



# **HEALTH PROFESSIONS REVIEW BOARD 2021 ANNUAL REPORT**

***COVERING THE REPORTING PERIOD FROM  
JANUARY 1 – DECEMBER 31, 2021***



# Health Professions Review Board

Suite 900, 747 Fort Street, Victoria BC V8W 3E9

Tel: (250) 953-4956

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

Toll free: (888) 953-4986

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

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July 27, 2022

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

Dear Minister Rankin:

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, 2021, to December 31, 2021.

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

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# Health Professions Review Board

## Contents

Message from the Chair .....	1
Rule Changes.....	10
About the Review Board.....	17
The Mandate of the Review Board .....	18
Review Board Members .....	20
The Review Board Office .....	22
The Review Process – Flow Charts .....	23
Alternative Dispute Resolution (Mediation) .....	28
The Adjudication Process.....	30
Noteworthy Decisions.....	32
Delayed Investigation Reviews.....	48
Judicial Reviews of Review Board Decisions .....	50
Review Activity Statistics .....	58
Financial Performance .....	61

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# Message from the Chair

## *The Year in Review*

### Applications

In 2021, the Review Board received a total of 142 applications for review, a 27 percent drop over 2020 (195 applications received in 2020), and a 40 percent drop over 2019 (237 applications received in 2019). This may be related to the COVID-19 pandemic, a time when there were fewer visits to health professionals in the regular course.

As in previous years, the Review Board received the largest number of applications for review in relation to complaint dispositions made by the inquiry committees of the College of Physicians and Surgeons, the College of Dental Surgeons and the College of Nurses and Midwives. The number of complaint disposition review applications related to all three colleges remained stable in 2021 with those of the College of Physicians and Surgeons continuing to decline.

<b>Year</b>	<b>College of Physicians and Surgeons</b>	<b>College of Dental Surgeons</b>	<b>BC College of Nurses and Midwives*</b>
<b>2016</b>	133	17	8
<b>2017</b>	89	6	23
<b>2018</b>	112	13	22
<b>2019</b>	101	14	11
<b>2020</b>	100	11	8
<b>2021</b>	93	14	10

\*2016 and 2017 figures include total numbers for 3 nursing colleges which were amalgamated in 2018, for the sake of comparison

### Decisions

Despite receiving fewer applications for review, the Review Board published 132 decisions, 11 percent more than 2020 (117 decisions), and 30 percent more than in 2019 (100 decisions). This appears to indicate that the Review Board has achieved some process efficiencies such as a paperless review process which does not rely on mailing or couriers for correspondence and review material to parties; and can perhaps be credited in part to the review board's efforts to modernize and clarify its resource materials and correspondence to be more accessible to the public, resulting in a more streamlined hearing process.

The Review Board issued 116 complaint disposition reviews in 2021, 30 percent more than in 2020 (88 decisions). Of these, 83 were confirmed at Stage one (i.e., without requiring submissions from the registrant or college), 19 were confirmed at Stage two, and 14 (16 percent) were remitted back to the college for reconsideration. The distribution of these decisions among health professions regulatory colleges was: 13 College of Nurses and Midwives (two remitted), five College of Chiropractors (two remitted), 13 College of Dental Surgeons (two remitted), one College of Denturists, one College of Dietitians, four College of Naturopathic Physicians (one remitted), one College of Physical Therapists, 69 College of Physicians and Surgeons (six remitted), eight College of Psychologists (one remitted), and one College of Traditional Chinese Medicine Practitioners and Acupuncturists.

The number of registration decision reviews issued, on the other hand, dropped by 66 percent (correlating to a 50 percent drop in applications for review of registration decisions over 2020), with only five published in 2021, as compared to 15 in 2020. Of these five decisions, the distribution among the colleges was three College of Nurses and Midwives (one confirmed at Stage 1 without the need for college submissions, and two confirmed at Stage 2), and two College of Physicians and Surgeons (both remitted).

#### Extensions of Time and other applications

The Review Board heard 11 applications for extensions of time to file applications for review, granting five and denying six; this is broadly consistent with previous years: In 2020, 12 applications were adjudicated, with three granted and nine denied; and in 2019, 13 applications were adjudicated, with seven granted and six denied. 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 (five were granted, and one granted in part); and only one application for review of a delayed investigation (order issued to college to complete investigation within a specified time). The Review Board dismissed one application due to lack of jurisdiction.

#### Time to Complete Reviews

In 2021, the average time to complete a review was the same as in 2020, and well within the timelines set out in Practice Directive 1.

### ***COVID-19 Pandemic***

The Review Board's office building continued to be closed to the public throughout 2021 so the office was shut down to walk in traffic. Review Board staff continued to have the option of working remotely and, as in 2020, tribunal operations were conducted almost exclusively

electronically. Other than this, the Review Board did not make any process adjustments related to the pandemic in 2021.

### ***Court of Appeal decision in “Dawson”***

Within weeks of the end of 2021, on January 13, 2022, the BC Court of Appeal issued its decision in *The College of Physicians and Surgeons of British Columbia v. The Health Professions Review Board*, 2022 BCCA 10 (referred to below as “Dawson” after the Complainant in that case). This decision was issued further to the Review Board’s 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, which judicially reviewed Review Board decision *Complainant v. College of Physicians and Surgeons of British Columbia*, 2015 BCHPRB 86. This decision provided practical instruction to the Review Board in several important areas:

#### Registrar’s jurisdiction

First, the Court of Appeal laid to rest the long-standing issue of whether the Review Board was authorized to consider if the Registrar had properly taken jurisdiction of a complaint, stating that the Review Board has no authority to deal with process errors that do not impact the adequacy of the investigations or the reasonableness of the disposition.

#### Adequacy of the Investigation

The Court overturned its own decision in *Moore v. College of Physicians and Surgeons of British Columbia*, 2014 BCCA 466, affirming 2013 BCSC 2081, which directed that the Review Board was to determine whether an investigation was reasonably adequate. Instead, the Court’s direction was that to find an investigation inadequate, the Review Board needs to identify aspects of the investigation that are functionally deficient or identify additional information that would be helpful that is not in the investigative materials - for example, where the account of two witnesses diverges and there is a third witness who was present but not interviewed:

[114] Adequacy describes a relationship between an action and a goal. An investigation is “adequate” if it is sufficient to meet its goals. There may be many goals of an investigation of a complaint against a physician. Obvious goals include public accountability and uncovering the truth. A further possible goal is to gather sufficient information to allow an effective remedy to be crafted. Scarcity of resources dictates that one goal of investigations will be to obtain necessary information without squandering resources. There are, no doubt, other goals that can be ascribed to the investigative process.

[115] What is important is that there is, in the concept of “adequacy”, no implication of deference. Where a review board considers the “adequacy” of an investigation, it is entitled (as long as it does not act patently unreasonably) to characterize the goals of the investigation and to make judgments as to whether the efforts expended were commensurate with those goals.

...

[117] Referring to Felix Frankfurter, “Some Reflections on the Reading of Statutes” (1947) 47 Columbia L.R. 527 at 528, the Review Board describes s. 50.6(5)(a) as having been drafted with “purposeful ambiguity”. I agree with that characterization. The intent was to allow the Review Board leeway in characterizing the goals of the investigation, and to allow it to exercise its own judgment on whether the investigation that was conducted was commensurate with those goals.

#### Reasonableness of the Disposition

The Court of Appeal clarified that when the Review Board reviews the “reasonableness of the disposition,” it must apply the term “reasonableness” as a term of art in administrative law, the contours of which are presently established by the Supreme Court of Canada’s decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

In short, when considering the reasonableness of the disposition of the complaint:

- the Review Board is entitled to consider both the findings made by a college and the sanctions that it imposes;
- the Review Board must respect the administrative decision maker and their specialized expertise and not ask how they themselves would have resolved an issue;
- the focus is on the decision actually made by the College, including both its reasoning process and outcome. In decisions such as those made by the College where reasons are provided, those are the starting point for the analysis;
- the Review Board must pay respectful attention and seek to understand the reasoning process followed and the conclusions reached;
- a reasonable decision must be internally coherent, follow a rational chain of analysis, and be justified in relation to the facts and law that constrain the decision maker; and
- reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process and with whether the decision

falls within a range of possible, acceptable outcomes defensible in respect of the facts and law.

#### Standard of Review in Judicial Review of Review Board Decisions

Section 58 of the *Administrative Tribunals Act* prescribes that a Court must apply a standard of patent unreasonableness in judicial review of Review Board decisions in respect of the reasonableness of the College's disposition. However, *Dawson* provided an important and novel clarification of how that standard operates in practice when a court reviews an assessment of reasonableness. The Court of Appeal held that in that context, the focus of the Court's attention should be on the decision of first; and that it is not helpful and not necessary to "stack" standards of review – in other words, to determine whether the Review Board's finding on reasonableness was itself patently unreasonable. The BC Court of Appeal explained:

[172] The *Health Professions Act* expressly provides that the Review Board is to review the College's disposition of a complaint on a reasonableness standard. This indicates that, in respect of the disposition, the statute's focus of deference is on the College. A failure by the Review Board to afford deference to the College would be a fundamental violation of the statutory scheme.

[173] The judicial review judge characterized the failure by the Review Board to defer to the College as being "patently unreasonable". I do not disagree with that manner of characterizing the error, but in my view the "stacking" of standards of review is unwieldy and unnecessary.

[174] For reasons that follow, it is my view that, in deciding whether the Review Board's view that the College's decision was unreasonable was, itself, patently unreasonable, the Court can properly take a shortcut. It need only analyze the reasonableness of the College's decision. A further inquiry into the question of whether the Review Board's decision on review was patently unreasonable will not add any substance to the inquiry. It will be an empty mechanical exercise...

[emphasis added]

The Court of Appeal went on to explain that a determination of reasonableness is a binary choice – either a decision is reasonable or not reasonable. As such, a determination that an unreasonable decision is reasonable must be patently unreasonable.

#### ***Registration Decision Review - Labour Mobility Act***

The 2021 decision of *Applicants v. College of Physicians and Surgeons of British Columbia* (No. 2), 2021 BCHPRB 53 was the first time the Review Board ordered a college to grant registration to an applicant.



There were four applicants in this matter, all of whom had received their education internationally and were registered in the “provisional specialty class,” meaning they could not practice independently and were required to fulfil certain conditions of practice. However, all of them had successfully completed the requirements for a “regular licence,” without conditions, in New Brunswick. The applicants requested that the Review Board order the Registration Committee to grant them “full specialty class” registration without conditions under s.50.54(10)(b) of the *Health Professions Act* as persons to whom the Committee must grant registration under the *Labour Mobility Act*.

