure was dependent upon his “becoming a Licentiate of the Medical Council of Canada (“LMCC”) within three years of commencement of practice in BC” and “obtaining the certification examinations of the College of Family Physicians of Canada within five years of commencement of practice in BC.”

[11] The Applicant commenced practicing as a family physician in a northern community in British Columbia on July 23, 2013. He is presently an examiner and teacher at the medical school of a local university in addition to providing medical services, under supervision, to approximately 1700 patients in a local clinic, in hospital and in care facilities. His practice includes many elderly patients with complex needs as well as those who are in palliative care.

[12] On June 23, 2015, the Registrar’s Assistant at the College sent an email letter signed by the Deputy Registrar to the Applicant requiring the Applicant to provide an update regarding his examination status. Contrary to assertions in the Registration Committee’s Decision, the Applicant responded to that email the same date confirming that he intended to sit the Medical Council of Canada’s Qualifying Exam, Part I (the “MCCQE Part I”) in the October 2015 sitting and Part II of the exam (the “MCCQE Part II”) in April 2016.

[13] On July 15, 2016, a Compliance Monitor at the College emailed the Applicant, referencing the June 23, 2015, email sent by the Registrar’s assistant and cautioning him that as a requirement of his registration and licensure, he was to become a Licentiate of the Medical Council of Canada by July 23, 2016. The Compliance Monitor requested that the Applicant reply by July 23, 2016, stipulating whether he had obtained his LMCC and

the date that he was certified by the College of Family Physicians of Canada (the “CCFP”).

[14] On August 5, 2016, a Compliance Monitor, Registration Department of the College wrote the Applicant regarding his ongoing registration and licensure. The Compliance Monitor noted that the College had made two previous attempts to contact the Applicant seeking an update on his examination status and reviewed the terms of his eligibility for registration and licensure and noted:

Due to (the Applicant’s) failure to provide an update on your progress on the LMCC examination and given that the College has not received confirmation of your success in obtaining this examination within the timeline stipulated, your file will be referred to the Registration Committee to consider the following options:

- Continuing your registration and licensure in your current class and granting you another opportunity to obtain both the LMCC examinations in the Fall of 2016, failing which your registration and licensure will be cancelled;*
- Cancel your registration and licensure three months following the Committee meeting, allowing you time to wrap up your practice, due to your noncompliance with the requirements for your continued registration and licensure, or*
- Other options put forward by the Registration Committee.*

The Applicant was instructed to provide any additional information that he wished the Registration Committee to review by August 31, 2016. He was invited to provide the results of his MCCQE Part II examination, documentation from the Medical Council of Canada that he was registered for the Fall 2016 MCCQE Part II examination, any other information relevant to the examination such as his preparation for the exam and any prior attempts to pass the examination, and any extenuating circumstances that he would like the Registration Committee to review.

[15] The Applicant replied to the Compliance Monitor by email dated August 25, 2016, in which he advised the Compliance Monitor that he sat and passed the MCCQE Part I in October 2015 and sat, but did not pass, the MCCQE Part II in April 2016. He advised that due to family and work commitments, he did not apply to sit the Part II exam in the Fall 2016. He explained that he had two young children and that he had been acting as an examiner and medical school teacher for the past 3 years in addition to his family medicine practice where he cared for approximately 1500 patients. He confirmed that he had obtained his Certification in Family Medicine (CCFP) and would provide a copy of it by separate email. He expressed concern for his patients if he were required to close his practice.

[16] The Registration Committee met on September 26, 2016, to review the details of the Applicant’s registration and licensure history with the College, specifically his “inability to obtain LMCC within three years of practice (by July 23, 2016) as stipulated in your original resolution, #12-1038, passed by the Registration Committee at the time of granting you eligibility for registration and licensure at its meeting of December 13, 2012.”

[17] The Registration Committee’s Decision indicates that the Registration Committee considered that College staff had emailed the Applicant on June 23, 2015 and requested that he provide details of his progress towards achieving his LMCC but that no response was recorded by the College but noted that the College had been able to independently

verify that the Applicant was successful on the MCCQE Part I on June 11, 2015. The Registration Committee acknowledged the Applicant's email of August 24, 2016 in which he advised that he was unsuccessful at the Part II examination in April 2016. The Registration Committee noted that the Applicant had not registered for the next available sitting of the examination due to family and work commitments and noted his express intention to register for the spring 2017 sitting of the exam. After deliberating, the Registration Committee passed Resolution 16-805 in which it resolved "to cancel the Applicant's registration and licensure three months following the September 26, 2016 meeting due to his non-compliance with meeting the timeline of obtaining the LMCC by July 23, 2016." After deliberating, the Registration Committee decided not to grant the Applicant a further extension of his registration and licensure, directed that his registration and licensure be cancelled effective December 26, 2016, and advised him of his right to appeal the decision to the Review Board.

[18] The Applicant advised the Review Board that the Registration Committee met again on December 15, 2016, and considered further information provided by the Applicant, including the Seven Documents referenced earlier in this decision. The Applicant advised the Review Board that the Registration Committee considered the additional information provided by the Applicant but confirmed its earlier decision. ...

V GROUNDS FOR A STAY SUBMITTED BY THE APPLICANT

Stage 1 – "serious issue" to be tried

[35] The Applicant made no submissions as to whether there are serious issues to be tried in the review. That said, I am cognizant of the fact that, unlike the stay application before the Review Board in 2016-HPA-209(a), the Applicant in this case is unrepresented. I note that in his letter to the Review Board applying for a stay of the Registration Committee Decision he merely stated that there are "urgent and compelling reasons for a stay of proceedings, including irreparable harm to myself and to my patients." He did not expand on what those reasons might be. He did, however, provide the Seven Documents in support of his application and had already provided nine pages of submissions in support of his Application for Review.

[36] While it would not ordinarily be sufficient for an applicant to simply assert that there are urgent and compelling reasons to stay a decision of a registration committee, in this instance, I note that the Applicant stated in his application for a stay that he was aware that the College had advised the Review Board that it took no position with respect to the application for a stay. In my view, it is reasonable to assume that an unrepresented applicant would not be aware of the legal test that the Supreme Court of Canada has suggested ought to be applied when reviewing bodies are considering stay applications. It is also reasonable to assume that the Applicant might believe that he had only to demonstrate that irreparable harm might befall him and his patients if the stay were not granted. It is still further reasonable to assume that an unrepresented applicant might assume that the Review Board would consider submissions that he had previously made in the Application for Review and would not repeat those submissions as they relate to the stay application.

[37] I might view this matter differently had the College made submissions opposing the stay application and had the College referenced the law governing stay applications, including the RJR-MacDonald test. The Applicant would have, then, been afforded the opportunity to respond to that law and the College's submissions.

