



HEALTH PROFESSIONS REVIEW BOARD 2020 ANNUAL REPORT

***COVERING THE REPORTING PERIOD FROM
JANUARY 1 – DECEMBER 31, 2020***



Health Professions Review Board

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July 30, 2021

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

Dear Minister Eby:

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, 2020 to December 31, 2020.

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,

David Hobbs, Chair
Health Professions Review Board

Enclosure



Health Professions Review Board

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Message from the Chair

The Year in Review

The Review Board published 117 decisions in 2020, an increase of 17 over 2019.

The Review Board issued 88 inquiry committee complaint disposition reviews. Of these, the distribution among the colleges was 51 (College of Physicians and Surgeons with four remitted), nine (College of Dental Surgeons, one remitted), eight (BC College of Nurses and Midwives, one remitted), five (College of Psychologists, none remitted), five (College of Chiropractors of BC, one remitted), three (College of Massage Therapists, none remitted), two (College of Optometrists of BC, none remitted), two (Traditional Chinese Medicine Practitioners and Acupuncturists, one remitted), two (College of Opticians, one remitted), and one (Speech and Hearing Health Professionals, none remitted).

The Review Board issued 15 reviews of registration committee decisions. Of these, the distribution among the colleges was five (College of Physicians and Surgeons, one remitted) one (College of Denturists of BC, none remitted), six (BC College of Nurses and Midwives, none remitted) one (College of Chiropractors, none remitted), one (College of Physical Therapists, none remitted), one (College of Opticians, none remitted).

The Review Board heard 12 applications for extensions for time, granting three; this is down from 2019, when seven of 13 applications were granted. The Review Board adjudicated six applications for the Review Board to receive information in confidence to the exclusion of one or more of the parties (three granted, two granted in part and one denied); six applications for review of delayed investigations (orders issued to college in each case to complete investigation within a specified time); and one summary dismissal in 2020, for lack of jurisdiction.

As in previous years, the Review Board received the largest number of applications for review in relation to complaint dispositions made by the College of Physicians and Surgeons, the College of Dental Surgeons and the BC College of Nurses and Midwives. Numbers for all three colleges remained stable in 2020, with the numbers for the College of Nurses and Midwives continuing to drop from a high of 23 in 2017 to 8 in 2020.

Year	College of Physicians and Surgeons	College of Dental Surgeons	BC College of Nurses and Midwives*
2016	133	17	8
2017	89	6	23
2018	112	13	22
2019	101	14	11
2020	100	11	8

*2016 and 2017 figures include total numbers for 3 nursing colleges for sake of comparison

Response to COVID-19 Pandemic

2020 was a uniquely challenging year. Like the rest of the province and the world, the Review Board had to adjust to unprecedented restrictions in and outside of the workplace and their effects on colleges, registrants, complainants, applicants, and their representatives.

Initial Measures

On March 17, 2020, British Columbia's Provincial Health Officer declared a "public health emergency" under s. 52 of the Public Health Act. On March 20, 2020 the Review Board Chair posted a website notice announcing that the Review Board would continue to provide service to the public but there would be reduced staffing at the office location. The notice stated that the Review Board would grant a 30-day extension of time for receipt of the record and submissions in all cases currently before the Review Board where time limits had been imposed. This general extension of time applied only to active matters before the Review Board and did not change the 30-day limitation period for filing an application for review. Further, the notice acknowledged that all parties to reviews would likely have reduced capacity to respond to Review Board processes and might need to request extensions to deadlines; and that the Review Board would take this into account in its review processes. Before the end of March, the Review Board's office building was closed to the public, so the office was shut down to walk in traffic; it remained so until the end of the year.

Notices of Delayed Investigations

The Review Board plays a role in ensuring timeliness of college complaint investigations. The Act requires colleges to issue three "notices of delayed investigation" at set intervals in the investigation process; the third notice triggers the right of either the complainant or the registrant to apply to the Review Board for a review of the delayed investigation. On March

24, 2020 the Review Board Chair issued a memorandum to all British Columbia colleges advising they would be granted an automatic 60-day time extension to complete their investigations for all delayed investigation reviews that had been filed before April 30, 2020. On March 26, 2020 the Minister of Public Safety and Solicitor General issued Ministerial Order 086 (MO 73/2020) "Limitation Periods (Covid-19) Order" under the Emergency Program Act, which provided that a person, tribunal, or other body that has a statutory power of decision may waive, suspend, or extend a mandatory time period relating to the exercise of that power. Recognizing that timeliness of complaint investigations would be significantly hampered by the pandemic and its impact on health service providers, colleges asked the Review Board to consider using this new authority to suspend the requirement for colleges to issue notices of delayed investigations.

On April 3, 2020, the Review Board Chair sent a memorandum to colleges saying it was not clear whether the Limitation Periods Order gave the Review Board authority to do this, so the Review Board had written to the Minister of Health respectfully requesting that he suspend the "notice of delayed investigation" requirements which he had the power to do. The memorandum also invited colleges to comment on their capacity to issue delayed investigation notices; the colleges helpfully and promptly replied on April 10, 2020 through the "BC Health Regulators" group.

The full Review Board convened on April 17, 2020 to consider whether and to what extent colleges should be relieved from the task of calculating time limits and sending notification letters. The discussion was informed by the correspondence to date, and on April 8, 2020, Ombudsperson's letter to all administrative tribunals cautioning that any extensions of mandatory timelines should be approached with appropriate caution and fair consideration to the interests of all parties, including the public interest. The Review Board concluded it was important to respect the legislative decision to give the Minister the authority to suspend delay notices, and not to take any action that might conflict with the Minister's deliberations and policy decisions.

On May 6, 2020, by Ministerial Regulation 100/2020 (B.C. Reg. 275/2008), the Minister of Health amended the Health Professions General Regulation to suspend the running of notice periods until the provincial health officer lifts the declaration of public health emergency. That declaration is still in force as of July 30, 2021.

The Review Board commends the Minister and Ministry of Health staff on this nimble response, accomplished in the early and uncertain days of the COVID-19 crisis. It provided decisive relief to regulatory bodies from the requirement to issue notices of delay while setting a defined date for resumption of this mechanism, which provides the public with an

avenue for review of lengthy complaint investigations. As a result of the regulatory amendment, the Review Board received 27 fewer applications for review of delayed investigations in 2020 than it did in 2019.

Review Board Office Administration

The Review Board conducts almost exclusively written reviews so, unlike many other tribunals, did not have to transition quickly to video hearings. The office's transition to paperless administration and remote work options for staff was well underway before 2020, allowing it to weather the pandemic relatively unscathed. Most importantly, the Secure File Transfer System was already on its way to becoming the primary means for sending and receiving sensitive complaint investigation records for review purposes. Mail service restrictions due to the pandemic compromised the ability to securely send paper records, so the office was obliged to rely more heavily on electronic communication with colleges, members, and parties to reviews. Like most of the administrative tribunal community, email became the preferred mode for sending and receiving correspondence. In 2019, about twenty five percent of reviews were managed entirely electronically. In 2020, this rose to almost one hundred percent.

Time to Complete Reviews

Despite challenges associated with the pandemic, the Review Board stayed within the usual times for processing reviews and decisions set out in Practice Directive 1; however, reviews averaged about one month longer from start to finish than in 2019.

Reasonableness Review – “Vavilov” decision

The landmark Supreme Court of Canada decision *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (“Vavilov”), which clarified the standard of review for administrative decisions and explained how to review administrative decisions for reasonableness, was released on December 19, 2019. Because the Review Board must review college complaint decisions considering the adequacy of the investigation of the complaint and/or the reasonableness of the disposition, *Vavilov's* analysis on determining reasonableness was of particular interest in 2020. The Review Board grappled with the ramifications of *Vavilov* in *Complainant v. British Columbia College of Nursing Professionals (No. 1)*, 2020 BCHPRB 74. The Review Board asked the parties to make submissions about the effect of *Vavilov* on reasonableness review, then identified key aspects of the case that could be helpfully adapted to Review Board reviews on reasonableness of college complaint dispositions, including: acknowledging the importance of the first instance role and expertise of college and inquiry committee decision-makers; requiring, taking a “robust” approach to determining reasonableness by requiring a college to sufficiently justify its conclusions on key complaint issues rather than accepting a conclusion simply because the

inquiry committee is “expert,” not applying different standards of deference for clinical or medical findings over findings in other areas; and not automatically assuming that a college’s submissions on review reflects its inquiry committee’s actual thinking on key complaint issues where there is no hint of that in the investigative record. In these cases, college decision-makers should be required to provide reasons unless the Review Board concludes that would serve no useful purpose, or where the Review Board would be better to direct an alternative outcome.

Modernization of Health Professional Regulation

In August 2020, the Steering Committee on Modernization of Health Professional Regulation, established by Minister of Health Adrian Dix, issued its recommendations to modernize the provincial health profession regulatory framework. The recommendations responded to the findings of April 11, 2019’s “An Inquiry into the performance of the College of Dental Surgeons of British Columbia and the Health Professions Act” which suggested approaches to modernizing BC’s overall health professions regulatory framework. This report recommended that the Health Professions Review Board become an arm of a new oversight body for health professions regulators.

The steering committee recommended that, rather than becoming an arm of the oversight body, the review board should remain a separate entity. This would avoid the perception of any conflict of interest and support the review board to continue to carry out independent reviews of registration and complaint investigation decisions made by regulatory colleges. The steering committee further recommended that the Health Professions Review Board should retain a role in addressing concerns about timeliness in individual complaints processes, such as timely communication by regulatory colleges. The oversight body, on the other hand, should be responsible for monitoring regulatory colleges’ systemic progress on complaint process timeliness and for encouraging improvements.

As alluded to above, the Health Professions Act currently sets time limits for how long inquiry committees have to complete complaint investigations, allows the suspension of investigations if they are delayed, and gives certain powers to the Health Professions Review Board to investigate and respond. It is certain that the pandemic has delayed the progress of the modernization initiative, but the Review Board looks forward with interest to what new measures will be devised to promote timely complaint investigations.