The College’s Registration Committee denied the applicants full registration on the basis that they did not meet “an implied but necessary requirement” under the *Labour Mobility Act* that an applicant must have recently lived in or have a substantial connection to the province whose registration they are relying on. The Committee decided that the equivalent to a New Brunswick “regular licence” was the British Columbia College’s “conditional-practice setting” category because physicians in British Columbia in the “full specialty class” are required to obtain licensure with the Medical Council of Canada while physicians with a “regular licence” in New Brunswick are not. Licensure with the Medical Council of Canada is achieved through twelve months of postgraduate clinical medical training and the completion of qualifying examinations. The Committee argued that to do otherwise would allow applicants to bypass local occupational standards and instead obtain certification from the jurisdiction with the “lowest occupational standard.”

The Review Board concluded, however, that the Registration Committee made an error when it assessed the equivalency of the New Brunswick “regular licence” against the British Columbia “full specialty class” licence: The British Columbia *Labour Mobility Act* incorporates Chapter 7 of the Canada Free Trade Agreement and provides that applicants who are certified to practice a particular occupation must be certified for the “BC equivalent occupation.” A “BC equivalent occupation” is defined in the *Labour Mobility Act* as “a set of jobs that is the same as or is substantially similar to the set of jobs that constitutes the extra-provincial occupation.” Determining whether an occupation is a “BC equivalent occupation” does not require comparison of entry standards. Rather, if the tasks, duties or type of work that the applicants (three psychiatrists and an ophthalmologist in this case) were registered to do in New Brunswick were the same, or substantially similar to the tasks, duties or type of work performed in British Columbia, the Registration Committee ought to have certified them for that occupation.

The Review Board found that eligibility for registration under the terms of the *Labour Mobility Act* and the Canada Free Trade Agreement does not require applicants to satisfy an

“implied residency term.” Neither are applicants required to demonstrate a particular motivation for obtaining registration and licensure. The Review Board ordered the Registration Committee to grant the Applicants registration in the “full-specialty” class of registration without limits or conditions.

### ***Improving Review Board Operations***

#### Communicating with Parties and the Public

In 2021, the Review Board Office updated all of its application forms and other key public facing material to be clearer and more useful to the public. These were revised in accordance with Access to Justice principles, to improve accessibility, utility, and ease of use. Forms were customized to be electronically fillable, and to accommodate electronic signatures, and the Review Board *Rules of Practice and Procedure* were amended to better support electronic reviews.

#### Educating the Board about Indigenous-specific Racism in BC Health Care

In late 2020, the Honourable Dr. M.E. Turpel-Lafond, appointed by the Minister of Health to conduct a review of indigenous-specific racism in the provincial health care system, issued her report *In Plain Sight: Addressing Indigenous-specific Racism and Discrimination in B.C. Health Care*. As a part of the health professions regulatory system, the Review Board paid close attention to this important report. Recommendation 13 of the Report was to establish the new position of Associate Deputy Minister for Indigenous Health within the Ministry of Health, with clear authorities including supporting the Deputy Minister of Health in leading the Ministry's role in implementing these Recommendations. The Review Board invited Dawn Thomas, first Associate Deputy Minister for Indigenous Health, to speak at its 2021 Annual General Meeting. This not only educated the Review Board on the work of coordinating a system-wide responsibility and accountability towards eliminating Indigenous-specific racism and achieving cultural safety, but also raised the Review Board's awareness of its role in contributing to this goal.

#### Increasing Board Diversity

The Review Board also turned its attention to increasing diversity in its membership, working with the Ministry of Attorney General Tribunals and Independent Offices Branch to identify ways to broaden its contacts in aboriginal and other diverse communities. This groundwork has positioned the Board to ensure its next notice of position will be communicated to a wider audience than in the past, to recruit a more diverse membership going forward.

## Budget

In the latter part of 2021, the Tribunals and Independent Offices Branch identified the Review Board as one of certain tribunals which were suitable to have its operational budget assessed. The Branch initiated a review of the Board's operations from a financial perspective: the Branch interviewed staff and select members, researched the Review Board's operations and public facing material, and analyzed the review process to assess operational efficiencies in light of current budget constraints.

## ***Board Membership and Legal Counsel***

There was considerable turnover in the Board in 2021, due to the expiry of appointments, members passing, and members leaving the Board for other opportunities. At the end of the year there were 17 Review Board members compared to 30 at the end of 2020.

A significant change for the Review Board was the retirement of our esteemed legal counsel Frank Falzon, Q.C., who had served as counsel from the Review Board's inception in 2009. He was succeeded in 2021 by Alison Latimer Q.C., who brings with her a wealth of experience in administrative law and litigation.

Tragically, the Review Board saw the passing of two of its members in October and November of 2021: Roy Kahle, who wrote one of the Board's first decisions to consider and apply the standard of review in administrative law set by the Supreme Court of Canada in 2019, in the case of *Canada (Minister of Citizenship and Immigration) v. Vavilov*; and Don Silversides Q.C., one of the Board's original members, who was instrumental in writing the Review Board's *Rules or Practice and Procedure* and issued over fifty decisions in his years with the Board. Many of his decisions were in complex cases, or addressed specific legal issues, and have been quoted in later Review Board decisions. These members had a considerable positive impact on the Review Board, and their passing was a significant loss.

On a happier note, long-time Review Board Member Madame Lorianna Bennett was appointed as a judge of the Provincial Court of British Columbia. Mme Bennett was a highly esteemed member who issued over one hundred decisions in her tenure with the Review Board. Her strong grasp of the law, thoughtful analysis, first-rate writing skills and attention to detail is missed, although it is some consolation that she continues her considerable contributions to the legal profession on the bench.

***Thank you***

In closing, I would like to recognize the Review Board members, our counsel Alison Latimer Q.C., 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, reading "David Hobbs". The signature is fluid and cursive, with the first name "David" and last name "Hobbs" clearly distinguishable.

David Hobbs, Chair  
Health Professions Review Board

## Rule Changes

On December 9, 2021, the Review Board passed amendments to:

- maintain the current requirements that applicants must provide a postal address to the review board, but also allow for an email address to be used as an address for delivery, so as to facilitate the paperless (electronic) hearing process;
- make the process for s.42 of the *Administrative Tribunals Act* applications more accessible to parties; and
- clarify the process to be followed for producing the record, including explicitly requiring colleges to produce redacted copies of the record.

Rule	Previous	New
Rule 3 (1) definitions	<p>“address for delivery” means a current postal address for purposes of delivery of any notices in respect of the review, and may include a fax number;</p> <p>“information sheet” means a document that is prepared by the review board and made available on its website to assist the parties and the public by providing general information or explanations on various parts of the review process</p>	<p>“address for delivery” means a current postal address for purposes of delivery of any notices in respect of the review, and may include <b>an email address and/or</b> a fax number;</p> <p><del>“information sheet” means a document that is prepared by the review board and made available on its website to assist the parties and the public by providing general information or explanations on various parts of the review process</del></p>
Rule 13 Record for registration reviews	(1) Subject to paragraphs [2 - 4] below, and subject to Rule 15(3) and (4) below, the record, for the purposes of a registration review, consists of the registration committee’s decision and the college’s registration file, whether or not the registration file was placed before the registration committee when the decision under review was made.	(1) Subject to paragraphs (2 to 4) below; <del>and subject to Rule 15(3) and (4) below,</del> the record, for the purposes of a registration review, consists of the registration committee’s decision and the college’s registration file, whether or not the registration file was placed before the registration committee when the decision under review was made.
Rule 15 Preparing the record	<p>(1) A separate and distinct record must be prepared for each individual application for review unless the review board makes an order to the contrary.</p> <p>(2) The record must be legible, organized and sequentially page numbered.</p>	<p>(1) <del>A</del> <b>The college must prepare a</b> separate and distinct record <del>must be prepared</del> for each individual application for review unless the review board makes an order to the contrary.</p> <p><del>(2) The record must be legible, organized and sequentially page numbered.</del></p> <p><b>(2) The record must be:</b></p>

	<p>(3) Before the college produces the record to the review board, the college may sever from the record the home address, home phone number or private email account and identification or billing number or similar personal identifiers of a witness expert or party (unless, in the case of a party, the party has used that information as contact information for the review process). The college is to notify the Health Professions review board in its covering letter if such severances have been made.</p> <p>(4) The college will not produce to the review board, as part of the record:</p> <ul style="list-style-type: none"> <li>a) information falling within s.51 of the Evidence Act;</li> <li>b) information that concerns unrelated matters referred to in the inquiry committee or registration committee minutes; or</li> <li>c) legal advice the college has received, unless the college is prepared to waive solicitor-client privilege.</li> </ul> <p>(5) Before the college produces the record, the college may consult with the registrant and/or the complainant where the college believes that particular information or a particular document may raise an issue for that party under s.42 of the ATA.<sup>10</sup> See also Rules 18 and 19.</p> <p>(6) When the college produces the record to the review board, the college is to identify in the index those parts of the record that were before the inquiry committee or the registration committee that made the decision.</p> <p>(7) The cover letter enclosing the record must contain the college's</p>	<ul style="list-style-type: none"> <li>(a) legible, organized and sequentially page numbered;</li> <li>(b) indexed, with the index identifying <ul style="list-style-type: none"> <li>a. those parts of the record that were before the inquiry committee or the registration committee that made the decision;</li> <li>b. where any material described in Rule 15(3) is severed from the record</li> </ul> </li> <li>(c) accompanied by all relevant college bylaws, codes of conduct, standards, guidelines or other college reference material;</li> <li>(d) accompanied by a cover letter <ul style="list-style-type: none"> <li>a. certifying that the record is complete and accurate;</li> <li>b. notifying the review board of any material that has been severed from the record in accordance with Rule 15(3); and</li> </ul> </li> <li>(e) prepared in accordance with the requirements of practice directive 2.</li> </ul> <p>(3) Before the college produces the record to the review board, the college may sever from the record</p> <p><del>(a) the home address, home phone number or private email account and identification or billing number or similar personal identifiers of a witness expert or party (unless, in the case of a party, the party has used that information as contact information for the review process); The college is to notify the Health Professions review board in its covering letter if such severances have been made.</del></p> <p>(4) The college will not produce to the review board, as part of the record:</p>
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	<p>written certification that the record is complete and accurate.</p>	<p>a) information falling within s.51 of the <i>Evidence Act</i>;</p> <p>b) information that concerns unrelated matters referred to in the inquiry committee or registration committee minutes; or</p> <p>c) legal advice the college has received, unless the college is prepared to waive solicitor-client privilege.</p> <p>(5) Before the college produces the record, the college may consult with the registrant and/or the complainant where the college believes that particular information or a particular document may raise an issue for that party under s.42 of the ATA.<sup>10</sup> See also Rules 18 and 19.</p> <p><del>(6) When the college produces the record to the review board, the college is to identify in the index those parts of the record that were before the inquiry committee or the registration committee that made the decision.</del></p> <p><del>(7) The cover letter enclosing the record must contain the college's written certification that the record is complete and accurate.</del></p>
<p>Rule 16 Production of the record to the review board</p>	<p>(1) Unless otherwise directed by the review board, the college is required to produce three (3) paper copies of the record to the review board, with one copy in electronic form, together with any application under s.42 of the ATA, within 35 days from the date of the review board's written request for the record.</p> <p>(2) If the record cannot be prepared within 35 days, the college must make a written request for an extension of time, copied to the other party or</p>	<p>(3) Unless otherwise directed, where the review board grants an application for information or documents contained in the record to be considered by the review board to the exclusion of one or both parties under s. 42 of the ATA, the college is required to produce to the review board the redacted copy of the record for each party within 14 days from the date of the review board's direction.</p>