[38] Even though the Applicant did not clearly articulate that there was a “serious issue” to be decided, I am aware of the following based on the totality of the information provided by the Applicant to the Review Board:

- in December 2012 the College granted the Applicant eligibility for registration and licensure in the Provisional; General/Family class and in July 2013 the Applicant joined a medical clinic in northern British Columbia at which at least four other physicians practiced in a community that was experiencing a shortage of family physicians;
- the other physicians at the clinic have no reservations regarding his skills and abilities;
- the Applicant provides care to between 1500 and 1800 patients and there continues to be a shortage of family physicians in the community;
- the Applicant’s medical practice is supervised by another physician who has provided regular supervisory reports to the College and offered the Registration Committee a glowing endorsement of the Applicant while expressing surprise that he failed the exam, noting that there were “significant mitigating circumstances”;
- the Applicant had two deaths in his family and both of his young children were ill (one seriously ill for an extended period) with a medical condition that went undiagnosed for a significant time prior to the Applicant writing the MCCQE Part II exam which he did not pass;
- the Applicant has asked for a review of his mark on the MCCQE Part II exam as he failed it by a very narrow margin, i.e. 0.2%, on a matter of “exam technique” rather than competence;
- the (local) Division of Family Practice offered to “do anything” to support the Applicant as he pursued his LMCC; and
- the Registration Committee’s Decision contained several factual inaccuracies and relevant omissions including:
 - noting that the Applicant had not responded to a June 23, 2015, email from College staff requesting a progress update regarding his exam status when, in fact, he had responded the same date;
 - noting that the College had independently verified that the Applicant succeeded on the MCCQE Part I exam on June 11, 2015 when the Applicant did not sit (and pass) the exam until October 2015 and had advised the College of this fact;
 - acknowledging an email from the Applicant dated August 24, 2016, advising that he had not been successful at the MCCQE Part II examination and had not registered for the next sitting date but intended to register for the spring 2017 sitting of the exam. In fact, the Applicant had emailed College staff on August 25, 2016, and had provided the results of both exams, indicated the steps that he had taken to prepare for the exams and noted that given his work and family commitments he had not registered for the next session (by the time the Compliance Monitor wrote on August 5, 2016, seeking proof that he had enrolled in the next sitting, registration for the Fall 2016 sitting had closed). The Applicant also noted his three years of community service acting as an examiner and teacher at the local university’s medical school and confirmed that he had obtained his Certification in Family Medicine;
 - omitting to reference that the Applicant had partially met the first requirement for extending his registration and licensure, i.e. the Applicant had passed the MCCQE Part I and had narrowly missed passing the MCCQE Part II and had sought a review of the Part II exam result (which, if successful, would lead to his satisfying the first requirement in its entirety)

and had met the second requirement of his registration and licensure, i.e. obtaining his Certification with the College of Family Physicians of Canada (CCFP);

- *the Applicant's ability to support himself and his family but also his immigration status in Canada as a sponsored physician is dependent on his being able to provide medical services to his patients.*

[39] I cannot ascertain from the material before me whether the Registration Committee considered the Seven Documents or any other new information when it, purportedly reconsidered the Applicant's file and confirmed its earlier decision to cancel the Applicant's registration and licensure effective December 26, 2016. Nor can I ascertain whether the Registration Committee addressed any of the factual errors or omissions in the Registration Committee's Decision in its reconsideration.

[40] Given all the above, I am satisfied that there are several serious issues to be tried in the review of the Registration Committee's Decision including:

- *whether the factual errors and omissions in the Registration Committee's Decision had a bearing on the Registration Committee's decision to cancel the Applicant's registration and licensure effective December 26, 2016;*
- *whether the Registration Committee reconsidered its September 26, 2016, decision on December 15, 2016, and, if so, what information it had before it at that reconsideration meeting;*
- *if the Registration Committee reconsidered its earlier decision, whether and how it conveyed its reconsideration to the Applicant and whether any reconsideration should be considered in the context of the review of the Registration Committee's Decision; and*
- *whether the Applicant will ultimately succeed in his request to have his LMCC Part II exam results reconsidered and, if so, whether the stated basis for the Registration Committee's Decision would be addressed.*

[41] I am cognizant of the Supreme Court of Canada's admonition that it is, generally, neither necessary nor desirable to conduct a prolonged examination of the merits of the case and that the threshold for determining whether there is a serious issue to be tried is low. I am satisfied that the Appellant has raised several serious issues in his supporting materials to his stay application which are neither frivolous nor vexatious and thus has met the low threshold necessary to satisfy stage 1 of the stay test.

Stage 2 – Irreparable Harm

[42] The Applicant submits that both he and his patients will suffer irreparable harm if the stay is not granted and his registration and licensure with the College are cancelled effective December 26, 2016.

[43] As noted above, the Applicant provided the Review Board with six letters of support signed by physicians at the medical clinic where he practices, two officials at the regional health authority, the local "Division of Family Practice" and physician at an after-hours medical clinic; all attesting to the harm that would befall the community if the Applicant were de-registered. The Applicant also provided the Review Board with a four-page letter to the Registration Committee dated December 3, 2016, in which he first detailed the harm that he believed would ensue if the Registration Committee did not reconsider its decision to cancel his registration and licensure. He also filed nine pages in support of his

Application for a Review identifying the harm that he believed would result from the Registration Committee's Decision. In sum, the information before me is that:

- *there are between 1500-1800 patients currently in the care of the Applicant (many of whom are elderly and have complex care needs) who will be left without a family physician if the stay is not granted and the Applicant's registration and licensure is cancelled;*
- *the remaining family physicians in the local area cannot absorb the care of these patients, neither can the walk-in clinics and the Emergency Department of the local hospital which is already overloaded with patients who require care and do not have a family physician;*
- *the local university will lose an examiner and a teacher for medical students;*
- *the Applicant will lose his ability to financially support himself and his young family;*
- *the Applicant's immigration status will likely be negatively impacted and he may be forced to leave the country and uproot his family; and*
- *the Applicant's MCCQE Part II exam results are subject to reassessment and, given the nature and degree of "failure," the results may be varied such that he will have successfully passed the exam and qualified as a Licentiate of the Medical Council of Canada thereby removing the Registration Committee's sole reason for cancelling his registration.*

All the above harm could conceivably occur before the Review Board hearing of the Review Application.

[44] I am satisfied that a refusal to grant the stay could so adversely affect the Applicant's interests that the harm could not be remedied if the eventual decision on the merits is different than the decision being reviewed. In other words, the harm to the Applicant would be irreparable. If his registration and licensure are cancelled prior to the hearing of his application for a review of the Registration Committee's decision, the review would be moot as even if the Review Board were to find in his favour and overturn the decision of the Registration Committee or direct that the Registration Committee reconsider its decision, the Applicant's financial and immigration status and his ability to practice in Canada may have been irrevocably harmed. Accordingly, I am satisfied that the Applicant has satisfied the requirements of the second stage of the stay test.

Stage 3 – Balance of Convenience:

[45] The Applicant made no submissions regarding the balance of convenience save to note that the College was taking no position with respect to his stay application.

[46] I agree with the Court of Appeal's observations in Coburn v. Nagra, supra that in this case, as in most, the issue amounts to ascertaining the relative weight of the convenience and inconvenience of the order sought, always considering the paramount measure, the interests of justice. I am satisfied that based on the totality of the material before me, the balance of convenience favours granting the stay as there is no evidence that the College, or the public interest which it owes a duty to protect, will suffer any inconvenience or harm, let alone suffer inconvenience or harm that is greater than the Applicant would suffer if the stay were not granted. In fact, the evidence before me strongly suggests that the public interest will be harmed if the stay is not granted and the community loses the services of the Applicant before the Application for Review can be heard by the Review Board.

[47] I am further satisfied that it is in the interests of justice to maintain the status quo until the Review Board has concluded its review of the Applicant's Application for a Review as to do otherwise would render the review moot and would deny the Applicant the possibility of retaining his ability to practice medicine and reside in Canada.

[48] In my view, the Applicant has discharged his onus of satisfying me that there are sufficient and compelling grounds to grant his application for a stay of the Registration Committee's Decision.

[Editor's note: when this matter was reviewed on the merits later in 2017, it was remitted to the Registration Committee for reconsideration, based on reasons consistent with the facts described above.]

2. REGISTRATION DECISIONS

Registration reviews: English Language Proficiency (ELP) policy

DECISION NO. 2015-HPA-065(a), December 16, 2016, Physicians and Surgeons

Decision No. 2015-HPA-065(a) identified several serious defects in the College of Physicians' and Surgeons' registration processes for foreign trained physicians. At the core of the review was the College's English Language Proficiency (ELP) policy. The Review Board panel applied the standard of reasonableness, even though that standard is not expressly referenced for registration reviews (except as to one particular remedy):

[233] As noted earlier, I am content in this case to apply the standard of reasonableness. In doing so, I note that the deference involved in applying "reasonableness" does not mean absolute submission. Where, as in this case, the Record contains unrefuted evidence that the information provided to the Registration Committee did not accurately communicate the facts, deference gives way. Further, where the Registration Committee had discretion but failed to exercise it, exercised it without a rational foundation, asked the wrong question, fettered its discretion or acted without any identifiable rationale, the Review Board is entitled to intervene. Any other approach would render the Review Board's mandate meaningless.