Appeal of “Dawson” Judicial Review Decision

The Review Board’s 2019 Annual Report made note of the Review Board’s appeal to the British Columbia Court of Appeal of the Supreme Court’s decision in *The College of Physicians and Surgeons of British Columbia v. The Health Professions Review Board*, 2018 BCSC 2021. That

decision judicially reviewed Review Board decision *Complainant v. College of Physicians and Surgeons of British Columbia*, 2015 BCHPRB 86. The Court of Appeal's decision was on reserve at the close of 2019 and was expected to be issued in 2020 but, perhaps due to issues associated with the pandemic, continues to be on reserve as of July 30, 2021.

Improving Review Board Operations

Forms and Information Sheets

In 2019, the Review Board revised and updated Form 13, used to request review of a college decision more than 30 days after it was received. In 2020, the Review Board Office continued the work of updating its forms and information sheets in accordance with Access to Justice principles, improving accessibility, utility, and ease of use, making them electronically fillable, and accommodating electronic signatures.

Fully paperless office

In 2020, the review board office concluded its project to become an entirely paperless office by making provision for electronic record retention. Cost savings on mailing, off-siting, shredding, and archiving paper files continued to be realised. A draft Operational Records Classification System ("ORCS") schedule was submitted to the Ministry of Citizens' Services for vetting with the goal of obtaining legislative approval in 2023.

Board Membership

In 2020, two new members were temporarily appointed to the Board by the Chair, and no new members were appointed by the Lieutenant Governor in Council. At the end of the year there were 30 Review Board members, with significantly improved gender balance among members over previous years.

Thank you

In closing, I would like to recognize the Review Board members, our legal counsel Frank Falzon, Q.C., succeeded in 2021 by Alison Latimer, the staff of the Environmental Appeal Board which provides financial and administrative support, and the dedicated team at the Victoria office for their work on behalf of the Review Board.

A handwritten signature in black ink, appearing to read "David Hobbs", written in a cursive style.

David Hobbs, Chair
Health Professions Review Board

Rule Changes

Previous Rule	Revisions Made (Now current)
<p>Rule 5 Time limit for application</p> <p>(1) An application for review must be received by the review board within 30 days of the day on which written notice of the registration decision, the inquiry committee disposition or the notice of delayed investigation to be reviewed was delivered to the applicant.</p> <p>(2) An applying party may apply to the review board to extend the time for making an application, even if the time limit has already expired.</p> <p>(3) An applying party must satisfy the review board that “special circumstances” justify granting an extension of time. An applying party must deliver a written request to the review board, with any supporting documentation, that addresses the following:</p> <p>a) Did the applying party form a genuine intention to apply for review and communicate that to any respondent before the expiry of the 30 day limitation period?</p> <p>b) What was the length of the delay and was there a legitimate explanation for the delay?</p> <p>c) Is the application bound to fail? Specifically, what are the applying party’s reasons for challenging the College disposition and do those reasons have sufficient merit to justify granting an extension of time?</p> <p>(4) Before deciding whether to grant an extension of time, the review board may give the other parties an opportunity to respond, which response may include reference to any special prejudice that party would experience if an extension was granted.</p> <p>(5) If the review board is satisfied that special circumstances warrant an extension of the time limit to make an application for review, it may grant an extension of time whether or not the time limit has already expired.</p>	<p>Rule 5 Time limit for application</p> <p>(1) An application for review must be received by the review board within 30 days of the day on which written notice of the registration decision, the inquiry committee disposition or the notice of delayed investigation to be reviewed was delivered to the applicant.</p> <p>(2) An applying party may apply to the review board to extend the time for making an application, even if the time limit has already expired.</p> <p>(3) An applying party must satisfy the review board that “special circumstances” justify granting an extension of time. An applying party must deliver a written request to the review board, with any supporting documentation, that addresses the following:</p> <p>a) Did the applying party form a genuine intention to apply for review and communicate that to any respondent before the expiry of the 30-day limitation period?</p> <p>b) What was the length of the delay and was there a legitimate explanation for the delay?</p> <p>c) Is the application bound to fail? Specifically, what are the applying party’s reasons for challenging the registration decision, the inquiry committee disposition, or the delayed investigation and do those reasons have sufficient merit to justify granting an extension of time?</p> <p>(4) Before deciding whether to grant an extension of time, the review board may give the other parties an opportunity to respond, which response may include reference to any special prejudice that party would experience if an extension was granted.</p> <p>(5) If the review board is satisfied that special circumstances warrant an extension of the time limit to make an application for review, it may grant an extension of time whether or not the time limit has already expired.</p>

About the Review Board

The Health Professions Review Board (the “Review Board”) has been in operation since 2009 and is the only province other than Ontario to establish an independent health professions regulatory 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 (the “Act”). The Act provides a common regulatory framework for health professions in British Columbia. There are 26 regulated health professions, of which 25 are governed by 18 regulatory colleges under the Act. The Review Board is responsible for conducting reviews of certain complaint dispositions and registration decisions of these 20 colleges. 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.

One profession (emergency medical assisting) is regulated by a government-appointed licensing board under a separate statute and is not subject to Review Board scrutiny.

The health professions colleges 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
- Naturopathic Physicians
- Nurses and Midwives
- Occupational Therapists
- Opticians
- Optometrists
- Pharmacists
- Physical Therapists
- Physicians and Surgeons
- 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 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.
2. 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.

3. 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

The Review Board is a tribunal consisting exclusively of members appointed by the Lieutenant Governor in Council (usually referred to as “cabinet”). In contrast, colleges are professional regulatory bodies with board members elected or appointed by the Minister of Health in accordance with the Act. Appointment of Review Board members by cabinet ensures 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 a number of part-time members. The Act does not specify a minimum or maximum number of members required. 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, 2020

Member	Profession	From
David A. Hobbs (Chair)	Lawyer	Vancouver
Maria Alcuitas-Imperial	Vice-Chair, WCAT	Richmond
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
David Blair	Physician (Ret)	Victoria

D. Marilyn Clark	Consultant/Business Executive	Sorrento
Ryan H. Clements	Lawyer	Vancouver
Gregory J. Cran	Academic Consultant	Lund
Douglas S. Cochran	Lawyer (Ret)	Vancouver
William Cottick	Lawyer	Victoria
Brenda Edwards	Lawyer	Victoria
Celia Francis	Adjudicator	Victoria
Leigh Harrison	Lawyer (Ret)	Rossland
Jeanne Harvey	Judge (retired)	Victoria
Roy Kahle	Lawyer (Ret)	Kamloops
Robert McDowell	Project Director	Vancouver
Nancy Merrill, Q.C.	Lawyer	Nanaimo
David Newell	Lawyer	Vancouver
John O'Fee, Q.C.	Lawyer/University Lecturer	Kamloops
John M. Orr, Q.C.	Lawyer	Victoria
Philip A. Riddell	Lawyer	Port Coquitlam
Helen J. Roberts	Mediator	Vancouver
Donald A. Silversides, Q.C.	Lawyer	Prince Rupert
Katherine Wellburn	Lawyer (Ret)	Vancouver
Kent Woodruff	Lawyer/Mediator	Kamloops
Deborah Zutter	Mediator/Lawyer(ret)	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
- 3 Case Managers
- 1 Intake and Administration Officer
- 1 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

Website Address: www.hprb.gov.bc.ca

Mailing Address:

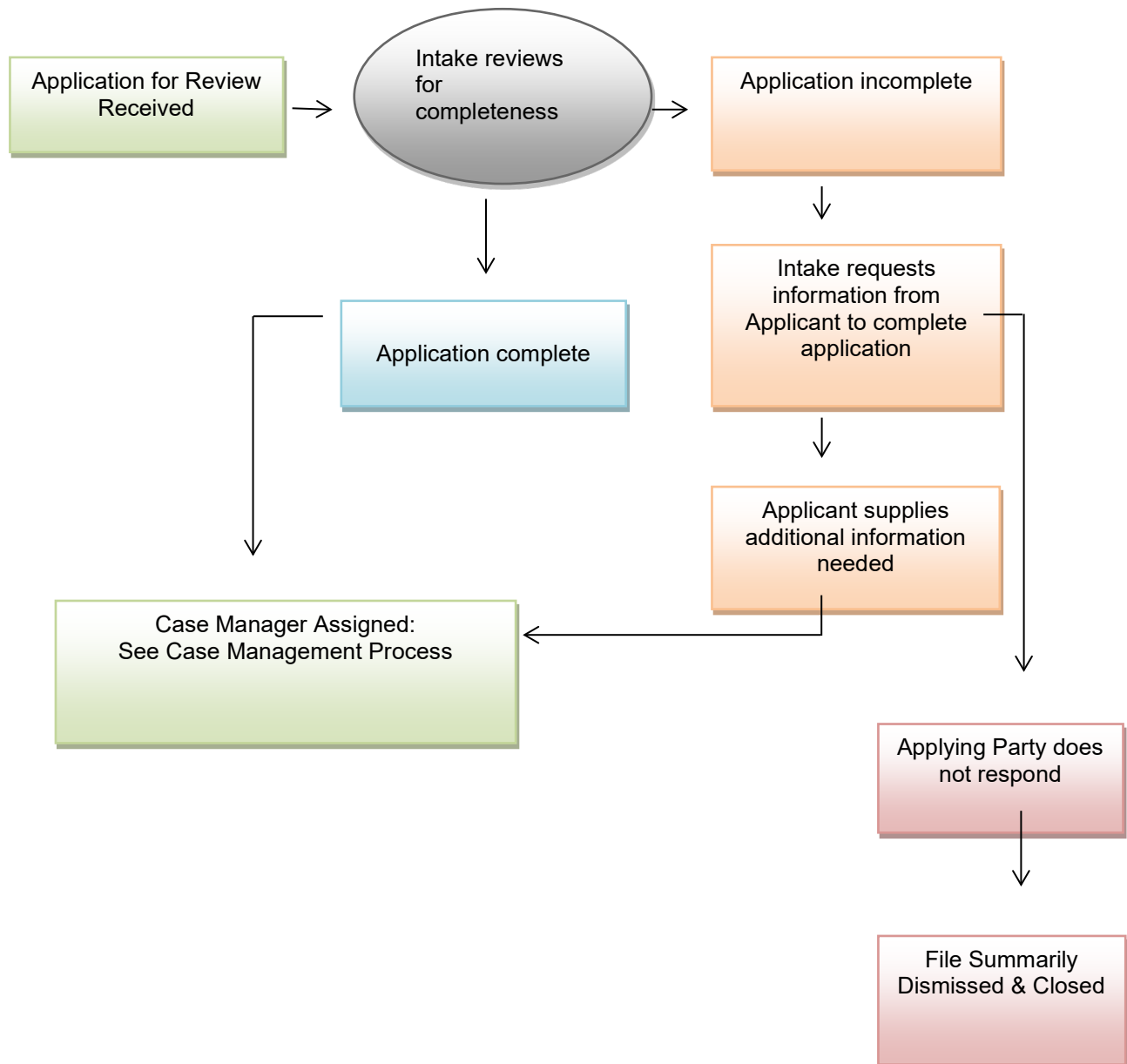
Health Professions Review Board
PO Box 9429 STN PROV GOVT
Victoria, BC V8W 9V1

The Review Process – Flow Charts

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.