	parties to the review, and state the reason(s) for the extension and the length of the extension requested.	
Rule 18(4) and (6)	<p>(4) A complainant or registrant will have 14 days from the date they are provided with the Information Sheet titled "Preparing and Disclosing the Record"<sup>12</sup> to make their own application under s.42 of the ATA. A complainant or registrant who makes a s.42 application must:</p> <ul style="list-style-type: none"> <li>a) identify the particular document or information, if known, that raises the s.42 concern, or otherwise identify any special concerns they have which justifies a s.42 order based on their knowledge of the subject matter of the complaint; and</li> <li>b) notify the other party of their application and the basis for the application (without disclosing the actual information or document) unless such notice would defeat the purpose of the application.</li> </ul> <p>(6) If no application from a complainant or registrant under s.42 of the ATA is received within the 14 days from the date they were provided with the Information Sheet referred to in rule 18(4), they will be deemed to have no objection based on s.42, subject to their right to make submissions on any s.42 application by the college.</p>	<p>(4) A complainant or registrant will have 14 days from the date they are provided with the <del>Information Sheet</del> notice titled "Withholding Information in the Record from a Party" "<del>Preparing and Disclosing the Record</del>"<sup>12</sup> to make an application under s.42 of the ATA. A complainant or registrant who makes a s.42 application must:</p> <ul style="list-style-type: none"> <li>a) identify the particular document or information, if known, that raises the s.42 concern, or otherwise identify any special concerns they have which justifies a s.42 order based on their knowledge of the subject matter of the complaint; and</li> <li>b) notify the other party of their application and the basis for the application (without disclosing the actual information or document) unless such notice would defeat the purpose of the application.</li> </ul> <p>(6) If no application from a complainant or registrant under s.42 of the ATA is received within the 14 days from the date they were provided with the <del>Information Sheet</del> notice referred to in rule 18(4), they will be deemed to have no objection based on s.42, subject to their right to make submissions on any s.42 application by the college.</p> <p>Footnote 12</p>



		<p><del>See the Information Sheet</del> The notice titled <del>“Preparing and Disclosing the Record”</del> <del>“Withholding Information in the Record from a Party”</del> <del>which</del> is provided to the parties <del>under Practice Directive No. 3</del> at the time the review board requests <del>to prepare</del> the record <del>is made to</del> from the college. <del>The</del> and is appended to Practice Directive 3. <del>information sheet is on the review board’s website.</del></p>
Rule 25 Delivering a document to parties in the process	<p>(1) The review board or a participant may deliver a document or communication to another participant by:</p> <ul style="list-style-type: none"> <li>a) leaving a copy of it with such participant;</li> <li>b) mailing it to such participant’s address for delivery by regular or registered mail;</li> <li>c) delivering it by hand or courier to such participant’s address for delivery;</li> <li>d) faxing it to such participant’s fax address for delivery; or</li> <li>e) by any other means permitted by the review board that allows for proof of receipt.</li> </ul>	<p>(1) The review board or a participant may deliver a document or communication to another participant by:</p> <ul style="list-style-type: none"> <li>a) emailing it to the participant’s email address authorized by the review board;</li> <li><del>a)</del>b) leaving a copy of it with such participant;</li> <li><del>b)</del>c) mailing it to such participant’s address for delivery by regular or registered mail;</li> <li><del>c)</del>d) delivering it by hand or courier to such participant’s address for delivery;</li> <li><del>d)</del>e) faxing it to such participant’s fax address for delivery; or</li> <li><del>e)</del>f) by any other means permitted by the review board that allows for proof of receipt.</li> </ul>
Rule 26 Electronic delivery of documents	<p>(1) If a participant wishes to deliver or receive delivery of documents by email or other electronic means, the review board may authorize such delivery to or by one or more parties as the review board deems appropriate in the circumstances. Participants receiving documents or submissions electronically must confirm receipt.</p> <p>(2) Electronic communications to the Review Board may only be sent to HPRBINFO@gov.bc.ca unless</p>	<p>(1) If a participant wishes to deliver or receive delivery of documents by email or other electronic means, the review board may authorize such delivery to or by one or more parties as the review board deems appropriate in the circumstances. <del>Participants receiving documents or submissions electronically must confirm receipt.</del></p> <p>(2) Electronic communications to the Review Board may <del>only</del> be sent to HPRBINFO@gov.bc.ca <del>unless otherwise permitted by the Review Board.</del></p>

	otherwise permitted by the Review Board.	
Rule 27 Deemed Delivery	<p>(1) If the review board or a participant delivers a communication to a participant's address for delivery under rule 22, that participant is deemed to have notice of the communication.</p> <p>(2) A document or communication that is delivered after 4:30 pm is deemed delivered on the next day that is not a Saturday, Sunday or public holiday.</p> <p>(3) A document or communication that is sent by mail is deemed delivered on the fifth day after it is mailed, excluding a Saturday, Sunday or public holiday.</p>	<p>(1) If the review board or a participant delivers a communication to a participant's address for delivery under rule 22, that participant is deemed to have notice of the communication.</p> <p>(2) A document or communication that is delivered after 4:30 pm is deemed delivered on the next day that is not a Saturday, Sunday or public holiday.</p> <p>(3) A document or communication that is sent by mail is deemed delivered on the fifth day after it is mailed, excluding a Saturday, Sunday or public holiday.</p> <p>(4) A document or communication that is sent by email is deemed delivered on the day and time it is sent.</p>
Rule 28 Proof of delivery	<p>(1) If the review board requires proof of delivery, a participant may prove delivery by:</p> <p>a) an affidavit from the deliverer setting out the time, date and method of delivery;</p> <p>b) a copy of "Canada Post's Certificate of Delivery Confirmation – Registered Mail";</p> <p>c) Express Post or Priority Post tracking confirmation;</p> <p>d) a fax transmittal sheet; or</p> <p>e) having the deliverer testify under oath or solemn affirmation at a hearing as to the time, date, and method of delivery.</p>	<p>(1) If the review board requires proof of delivery, a participant may prove delivery by:</p> <p>a) an affidavit from the deliverer setting out the time, date and method of delivery;</p> <p>b) a copy of "Canada Post's Certificate of Delivery Confirmation – Registered Mail";</p> <p>c) Express Post or Priority Post tracking confirmation;</p> <p>d) a fax transmittal sheet; <del>or</del></p> <p>e) having the deliverer testify under oath or solemn affirmation at a hearing as to the time, date, and method of delivery; <del>or</del></p> <p>f) forwarding the sent email</p>

Rule 54  Decisions	(4) All written decisions concluding a matter before the review board will be made available to the public by posting the decision on the review board's website not less than seven (7) days after the decision is provided to the parties.	(4) All written decisions concluding a matter before the review board will be made available to the public by posting the decision on the <b>national CanLII</b> <del>review board's</del> website not less than seven (7) days after the decision is provided to the parties.
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## 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.

### Tribunal Members as of December 31, 2021

Member	Profession	From
David A. Hobbs (Chair)	Lawyer	Vancouver
Michael J.B. Alexandor	Business Exec./Mediator (Ret.)	Vancouver
Shannon Bentley	Lawyer/Advocate	Bowen Island
David Blair	Physician (Retired)	Victoria
D. Marilyn Clark	Consultant/Business Executive	Sorrento
Ryan H. Clements	Lawyer	Vancouver
Douglas S. Cochran	Lawyer (Retired)	Vancouver
Gregory J. Cran	Academic Consultant	Lund
Brenda Edwards	Lawyer	Victoria
Celia Francis	Adjudicator	Victoria
Jeanne Harvey	Judge (retired)	Victoria

Amanda McReynolds	Public Administration (retired)	Victoria
David Newell	Lawyer	Vancouver
John O'Fee, Q.C.	Lawyer/University Lecturer	Kamloops
John M. Orr, Q.C.	Lawyer	Victoria
Helen J. Roberts	Mediator	Vancouver
Katherine Wellburn	Lawyer (Retired)	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](http://www.hprb.gov.bc.ca)