The facts related to the applicant were set out by the panel as follows:

[60] It is common ground that the Applicant earned his Bachelor of Medicine and Bachelor of Surgery degrees in a country ("Home Country") that is not on the College list of English speaking countries. While the native language of the Home Country where the medical school is located is not English, the Record, at all material times, contains official certification from the university where he obtained his medical degrees that all lectures, teaching and examinations were conducted entirely in English and 75% of the complete clinical interaction which occurred as part of the course of study was in English. The Applicant graduated in 1990 and practiced in his Home Country until mid-1995.

[61] From the fall of 1995 until the end of 2009, the Applicant practiced medicine in Ireland or the United Kingdom, countries which are on the official list of English speaking countries used by the College. During this time, he took

his post medical school physician training, received a certificate of basic training (“BST”) and a postgraduate examination-based diploma (“MRCS”) from the Royal College of Surgeons in Ireland.

The Panel noted that the criteria applied by the College for determination of compliance with the ELP policy was not applied consistently and had even been altered without notice. The panel stated that it was not open to College staff to add a third criterion to the policy on its own motion:

[107] I take it as obvious that absent evidence that the Registration Committee or College Board added the third criterion, College staff could not on their own motion, without permission, amend the Policy and generate documents or web pages purporting to “add” a third criterion. College staff cannot dictate policy to the Registration Committee, or revise the policy of the Registration Committee at their own motion.

[108] The absence of any reference in the Policy to a third criterion obviously makes the conflicting versions of that criterion even more confusing and problematic in their application to a person who the College only now concedes met the first two criteria, and who has a strong argument to make as well on one version of the third criterion, as discussed next.

[120] In the absence of evidence that the Registration Committee or the College validly appended criterion c), the only conclusion that can reasonably be drawn is that criterion c) was, in its various inconsistent iterations, asserted by College staff without proper authority. Indeed, the very inconsistency in the expression of criterion c) by College staff, and the absence of any reference to criterion c) in the Affidavit (which one would expect to be complete) support the conclusion that the criterion did not flow from a resolution of the Registration Committee or the College Board. This inconsistent and confusing state of affairs shows just why such formal resolutions are necessary so that College Policy is clearly articulated and expressed, rather than being altered or added to by Staff.

The panel also emphasized the importance of the College representing its policies consistently:

[111] It is also common ground that the Applicant practiced medicine for 15 years in two countries recognized as English speaking by the College, primarily Ireland. As becomes evident below, he completed his post-graduate degree training in medicine in an English-speaking country. It was thus entirely reasonable for the Applicant to have represented on his Application that he satisfied the criterion set out as item c) in both the Application document and the Instructions for completing the Application....

[113] The College cannot be arbitrary in its dealings with applicants for registration. Applicants would and should reasonably expect the College to represent and express its key policies clearly and consistently. Applicants would also reasonably give primacy to the documents they are being asked to sign. Where, as here, all three documents have what, on first reading, appears to be identical text, in near identical format, it is not reasonable to think that an applicant would even notice that the third version of the criterion contains a substitution of one word with four words that materially alters the meaning.

The panel also commented on the significance of the distinction between the terms “medical school” and “physician training”:

[197] Perhaps the Registration Committee intentionally “interpreted” criterion c) such that physician training” means only “medical school.” If so, the Registration Committee decision is unreasonable because it does not explain why, when condition a) refers to “medical school” explicitly, condition c) must, implicitly, be limited to medical school alone, or why physician training post medical school is irrelevant for ELP purposes. If the country “where the physician was trained” in c) refers to where the applicant went to medical school, it would have been easy to say so. It is self-evident that something more was being expressed in c). That “something more” is the reality that physician training involves considerably more than medical school. None of this is reflected or acknowledged by the Registration Committee. Thus, even if condition c) of the ELP Policy, as expressed by the Registration Committee, was in fact part of the Policy, the Registration Committee’s application of condition c) was unreasonable.

In the result, the panel issued an order requiring the College to issue a new decision that was based on the policy it approved, and that if it had approved (unbeknownst to the Review Board) a modification of the Policy to include some version of condition (c), that it explain whether he is entitled to an exemption, and if not, that it take his test results into account along with his training and experience.

3. COMPLAINT DISPOSITION REVIEW DECISIONS

Hearing on the merits: Understanding the distinction in HPA ss. 32 and 33 between College submissions and reasons of the Registrar or Inquiry Committee

DECISION NO. 2015-HPA-144(a); 2015-HPA-145(a); 2015-HPA-146(a); 2015-HPA-147(a) (Group File: 2015-HPA-G23), October 5, 2016, Physicians and Surgeons

Decision No. 2015-HPA-G23 emphasized that that the HPA’s use of these different terms is significant. The Review Board member referred with approval to the HPRB’s Practice Directive on Mediation:

The college is correct when it points out that while the committees operate within the larger college structure, they operate as distinct legal entities within a college. Their structures, personnel and mandates are carefully laid out in the Health Professions Act, (the “Act”) and the various college bylaws. It has long been a feature of professional regulatory statutes that within the larger structure of a college, the legislation contemplates “distinctive bodies,” with each body being given “separate and distinct duties to perform” (Harris v. Law Society of Alberta, [1936] S.C.R. 88 at p. 102; see also Richmond v. College of Optometrists of Ontario, [1995] O.J. No. 2621 (Gen. Div.)), even though these bodies are made up of members who at times necessarily exercise overlapping functions: Ringrose v. College of Physicians and Surgeons of the Province of Alberta, [1977] 1 S.C.R. 814; Gagnon v. College of Pharmacists, [1997] B.C.J. No. 1362 (C.A.). This structure even enables the “college” to appear as a party before one of its own committees and even to appeal decisions of college

committees: the Act, ss. 38(2) and 40(1). Indeed, experience has shown that a college will not always support the decision of a committee. There may be cases where the college agrees that a committee has committed a serious error – for example, by failing to provide any procedural fairness, failing to comply with mandatory provisions of the statute, considering the public interest in a way that was unreasonable or acting in a fashion contrary to clear jurisprudence –or that it should take new or further information into account.

This division of responsibility is evident in Review Board hearings. While the Review Board is to review dispositions of the registrar or inquiry committee, the party to the review is the college. What is the significance of the fact that the college, as a party, is appearing to defend the disposition of a specific internal decision-maker – either the registrar or the inquiry committee?

In *Review Board Decision No. 2015-HPA-G23*, a key issue was whether the registrant had engaged in professional misconduct by failing to ensure that the complainant's *Charter* rights were respected while he was detained under the *Mental Health Act*. While the issue was squarely raised on the complaint, the Registrar's disposition was silent on the issue. As noted by the Review Board panel:

[99] The reasonableness standard means that I may not merely substitute my views for that of the Registrar. Rather, I must have regard to what the Registrar has concluded and grant a remedy only if what the Registrar has done is unreasonable. As noted above, this includes assessing whether the Registrar arrived at his conclusion in a fashion that is transparent, intelligible and justified. Review Board decisions make clear that while a disposition decision need not provide detailed archival reasons on every aspect of every complaint, it must provide a meaningful response on the key issues on the complaint.

[100] This presents a significant problem in this case, as the Registrar's letter, while identifying the "right to counsel" issue as a component of the complaint, is silent on its assessment of the issue....