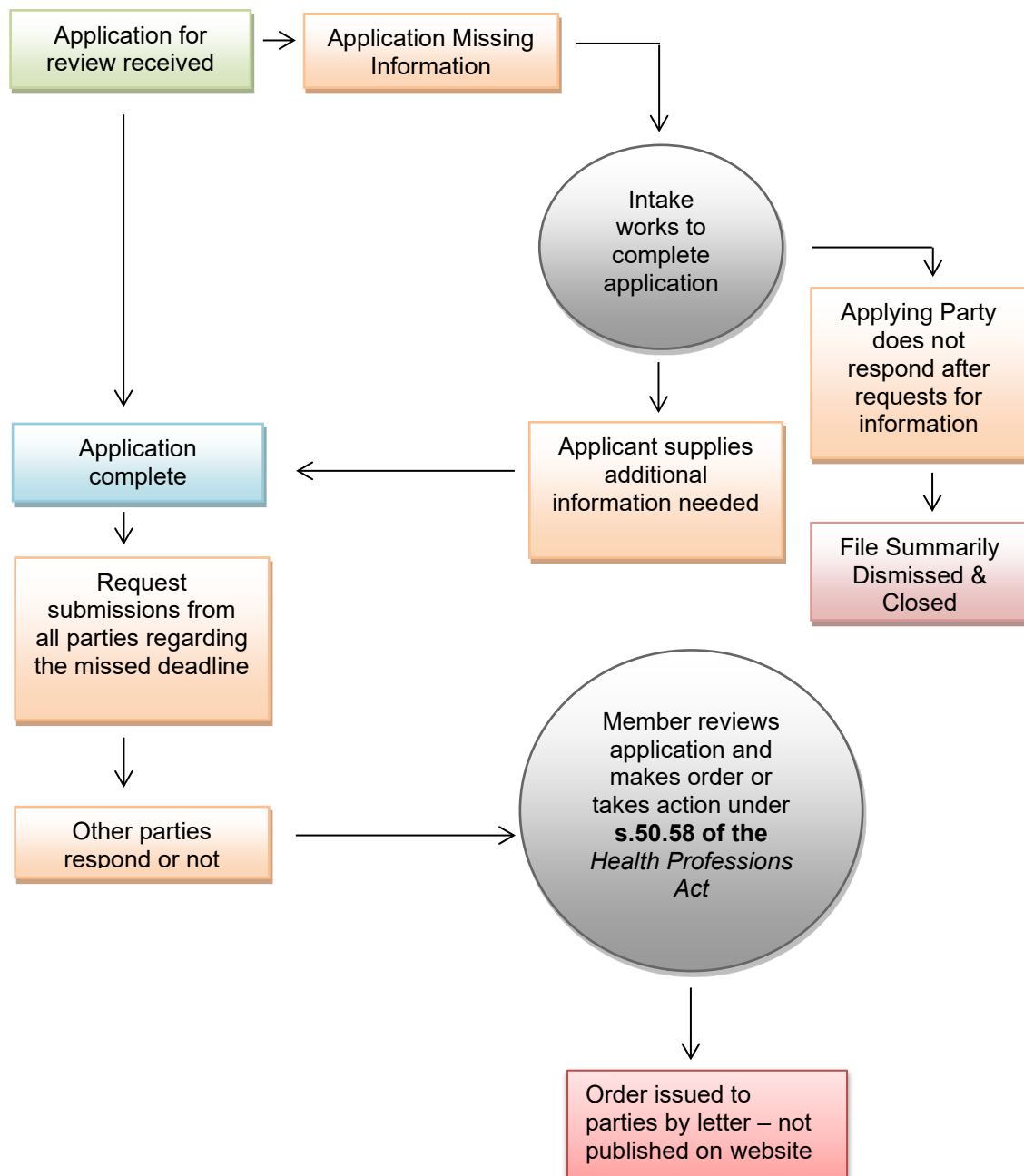
Few applicants who submit applications for review to the HPRB have had any exposure to administrative law or process. For that reason, intake staff assist applicants to go through the steps necessary to “perfect” an application so that it meets the requirements of the *Health Professions Act* and the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

Intake Process



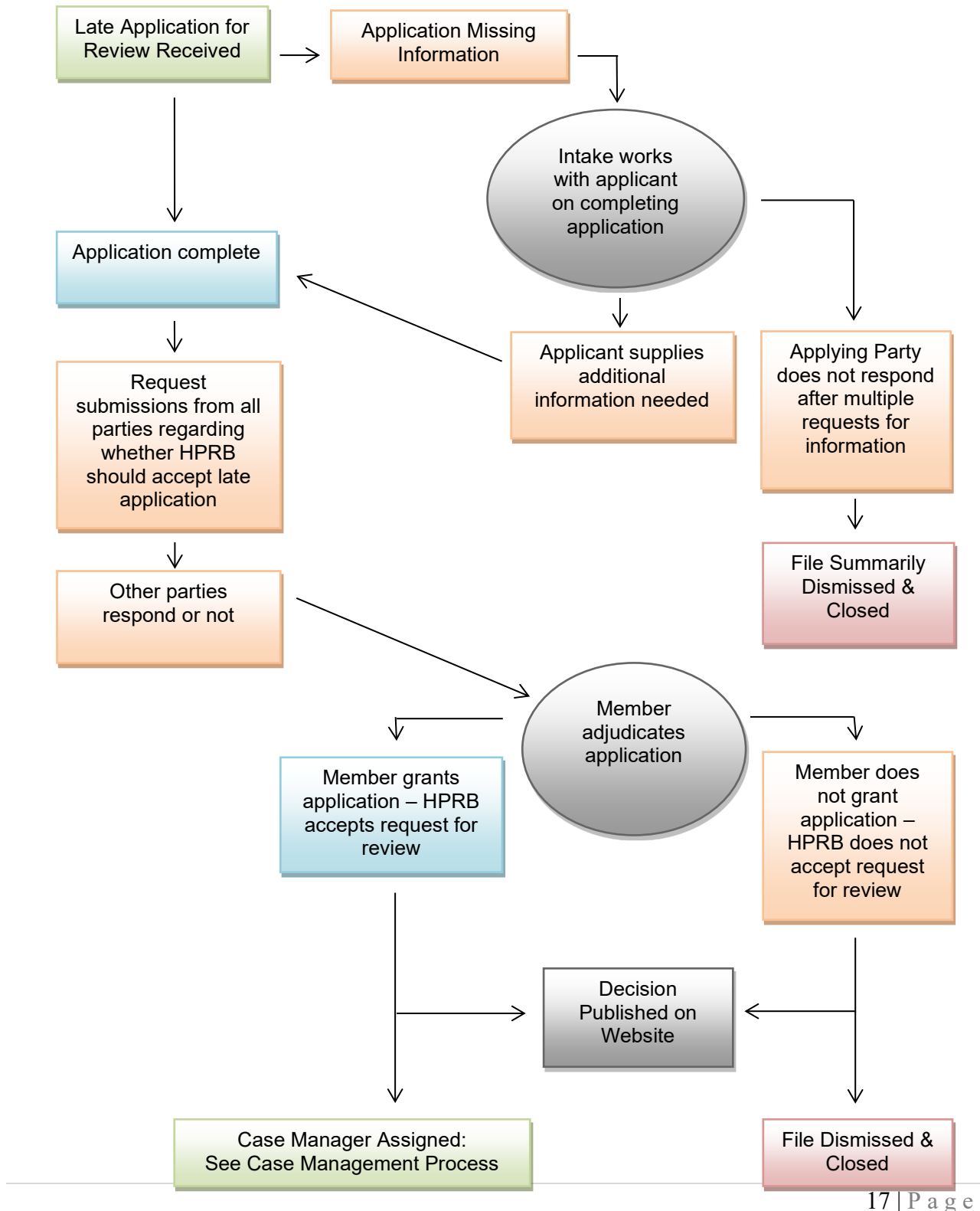
Process for Review of Investigations Not Completed within Statutory Deadlines

Complainants who are waiting for a college to complete its investigation into the circumstances of the complaint may, after the amount of time specified in the legislation has elapsed, apply to the Review Board for a review of the delay. This chart describes the delayed investigation review process.