**Mailing Address:**

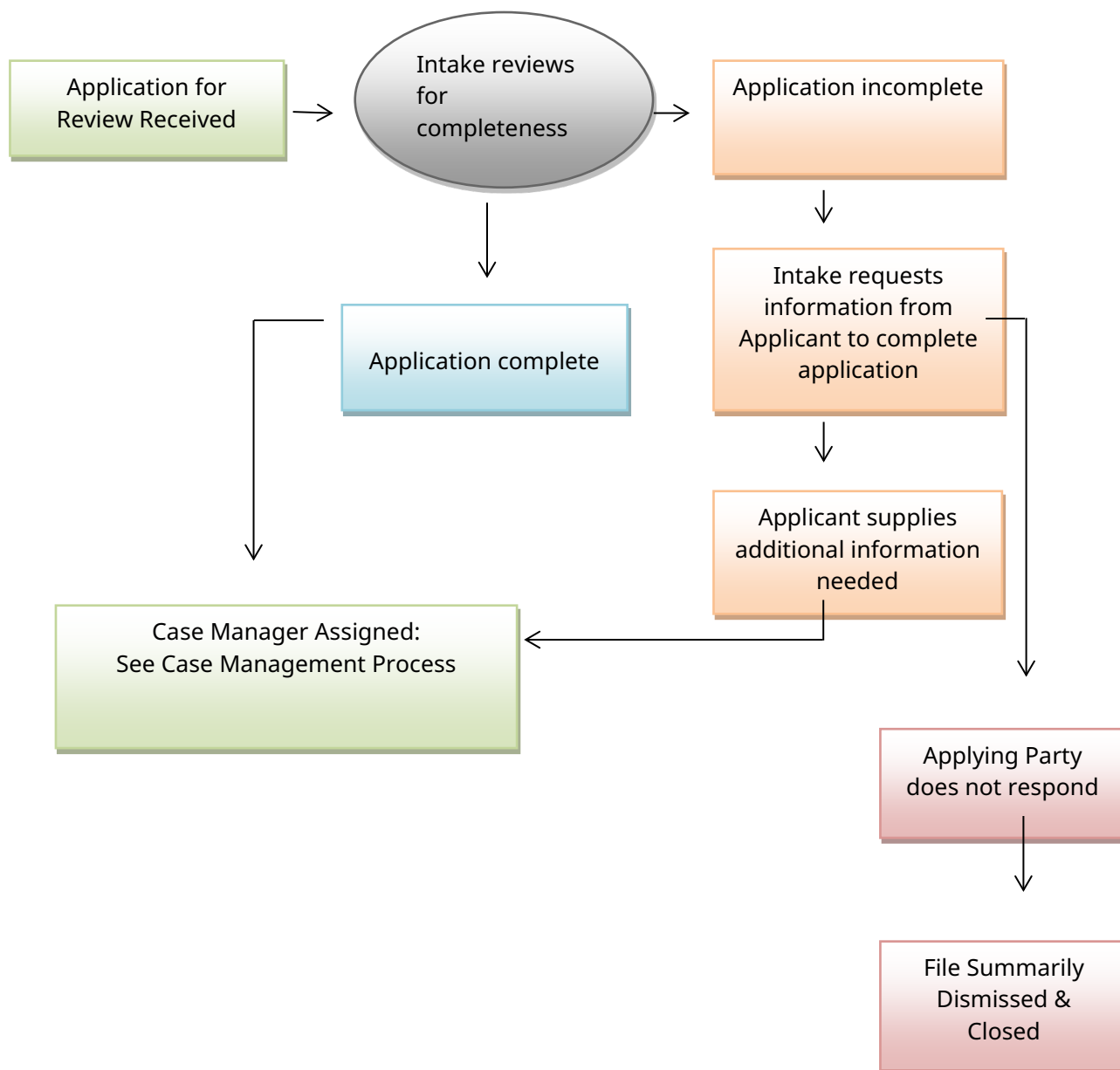
Health Professions Review Board  
PO Box 9429 STN PROV GOVT  
Victoria, BC V8W 9V1

## The Review Process – 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.

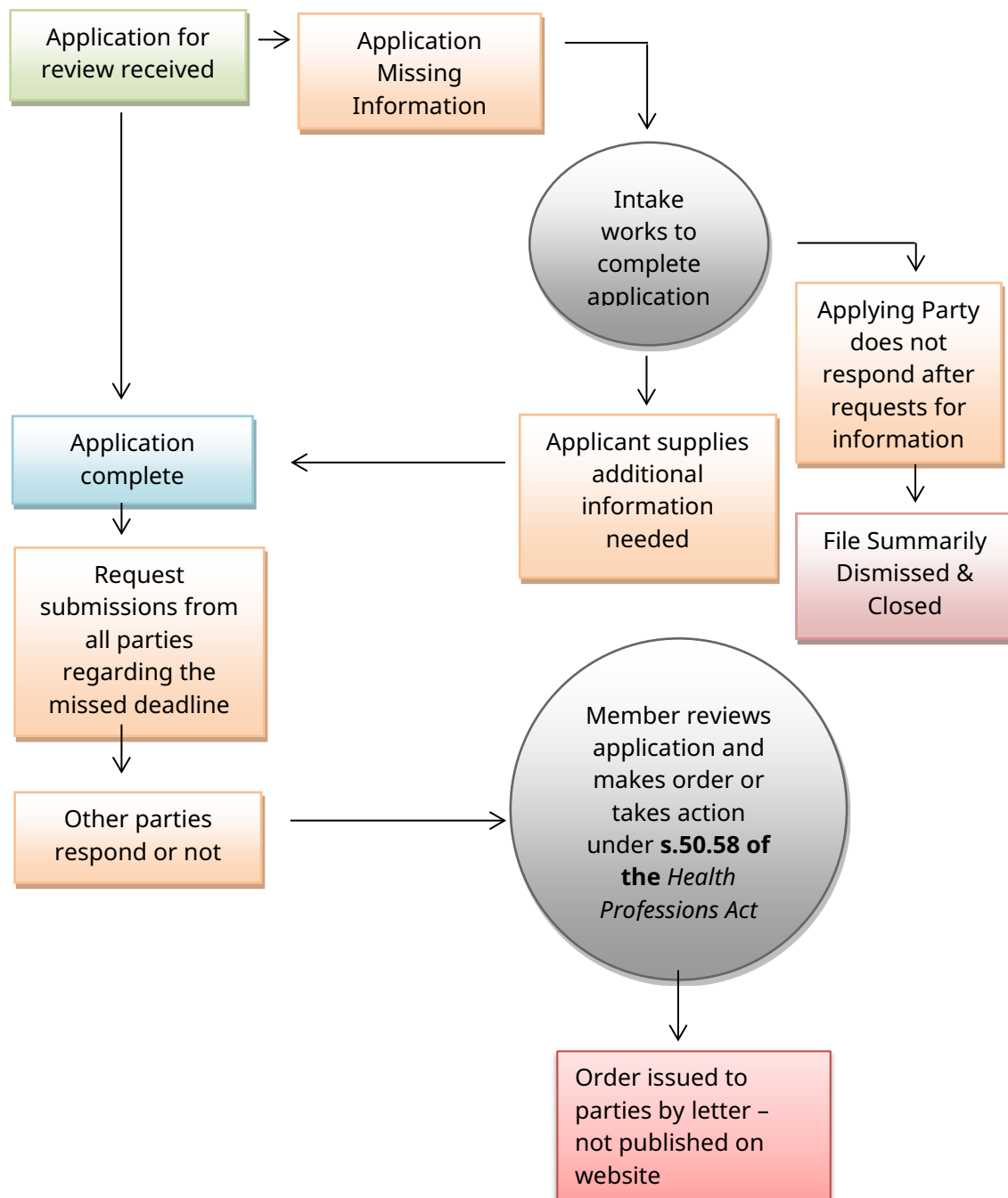
Few applicants who submit applications for review to the Review Board have had any exposure to administrative law or process. For that reason, intake staff assist applicants to go through the steps necessary to “perfect” an application so that it meets the requirements of the *Health Professions Act*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

## Intake Process



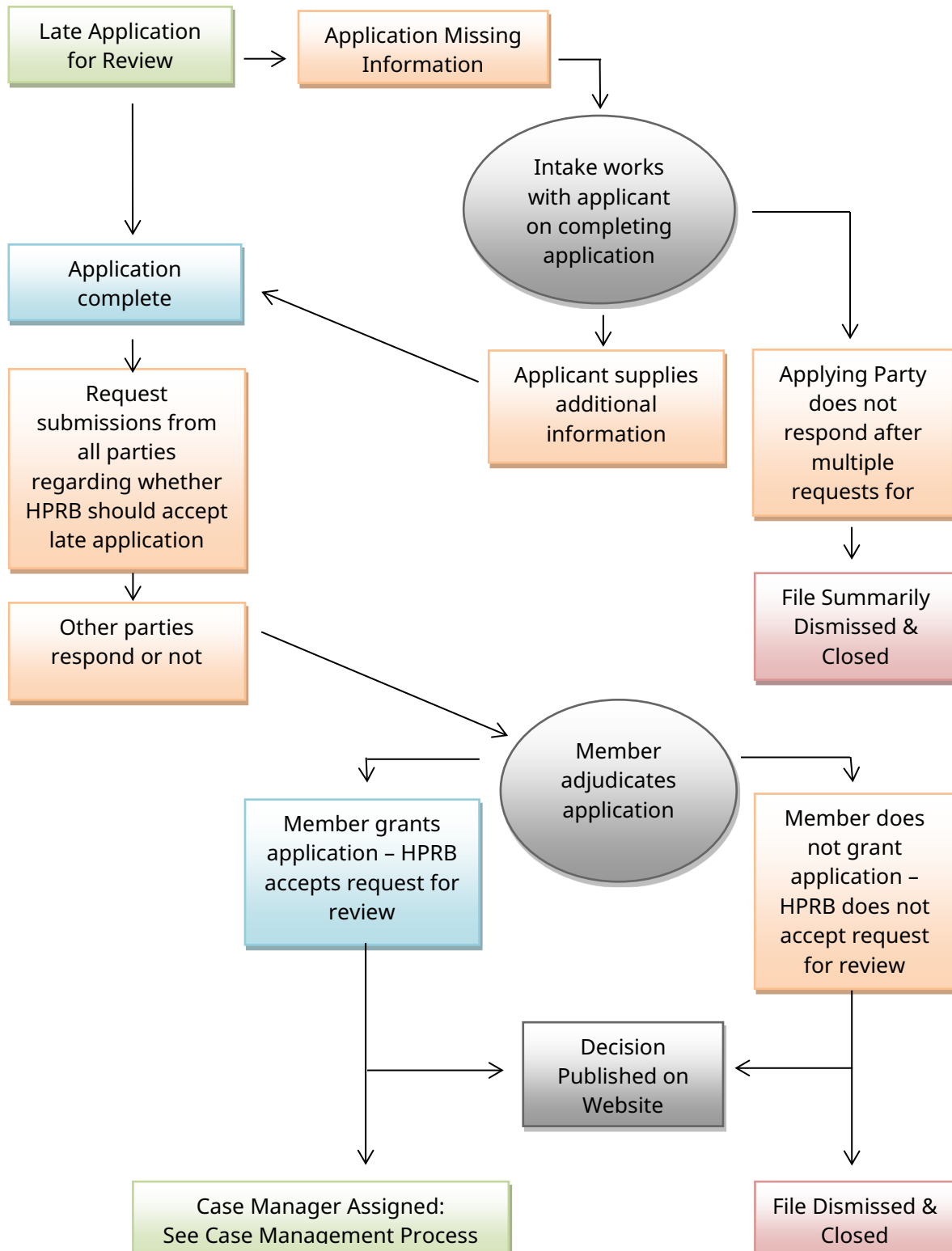
## Process for Review of Investigations Not Completed within Statutory Deadlines

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.