[101] As previous Review Board decisions make clear, the failure to address a key issue on a complaint can render a disposition unreasonable, particularly where the Review Board is in no position to conclude, either on the record or as a matter of medical competence, the outcome would inevitably have been the same had the issue been addressed: Review Board Decision No. 2014-HPA-102(a); 2014-HPA-103(a); 2014-HPA-104(a) at paras. [44] and [70-90].

The College argued that even though the issue had not been addressed in the reasons, the position argued by the College was "the only possible reasonable outcome based on the record": para. 108. The Review Board panel rejected that submission, stating:

[110] Since the College and the Registrar are not simply interchangeable, and I am not prepared to receive the College's submissions as simply being "supplementary reasons" of the Registrar, the question for me is whether, based on the College's submission, the only reasonable outcome the Registrar could have reached in this case would be to dismiss the arguments based on the right to counsel.

[111] I am unable to come to that finding for the following reasons.

[112] First, whether or not a person has the right to counsel after arrest and prior to certification under the MHA there is at least a question as to whether, upon certification, a patient is required to be informed of his right to retain and instruct counsel immediately thereafter: see *R. v. Suberu*, 2009 SCC 33.

[113] Second, I am not in a position to make a first instance finding on the Record as to when the Complainant was notified of his right to counsel in the prescribed manner accordance with s.34 of the MHA...

[114] Third, and importantly, I am not in a position to make a finding on the question whether, if those responsible for ensuring the Complainant's rights were respected failed to respect those rights, such breach can or should have professional responsibility implications for any of these registrants, one of whom was the director of the facility. In this regard, I agree with the College that the issue for the Registrar or Inquiry Committee is not illegality per se, but whether what happened in this case raised professional standards concerns. While it may be true, as the College points out, that there is no clear case on point, the determination of professional standards is something for the profession to determine. As I see it, the absence of "clear law" only reinforces that this was an issue that the Registrar or Inquiry Committee had to put their minds to...

This finding is very similar to the finding made in *Decision No. 2014-HPA-G21* (February 11, 2016), where an IC disposition was silent on the issue, central to the complaint, as to whether a registrant had disregarded a "do not resuscitate" order:

[89] The College refers to judicial review cases that suggest that a court can uphold a tribunal's decision, even if reasons are deficient, if the ultimate outcome would be reasonable on the record. While that could apply in some kinds of cases, the problem here is that I am obviously in no position to make the necessary clinical judgment as to whether an MI [heart attack] occurred and whether the Registrants knew or should have reasonably known of that fact, and acted in contravention of the DNR order. In the absence of a reasoned explanation by the Inquiry Committee, there is a gap about which I cannot speculate.

[90] This is clearly a subject that only the Inquiry Committee can answer, and on which it may well decide to consult with Dr. [A], the physician identified on the ECG in the Record and as identified by the Complainant, or take other specialized advice. My directions below concerning this issue will give the Inquiry Committee flexibility with regard to how it wishes to proceed.

DECISION NO. 2015-HPA-048(a); 2015-HPA-049(a); 2015-HPA-050(a) (Group File: 2015-HPA-G11), August 25, 2016, Physicians and Surgeons

Decision No. 2015-HPA-G11 (August 25, 2016), made clear that the Registrar's disposition letter is not the end of the line:

[48] Under s. 32(4) if the registrar proposes to summarily dismiss a matter (applying s.32(3)(c) as in the present case) then the registrar must report to the inquiry committee. The Act does not detail what is required other than to say that it must be "about the circumstances of the disposition." At a minimum, the inquiry

committee must be provided with sufficient information to enable it to meaningfully exercise its function under s. 32(5) to determine whether to take over conduct of the matter, such as by ordering a further investigation. In my view, the report must be such as to ensure the inquiry committee has no less disclosure and understanding of the reasons (and process) as must be provided to a complainant. The statutory requirement for “procedures that are transparent, objective, impartial and fair” (s. 16(2)(i.1)) and the obligation that explanations be justified, transparent, and intelligible to be sustained must apply internally as much as they do externally. It is difficult to contemplate a s. 32(3)(c) disposition being sustained if the registrar’s report fails to meet these standards absent matters expected to be within the common knowledge and skill of committee members.

Finally, *Decision No. 2015-HPA-G11* emphasized that, under s. 34 of the HPA, it is the inquiry committee’s job to deliver the Registrar’s disposition to the complainant:

[52] Upon an inquiry committee receiving a registrar’s report proposing disposition by dismissal or imposing a Registrar’s Remedy(requesting that a registrant act as described in s.36(1)), the next step is for the inquiry committee to decide whether to, essentially, take over the conduct of the matter (per s.32(5)) - a decision that the registrar must await. That decision is known in one of two ways; either the inquiry committee will issue directions taking over conduct of the matter or it will issue the s.34 communication to the complainant thereby letting the registrar’s disposition stand – both tasks being exclusive to the inquiry committee.

[53] A summary disposition proposed by a registrar is considered as a disposition by an inquiry committee upon that committee’s issuance of the s.34 communication of the summary of the disposition. Express approval of the disposition itself is not required as the inquiry committee’s function is not to “re-do” the registrar’s decision, but only to make clear that it has considered the complaint and the registrar’s report, determined that no further action is required by it (thus it need not investigate), and that a s.34 communication is to be issued under its authority....

Hearing on the merits - adequacy of investigation - seriousness of complaint

DECISION NO. 2015-HPA-138(a); 2015-HPA-139(a); 2014-HPA-140(a) (Group File 2015-HPA-G21), August 18, 2016, Physicians and Surgeons

Decision No. 2015-HPA-G21, August 18, 2016, emphasized that in assessing the adequacy of any particular investigation – what degree of investigative diligence needed to be shown - the seriousness of the complaint is a key factor:

[175] One of the key factors the Review Board considers in assessing the adequacy of an investigation is the objective seriousness of the complaint. The more serious the complaint, the more diligent the College will have to be for its investigation to be seen as “adequate.” As noted in the Moore decision, the adequacy of any investigation must be considered relative to the matter being investigated.

[176] While almost all complaints are subjectively important to the complainants making them, I find in the matter before me that it is one of the more objectively serious matters that might constitute a complaint. The death of the baby, the submission (not challenged) of on-going medical problems for the Complainant in

the wake of these events, the nature of the allegations of substandard care from beginning to end, the alleged failures to obtain informed consent to medical care (to which the Inquiry Committee itself stated it attaches “great importance”) and the Registrants’ own recognition of seriousness as reflected in the unsolicited further statement and Expert Opinion, places this matter at the highest level of seriousness. While this conclusion does not mean I am applying a standard of perfection, it does mean that I have concluded that this is an investigation where the college was subject to a higher standard of diligence.

Hearing on the merits - adequacy of investigation - disclosure of information to complainant

DECISION NO. 2015-HPA-138(a); 2015-HPA-139(a); 2014-HPA-140(a) (Group File 2015-HPA-G21), August 18, 2016, Physicians and Surgeons

Decision No. 2015-HPA-G21 addressed the issue of when the failure to disclose information to a complainant will make an investigation inadequate:

[181] Before turning to the reasons for my conclusions, I will make two preliminary points. First, I have not approached the adequacy of the investigation by asking whether the College owed a legal duty of procedural fairness to the Complainant. The question for the Review Board is only whether the investigation was adequate. This question does take into account the legitimate interests of a complainant, but it also requires the Review Board to consider all the circumstances of the investigation to determine whether the failure to disclose information rendered the investigation inadequate.