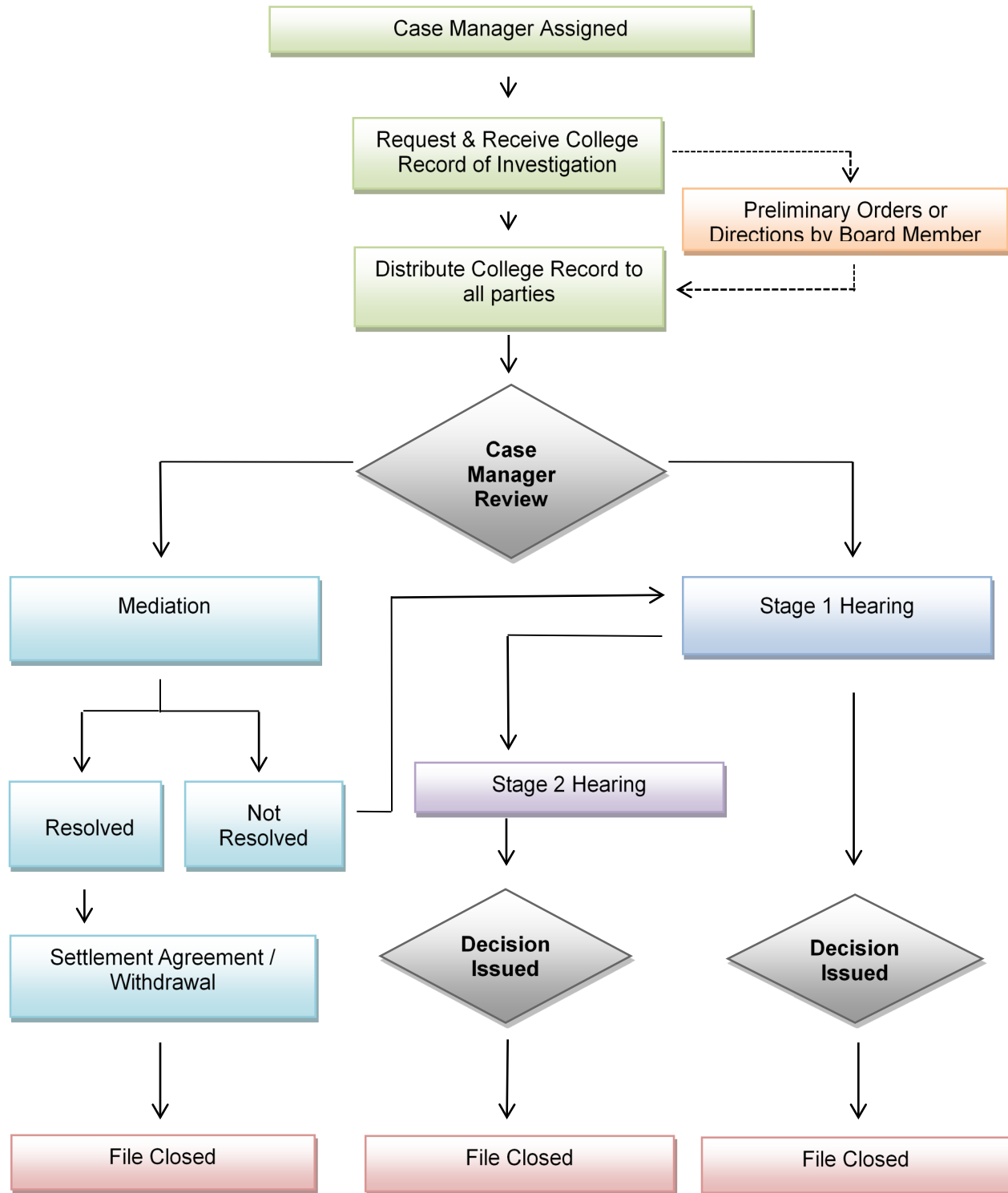
Process for Applications Submitted Outside Legislated Deadline

The Review Board has authority under section 24 of the Administrative Tribunals Act to accept applications outside legislated deadlines if special circumstances exist. Review Board staff ensure that such applications are put to a member for adjudication.



Case Management 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.



Alternative Dispute Resolution (Mediation)

Surprising things can happen in mediation. Seemingly intractable parties can and do shift, often achieving better outcomes and better satisfaction of the parties than adjudication. Review Board office staff approach each application with resolution outside of adjudication in mind, assessing each case to determine whether it is amenable to mediation.

The Review Board conducted six mediations in 2020, four of which were settled under mediation, and there were three informal resolutions achieved by case managers which the application for review being withdrawn. As with so many aspects of health care, technology is impacting mediations. Mediation courses are now offered in tele-mediation and even online mediation, and mediations can take place virtually using video-conferencing platforms. Mediations are an important aspect of the Review Board's work and are pursued by the Review Board whenever there is the possibility of a satisfactory outcome for all parties.

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 the requirement for absolute confidentiality we can provide glimpses into both processes and outcomes for 2020:

1. A complainant felt she was injured by a registrant. The mediation was conducted entirely by telephone with documents exchanged by email. The registrant provided a letter of apology, the complainant accepted it, and withdrew her application for review.
2. A complainant had a financial dispute with a registrant for care provided. The college decision was that the registrant had met the standard of care; however, both the complainant and the registrant were open to mediation. With patience and goodwill, a settlement was reached, and the registrant and complainant agreed to an amount of financial compensation.
3. A complainant felt strongly that the college should punish and discipline a registrant for care he felt was substandard and insisted this should be the goal of mediation. Following mediation, the complainant accepted a letter of apology from the registrant and withdrew his application for review.
4. An applicant requested review of a college registration committee decision not to grant her registration. Mediation was conducted via telephone and email. The applicant discussed alternatives to achieve registration directly with college, and consequently withdrew her application for review.

Consent Matters

While not mediations per se, the Review Board does resolve by consent of the parties many procedural issues that arise in the course of a review proceeding. At the preliminary stage of a review proceeding there are circumstances where a college may make an application under s. 42 of the *Administrative Tribunals Act* for certain information contained in the Record to be received in confidence by the Review Board and redacted from the Record prior to disclosure to a certain party – usually the applicant/complainant. Colleges may also seek to withhold the name of an individual who provided an expert medical report during an investigation. Review Board case managers have in many instances been able to negotiate such redactions to the record by consent of the parties, thus avoiding the need for a separate s. 42 adjudication process.

College Requests to Reconsider

At various stages of the Review Board process, on a number of files, the Review Board has received requests from colleges to refer a matter back to their Inquiry Committees or Registration Committees so that the Committee can further investigate, consider new information not previously considered, and then render a new decision. The Review Board has granted these requests, noting that there is no benefit to the parties nor is it in the public interest for the Review Board to require the parties to proceed with a hearing on a matter pending a possible college reconsideration. This process does not prejudice to the complainant or applicant, as they are free to apply for a review of the new college decision in due course. This constructive feedback loop is an example of one of the benefits of Review Board review.

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 2 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 CanLII website.

Noteworthy Decisions

A selection of significant decisions issued in 2020 is summarized below. 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 Decisions**

[Complainant v. College of Physicians and Surgeons of British Columbia \(No. 1\), 2020 BCHPRB 48](#)
(follows *Complainant v. College of Physicians and Surgeons of British Columbia*, 2018 BCHPRB 93)

Preliminary application by the College under s.42 of the Administrative Tribunals Act (ATA) for the Review Board to receive identifying information of an independent witness in confidence to the exclusion of the Complainant and Registrants - Denied.

The College of Physicians and Surgeons of British Columbia hired an independent expert to assess the care provided by the Registrants vis a vis the complaint. The College sought to withhold identifying information of the expert from the record of investigation, saying that without assurances of confidentiality, expert witnesses may be unwilling to be open and honest in their assessments of physicians in case their assessments are not well-received by their peers. The College emphasised that only the identity of the independent expert would be withheld from the Complainant and Registrants. That information was also withheld from the Inquiry Committee so they would all have the same information.

*The Complainant objected; he submitted that without the identity of the expert there could be no full examination and determination of the expert's qualifications. The Registrants consented. Practice Directive No. 3 guides the Review Board on the application of s.42. In the interests of procedural fairness, all parties normally have access to the entire Record, and there must be a strong basis for uneven disclosure. *Complainant v. College of Registered Nurses of British Columbia*, 2009 BCHPRB 5, noted that exceptions to the usual rule can be made, but the tribunal must find that the exception is required to ensure the proper administration of justice.*

*The issue is not whether the Complainant has the same information as the Inquiry Committee, but whether the expert's identity and location should be withheld from the Complainant and Registrants even though the Review Board has the information. The College relied on *Complainant v. College of Physicians and Surgeons of British Columbia*, 2014 BCHPRB 3, in which the Review Board allowed the expert's identity to be withheld. The Review Board chose instead to follow *Complainant v. College of Physicians and Surgeons of British Columbia*, 2018 BCHPRB 93, which denied a similar s.42 application. The analysis in the 2018 decision is*

sound. The decision considered judicial decisions, decisions of the Ontario Health Professions Appeal and Review Board, and previous Review Board decisions including 2014 BCHPRB 3, which it chose not to follow; it made the point that the Review Board cannot speculate on the utility of the expert's identifying information, the risk of conflict or potential conflict based on its own private review of the expert's identity, nor whether withholding the expert's identity would or would not undermine the Complainant's ability to advance his case.

The College has not provided evidence that professional experts would not be candid if their identities could not be withheld. There is no evidence that this was of concern to the independent expert who provided the report after being advised that their identity could be disclosed in the event of a review. Conversely, there are a number of policy arguments to be made that disclosure of an expert's name can serve to enhance the administration of justice.

The College has not met its onus of establishing that the identity and address of the College's expert should not be disclosed. The application is denied; the information will be withheld for 14 days from the release of the decision to give the College time to advise whether it will seek judicial review of the decision. The 2018 decision made the point that revealing the identity of the independent expert can improve the administration of justice as it demonstrates transparency and may be helpful to the complainant. The College did not demonstrate that that the test under s.42 was met.

Complainant v. College of Psychologists of British Columbia, 2020 BCHPRB 3

Preliminary Section 42 Administrative Tribunals Act (ATA) application by the College to withhold certain documents in the Record from disclosure to the Complainant - Granted. The College sought to exclude from the Complainant, psychological testing materials and interpretive reports used in a vocational assessment of the Complainant. The Review Board found that the Complainant would not be harmed in his ability to advance his case by holding the psychological testing materials and interpretive reports. The essence of the complaint is that the Complainant believes that the Registrant forged his signature on a form and submitted a report which prevented him from being accepted into a specialized training program at his place of employment. The Review Board concluded that the potential harm to the public should the psychological testing materials and interpretive reports be released outweighs any harm that the Complainant might experience by reason of the uneven disclosure. The Review Board ordered the psychological testing materials and interpretive reports be held in confidence to the exclusion of the Complainant.