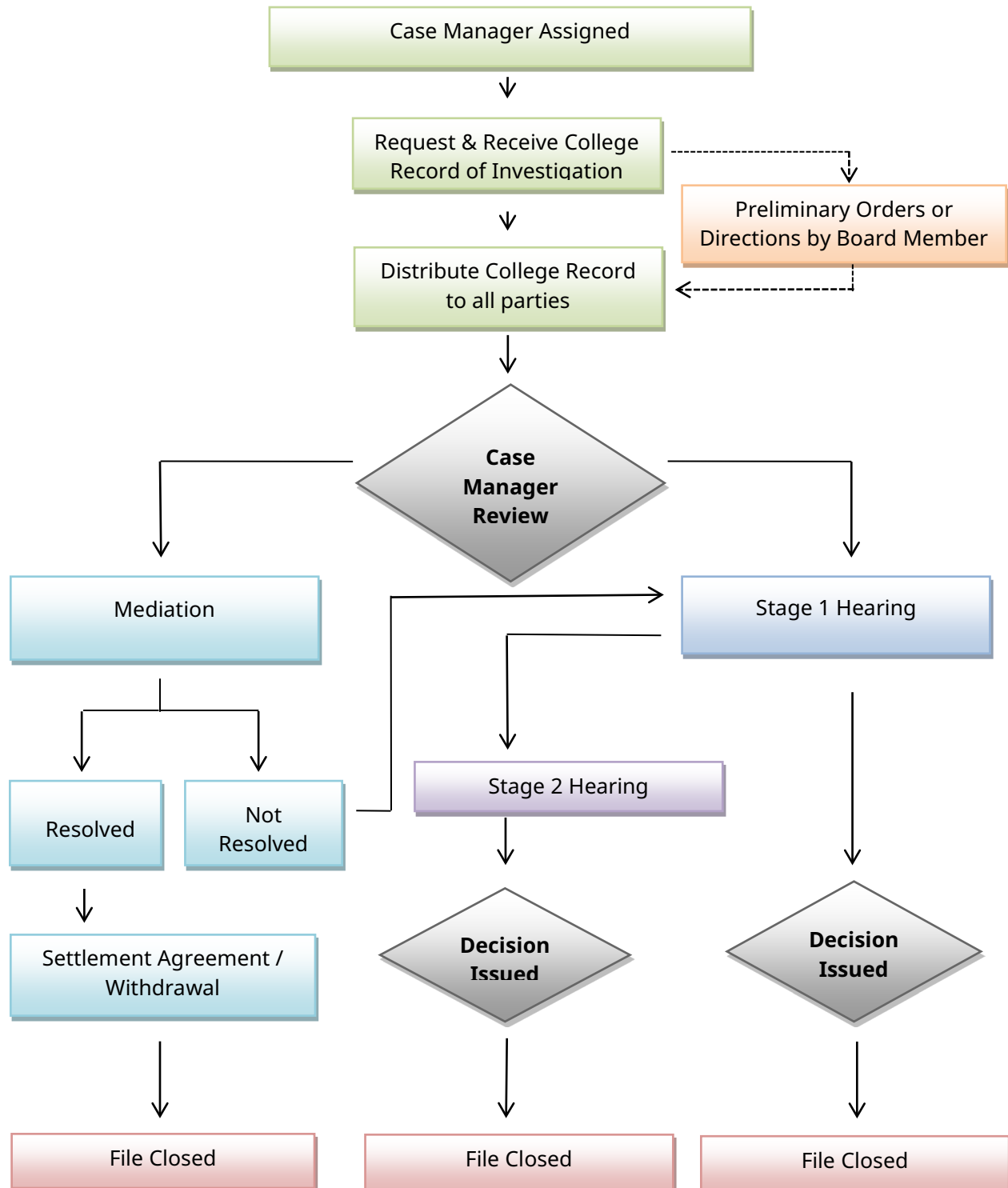
## Process for Applications Submitted Outside Legislated Deadline

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)

Historically, the Review Board has encouraged parties to engage in non-adversarial resolution of disputes. This can be done in a number of ways, including mediation, with a Board-appointed mediator, at no charge to the parties. However, it has been the Review Board's experience that parties may initially be reluctant to participate. This is particularly so for the Review Board in complaint disposition reviews, where the complaint was made some time ago, a complainant is not satisfied with the college's handling of the complaint, and the registrant's role has been scrutinized and found not to warrant further action. Nevertheless, the Review Board has had first-hand experience with the positive and surprising things that can happen in mediation when seemingly intractable parties communicate directly. In the clearly marked road to adjudication, it is easy to lose sight of the fact that facilitated dispute resolution offers a variety of outcomes which are not possible in the adjudicative process; and has been proven to achieve better outcomes and better satisfaction of the parties.

In 2015, the legislature responded to this dynamic for tribunals generally, and underscored its belief in the importance of alternative dispute resolution by amending the *Administrative Tribunals Act* to allow a tribunal to require participants to participate in a facilitated settlement process. This prompted the Review Board to follow suit by amending its rules accordingly, in December 2015. As such, this is an option the Review Board will consider for all applications for review that it receives and should be one that parties should be prepared to seriously consider. Such a process typically results in withdrawal of all or part of the application for review but, it can also assist the parties to focus the issues on review or foster a deeper understanding of the dynamics at play.

Alternative dispute resolution, and requiring participants to participate in it, is not appropriate for every case. Indeed, mediation is inappropriate where, for example, an application identifies a broad systemic problem, or where a dispute raises an issue of law, policy or interpretation that needs to be determined on the Record, or where an applicant or complainant 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. But these exceptions do not undermine the Review Board's general philosophy in favour of a robust process designed to encourage all parties to participate and resolve applications in a non-litigious way.

In 2021, the Review Board renewed its focus on mediation which had slowed with the challenges of the COVID-19 pandemic. In reviewing the numbers of successful dispute

resolutions over recent years, it was evident that case managers play an important role in achieving resolution of registration decision reviews in particular. In 2020, case managers facilitated settlement of 20 registration decision reviews, and in 2021, facilitated withdrawal of 8 applications for review of registration decisions in the following ways:

- Settled under mediation
- Review Board granted a time extension for the college to come to an agreement with the applicant
- College produced new decision
- College produced new decision which granted registration
- College transferred registrant to a different registrant class
- College reconsidered application for registration
- College granted registrant full registration
- College granted the applicant registration in the class they requested

While not formal 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 ATA 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.



## The Adjudication Process

As the Review Board's *Rules of Practice and Procedure* indicate, mediation is not 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 Act and in the provisions of the ATA, is codified in the Review Board's *Rules of Practice and Procedure*. These Rules provide for the efficient adjudication of questions arising at the beginning of a Review Board proceeding, such as:

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

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 2021 is summarized below.

### 1. Preliminary Decisions

#### *Applicants v. College of Physicians and Surgeons of British Columbia (No. 1), 2021 BCHPRB 19*

*This application for document disclosure is denied; the College has already produced the subject documents and the Panel Chair is satisfied that the Record is now complete.*

*The Panel Chair addressed the issue of document inclusion in her review, rather than the merits of the reviews of the Registration Committee's decisions. However, for reference, each of the four applicants raised issues regarding labour mobility and the Canadian Free Trade Agreement. Following a review of the Record, counsel for the Applicants sought the inclusion of additional information that he felt formed part of the Record. The College responded with an objection against the inclusion of most of these documents. The Applicants cited the College's obligation to produce all the information necessary for the Review Board to perform its mandate properly and meaningfully. For registration files, this includes all records, documents, emails and things in the custody or control of the College that are relevant to the subject matter of the review. The Applicants specifically requested that the College submit materials relating to a July 7, 2020 meeting of the Registration Committee. These included meeting minutes which may have relevance to the decision-making process, and correspondence about the decision with external legal counsel who attended the meeting. The presence of external legal counsel at the meeting was of concern to the Applicants, who felt that their presence may influence the committee's decision-making process; counsel for the Applicants was not present at this meeting. The Applicants requested a variety of documents relating to legal counsel's involvement in the meeting and decision-making process.*

*Citing Baker v. Canada (Minister of Citizenship and Immigration), 1999 CanLII 699 (SCC), [1999] 2 SCR 817, the College asserted that fairness does not always require an oral hearing. The College argued that the Applicants' exclusion from the meeting did not amount to unequal participation in the process; the Act does not require that the Registration Committee hold oral hearings, and the College determined that written submissions were sufficient to address the questions of mixed fact and law involved in this review. The College outlined the issues reviewed in reaching its decision, and its reasons for refusing the Applicants' request to submit the requested information, which relate to solicitor-client privilege and deliberative secrecy. The Applicants' final reply suggested that the Registration Committee was advancing its interests in maintaining an internal policy change and used external legal counsel to advise College staff and*

*act as committee members, creating an inappropriate an overlap in function. As counsel was argued to be acting in the role of committee members, the Applicants asserted that solicitor-client privilege did not apply. The Applicants pointed to the length and complexity of the Registration Committee's decision as evidence that it was the product of the College's legal counsel. Finally, the Applicants argued that new legal issues and arguments referenced in the Committee's reasons were not presented in advance to the Applicants, despite their request.*

*The Panel Chair outlined the role of the College and the Registration Committees, noting that there is a clear distinction between the College and its committees, and the roles of each. She notes that it is common for Colleges to have in-house counsel or to contract outside counsel; the participation of either gives rise to solicitor client privilege as outlined by *Crompton (Alfred) Amusement Machines Ltd. v. Comrs. of Customs and Excise* (No. 2), [1972] 2 All E.R. 353 (C.A.), at p. 376 and subsequently adopted by *R. v. Campbell*, 1999 CanLII 676 at para. 49 – 50. The Panel Chair applied the presumption of regularity, that is, everything is presumed to be rightly and duly performed until the contrary is shown in regard to College committee procedures. Citing *Eastside Pharmacy Ltd. v. British Columbia (Minister of Health)*, 2019 BCCA 60 at paras. 49-50, the Panel Chair indicates she found no evidence of procedural unfairness that would lead her to disregard the principle of deliberative secrecy and order the production of the materials requested by the Applicants. The Panel Chair did find two items which she would have ordered disclosed to the Applicants, however, these had already been provided to the Applicants at the time of her review. These were research materials, correspondence, and other documents relating to the preparation of the Registration Committee's response, and documents relating to two College letters dated June 18, 2020, the first to legal counsel for the Applicants and the second to the registrar of the New Brunswick College. The Panel Chair is now satisfied that the Record is now complete, concluding the preliminary decision process.*

## **2. Decisions Reviewing Inquiry Committee Dispositions**

### ***Complainant v. College of Physicians and Surgeons of British Columbia (No. 1), 2021 BCHPRB 17***

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

*The Complainant complained to the College about the treatment her elderly father received from the two Registrant physicians while he was a Patient in an intensive care unit of the hospital, and later with respect to an assessment that emergency intervention. The Complainant disagreed with the interventions taken without her*