[182] The second point is that the Review Board has not taken the position that an adequate investigation requires the colleges to disclose all of their investigative information to all complainants all of the time. The Review Board examines the circumstances of each case to determine whether non-disclosure of information or a registrant’s response rendered the investigation inadequate: see for example Review Board Decision No. 2014-HPA-129(a) and Review Board Decision No. 2013-HPA-216(a). In the latter decision, the Review Board in my view correctly stated as follows:

[57] There is a long line of Review Board cases standing for the proposition that an inquiry committee must take steps to obtain key information with the degree of diligence commensurate with the circumstances. Whether or not a complainant would be entitled to a modicum of process under the audi alteram partem (“the right to be heard”) principle at common law, the statutory adequacy standard recognizes that complainants are more than mere initiators of a complaint but can also be valuable sources regarding missing committees choose from among the several courses of action open to them in s. 33 of the Act.

Hearing on the merits - adequacy of investigation - duty and necessity to investigate “less serious” complaints

DECISION NO. 2015-HPA-142(a), November 1, 2016, Physicians and Surgeons

In *Decision No. 2015-HPA-142(a)* (November 1, 2016), a complainant (wife) complained that the registrant, a respirologist, allowed her husband to leave a care facility without oxygen tanks despite her requests at a meeting and despite another professional advising them that a tank was

an essential precaution if he left the site.

The Review Board panel accepted that the complaint was not serious in the sense that the incident had nothing to do with the cause of his death, and there was no evidence of any breathing problems he experienced on the day in question when he left hospital. However, the panel was troubled by the Registrar's statement that "it is not possible for the College to investigate this possibility further".

The panel noted that the Registrar had expressly advised the IC that if the complaint had been established, it could have had professional responsibility consequences:

[47] The Registrar's recommendations to the Inquiry Committee ... say in part about the complaint: "allegation of refusal (of) a specialist to provide a patient with oxygen therapy, when the patient's partner had been informed that he needed one. If admitted or proven these allegations would normally be concluded with no more than a reprimand" (my emphasis).

[48] The clear meaning of this, is that if the Complainant's allegations were admitted or proven, the conduct was such as to raise a professional regulatory issue, albeit one that would normally be concluded with no more than a reprimand. This is important, because if for example the Registrar had concluded the complaint was not capable of giving rise to a valid complaint if admitted or proven (for example because as a clinical matter, oxygen should not have been permitted off-site even if it had been requested and refused) then the complaint would be a non-starter and properly disposed of under s. 32(3)(a) of the Act.

Because the Review Board panel's reasoning is an excellent model of the kinds of considerations that are needed to explain an outcome in a case such as this, the reasons that follow below are set out in full:

[54] The Registrant himself points out that the RT was present through the whole meeting, and still works at LTCF (the Complainant is not sure RT remained present through the whole meeting), the clear implication being that she could be approached for her notes and/or recollection as to what led to the requested meeting, and what transpired at that meeting.

[55] Yet the Disposition states that, with regard to what may have been discussed but not recorded at the March 13, 2013, meeting, "it is not possible for the College to investigate this possibility further."

[56] With respect, the Complainant and Registrant both (the latter implicitly) suggested to the College exactly how the matter could be investigated further – namely, that the College could follow up in specific connection with the notes or recollections of the respiratory therapist who initiated the meeting and was present either for all of it, according to the Registrant, or at least some of it, according to the Complainant....

[58] The Review Board does not require investigations to be perfect. The degree of investigation that is necessary for an investigation to be adequate must take into account the college's role (a screening role rather than a formal adjudicative role), the objective seriousness of the complaint and the nature of the additional investigative steps, including the burden they would impose on the College.

[59] With regard to the latter criterion –the burden the addition steps would impose on the College –it would have been a very simple matter to have taken the following steps to follow up on the question whether, as alleged, the Registrant refused to allow the patient to receive oxygen therapy offsite when his partner had been informed that he needed one:

(a) Contact the respiratory technologist who was present at the meeting and ask for her recollection as to whether the registrant refused to allow the complainant to take oxygen offsite for the patient, and if so, whether he explained why.

(b) Ask the Registrant, despite his lack of recollection of the meeting, who or what office authorizes the provision of oxygen tanks offsite, what if any connection he had with that office and relevant time and whether he had authority to decide whether oxygen tanks could be taken off-site.

[60] In my view, these are simple and basic investigative inquiries. They would not impose any unusual burden on the College. It cannot be said that to make these inquiries would be pointless or futile. They call into serious question the Registrar’s conclusion that “it is not possible for the College to investigate this possibility further.”

[61] I appreciate of course the possibility that these inquiries might not have borne fruit. However, no credible investigation is conducted on the basis that the investigator will only pursue leads that before the lead is even followed up, are sure to resolve all doubt. The question is whether an adequate investigation would pursue that line of inquiry in the circumstances based on there being a reasonable prospect that making the inquiry would advance the purpose of the investigation.

[62] I am aware that the College does not have power to formally compel evidence in a complaint investigation. But if the power of compulsion was the precondition to a proper investigation, the College’s investigation function would be futile. Where, as here, the investigation power is exercised in the absence of a formal summons power, it can only be exercised by asking questions and seeking documents from registrants and third parties.

[63] Nor would these inquiries be contrary to the Registrar’s role. It is oft-repeated that the Registrar exercises a screening role and not a final adjudicative fact finding role. But the Act makes clear that even a screening investigation must be adequate as a screening investigation. The Review Board was created precisely to assess that. If the “screening” role allowed the College to throw up its hands every time one party could not remember an interaction, rather than follow up on obvious investigative avenues, the “adequacy of the investigation test” would be a dead letter: see generally, Review Board Decision No. 2015-HPA-138(a) at paras. [168-174].

[64] Finally, asking these questions is proportionate with the objective seriousness of the complaint. I have previously pointed out that even a Registrar’s complaint, which is by definition concerned with matters “other than a serious matter,” may still be objectively serious given that the “other than a serious matter” test is concerned with remedy rather than conduct: Review Board Decision No. 2015-HPA-012(a) at paras. [14-15]. Even so, this case is in my view at the low end of the spectrum under s.32(3)(c). Nonetheless, as a non-trivial complaint that could, if admitted, have given rise to regulatory concern, the Registrar had a duty to take

such minimally adequate steps as are necessary to ensure an adequate investigation. In my view, those steps were not taken here. The minimally adequate steps that should be taken for this investigation to be adequate will be set out in the directions below.

Reasonableness of the disposition: missed issues

DECISION NO. 2015-HPA-138(a); 2015-HPA-139(a); 2014-HPA-140(a) (Group File 2015-HPA-G21), August 18, 2016, Physicians and Surgeons

Decision No. 2015-HPA-G21 made it clear that elements of the complaint that are non-trivial should be addressed:

[223] In returning the disposition regarding Registrant 2 to the Inquiry Committee, I am also directing that the Inquiry Committee's new disposition letter specifically address the Complaint regarding the alleged inappropriate joking in the treatment room and the subsequent "hallway conversation" concerning the MRI of the child. While I agree that an Inquiry Committee has some scope to focus its investigation on key issues, these were far from being trivial parts of the Complaint in the circumstances of this case. These issues were addressed by the Complainant and by the Registrants. The Inquiry Committee's disposition letter refers to them as being part of the Complaint. Unfortunately, neither the Minutes nor assessment portion of the disposition letter made any comment on them. I am not prepared to infer that the Inquiry Committee addressed these topics, particularly since its focus with regard to Registrant 2 was on the antenatal care. In this case, the failure to address a key issue in the Complaint renders the Disposition unreasonable.

Reasonableness of the disposition: remedial measures sufficient to protect the public

DECISION NO. 2015-HPA-G21, August 18, 2016, Physicians and Surgeons

The application for review arose from a complaint following the death of a baby, 28 days after birth. The complaint alleged that three registrants failed in their duties respecting antenatal care, the labour and delivery process, and a subsequent surgery on the mother to address internal bleeding.

The IC was "critical" of certain aspects of the care of two of the registrants. In its submissions, the College stated that these remedial responses were reasonable because they would remain on the permanent files of each registrant, the registrants' responses showed that they had "carefully reflected" on their role in the tragic events, and the inquiry committee had concluded that further action was not necessary in the public interest.