Complainant v. College of Psychologists of British Columbia (No. 1), 2020 BCHPRB 77

Preliminary applications under s.42 of the Administrative Tribunals Act for portions of the record to be received in confidence to the exclusion of the Complainant – granted in part. The College and Registrant each sought orders to withhold certain information in the Record from the Complainant. The Panel held that portions of a report concerning psychological assessments of third parties are to be withheld from the Complainant because the privacy interests of those individuals are greater than the need for transparency; that information has little relevance and would probably receive little or no weight in assessing the Registrant's actions or reviewing the Inquiry Committee's disposition. Documents falling under settlement privilege and solicitor/client privilege are excluded because those privileges are vital to the proper administration of justice, and the

potential harm done by overriding the claimed privilege in those instances is greater than respecting it. Protecting the proprietary interests of psychological testing companies does not justify withholding brief statements in psychological assessments that summarize the results of testing the Complainant's children. Whether the Registrant's opinion was consistent or contrary to the testing outcomes may be highly relevant to the Complainant's concerns, and it is relevant to consideration of the adequacy of the investigation and reasonableness of the outcome. The Panel directed that the redacted Record is not to be delivered to the Complainant for 14 days to permit the College or Registrant time to advise the Review Board if they are seeking judicial review of this decision.

2. Decisions Reviewing Inquiry Committee Dispositions

[Complainant v. College of Physical Therapists of British Columbia, 2020 BCHPRB 25](#)

Court ordered reconsideration of a disposition dated January 20, 2017, and Stage 2 review of a subsequent disposition dated May 29, 2019 in an application for review of an inquiry committee disposition under s.50.6 of the Health Professions Act – remitted back to the Inquiry Committee with directions.

Procedural background: In 2016 the Complainant complained to the College alleging that Registrant failed to conduct a competent assessment and record an appropriate history, and further that the Complainant suffered harm when he was subsequently assessed by an occupational therapist who relied on the Registrant's assessment. The College investigated and issued a disposition in 2017 after they obtained the Registrant's undertaking to review the College's standards concerning keeping clinical records and to submit to a clinical chart audit. The Complainant applied to the Review Board for review of that disposition, and the Review Board confirmed it on July 13, 2017.

A party applied to the Supreme Court of British Columbia for judicial review of the Review Board's decision, and on September 26, 2018 the Court issued an order quashing the Review Board's 2017 Decision and remitting the matter back to the Review Board for reconsideration. On November 15, 2018 the Panel granted the College's request to adjourn the review to allow the Inquiry Committee to reconsider the matter. The College sought two further adjournments before the Inquiry Committee issued its new disposition on May 19, 2019 confirming its decision to obtain the Registrant's undertaking to prepare and submit a Competency Paper within 30 days, undertake any further remedial direction after review of the paper, and complete a chart stimulated recall as well as any further remedial action as directed. On June 14, 2019 the Complainant indicated that he wished to proceed with review of the 2017 and 2019 dispositions. On receipt of the College's supplemental Record of the reconsideration, the Panel set a schedule for submissions which closed on October 21, 2019.

The Panel found that the Complainant was given multiple opportunities to articulate his complaint and tender evidence. On reconsideration in 2019, the College provided the Complainant with the Registrant's response to the complaint and permitted him to reply to that response and to the Inspectors' reports. In addressing the Complainant's concerns that the investigation was not adequate, the Panel held that a registrant interview is only required for an adequate investigation where there is a clear and compelling reason such as a credibility issue where an interview is necessary to make an informed decision on a key

complaint issue; it was not necessary to interview the Complainant's physician and physiotherapist on whose reports the Inquiry Committee relied as no contrary findings were made concerning the Complainant's impairments; the Inquiry Committee was not obliged to require the Inspector to conduct an audio interview of a registrant; and the Inspector followed standard practice by taking notes of the interview. While the initial investigation may have been lacking in some areas, the College ultimately took reasonable steps to ensure that the Inquiry Committee had the key information that it needed to properly consider the matter in the context of the seriousness of the complaint, the complexity of the investigation, the availability of evidence and the resources available to the College.

The Panel held that the College's investigation, viewed in its totality, was reasonably adequate. The Panel deferred to the Inquiry Committee's assessment of the evidence and the interpretation of its clinical standards and noted that transparency and justification are a key part of determining whether a disposition is reasonable. The Review Board cannot conclude that the Inquiry Committee's finding of "no issue" is reasonable in the face of the first chart audit which reports numerous deficits such as missing consent, illegible entries, inappropriate abbreviations, incomplete complaint and medical histories, incomplete observations, incomplete or nonspecific relevant findings, and incomplete changes to treatment plan.

The Panel considered the Reconsidered May 2019 Disposition to be reasonable review of the College's investigation of the complaint and the reasons offered by the Inquiry Committee. It is written in a manner that, but for the Inquiry Committee's inexplicable treatment of the results of the first chart audit, is logical, flows naturally, and is easily read and understood by the reader. The only aspect of the Inquiry Committee's May 2019 Reconsidered Disposition which is not rationally supported by the evidence is the part which addresses the Committee's remedial response on the documentation issues that arose from the complaint. The Panel sent the matter back to the Inquiry Committee with directions to reconsider its finding that "no issues arose" from the Inspector's 2017 chart audit report and provide reasons on that issue and, if it revises its finding that "no issues arose", issue a new disposition with reasons determining whether and on what basis additional remedial action is, in the public interest, appropriate.

Complainant v. British Columbia College of Nursing Professionals (No. 1), 2020 BCHPRB 74

Stage 2 hearing of an application for review of an Inquiry Committee complaint disposition under s. 50.6 of the HPA – Remitted in part to Inquiry Committee for reconsideration. The Complainant complained to the College alleging professional misconduct by the Registrant, a registered nurse, in connection with his visit to a hospital emergency room (ER): She administered the drug Toradol without a physician's order; at the conclusion of his visit told him to consume an oral antibiotic medication right away in contravention of the physician's written order; and triaged the Complainant even though she was not qualified to.

Registrar's disposition

The Registrar dismissed the complaint as vexatious under s. 32(3)(a) of the Act (as the Complainant's daughter was also a nurse and was under investigation by the college for separate alleged transgressions in which the Registrant was involved as a witness) and under s. 32(3)(c) of the Act (containing allegations that, if admitted or proven, would constitute a matter other than a serious matter). The Review Board found that the Registrar's disposition of

the Complaint under s. 32 (3)(a) as vexatious was unreasonable. To reasonably dismiss as vexatious a complaint that would otherwise be considered on its merits requires that the evidence support no other reasonable inference as to the Complainant's intent (which is not the case in this review). Otherwise, the College would be placing its characterization of the Complainant's motives above its paramount duty to protect the public. The Review Board found that the Registrar also erred in asserting authority over the allegation of administering Toradol without a physician's order when she determined that, unless the departure from the Scope of Practice in relation to the allegation was extremely negligent or the registrant's actions had significant and reasonably foreseeable health impacts, such an allegation would not ordinarily result in conditions or limits on practice, a suspension or cancellation of registration. The Registrar applied s. 32(3)(c) of the Act incorrectly by factoring in an "inference" that the Registrant had a verbal order, and not simply focusing on whether the allegation itself, if admitted or proven, would be a serious matter. The Review Board found that it would be a very serious matter for a nurse to administer Toradol when not prescribed by a physician. The administration of medication with a doctor's order is a professional standard central to nursing practice. This allegation was required to have been disposed of by the Inquiry Committee.

Even if the Registrar did not unreasonably assume authority to dispose of the Toradol allegation, the Registrar's disposition in relation to the Registrant's failure to record the physicians verbal order was unreasonable because it did not refer to the College Practice Standard on Medication Administration or to other possibly relevant standards, but instead to standards of negligence in the common law.

Adequacy of the Investigation

The Complainant submitted the College failed to interview key witnesses to confirm the Registrant's accounts, such as the verbal order for Toradol. However, the Review Board found the investigation for all three allegations was adequate and investigative steps were commensurate with the nature of the complaint. An investigation of the sort the Complainant wanted is more suitable for a discipline hearing or civil trial. An investigation in this context need not be perfect, only adequate.

The test for determining reasonableness and the application of Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 (Vavilov)

The Review Board asked the parties to make submissions about the effect of on reasonableness review; aspects of Vavilov that can be helpfully adapted into Review Board reasonableness review include:

- Applying restraint – ie. Acknowledging the importance of the first instance role and expertise of college and inquiry committee decision-makers.*
- Taking a "robust" approach to determining reasonableness – requiring the college to sufficiently justify its conclusions on key complaint issues rather than accepting a conclusion simply because the inquiry committee is "expert"; nevertheless, some dispositions will be justified even if they are explained in less detail when understood in light of the Record or the practical realities in which college decision-makers operate.*

- *Not applying different standards of deference for clinical or medical findings over findings in other areas. Reasonableness depends on the legal and factual context of the decision under review, not on differing “degrees” of reasonableness review for medical and clinical findings over other findings.*
- *Not confirming an inquiry committee decision based on reasons that “could be offered”. The Review Board shouldn’t automatically assume that the College’s submission on review reflects the Inquiry Committee’s actual thinking on key complaint issues where there is no hint of that in the Record. In these cases, College decision-makers should be required to provide reasons unless the Review Board concludes that would serve no useful purpose, or where the Review Board would be better to direct an alternative outcome.*

Reasonableness of the Disposition

The Registrar found failure to record the Toradol order was “an occasional inconsistency, inaccuracy, and/or omission”, the parties provided alternate accounts of the antibiotic allegation, and there were competing accounts of what took place with regard to the triage allegation. The Review Board found that the Registrar’s disposition concerning the antibiotic and triage allegations to be reasonable.