*consent, and alleged that the procedure precipitated the Patient's decline which ultimately led to his death.*

*At several points the College expressed its condolences, as did the Registrants and others; the Complainant considered this apology an admission of some sort. The Panel Chair stated: "Condolence, sympathy, regret, and even contrition are part of human nature and to be encouraged in a caring society without the concern or threat of such expressions being weaponized. This is recognized by the Apology Act, R.S.B.C. 2006, c. 19. Accordingly, I shall not consider any implication from the Complainant's assertion that the Registrant apologized, other than as an expression of compassion."*

### **Complainant v. College of Physicians and Surgeons of British Columbia (No. 1), 2021 BCHPRB 33**

*Stage 2 hearing of an application for review of an Inquiry Committee complaint disposition under s. 50.6 HPA – Matter sent back to the Inquiry Committee with directions.*

*The Complainant is one of two adult sons of a Patient with dementia and multiple health issues who died in a care facility in 2017. His complaint to the College was that the Patient's family physician (Registrant 1) chose to follow the other son's direction regarding the Patient's health even though the Patient's wife was still alive and attending the care facility almost daily, and there was no proper evidence that the other son was legally responsible for making health care decisions on the Patient's behalf. The Complainant said that, on the other son's direction, the family physician characterized the Patient's condition as palliative so that the care facility did not provide treatment which could have extended the Patient's life; when Registrant 1 was not available during the last days of the Patient's life, the family physician's locum (Registrant 2) did not make himself available to the Complainant to discuss such possible treatment. The College investigated the Complaint, and the Senior Deputy Registrar (the "Registrar") dismissed it under s. 32 of the Act. The College's Inquiry Committee confirmed this Disposition under s. 32(5) of the Act.*

*The Complainant applied to the Review Board for review of the adequacy of the College investigation, and the reasonableness of the Inquiry Committee's Disposition, and asked for a number of remedies, including that the matter be returned to the Inquiry Committee for reconsideration with directions from the Review Board. He felt that the College should not have accepted Registrant 1's statement that he had tried and failed to contact the Patient's wife; he said Registrant 1 should not have relied on the other son's alternate power of attorney status to take direction from the other son because it was not proper legal authority; and he said there was nothing in the record of investigation to support Registrant 1's claim that he took direction from the other son because the Complainant was not involved in his father's care. The Review Board Panel Chair reviewed the record of investigation and submissions from the Complainant,*

*College and Registrants. The Panel Chair found the investigation inadequate, because the Complainant's alleged lack of involvement in his father's care was a cornerstone of Registrant 1's justification for communicating solely with the other son, yet the Complainant said he had been a constant visitor to the Patient in the years prior to his death. The Registrar was aware of this inconsistency, which could be easily resolved by obtaining the care facility's sign-in sheets for visitors to the Patient throughout his residency from 2015 to February 2017.*

*The Panel Chair also found the Disposition to be unreasonable because it failed to address a key issue: concern about Registrant 1's care of the Patient in the years preceding the Patient's death. The Panel Chair found that this issue was intimately entwined with the events around the Patient's death in 2017. Further, the Complainant said that the Patient was left without a physician for 2 days close to the time of his death, after Registrant 1 went on vacation, until Registrant 2 took over his care. The College did not address whether this constituted a failure to meet with a general duty of non-abandonment, and there is nothing in the record of investigation to support the College's submission that nurses at the care facility were always able to contact a physician in any event. The Disposition is unreasonable both because the basis for the outcome is not sufficiently justified, intelligible and transparent in light of the investigative records and submissions made, and because certain aspects of the Disposition suggest that the Registrar either fundamentally misapprehended or failed to account for the evidence before him. Registrant 1's statements are not internally consistent and do not accord with his own clinical records and, when compared with information in the investigative record, show that he inaccurately described dates and medical reasons for events and confused the two sons. Registrant 1 also claimed that the Patient had suffered aspiration events, but the record does not bear this out. Notes by Care Facility staff made contemporaneously with the events close to the time of the Complainant's death do not support Registrant 1's statements. Registrant 1 says the Patient was "bed-bound," but his nursing notes describe him as upright and enjoying music in a communal room. Registrant 1 says that attempts were made to contact the Patient's wife, but there is nothing in the records to show it. The issue is whether failure to take a more proactive approach in obtaining consent from the wife amounted to misconduct. The Disposition lacked transparent justification for why the Registrar chose to rely on Registrant 1's assertions that the Patient wished the other son to make decisions, when the record of investigation did not support those assertions. The Registrar did not address why the Patient's "M2" designation did not prevent him from being hospitalized in 2015 for treatment of a urinary tract infection, yet it was the reasons why he was not hospitalized for the aspiration event that precipitated his decline in 2017. The Panel Chair noted that the Disposition was critical of Registrant 1's clinical notes because they were illegible but, did not appear to advert to the fact that the same incorrect phrase and wording was made in notations repeatedly from 2010 to 2015. Registrant 1's clinical records also contained several letters regarding the Patient's capacity, which were unexplained. With respect to Registrant 2, the Panel Chair found the investigation was adequate. However, the Disposition was unreasonable. The*

*decision letter said that Registrant 2 met the College's expected standard of behaviour because he did not refuse to attend the Patient. The Panel Chair questioned this logic and asked the Registrar or the Inquiry Committee to address whether the Registrant's failure to attend the Patient in the weeks before his death was in accord with professional standards, specifically the duty of non-abandonment. Further the reasons were not sufficiently transparent on the issue of whether Registrant 2 misconducted himself by failing to schedule a timely appointment, or, by failing to communicate to the staff that any communications from the Patient's family should be given priority in all the circumstances. The Panel Chair returned this matter to the Registrar or Inquiry Committee with directions to remedy the identified deficiencies in the disposition.*

### **Complainant v. College of Physicians and Surgeons of British Columbia (No. 2), 2021 BCHPRB 86**

*Stage 2 hearing of an application for review of an Inquiry Committee complaint disposition under s. 50.6 of the HPA – Disposition remitted in part with directions.*

*The Complainant complained about his deceased mother's (the Patient) care preceding her death in January of 2018. In December of 2017, the Patient attended a hospital emergency room due to a severe headache. After tests including a lumbar puncture a CT scan and a CT angiogram, she was discharged without follow-up. The Patient presented to hospital again in January of 2018 following a severe headache and collapse. She became unresponsive en route to a second hospital, where she was diagnosed with a massive subarachnoid hemorrhage and subsequently died. The Complainant's primary concern was that his mother's aneurysm was not detected during her initial visit to the hospital, and that further testing was warranted which could have prevented her death. He complained about two radiologists who did not identify the aneurysm, and two emergency physicians who, he argued, performed inadequate investigations into her condition, failed to adequately communicate with one another, and prematurely released the Patient in the absence of a definitive diagnosis. The College sought and obtained the hospital records and letters of response from each of the Registrants. As the Inquiry Committee panel did not have radiology expertise, an expert opinion was sought from Dr. B who produced an Expert Report, which concluded with no criticism of the two radiologists. The Complainant and each Registrant was invited to reply to the Report although Dr. B's identity was not disclosed to them or the Inquiry Committee. The Inquiry Committee met and concluded with no criticism of any of the Registrants. A College staff physician sent a report on the disposition to the Complainant that had not been reviewed by the Inquiry Committee but included reasons for the Disposition that differed from those contained in the approved Minutes of the Inquiry Committee's meeting. The panel concluded that the Minutes and not the report contained the Inquiry Committee's reasons for disposition. The panel adapted Ontario Health Profession and Appeal Review Board cases as a framework to assess whether the College's process to obtain the Expert Report was adequate and whether it was reasonable for the Inquiry Committee to rely on the Expert*



*Report. The panel held that the investigation was inadequate and the Disposition unreasonable with respect to the two radiologists. The College's process for retaining and instructing Dr. B to prepare the Export Report was flawed and lacked transparency and it was not reasonable for the Inquiry Committee to base its disposition on Dr. B's report when it did not have information to be satisfied that Dr. B: was independent, and not biased or in a conflict of interest; and that her report was reasonably supported by the information contained in the Record. The panel held that the investigation was adequate and the disposition reasonable with respect to the emergency physicians because the Inquiry Committee took reasonable steps to obtain key information that would have affected its assessment of the complaint against them and the disposition regarding them exhibits the requisite degree of justification, intelligibility, and transparency*

### **Complainant v. College of Chiropractors of British Columbia (No. 1), 2021 BCHPRB 125**

*Stage 2 hearing of 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.*

*The Complainant filed complaints with the College about the marketing practices of the Registrants. Without notifying the Registrants about the complaints, the Registrar dismissed them as other than serious matters subject to investigation by the Inquiry Committee. The Panel found that the Record consists of the complaints, the College's acknowledgement of the complaints and the Registrar's affirmed evidence that she, on some unknown date, looked at the Registrants' websites. Neither the legal advice obtained by the Deputy Registrar nor the Deputy Registrar's belated email to the Inquiry Committee after the Registrar disposed of the complaints, form a part of the investigative record. The Inquiry Committee did not have sufficient information before it to understand the complaint in context and determine whether to endorse the Registrar's recommended disposition or direct further investigation before concluding the matter.*

*The Inquiry Committee's screening role applies equally to any screening carried out by a registrar authorized to act under section 32(3) of the Act. The Registrar appears to have been motivated to dispose of the complaints as quickly as possible so that the Registrants would not be barred by the College's election rules from standing for office on the College Board. The Registrar did not seek direction from the Inquiry Committee regarding referral to an independent, arms-length investigator, although she was aware that was done in previous complaints involving Board members to avoid any perception of bias or partiality. Instead, she chose not to refer the matters to the Inquiry Committee either before investigating, or after investigating but before issuing the dispositions. As the Registrar did not keep a record of what she observed on the*



*Registrants' websites, the only evidence of what was on them is the Complainant's screenshots.*