The Review Board panel began by considering the College's argument that "competency and perfection are not the same thing, and that imperfect performance does not necessarily require formal regulatory action in the public interest:"

[208] The fact is, however, the Inquiry Committee of this college does regularly comment on whether the particular clinical practice complained of has met its expected regulatory standard of practice. It is not a question of perfection. If a registrant has fallen below that standard in the particular case complained of, the Inquiry Committee reasonably sees its role under s.33 as allowing it to express regulatory criticism of the registrant's conduct or competence in the particular case even if it has not drawn the much more serious conclusion that the registrant is

generally incompetent. That approach is completely consistent with its role in protecting the public.

[209] If the Inquiry Committee, as it did here, thought it appropriate to express “regulatory criticism” of Registrant 1, the next question it had to answer is what if any further steps it should take. To do that, understanding the possibilities is obviously very important. The range of options is set out in ss. 33(6) and 36 of the Act...

[210] These provisions give the Inquiry Committee room to consider a wide range of informal options where it finds that substandard practice warrants regulatory criticism. The Inquiry Committee may decide that regulatory criticism is enough. Or it may take informal steps beyond that. It may remind the registrant of its expectations. It may seek an in-person meeting with the registrant to express the Inquiry Committee’s concerns and follow up on whether those concerns have been met. It may ask the registrant to consent to its request not to repeat the conduct, to take educational courses or even consent to a reprimand. It might, as in Ontario, request a “written report” addressing the proper circumstances and method by which to perform the procedure: A.H. v. M.H.L., 14-CRV-0021. In choosing between any of these steps, the Inquiry Committee is obviously well advised to consider any relevant past conduct history in its files: Act, s.39.2.

[211] The key point is that since only a small number of formal citations are issued each year, the Inquiry Committee’s decisions about what informal actions to take or recommend are obviously critical to protecting the public.

[212] The Review Board’s role is to determine whether the disposition was reasonable. While the Review Board rarely intervenes with such dispositions, if the disposition was unreasonable -for example because it cries out for an explanation, or shows a failure to consider key factors, or shows a clear lack of proportion in its statutory duty to protect the public - the Review Board can return the matter to the Inquiry Committee or issue its own disposition. [emphasis added]

Based on this framework, the panel considered the dispositions respecting each registrant. With respect to Registrant 1, he stated:

[213] In this case, Registrant 1 made a surgical error. The Inquiry Committee emphasized that Registrant 1 showed insight in accepting full responsibility for the error. Registrant 1 apologized in person to the Complainant and her husband. While the Record is silent about any past conduct history, it does not suggest that there is any information that would contradict her statement that she had never before sutured an abdominal drain to the fascia. Registrant 1 advised the College that: “In the future, I will be more careful to ensure that this does not happen again.”

[214] Given the nature of the procedure and the seriousness of the outcome, it would not have been unreasonable for the Inquiry Committee to have adopted a more proactive and protective approach, such as recommending that Registrant 1 attend an educational course or write a report concerning the appropriate surgical techniques involved in the insertion of a drain. However, given the insight shown by the Registrant 1 on the Record, and in the absence of any indication of a relevant past conduct history, that would contradict that this was the first instance of such an error, I have concluded that the Inquiry Committee did not

unreasonably fail to protect the public interest. The remedial disposition was reasonable.

[215] I will note that I have hesitantly reached this conclusion. That is because the Record is silent about what specific inquiries the Inquiry Committee made with regard to the past conduct history of Registrant 1. While I am prepared in this case to assume that there is no relevant past conduct history, it would greatly assist the Review Board in future to have some indication in the Record as to whether an inquiry into past conduct history has been made in any case where the Inquiry Committee determines that regulatory criticism against a registrant is appropriate.

With respect to Registrant 2, the panel stated as follows:

[217] the Inquiry Committee criticized Registrant 2 for “deficient documentation of consent discussions on the topic of vaginal versus surgical (Cesarean) delivery.” The Inquiry Committee stated that it “attaches great importance to securing informed consent to medical treatment and to the documentation of consent discussions” and that “given the importance of this topic, particularly in light of your tragic outcome, the Inquiry Committee agreed that regulatory criticism was warranted with regard to [Registrant 2’s] failure to document discussions regarding cesarean section with you in the medical record.” [emphasis added]

[218] The Inquiry Committee then set out its resolution: “The Committee’s expectation is that he [Registrant 2] will, in future, ensure that informed consent discussions figure prominently in his medical records. In general, this should include a record that the risks and benefits of the proposed obstetrical management, as well as the available options, have been discussed with patients in regard to important intervention questions.”

[219] Was it reasonable in this case for the Inquiry Committee to merely set out its “expectation” that Registrant 2 will, in future, prominently record informed consent discussions in his records?

[220] A reasonable person might fairly ask how the Inquiry Committee’s “statement of this expectation” could, by itself, be meaningful and reasonably protective of the public interest given its stated importance of this issue without one or more of

- (a) an additional statement that it will at a future date monitor the Registrant’s practice for such notes (Review Board Decision No. 2015-HPA-027(a));*
- (b) a request for concrete action by the Registrant (such as a letter or educational course) specifically addressing this issue; or*
- (c) an undertaking not to repeat that conduct in the future.*

[221] It is possible that the Inquiry Committee decided to not require any additional steps because it had complete confidence that Registrant 2 would implement the necessary changes without the need for any follow up, and that therefore public protection required nothing more. That is possible, but it would be speculation on my part. If the Inquiry Committee thought that, it should have said so.

[222] This is not a case where I can deduce the reasonableness of the Inquiry Committee's rationale from the Record. This is a disposition that cries out for an explanation or, if it cannot be adequately explained, a reconsideration by the Inquiry Committee.

DECISION NO. 2014-HPA-185(a); 2014-HPA-186(a) (Group File: 2014-HPA-G31), June 22, 2015, Physicians and Surgeons

In this case the Review Board panel found that "regulatory criticism" by the IC was insufficient to address the circumstance of that complaint, which concerned the circumstances in which NSAID medications should be prescribed to patients following surgery. Noting the uncertainty reflected in the registrant's responses to the IC, the panel stated:

[23] Keeping in mind the object of protection of the public and promotion of the public interest, it would be undesirable, if the outcome of a complaint was for Registrant 2 to decline to prescribe a particular medication, in circumstances where patients would benefit from it and there is little risk, because of fear of future criticism by the Inquiry Committee. It is not my role to resolve the uncertainty that Registrant 2 continues to have regarding prescription of NSAIDs but it is evident that he continues to be unclear regarding circumstances where this class of medications may be appropriately prescribed. It strikes me, as a lay person, that a reasonable resolution would be for this uncertainty to be resolved through education, so that Registrant 2 would acquire state of the art knowledge about the post-operative use of NSAID class medications.

[24] The Inquiry Committee determined that the only regulatory criticism they have of Registrant 2, in these circumstances, is with regard to his prescription of a NSAID medication post-operatively. As far as it goes I find this conclusion to be reasonable. Yet, taking into account the object of protection of the public and the requirement to proceed in the public interest, the consequence flowing from that determination is not rational. One only has to look at Registrant 2's ongoing confusion regarding how he should now conduct himself in relation to the prescription of NSAIDs to see that the direction of the Inquiry Committee needs to be expanded upon. I conclude that the Inquiry Committee's disposition in relation to Registrant 2 does not fall within a range of acceptable and rational outcomes, which, based on all the evidence before them, are defensible in respect of the facts and law.