The issue of the Toradol complaint is remitted to the Inquiry Committee for reconsideration under s.50.6(8)(c) of the Act, with the direction that it provides reasons in support of its disposition of that complaint one way or the other.

Complainant v. College of Physicians and Surgeons of British Columbia (No. 1), 2020 BCHPRB 84

Stage 2 hearing of an application for review of an inquiry committee disposition under s.50.6 of the Health Professions Act – the disposition concerning 4 Registrants was confirmed and the disposition as to the remaining 7 Registrants was remitted back to the Inquiry Committee with directions.

The Complainant alleged to the College that 12 physicians failed to competently care for her 43-year-old son and prevent his death after his potentially fatal pancreatitis and gallstones had been diagnosed. Following an investigation, the Inquiry Committee found that 10 of the Registrants met the standard of care. It was critical of various aspects of the care provided by the other 2 Registrants, one of whom entered a consent agreement to review guidelines on consent and take courses on record keeping and prescribing. No remedial measures were taken concerning the other Registrant who was criticized for failing to document physical findings and for inadequate discharge advice. The Complainant sought review of the disposition concerning 11 of the 12 Registrants. The Panel held that the investigation concerning each of the 11 Registrants was adequate and the Disposition with respect to 4 of them was reasonable.

The Panel remitted the matter back to the Inquiry Committee for reconsideration of several aspects of the Disposition concerning the remaining 7 Registrants. Reasonable dispositions are intelligible, transparent, and justifiable; they address the key issues, explain whether the conduct satisfies the College’s regulatory standard of care, and should provide some brief explanation of the factors considered in deciding on remedial outcomes. The Panel held that delays did not adversely affect the adequacy of the investigation in this case, but circumstances

could arise where a college's failure to adhere to statutory timelines could adversely affect the adequacy of an investigation.

Complainant v. College of Physicians and Surgeons of British Columbia, 2020 BCHPRB 81

Stage 2 hearing of an application for review of an inquiry committee disposition under s.50.6 of the Health Professions Act – disposition confirmed.

The Complainant initially applied in 2016 for review of the Inquiry Committee's disposition of her complaint concerning the Registrant's treatment of her late husband. The Review Board remitted the matter back to the Inquiry Committee for reconsideration. The College applied for judicial review of the Review Board's 2016 decision and in April 2019 the Supreme Court remitted the matter to a new Review Board Panel for reconsideration. In May 2019 a new Panel was appointed to reconsider the reasonableness of the Inquiry Committee's 2016 disposition. The new Panel found that the College Registrar's investigation was adequate. The Panel deferred to the Registrar's discretion not to consider the prior disciplinary action taken against the Registrant and not to apply the standard of "being above reproach" in assessing the Registrant's conduct and care of the Patient.

Despite the Registrar's determination that the Registrant's unsatisfactory documentation and care of the Patient were not serious matters, the Panel found that there were very significant deficiencies that could have had a significant adverse impact on the health and wellbeing of the Patient, and the Complainant deserved an explanation of why the Registrar chose to dispose of her complaint by dismissing it and including criticism of the Registrant's conduct and expectations for his future conduct in the Disposition Letter. The College had a duty to take steps that were likely to result in the quality of the Registrant's care and record-keeping meeting the expected standard when he provided care to patients in the future. The College also had an obligation to explain the Registrar's conclusion that an informal measure such as expressing criticism and expectations in the Disposition Letter was sufficient. In the absence of any such explanation, the Panel found that the disposition failed to meet the requisite standard of justification, transparency and intelligibility described by the Supreme Court of Canada in Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65. Having found that the disposition was not reasonable, however, the Panel confirmed it after concluding that it would serve no useful purpose to send the matter back to the Inquiry Committee for reconsideration in light of the Registrant's age and retired status.

Complainant v. College of Physicians and Surgeons of British Columbia (No. 1), 2020 BCHPRB 92

Stage 2 hearing of an application for review of an inquiry committee disposition under s.50.6 of the Health Professions Act – disposition confirmed.

The Complainant originally applied in 2017 for review of the Inquiry Committee's first disposition of her complaint against the Registrant concerning a number of things, including the challenges she faced obtaining her medical records from the Registrant after their strained physician-patient relationship ended.

On consent of the parties, the matter was referred back to the Inquiry Committee for reconsideration. The Inquiry Committee adopted the Registrar's decision that reached the

same conclusion as before and the Complainant sought review of that Second Disposition. On review of the Second Disposition, the Review Board remitted the matter back to the Inquiry Committee for reconsideration of the discrete issue of the unaddressed allegation that the Registrant did not disclose to, and discuss with, the Complainant a specialist's report (Decision 2019 BCHPRB 46).

In the course of the second reconsideration, it became apparent to the College that the specialist's report sent to the Registrant had been misfiled, and the Registrant had not provided a copy of it to the Complainant nor called her in for follow-up. In its Third Disposition, the Inquiry Committee upheld its criticism of the Registrant's insufficiently detailed records and added a further criticism of his suboptimal office processes. The Third Disposition was the subject of this review. The Panel held that the Inquiry Committee had the core materials necessary to review the discrete issue it was to reconsider and also enough to review the matter as a whole, including the Complainant's earlier Statement of Points to the Review Board, the prior Review Board Decision 2019 BCHPRB 46, and the specialist's report which was non-urgent, did not find an acute or marked issue, did not recommend a definitive treatment related to the patient's chronic, longstanding problems, and did not direct the Registrant to follow-up with the patient.

The Third Disposition captured the histories of the complaint, investigation, and review process, identified the discrete issue, which was remitted back for reconsideration, and described the Inquiry Committee's conclusions including its finding that it was acceptable in the circumstances for the Registrant not to have discussed the specialist's report with the Complainant. The Inquiry Committee also concluded that the community standard would not require every family physician to recall the patient and inform them in such circumstances. The College submitted that, "sometimes, as here, there are both a codified guideline and a community standard, and together they make up the expectations of the physician" and "[t]he community standard assessment requires attention to the particular situation under review – the outcome in each situation will differ. ... if a family physician were to receive a consultant's report that a patient required immediate medical intervention or to attend at a hospital, the community standard would expect a different response than in this case." The Inquiry Committee assumed that the specialist would have informed the Complainant of his recommendation for physiotherapy, noting that the report had been sent to WorkSafeBC for review by its staff. The investigation was adequate and the disposition reasonable.

Complainant v. College of Physicians and Surgeons of British Columbia (No. 1), 2020 BCHPRB 96

Stage 2 hearing of an application for review of an Inquiry Committee disposition under s.50.6 of the Health Professions Act – Matter remitted back to the Inquiry Committee with directions.

The Complainant made a complaint to the College against the Registrant, a geriatric psychiatrist, with respect to the treatment she provided to her Grandparents while they were in hospital and involuntarily admitted under the Mental Health Act. The distinction between "typical" and "atypical" antipsychotic medications was a key issue raised by the Complainant, and she maintained the Registrant's medication choices were contrary to best practices and she was dismissive about family members' concerns about their effect on her Grandparents.

After investigation the Registrar of the College did not find a basis to be critical of the Registrant and noted that the Grandparents were medically complex geriatric patients with significant medical and psychosocial problems. The Registrar concluded that a proper history was taken, an adequate examination was performed, a diagnosis suggested, and appropriate options for treatment and/or further investigation were advised. The Review Board found that the investigation of the Registrant's clinical care was not only adequate, but thorough. The Registrar was careful to seek and obtain all relevant clinical and medical records.

However, the Review Board determined that the investigation into the conduct aspect of the complaint with respect to the Registrant's interaction with the family was lacking and unreasonable. The refusal to investigate was based on the unreasonable premise that nothing could be done because the Deputy Registrar was not "present" during the alleged interaction. The Review Board stated that this unreasonable justification meant the Registrar failed to take even the minimum steps necessary to adequately investigate the conduct complaint, and thus failed to form any provisional assessment of the Registrant's conduct.

With respect to the final disposition the Review Board found that the conclusions reached on the clinical care complaints were unreasonable, even though the investigation was adequate, to the extent that the disposition lacked justification and transparency on the key complaint issue whether the Registrant failed to meet the regulatory standard of care when she prescribed typical as opposed to atypical antipsychotics for the Grandparents. The Review Board remitted the matter back to the Inquiry Committee with directions, along with the recommendation that expert evidence be sought regarding the regulatory standard of care for a geriatric specialist in the use of typical antipsychotics in elderly patients, including those with dementia, who are certified under the Mental Health Act.

3. Decisions Reviewing Registration Dispositions

[Applicants v. College of Physicians and Surgeons of British Columbia \(No. 1\), 2020 BCHPRB 113](#)

A Hearing of an application for review of a registration committee decision under s.50.54 of the Health Professions Act – Decision – No statutory authority to review.

The three Applicants in this matter applied to the Review Board for a review of what they describe as registration decisions of the College. Their first application was for a review of a decision made by the Registration Committee of the College. Their second application was for a review of a decision made by the College Board. The Review Board has placed the hearing of the first application in abeyance pending the outcome of the second application. This Decision is with respect to the issue of whether the Review Board has statutory authority to review the decision made by the College Board that is subject of the "second application."

Of the three Applicants two are individuals who earned their medical degrees outside of Canada in Poland and Barbados respectively. The third Applicant is a Society that asserts it represents Canadians who are studying, or have studied, medicine abroad in a country other than Canada or the United States.

The Review Board found that the College Board decision was made in response to requests for structural and bylaw changes made by the Applicants pursuant to the authority conferred on

the College Board by the Act and did not constitute decisions about the applications for registration made by the individual Applicants since those decisions had already been made by the Registration Committee. Having found that the College Board decision which is the subject of the second application does not constitute a registration decision, the Panel decided that the Review Board does not have statutory authority to review it.

[Applicant v. College of Physicians and Surgeons of British Columbia \(No. 1\), 2020 BCHPRB 45](#)

Stage 2 hearing on an application for review of a College of Physicians and Surgeons of BC ("College") Registration Committee decision under s. 50.54 of the Health Professions Act (the "Act"). Matter sent back to Registration Committee for reconsideration with direction to remove the limits and conditions it has, without legal authority, purported to place on the Applicant's registration.