*There is no documentation supporting the Registrar's assertion that "some" of the Inquiry Committee members purportedly endorsed her action after the fact. The steps taken by the Deputy Registrar after the Registrar's dispositions were issued call into question their legitimacy. The Registrar did not notify the Inquiry Committee of the Complainant's concerns about his complaints being treated impartially and fairly; that the Inquiry Committee had appointed an independent third party to investigate and report back in previous complaint involving a Board member, or that the Registrants had not been afforded an opportunity to respond to the complaints. The College's investigation was not adequate. The Registrar's reasoning process regarding the complaints about Registrant 1 is flawed; it does not offer a clear and cogent basis for her conclusion and is not justifiable based on the facts and the law. Although the Registrar's summary of the complaint allegations is accurate, her decisions to dismiss the complaints against Registrant 1 summarily was unreasonable. Neither disposition is clear and cogent; nor are they justifiable on the facts or the law. Rather, the Registrar's conclusions concerning Registrant 2 appear to contradict the College's bylaws. The Panel referred both matters back to the Inquiry Committee with directions to oversee fresh investigations recognizing the Registrants' positions as Board members at the time, and in keeping with its practice when investigating complaints involving Board members. The Inquiry Committee is also directed to give the Registrants an opportunity to respond to the complaints, give the Complainant an opportunity to review and comment on those responses, and ensure that the Inquiry Committee considers a written report of the investigation and proposed dispositions before approving any dispositions of the complaints or directing further actions.*

### **Complainant v. College of Physicians and Surgeons of British Columbia (No. 1), 2021 BCHPRB 126**

*Stage 2 hearing of an application for review of an Inquiry Committee complaint disposition under s.. 50.6 of the HPA – Remit.*

*The Complainant sought a review of her complaint to the College regarding the Registrant, a surgical oncologist, administering Lidocaine, a local anesthetic, against her wishes after she told him that Lidocaine does not work for her. According to the Complainant, she informed the Registrant three times prior to the biopsy procedure that a different local anesthetic should be used. Lidocaine was also listed on her medical records under the allergies and adverse reaction list from her previous experience with the local anesthetic. Believing that she would be left to pay for the procedure if she cancelled at that stage, the Complainant agreed to continue with the Lidocaine; however, the procedure was not completed as she experienced severe pain. The Disposition proposed that the significant pain experienced by the Complainant may have been*

*due her medical condition rather than the procedure and stated, “we would like to reassure you there is no evidence that this extreme pain you experienced was related to the local anesthetic itself.” Regarding the complaint about the Registrant making follow up appointments without the Complainant’s consent, the Disposition notes that the Registrar respects the Registrant’s decision to ensure that he provided the Complainant with a window of opportunity for treatment should the Complainant change her mind. The Panel Chair questioned whether investigative discretion was exercised reasonably by the College and concluded that it was not. The College did not seek hospital records which noted issues with Lidocaine and there appeared to be a hospital form signed by the Registrant indicating an awareness of the appended allergy/adverse reaction list. The Panel Chair did not accept the College’s logic that it did not seek additional records as it believed that if the Registrant had been aware of the issue with Lidocaine, he would have documented it. The Panel Chair found that the investigation of the complaint related to the administration of Lidocaine was inadequate and declined to consider the reasonableness of the disposition. With respect to the disposition about the Registrant scheduling follow-up appointments, the Panel Chair deferred to the Registrar’s assessment of such practice by the Registrant and found the disposition of that particular complaint reasonable. Pursuant to s. 50.6(8)(c) of the Act, the complaint about the administration of Lidocaine was sent back to the College’s Inquiry Committee for reconsideration with the following directions; An investigation into whether the Registrant met the appropriate standard of care in administering Lidocaine to the Complainant in light of all of the evidence. The Complainant’s records from November and December 2018, from the hospital are to be requested, all parties are to be provided with the materials collected in the investigation and the disposition shall be reconsidered de novo based on findings from the investigation.*

## **Complainant v. College of Chiropractors of British Columbia (No. 1), 2021 BCHPRB 25**

*Stage 2 hearing of an application for review of an inquiry committee disposition under s. 50.6 of the Health Professions Act (the “Act”) - remitted back to the College’s Deputy Registrar with directions.*

*Following a dispute between the Registrant and the Complainant who shared a multidisciplinary practice, the Complainant left the clinical premises without taking his patient clinical files with him, intending to pick them up later. Four days later the Complainant became aware that the Registrant had vacated the premises of the clinic and had removed all patient files including those of the Complainant. The complaint to the College arose when the Registrant ignored the Complainant’s request to return those files. The College’s Deputy Registrar dismissed the complaint as a civil matter that did not involve allegations of improper patient care.*

*The Panel first considered the reasonableness of the disposition and concluded that it was unreasonable that the Deputy Registrar dismissed the matter on the basis that it involved a business dispute which the College had no mandate to address. Such a blanket position, with respect to the essential elements of the complaint, would be in defiance of the College's duty to serve and protect the public as mandated under s.16 of the Act. There is no evidence that the Deputy Registrar put his mind to the issue that physical ownership of medical records resides with the practitioner who created them, and that ownership can only be altered by contract. The Disposition was not reasonable because the Deputy Registrar failed to engage the College's mandate to consider the essential elements of the complaint, namely the Registrant's inappropriate retention, storage, and denial of access of the clinical records to the Complainant. The Panel held that the investigation was inadequate because the Deputy Registrar made only a cursory investigation of the complaint and none of the essential elements of the complaint were adequately investigated. The Panel ordered the complaint sent back to the Deputy Registrar with directions for investigation of the allegations of the wrongful removal and retention of the Complainant's patient files, the files not being securely stored, and the Complainant and his patients having been denied access to the files or access having been impeded.*

#### **Complainant v. British Columbia College of Nurses and Midwives (No. 1), 2021 BCHPRB 44**

*The Complainant complained to the College of Nurses and Midwives that the Registrant had inappropriately made public comments about Medical Assistance in Dying (MAiD) and palliative care. The Registrant, a casual employee of a facility which had opted not to provide MAiD, was interviewed on a radio program; she asserted that palliative care and MAiD were not exclusive, noting that these are performed by separate teams. She argued that some people receive palliative care for months prior to deciding to utilize MAiD and, if their palliative care facility does not offer MAiD, must then be discharged to a different facility they may not be comfortable with. The Complainant said that the Registrant had a conflict of interest, her statements about palliative care and MAiD were wrong, and she may have been pressured by politicians to make a statement supporting MAiD in the facility where she was employed. She asked that the Registrant's licence be suspended until she completed a course on palliative care. The Inquiry Committee's response noted some of the Complainant's concerns fell outside of the jurisdiction of the College. However, the College was able to address whether the Registrant's off-duty conduct was egregious enough to impact the public's confidence in either the Registrant or the nursing profession. The College did not find the Registrant's behaviour to meet these criteria and concluded that no disciplinary or remedial action was warranted. The Panel Chair reviewed whether the Registrar gathered sufficient evidence from relevant sources to make an informed and reasonable decision. She noted that the Registrar had perplexingly dismissed the complaint under both sections 32(3)(b) [(b) does not contain allegations that, if admitted or proven, would constitute a matter subject to investigation by the inquiry committee under section 33 (4)] and*

32(3)(c) [(c) contains allegations that, if admitted or proven, would constitute a matter, other than a serious matter, subject to investigation by the inquiry committee under section 33 (4)] of the Act, which are mutually exclusive. Citing *Complainant v. College of Physicians and Surgeons of British Columbia*, 2012 BCHPRB 2, the Panel found that the Registrar is able to dismiss a complaint under section 32(3)(b) based only on the allegations, subject to any inquiries the registrar needs to make to clarify them. The purpose of section 32(3)(b) is to allow the dismissal of complaints that would not be subject to investigation, because they are not within the jurisdiction of the Inquiry Committee to investigate. Section 33(4) sets forth the matters in respect of which a complaint has to be based in order to be successful. Even if admitted or proven the facts alleged in the complaint must constitute behaviour which comes within the ambit of the matters set forth in the paragraphs of s.33(4). If not, s.32(3)(b) applies and the complaint may be dismissed by the Registrar, subject to s.32(5). However, for a Registrar to determine whether to dismiss a complaint under s.32(3)(c), act under s.36(1), or make a referral to the Inquiry Committee under s.32(2), the Registrar must investigate the complaint and assess its merits. The Panel Chair concluded that the Registrar's actions were simply to clarify whether the alleged conduct was so egregious that it would constitute professional misconduct, bringing the complaint within the mandate of the Inquiry Committee. The incident that was the subject of the complaint was public and the Registrar had to do nothing to determine whether it had occurred; also, it was about the conduct of a registrant in her private life. A full investigation was not necessary to properly dismiss the complaint as outside the mandate of the Inquiry Committee per s. 32(3)(b). The Panel Chair found that: it was not necessary to deal with the adequacy of the investigation under s. 32(3)(c); and, there was no need to investigate any suggested conflict of interest. Citing *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 ("Vavilov"), the Panel Chair noted that the decision must be based on a rational chain of analysis, and the decision must be justified. The Panel Chair identified that the disposition addressed relevant portions of the radio interview, discussed the balance between a Registrant's Charter right to freedom of expression and the potential for off-duty conduct to affect public perception, and dismissed aspects of the complaint which were irrelevant. The Panel Chair concluded that the disposition was reasonable, and the investigation was adequate, confirming the Inquiry Committee's disposition.

### **Complainant v. College of Naturopathic Physicians of British Columbia (No. 1), 2021 BCHPRB 106**

*Stage 2 hearing of an application for review of an Inquiry Committee complaint disposition under s. 50.6 of the HPA – Disposition Confirmed.*

*The Complainant, the parent of the Patient, contacted the College to make a complaint about the Registrant, a naturopath. In essence the complaint pertained to over billing, the Registrant misstating his education and training, deficient clinical records and breach of confidentiality. The Inquiry Committee considered the matter and decided to*

*take no further action pursuant to s.33(a) of the Act. The Complainant had previously made an application for review of a previous college disposition a prior complaint made by the Complainant against the same Registrant, alleging similar complaints. The Complainant withdrew his application for review of that matter.*

*The Panel Chair had asked the parties to address whether in the circumstances of this case res judicata or issue estoppel applied given the commonality between issues in the previous and current applications for review. The College took the position that the current case was simply an attempt to re-frame the issues dealt with in the previous case. The Registrant's position was that the review should be dismissed because it was dealt with in another proceeding. The Complainant did not address this issue. The Panel Chair relied on a review of the law submitted by the Registrant's counsel as well as previous Review Board decisions on the matter of Issue Estoppel which has been established to apply to decisions of administrative tribunals to prevent a party from attempting to have a matter re-heard but seeking a different result. The Panel Chair found that the factual basis for the previous complaint was the same as the complaint the disposition of which is now to be reviewed by the review board, but with a different spin. If the Complainant was dissatisfied with the outcome in that matter his remedy was to follow through on the review, he applied for on that College disposition. As he withdrew his application for review on that complaint, he was bound by that decision. The doctrine of issue estoppel applies to prevent the Complainant from seeking to have the same issue re-heard. Therefore, the application for review is dismissed. The investigation conducted by the Inquiry Committee was adequate, and the Disposition reasonable.*