Reasonableness of the disposition: Past conduct history

DECISION NO. 2016-HPA-112(a), November 29, 2016, Physicians and Surgeons

In Decision No. 2016-HPA-112(a), the issue was whether a Registrar's disposition was unreasonable for failure to take into account a public notice of disciplinary action taken against the registrant in 2003 for infamous conduct:

[24] On August 1, 2003, the College posted a notice to the public on the College's website advising that, following disciplinary charges, the Registrant had been found guilty of infamous conduct as a result of incidents in 2002. The notice provided that the College had taken disciplinary action against the Registrant, i.e. his name had been removed from the Medical Register and placed on a Temporary Register, he was suspended from practice for 12 months and certain

requirements had been placed on his return to practice and he must pay the costs of the disciplinary hearing. Further the College noted that:

(The Registrant)'s future professional conduct is required to be above reproach in every respect, and the college will monitor his practice.

The complaint alleged neglect by the registrant to serious health issues experienced by the complainant's father. The Registrar held that there were critical shortcomings in the care provided by the Registrant on a single occasion, but beyond noting that, he dismissed the complaint as this took place in the context of mitigating circumstances including the existence of other health conditions that display similar symptoms and the role of other care-providers at the Care Home and the hospital.

The key issue was whether reasonableness required the Registrar to take the Registrant's past conduct history into account:

[56] The College and the Registrant submit that the previous disciplinary action is irrelevant as it addressed misconduct of a different nature, i.e. ethical misconduct of a sexual nature. With respect, the College and the Registrant are reading words into the Disciplinary Committee's decision which are not there and in doing so are unjustifiably narrowing the scope of the decision and its implications for the Registrant in the event of future complaints. Nowhere in the College's notice to the public does the College provide that the Registrant is only to refrain from ethical misconduct in the future....

[60] I do not accept that conduct which the Discipline Committee of the College has described as "infamous" is irrelevant in the context of further complaints about the Registrant's conduct. The Discipline Committee clearly found that the previous misconduct was of such a serious nature that a severe penalty was warranted, i.e. striking the Registrant from its Permanent Register and suspending his practising status for 12 months and, further, imposing conditions on his re-entry to practice. Further, I find it relevant that the Disciplinary Committee clearly cautioned the Registrant that his conduct needed to be above reproach, in every respect. In my view, there is nothing unclear about that admonition and nothing that limits the admonition to sexual misconduct. The Registrant and the public were put on notice that the Disciplinary Committee of the College expected that, in future, there would be no grounds for the College to criticize his conduct, period. To further emphasize that point, the Disciplinary Committee put the Registrant and the public on notice that the College would be monitoring the Registrant's practice. Given the seriousness of the previous disciplinary action, it cannot reasonably be construed as "irrelevant" to the complaint before the Inquiry Committee in this case.

[65] When a complaint has been made to the College alleging professional misconduct by a registrant, the public is entitled to expect that when the Inquiry Committee disposes of the complaint it does so after carefully considering any record of previous misconduct by the registrant and with due regard for any previous disciplinary action taken by the College. Put another way, the College has a duty to safeguard the public interest.¹⁶ That duty was not met when the Inquiry Committee disposed of the complaint as if it was an isolated incident by the Registrant in mitigating circumstances when that was not the case. Context matters. The context here is that after being previously suspended by the Discipline Committee for infamous conduct, and after being cautioned to keep his conduct above reproach, the Inquiry Committee reproached the Registrant when it

found that the Registrant misconducted himself, again. This time the misconduct consisted of failing to examine the Complainant's spouse on September 9, 2015, (despite knowing that the family was greatly concerned about his changing condition and in the face of a recent admission to the emergency department for the same concerns) and by keeping inadequate medical records.

The College has filed an application for judicial review from this Decision. The matter has not yet been set for hearing.

Copies of these decisions are available on the Review Board's 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's substantive decision was patently unreasonable, and whether its process was fair and impartial.

1. Judicial Decisions Since Last Annual Report

None

2. Petitions Outstanding

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

Petition commenced by a complainant to set aside Decision No. 2012-HPA-004(a); 2012 HPA-005(a) (College of Physicians & Surgeons, 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. The Review Board therefore continued with the application for review and on September 9, 2014, rendered its final decision: Decision No. 2012-HPA-G16. 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: Petition commenced by a complainant from Review Board decision (Decision No. 2012-HPA-080(a)) dismissing an application to set aside a decision of the College of Dental Surgeons. The 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: Court filings have been completed. No date has been set for the hearing of the Petition.

Lohr v. Health Professions Review Board (Petition filed June 29, 2015)

Summary: The Petitioner applied for registration to the College of Chiropractors. The Petitioner applied to the Review Board for a review of the College's registration decision. In Decision No. 2015-HPA-202(a), the Review Board held that it had no jurisdiction to conduct a review a decision as the college registration committee's refusal to register the applicant was made under s. 20(2.1) of the Act, which sets out a class of decisions outside the Review Board's jurisdiction to review. The Petition alleges procedural unfairness.

Status: Court filings have been completed. No date has been set for the hearing of the Petition.

College of Physicians and Surgeons of British Columbia v. Health Professions Review Board (Petition filed September 29, 2015)

Summary: The College of Physicians and Surgeons applies for judicial review of Review Board Decision No. 2015-HPA-006(a), which held that the College failed to conduct an adequate investigation and ordered that the new disposition be issued by the Inquiry Committee rather than the Registrar. The Petition alleges that the Review Board failed to recognize that the College cannot compel third parties to provide it with evidence, failed to reasonably apply the “adequacy of the investigation” test and exceeded its role in requiring the Inquiry Committee to issue the new disposition.

Status: Petition argued April 18, 19, and 20, 2016 in British Columbia Supreme Court. Argument scheduled to continue July 20-21, 2017.

Millman v. Health Professions Review Board (Petition filed October 16, 2015)

Summary: Petition commenced by a complainant from a Review Board Decision dismissing an application for review from a college complaint disposition: Decision No. 2012-HPA-116(b). The Petition alleges procedural unfairness.

Status: Court filings have been completed. No date has been set for the hearing of the Petition.

3. Judicial Review Petitions filed 2016

College of Physical Therapists of British Columbia v. Health Professions Review Board (Petition filed April 13, 2016)

Summary: The College of Physical Therapists applies for judicial review of Review Board Decision No. 2015-HPA-121(a). The Petition alleges that the Review Board exceeded its mandate by posing issues not raised by the complainant, unreasonably admitted evidence and made unreasonable findings that the College’s investigation was inadequate and its disposition as unreasonable.

Status: Court filings have been completed. No date has been set for the hearing of the Petition.

Battie v. College of Physicians and Surgeons and Health Professions Review Board, Petition filed May 4, 2016

Summary: Petition challenges Review Board Decision No. 2015-HPA-122(a) - 125(a). The Review Board, at Stage 1, dismissed an application for review from a registrar’s disposition dismissing a complaint about the management of a fracture by four registrants.

Status: No date has been set for the hearing of the Petition.

Sanders v. Health Professions Review Board, Petition filed August 10, 2016

Summary: Petition challenges Review Board Decision No. 2016-HPA-G03. The Review Board, at Stage 1, dismissed an application for review from a College of Physicians’ disposition dismissing a complaint against four registrants alleged to have engaged in improper care of the complainant’s mother prior to her death.

Status: Hearing set for week of September 18, 2017

College of Dental Surgeons v. Health Professions Review Board, Petition filed October 20, 2016

Summary: Petition challenges Review Board *Decision No. 2015-HPA-214(a)*, which concluded that it was unreasonable for the Inquiry Committee to issue the same remedial disposition on two cases it considered on the same day, where it had been critical of the registrant.

Status: The Petition has not yet been set for hearing.

College of Physicians and Surgeons v. Health Professions Review Board: Petition filed January 20, 2017

Summary: Petition challenges Review Board *Decision No. 2016-HPA-G06*, which held that an investigation was inadequate, and the disposition was unreasonable, because the IC failed to address a registrant's care in relation to a college guideline setting out its expectations of the relationship between a primary care physician and consultant physician.