Background

The Applicant is an orthopedic surgeon who is a registrant of the Saskatchewan College of Physicians and Surgeons and practised in Saskatchewan. Since 2008, he also paid annual membership dues and maintained full registration with the BC College.

In 2016, the Saskatchewan health authority which had given the Applicant a permit to practise in its hospitals ("hospital privileges"), suspended his privileges due to concerns about patient safety, and commenced proceedings to determine whether his privileges should be revoked. The health authority informed the Saskatchewan College of Physicians and Surgeons about this; the Saskatchewan College decided to wait for the outcome of the health authority proceedings before deciding what action to take; in the meantime, the Applicant remained a full registrant of the Saskatchewan College.

BC Proceedings

In 2017 and 2018, the Applicant disclosed the fact of the ongoing Saskatchewan health authority proceeding to the BC College on his annual licence renewal form and, at the College's request, he provided them with the health authority's decision of June 2018. In July 2018, the Applicant informed the BC College that he wished to attend a fellowship program at the University of British Columbia. At the College's request, the Applicant completed an application for "return to practice", providing information about the Saskatchewan health authority privileges disciplinary proceedings, a criminal matter in which charges were stayed, civil actions in which he was named and complaints against him with the Saskatchewan College. In January 2019, the BC College Registration Committee refused a "reinstatement" of the Applicant's registration as it had concerns about potential safety risks associated with his practise.

The Applicant applied for a review of the Committee's decision, arguing that the Registration Committee had no legal right to refuse him registration as he was a paid-up registrant of the BC College in good standing. Also, he had provided a certificate of professional conduct from the Saskatchewan College and was thus entitled to registration under s. 25.3 of the Act; he should be registered automatically under the Labour Mobility Act.

The Registration Committee reconsidered the matter and issued a new decision in May 2019, offering the Applicant two options, both with specific conditions attached.

Submissions of the Parties

The Applicant filed a second application for review, largely reiterating his original arguments. The Applicant also submitted that when he first asked the College to confirm his registration in August 2018, his practise status was “current.” However, the Registration Committee’s “delay” in reaching a decision meant that he became subject to BC College Bylaw 2-8, which requires that a registrant must undergo a competence review if they wish to practise in an area in which they have practised less than 24 weeks in the preceding 3 years. He alleged the delay was arbitrary or in bad faith, for an improper purpose, based predominantly on irrelevant factors and in ignorance of the requirements of the Health Professions Act and the bylaws of the CPSBC.

The College submitted that the Registration Committee’s decision was reasonable; Its authority applies equally to new applicants as to registrants who seek to return to active practice in BC, and the Act gives the Committee broad discretion to grant registration taking into account a person’s knowledge skills and abilities. S. 25.3 of the Act is not a rubber stamp that allows any applicant from another jurisdiction to practise in BC simply upon presentation of a certificate of professional conduct, and in any case, the Applicant’s certificate of conduct noted the suspension of the Applicant’s privileges and that the Saskatchewan College had yet to determine what action it would take. Also, the Bylaws require an applicant for registration from another jurisdiction to certify that there is nothing underway in that jurisdiction that could affect the applicant’s entitlement to practise medicine, and the Applicant did not do so.

The Applicant replied that the Registration Committee has authority to accept certificates of professional conduct but has no authority to impose conditions on a licensed registrant’s practise.

Standard of Review

The Review Board noted that the Act does not set a standard of review that must apply in reviewing registration committee decisions, although it does set out a number of criteria that must be met if the Review Board decides to grant an applicant registration in a college. Prior Review Board decisions were canvassed to identify principles to be followed when considering the standard of review. The standard of review in this hearing is correctness because the central issues are about statutory interpretation and legal in nature - whether the Registration Committee has authority over licensed registrants and its lawful role in relation to s. 25.3 of the Act and the Labour Mobility Act. The Review Board considered Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65. It found this case governs judicial review and does not speak to the internal standard of review to be applied by the Review Board on a registration review.

Finding

The Review Board determined that the role of the Registration Committee is to grant or reinstate registration of a person as a member of the College: Act s.20(1). However, the Registration Committee was not entitled to “grant” the Applicant registration, because he was

already an active, fully paid-up registrant. Neither could it suspend or place conditions on a registration it had already granted, even if the registrant is seeking to return to active practice in BC, or in the interests of public safety. The College has other bodies with the legal responsibility and statutory tools at their disposal to limit or prohibit the practise of a registrant in order to protect the public. These are the College Board and its quality assurance, inquiry, and discipline committees.

With respect to s.25.3 of the Act, the decision-making role belongs to the Registrar, not the Registration Committee. The Labour Mobility Act does not give the Registration Committee additional authority to place conditions on an active registrant's licence, as the College argued. However, it does not take away from the powers of the Registrar and other College decision-making bodies to protect the public from a registrant under the Act.

Remedy

The matter is sent back to the Registration Committee for reconsideration, with direction to remove the limits and conditions it purported to place on the Applicant's practice. This does not grant the Applicant registration it only remedies the Registration Committee's decision which was not lawfully made.

The College's Bylaw 2-8 requirement for "current" practise status, being in the public interest, still applies to the Applicant. The College interacted in good faith with the Applicant, and the need for public protection prevails over any prejudice to the Applicant arising from the time the process took.

The Applicant's application to reopen his Statement of Points based on discredited expert witness testimony in the Saskatchewan health authority proceeding is dismissed, as this was argued on the assumption that the Registration Committee authority over active BC registrants, which it does not.

4. Applications filed after 30-day deadline

[Complainant v. College of Psychologists of British Columbia No. 1, 2020 BCHPRB 58](#)

Application for a time extension to apply for review of a complaint disposition - granted. The Complainant's application for review was received two days outside the deadline. The Review Board may grant an extension of time to accept an application for review that is received outside the 30-day statutory deadline if it finds that there are special circumstances that warrant it: s.50.6(2), Health Professions Act. Rule 5 of the Rules of Practice and Procedure for Reviews under the Health Professions Act, R.S.B.C. 1996, c. 183 asks applicants whether they formed a genuine intention to apply for review and communicate that to any respondent before the end of the 30-days, what was the length of delay and a legitimate explanation for the delay, and their reasons for challenging the College disposition. The Complainant submitted he had difficulty with the application form and that the COVID-19 pandemic delayed the normal procedure and transmission of information. The Review Board has in the past applied a 5-factor test to determine "special circumstances" – see Complainant v. College of Midwives of British Columbia, 2016 BCHPRB 68: was there a bona fide intention to apply for a review within the 30-day period, was the College informed of the decision, would the

College/Registrant be unduly prejudiced by an extension, is there merit to the application, and is it in the interests of justice for an extension to be granted. However, Complainant v. College of Physicians and Surgeons of British Columbia, 2019 BCHPRB 4 notes that this test does not expressly refer to the length of the delay, and whether there is a legitimate explanation for it. The Federal Court of Appeal and the Supreme Court of Canada expressly list the reasons for the delay as one of the factors in deciding whether to extend time: the Federal Court in Canada (Attorney General) v. Hennelly, 1999 CanLII 8190 (FCA) and the Supreme Court of Canada in R. v. Roberge, 2005 SCC 48. Also, with regard to the “merits of the complaint”, Complainant v. College of Psychologists of British Columbia, 2019 BCHPRB 23 followed the BC Court of Appeal’s approach in Boaler v. Brar, 1997 CanLII 2334 (BC CA) in determining that there does not necessarily need to be full assessment of the merits – only that the application is not “bound to fail”. This approach is a sensible one for the Review Board because members who adjudicate an extension of time application do not yet have the College’s record of investigation before them and therefore have limited information on which to find a clear picture of the merits of the application for review. In this context, it is in the interests of justice to give the applicant the benefit of any doubt, although this does not mean that applications must be routinely granted. This is just one factor, and each case must be decided on its facts.

In light of this evolution in Review Board decisions, the Review Board takes the following approach to “special circumstances”:

The Review Board determines whether it is in the interests of justice to grant an extension of time, considering 4 factors which are suited to the Review Board’s own context:

- 1. Did the applicant show or communicate an intention to challenge the College disposition before the expiry of the 30-day limitation period?*
- 2. What is the length of the delay and has the applicant provided a legitimate explanation for the delay?*
- 3. In addition to the impact on finality if an extension of time is granted, is there any special prejudice to either respondent?*
- 4. Having regard for the Review Board’s mandate, and taking into account the fact that the College Record has not yet been produced, can it be said with confidence that the application for review is bound to fail?*

How much weight will be given to any of these factors will depend on the circumstances of each case. The College and the Registrant submitted that the registrant had no direct clinical relationship with the Complainant and there is no merit to the Complainant’s application for review. They questioned the legitimacy of the Complainant’s explanation for his late application, as it was received by the Review Board before the provincial state of emergency related to the COVID 19 pandemic was declared. Neither raised any issue regarding the Complainant’s intention to apply for a review within the 30-day limit, nor did they allege that they would be unduly prejudiced by an extension. It is in the interests of justice to grant the extension in this case. The 2-day delay in applying to the Review Board was negligible. The Complainant was stressed, which can be considered in determining what the interests of justice require (R. v. Hadizadeh-Raeisi, 2004 BCCA 180), and should be given the benefit of the doubt with regard to his assertion that his “special circumstances” included the COVID pandemic. Even though his application was received before the state of emergency was declared in BC, a critical care worker such as the Complainant would have been aware of the risk of a COVID pandemic in the months preceding the declaration of a state of emergency. The

Complainant's allegations raise some apparently valid questions about the Registrant's actions such that the Review Board is satisfied that this application is not "bound to fail." The same conclusion would have been reached using the previous 5-factor test for "special circumstances."

Delayed Investigation Reviews

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 [Health Professions Act section 50.55](#) and the corresponding [Health Professions General Regulation section 7](#) that sets out “prescribed times” for compliance. This authority to review is only in respect to complaint files, which are files before the inquiry committee.

If a 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. During the time allotted, the college is required to issue the following delayed investigation notices:

1. after 150 days have elapsed, a notice to the parties of expected date of disposition;
2. after no more than 240 days has elapsed, a notice to the parties and the Review Board, of the upcoming disposition deadline; and
3. after no more than 285 days has elapsed, a notice to the parties and the Review Board, of suspension of the investigation.

The third and final notice suspends the investigation and triggers the right for the complainant or registrant to file, within 30 days, an application for review under the [Health Professions Act section 50.57](#) into the timeliness of the Colleges investigation. If none of the parties applies for a review, the investigation may proceed.

Upon review of a delayed investigation, the Review Board may:

- a. by order, send the matter back to the inquiry committee, with directions the review board considers appropriate, to continue and complete the investigation and dispose of the matter within the time period directed by the review board, or
- b. investigate and dispose of the matter under section 33 (6) of the Health Professions Act

Delayed investigation reviews are conducted in writing, and orders are issued by the Review Board Chair by letter to the parties. These orders are not published.

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 Discontinued

None.

3. Petitions Outstanding

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

Summary: Petition commenced by a complainant from Review Board *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 and the College of Chiropractors (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, Dr. Roderick Warren Bell, and David Dawson (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 18-20, 2017, February 1-2, 2018 in British Columbia Supreme Court. Decision Issued November 16, 2018. British Columbia Court of Appeals petition filed November 20, 2018. Petition argued before the British Columbia Court of Appeals February 2020 and the decision is still on reserve.

Millman and Webb v. Health Professions Review Board, the College of Psychologists of British Columbia, and Dr. Andrea Welder (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.

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.

C.W. Cheng, J. Li, And M.Y. Schneck v. Health Professions Review Board, The College of Traditional Chinese Medicine Practitioners and Acupuncturists of British Columbia (Petition filed March 8, 2017)

Summary: Petition challenges Review Board Decision

Grant v Health Professions Review Board, College of Physicians and Surgeons of British Columbia, and Dr. Paul Charles Milanese (Petition filed August 3, 2018)

Summary: Petition challenges Review Board *Decision No. 2018-HPA-014(a)*. It asks that the College’s decision be set aside as well as Review Board decision which upheld the College’s decision against Dr. Milanese. Further, she applies for an order remitting the matter back to the College for re-decision.

Status: Petition not yet set for hearing.

***The Society of Canadians Studying Medicine Abroad, Kostanski, and Falconer v. The College of Physicians and Surgeons of British Columbia, Her Majesty Queen in the Right of the Province of British Columbia as Represented by the Ministry of Health, The University of British Columbia, The Canadian Resident Matching Service, The Association of Faculties of Medicine of Canada, and the Health Professions Review Board* (Petition filed September 26, 2018)**

Summary: Petition challenges the decisions in Review Board files 2018-HPA-145, 2018-HPA-149, and 2018-HPA-150. Specifically, it seeks to overturn the decision made on July 27, 2018 denying that the Review Board had authority over the application for Review

Status: Petition is on hold pending the final decision on the matter currently before Member Don Silversides.

***Ooms, v. Health Professions Review Board, College of Physicians and Surgeons of British Columbia, and Dr. Abram Karrel* (Petition filed February 14, 2019)**

Summary: Petition challenge *Review Board Decision No. 2018-HPA-102(a)*. It asks that the Review Board decision be set aside and that the Review Board be directed to properly consider the evidence, in light of the submissions made in this review.

Status: Petition not yet set for hearing.

***Smith v. Health Professions Review Board* (Petition filed August 22, 2019)**

Summary: Petition challenges *Review Board Decision 2018-HPA-G11*. It asks for the decision of June 21, 2019 in the case involving eight nurses be set aside.

Status: Petition not yet set for hearing.

Chow v. Health Professions Review Board, College of Physicians and Surgeons of British Columbia, and Dr. Riaz Sinawin, (Petition filed September 23, 2019)

Summary: Petition challenges Review Board Decision 2016-HPA-199(d). The Review Board was never served with a copy of this petition.

Status: Petition not yet set for hearing.

4. Petitions filed

Maroofi v. Health Professions Review Board and College of Physicians and Surgeons of British Columbia, (Petition filed June 12, 2020)

Summary: Petition challenges a Summary Dismissal by the Review Board of file 2019-HPA-212.

Status: Petition dismissed.

Review Activity Statistics

For the reporting period from January 1, 2020 – December 31, 2020

Figure 1: Number of Applications, by type and month

Month	Complaint Dispositions	Delayed Investigations	Registration Decisions	Total Number of Applications	%
January	10	0	4	14	7%
February	9	1	0	10	5%
March	7	0	2	9	5%
April	15	0	3	18	9%
May	11	1	0	12	6%
June	21	0	1	22	11%
July	21	1	0	22	11%
August	8	2	3	13	7%
September	7	0	7	14	7%
October	38	0	1	39	20%
November	9	3	1	13	7%
December	6	3	0	9	5%
Total	162	11	22	195	
% of Total Applications	83%	6%	11%		100%

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

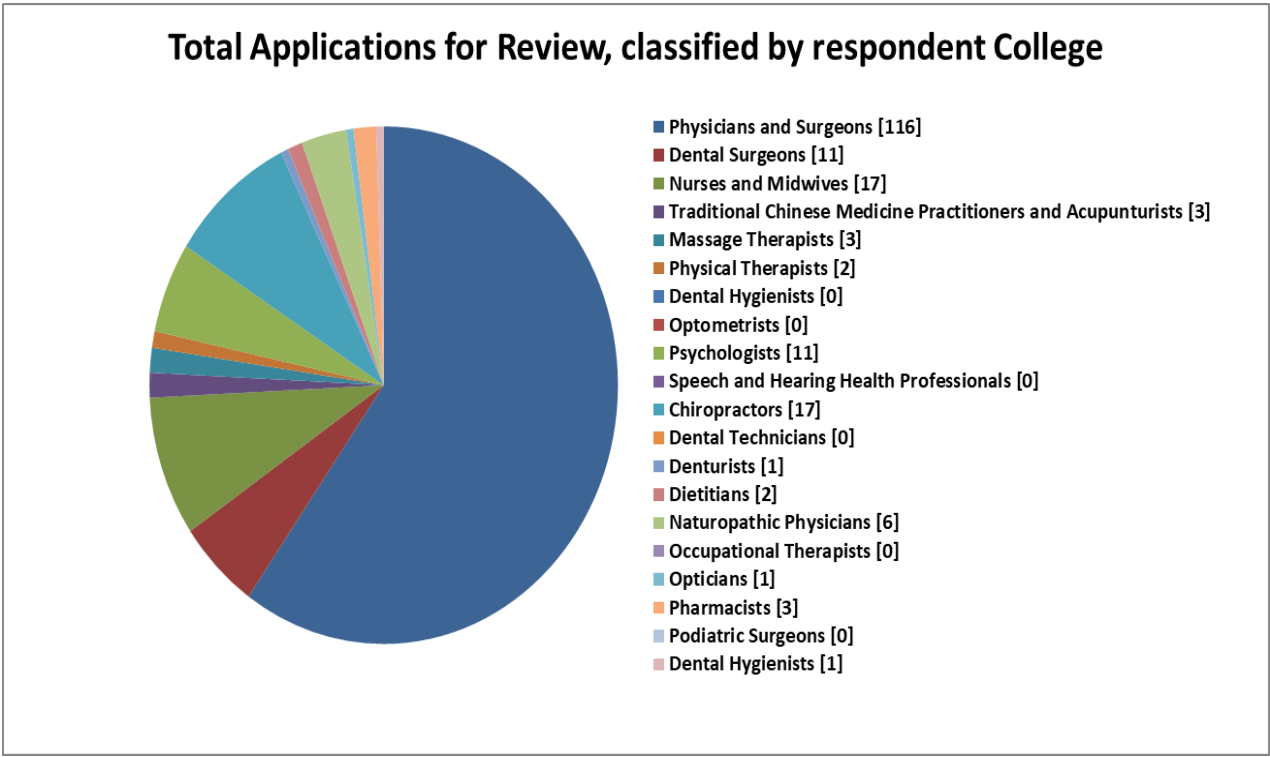


Figure 3: Applications for Review, by college and type

Respondent College	Complaint Dispositions	Delayed Investigations	Registration Decisions	Total Number of Applications	%
BC College of Nurses and Midwives	9	1	8	18	9%
College of Chiropractors of BC	17	0	0	17	9%
College of Dental Hygienists of BC	1	0	0	1	1%
College of Dental Surgeons of BC	11	0	0	11	6%
College of Denturists of BC	1	0	0	1	1%
College of Dietitians of BC	2	0	0	2	1%
College of Massage Therapists of BC	2	1	0	3	2%
College of Naturopathic Physicians of BC	4	2	0	6	3%
College of Opticians of BC	1	0	0	1	1%
College of Pharmacists of BC	2	0	1	3	2%
College of Physical Therapists of BC	1	0	1	2	1%
College of Physicians and Surgeons of BC	100	6	10	116	60%
College of Psychologists of BC	10	1	2	11	6%
College of traditional Chinese Medicine Practitioners and Acupuncturists of BC	1	0	1	3	2%
Total	162	11	22	195	
% of Total Applications	83%	6%	11%		100%

Figure 4: Applications for Review – by status

Applications for Review	Number
Number of applications open at January 1, 2020 (Case Management in Progress)	195
Number of applications for review received in 2020	196
Applications closed in 2020	179
Number of applications open at December 31, 2020 (Case Management in Progress)	212

Financial Performance

2020/2021 Year Expenditures

This reporting period covers the 2021 fiscal year of operation for the Review Board.

Following is a table showing the expenditures made by the Review Board during its 2020/2021 fiscal year.

Health Professions Review Board

Operating Costs - April 1, 2020 – March 31, 2021

Salary & Benefits	\$ 538,111
Operating Costs	\$ 913,328
Other Expenses	\$ 0
Total Operating Expenses	\$1,451,439

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.