Status: Petition not yet been set for hearing.

College of Physicians and Surgeons v. Health Professions Review Board, Petition filed January 27, 2017

Summary: Petition challenges Review Board *Decision No. 2016-HPA-112(a)*, which concluded that a disposition was unreasonable because it failed to take the registrant's past discipline history into account.

Status: Petition not yet set for hearing.

Links to judicial review decisions pertaining to Review Board matters are provided on the Review Board website.

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 by s. 50.55 of the *Health Professions Act* and the corresponding *Health Professions General Regulation* that sets out “prescribed times” for compliance (necessary to interpret s. 50.55 of 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.

During the time allotted to the College under the legislation, the College is required to issue the following delayed investigation notices to the parties:

- (1) after 150 days have elapsed,
- (2) again after 240 days, (providing a new date of expected disposition) i.e.: a notice of delay
 - (a) copied to the Review Board
- (3) and a final notice after no more than 285 days, i.e.: a notice of suspension
 - (a) copied to the Review Board
 - (b) this final notice triggers the 30 day time limit to request a review into the timeliness of the Colleges investigation, to the Review Board

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

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
- *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
- *Health Professions Act*: section 50.57: Review — delayed investigation:
http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96183_01#section50.57

Review Activity Statistics

For the reporting period from January 1, 2016 – December 31, 2016

Figure 1: Number of Applications, by type and month

| Month | Complaint Dispositions | Delayed Investigations | Registration Decisions | Total Number of Applications | % |
|-------------------------|------------------------|------------------------|------------------------|------------------------------|-----|
| January | 15 | 1 | 2 | 18 | 7 |
| February | 10 | 2 | 4 | 16 | 6.5 |
| March | 21 | 1 | 3 | 25 | 10 |
| April | 24 | 2 | 5 | 31 | 13 |
| May | 20 | 2 | 3 | 25 | 10 |
| June | 11 | 0 | 5 | 16 | 6.5 |
| July | 16 | 1 | 1 | 18 | 7 |
| August | 20 | 1 | 5 | 26 | 11 |
| September | 10 | 1 | 3 | 14 | 6 |
| October | 2 | 0 | 7 | 9 | 4 |
| November | 17 | 2 | 7 | 26 | 11 |
| December | 17 | 1 | 2 | 20 | 8 |
| Total | 183 | 14 | 47 | 244 | |
| % of Total Applications | | | | | 100 |

Figure 2: Total Applications for Review, classified by respondent College

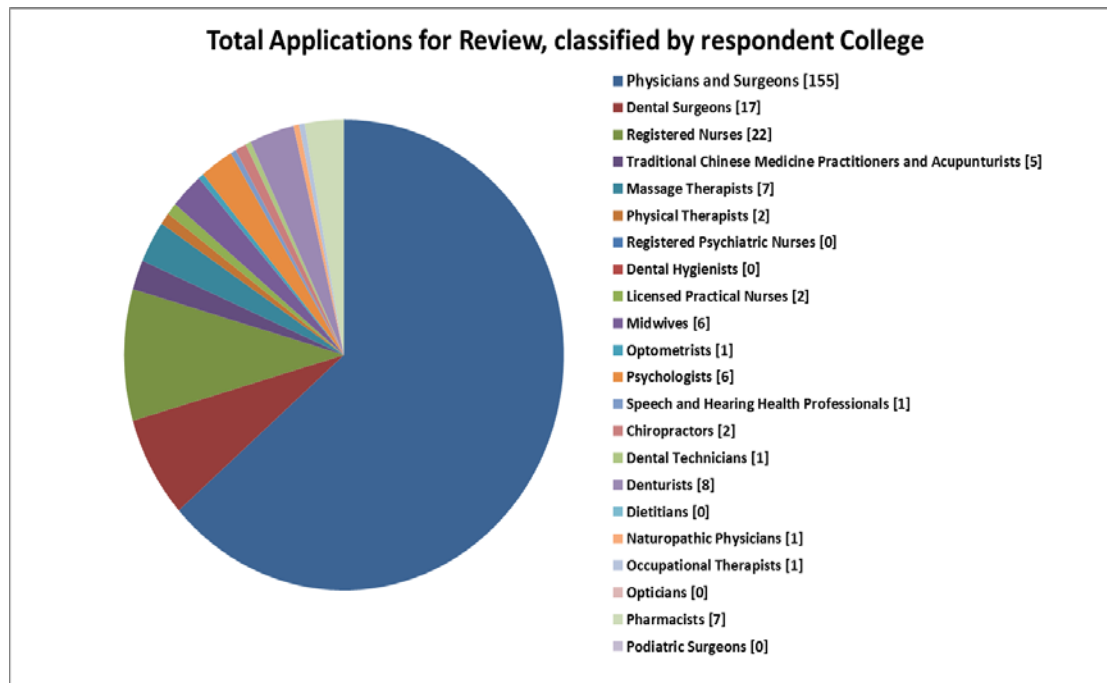


Figure 3: Applications for Review, by college and type

| Respondent College | Complaint Dispositions | Delayed Investigations | Registration Decisions | Total Number of Applications | % |
|---|------------------------|------------------------|------------------------|------------------------------|-------------|
| Chiropractors | 1 | 0 | 1 | 2 | 1 |
| Dental Hygienists | 0 | 0 | 0 | 0 | 0 |
| Dental Surgeons | 17 | 0 | 0 | 17 | 7 |
| Dental Technicians | 0 | 0 | 1 | 1 | 0.5 |
| Denturists | 2 | 0 | 6 | 8 | 3 |
| Dietitians | 0 | 0 | 0 | 0 | 0 |
| Massage Therapists | 2 | 5 | 0 | 7 | 3 |
| Midwives | 6 | 0 | 0 | 6 | 2 |
| Naturopathic Physicians | 0 | 1 | 0 | 1 | 0.5 |
| Licensed Practical Nurses | 0 | 2 | 0 | 2 | 1 |
| Registered Nurses | 8 | 0 | 14 | 22 | 9 |
| Registered Psychiatric Nurses | 0 | 0 | 0 | 0 | 0 |
| Occupational Therapists | 1 | 0 | 0 | 1 | 0.5 |
| Opticians | 0 | 0 | 0 | 0 | 0 |
| Optometrists | 1 | 0 | 0 | 1 | 0.5 |
| Pharmacists | 6 | 1 | 0 | 7 | 3 |
| Physicians and Surgeons | 133 | 2 | 20 | 155 | 63.5 |
| Physical Therapists | 2 | 0 | 0 | 2 | 1 |
| Podiatric Surgeons | 0 | 0 | 0 | 0 | 0 |
| Psychologists | 3 | 2 | 1 | 6 | 2 |
| Speech and Hearing Professionals | 1 | 0 | 0 | 1 | 0.5 |
| Traditional Chinese Medicine Practitioners and Acupuncturists | 0 | 1 | 4 | 5 | 2 |
| Total | 183 | 14 | 47 | 244 | 100% |

Figure 4: Applications for Review – by status

| Applications for Review | Number |
|---|---------------|
| Number of applications open at January 1, 2016 (Case Management in Progress) | 123 |
| Number of applications for review received in 2016 | 244 |
| Applications closed in 2016 | 217 |
| Number of applications open at December 31, 2016 (Case Management in Progress) | 150 |

Financial Performance

2016 Year Expenditures

This reporting period covers the 2016 fiscal year of operation for the Review Board.

Following is a table showing the expenditures made by the Review Board during its 2016 fiscal year.

Health Professions Review Board

Operating Costs - April 1, 2016 – March 31, 2017

| | |
|--------------------------|-------------|
| Salary & Benefits | \$ 503,744 |
| Operating Costs | \$ 915,174 |
| Other Expenses | \$ 83 |
| Total Operating Expenses | \$1,419,001 |

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 five other appeal tribunals.