### ***Complainant v. College of Naturopathic Physicians of British Columbia (No. 1), 2021 BCHPRB 118***

*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 for reconsideration.*

*The Complainant alleged that the Registrant's treatment of her son (the "Patient") sabotaged his hospital treatment and contributed to his death. The Inquiry Committee concluded that the evidence did not support a conclusion that the intravenous treatment administered by the Registrant was dangerous or contributed to the death of the Patient who died of a pulmonary embolism more than five months after the Registrant's final treatment, and that the Registrant never treated the Patient while he was an inpatient at the hospital. The Record of the College's investigation shows that the Registrant did treat the Patient while he was an inpatient on day passes from his involuntary hospitalization under the Mental Health Act. No effort was made by the Investigator or the Inquiry Committee to obtain information from the Patient's treating psychiatrist who contacted the Registrant and asked her to stop treating the Patient while he was an inpatient.*

*The Inquiry Committee had different materials before it each of the four times it met to discuss this matter in March 2020, June 2020, December 2020, and January 2021. At its final meeting in January 2021, it had only the Complainant's December 2020 response. The Record also shows that the Inquiry Committee found the Registrant's charting of her treatments was adequate despite the Investigator's Report that her notes were not all contemporaneous; some entries were made after she was made aware of the Patient's death months after her treatments ended at the request of the Patient's treating psychiatrist. No inquiry was made into this delay in record keeping and it was not addressed by the Inquiry Committee.*

*The Panel found that the investigative process was undermined by the investigator's and Inquiry Committee's acceptance of the Registrant's version of events involving a key witness without contacting that witness and by the failure to contact the treating psychiatrist or the hospital treatment team regarding their concerns about the Registrant's treatment. The essential complaint is that the treatment was undertaken at all on a mentally unstable, involuntary, inpatient and that it was undertaken without coordination with the hospital treatment team. The question the Inquiry Committee ought to have pursued, and did not, is whether it was appropriate for the Registrant to treat an involuntary patient on day passes without prior consultation with the hospital treatment team.*

*The Inquiry Committee failed to obtain sufficient information to enable it to review the complaints initiated by the Complainant in sufficient detail to assess the facts and reach the conclusions that they did. The Inquiry Committee's endorsement of the Registrant's treatment of an involuntary patient without coordinating the treatment with the hospital treatment team does not protect the public from negative medical outcomes where treatment by one health profession potentially conflicts with treatments provided in hospital by other health professionals. A decision rendered without the benefit of further investigation to determine what safety concerns the hospital treatment team had is not a reasonable one. The investigation was not adequate, and the disposition was not reasonable. The Panel referred the matter back to the Inquiry Committee with directions to consult the Patient's treating psychiatrist and hospital treatment team, to solicit submissions from the Complainant, to consider the additional information from those sources, and to consider the consequences that should flow from the Registrant's treatment of an involuntary patient without consultation with his hospital treatment team. Although the Panel did not accept the additional evidence provided by the Complainant tendered for the review that was not before the Inquiry Committee, he noted that it is open to the Inquiry Committee to consider it in its reconsideration.*



## ***Complainant v. British Columbia College of Nurses and Midwives (No. 1), 2021 BCHPRB 138***

*Stage 1 hearing of an application for review of an Inquiry Committee complaint disposition under s. 50.6 of the HPA – Disposition Confirmed.*

*This decision reviews the disposition of one aspect of a complaint that had been sent back to the college in Review Board decision Complainant v. British Columbia College of Nursing Professionals, 2019 BCHPRB 95.*

*The Complainant's father (the Patient) received oxygen in hospital prior to his passing in 2015. The Complainant alleges that the Registrant recorded that nasal prongs were used to administer oxygen, but instead gave the Patient an uncomfortable oxygen mask. The College retained the services of a contract investigator, who reviewed existing documentation from the Complainant, College, Patient Care Quality Office and Patient Care Quality Review Board. He reviewed the record of admission, corresponded with the Complainant and the Registrant, and interviewed the Registrant.*

*The Inquiry Committee found no evidence that the notation that nasal prongs had been applied to the Patient was made in error or was fabricated; instead, the use of nasal prongs was corroborated by three other healthcare professionals. There was no evidence that a mask was used in the Patient's care or had to be used due to a lack of available supplies. The Inquiry Committee explained that it is inappropriate for clinical staff to attempt to force patients to use oxygen equipment if they decline this intervention. The Inquiry Committee concluded that the Registrant's care was appropriate, and no regulatory action was required.*

*The Panel Chair noted that the Inspector's investigation was thorough, but the College did not comply with the Review Board's Rules of Practice and Procedure when it produced the record of investigation: it did not provide the record in the form required; provided an incomplete record that omitted certain documents; and made unauthorized redactions which made the Record indecipherable. Upon requesting and receiving an unredacted copy, the Panel Chair was satisfied that the inspector took adequate steps to understand and investigate the Complainant's key concerns. The Panel Chair was satisfied that the Inquiry Committee had the information it needed to fully investigate this complaint, and that the decision was transparent, easy to understand, and contained clear reasoning. She concluded that the disposition was reasonable.*

*The Panel Chair made particular note that the College should be mindful that its task is to screen complaints, not to approach complainants as litigants who bear the onus of proving the rightness of their complaint. Investigators, registrars and other college staff who lose sight of this role risk losing focus on the matters that are properly before them and alienating the very public that they are tasked with protecting.*

*\*This case is also notable for its observations and recommendations for colleges in producing the record of investigation, at Part X of the decision, para. 90.*

### **3. Decisions Reviewing Registration Dispositions**

#### ***Applicant v. College of Physicians and Surgeons of British Columbia (No. 1), 2021 BCHPRB 63***

*Stage 2 hearing of an application for review of a registration committee decision under s.50.54 of the Health Professions Act – pursuant to s.50.54(10)(b) of the Act the Registration Committee was directed to grant the Applicant’s registration in the “full-specialty” class of registration without limits or conditions. The Applicant is a foreign-trained psychiatrist registered in another Canadian province who applied for registration under the Canadian Free Trade Agreement (“CFTA”) and the Labour Mobility Act (“LMA”). He applied for review of the Registration Committee’s initial and reconsideration decisions to deny him registration and licensure. After the schedule for submissions in the Stage 2 hearing of this matter closed and the matter was on reserve, the Panel was assigned to adjudicate four other applications for review concerning applicants who had been denied registration and who had also relied on the CFTA and the LMA (the “Four Labour Mobility Applications”). The Panel noted that the College had submitted a supplementary Record consisting of 983 pages of labour mobility background material (the “Background Material”) in those four matters, but that material that had not been included in the Record of this matter that was under reserve. When the College declined the Review Board’s request to submit the same Background Material for the review of this matter, the Panel reopened the submissions process and directed the College to produce the Background Material. The College complied and the Panel provided a copy of it to the Applicant with a schedule for further submissions regarding the Background Material. The Applicant did not reply to the College’s submission. On review, the Panel noted that the Applicant completed his medical training in India, immigrated to the United Kingdom where he completed basic and higher specialist training in psychiatry, was awarded certification of completion of specialist training (CCST) in Forensic Psychiatry and was awarded fellowship in the Royal College of Psychiatrists (FRCPsych) in 2008. In 2010 the Applicant was granted a “restricted license” to practice medicine in the fields of (general) Psychiatry and Forensic Psychiatry, independently in Ontario. In 2015, after applying for and successfully completing a comprehensive Practice Assessment carried out by the Ontario College, the Applicant applied for and successfully had the “Academic” restriction lifted so that he was licensed to practice Psychiatry and Forensic Psychiatry, independently under what was formerly known as a “full licence” but what is now known as a licence restricted to his areas of specialty. In 2019 the Applicant applied for registration in British Columbia and responded to the College’s requests for additional information, but was advised he did not meet the College’s criteria for registration and licensure in*



the full-specialty class since the College did not have a class similar to the Applicant's Ontario "restricted licence." The LMA (in support of Chapter 7 of the Agreement on Internal Trade [now the CFTA]) was enacted in British Columbia following legislative debate about its provisions that included concerns of some members of the legislative assembly (and the College) that the proposed legislation would permit "forum shopping" and would result in provincial standards being lowered to that of the entry level of the jurisdiction with the lowest standards. The College Board confirmed that physicians who held a full licensure anywhere in Canada must be recognized for licensure in British Columbia. Denial of licensure in such circumstances would be appealable to the Health Professions Review Board which would be required to uphold labour mobility agreement provisions. The College subsequently amended its bylaws to grant full registration in British Columbia to all physicians who hold a current full, unrestricted licence to practice medicine without limits or conditions with a medical regulatory authority in another Canadian province or territory. Despite the College's repeated requests for an exemption to the Chapter 7 CFTA provisions, no such exemption has been granted. The Registration Committee had the right under the CFTA to undertake an equivalency assessment of the Applicant's certification in Ontario which is not itself a disguised restriction on labour mobility. The College repeatedly expressed concern about the Applicant's pathway to certification, that he did not write the national exams and that he was certified in Ontario after a three-day practice assessment. The Panel held that the Registration Committee's and the College's focus on the Applicant's "pathway" to certification is legally irrelevant except insofar as a particular pathway is reflected in particular practice limitations, restrictions or conditions. Since the Applicant had no limitation, restriction or condition placed on his certification to practice medicine in Ontario, the Registration Committee could not refuse to certify the Applicant based on the absence of a British Columbia "equivalent practice limitation, restriction or condition." The Applicant's restriction from standing for election for the Ontario College was a limitation on governance, not a "limitation", "restriction" or condition on practice in the context of labour mobility. To the extent the Registration Committee considered the governance issue, it erred in law and was unreasonable. The Applicant's Ontario licence restricted him to the independent specialty practice of Psychiatry and Forensic Psychiatry. The "defined specialty scope" is properly and reasonably seen as the only relevant "restriction" within the meaning of that term under the CFTA. Based on the complete Record and a proper and reasonable interpretation of the CFTA and the LMA, the Panel concluded that the Registration Committee incorrectly interpreted the LMA. The Applicant was eligible under the LMA to be registered in the "BC equivalent occupation" to the occupation in which he was registered in Ontario. The Panel found no difference in the main tasks or duties of a psychiatrist or forensic psychiatrist practicing their profession (specialty medicine) independently in Ontario versus those of a physician practicing specialty medicine independently in British Columbia. The only difference between the jurisdictions as far as the practice of medicine is concerned in the labour mobility context, is in the nomenclature assigned to the class. It was neither correct nor reasonable for the Registration Committee to conclude that there was no BC equivalent occupation to the

*Applicant's Ontario licence and to deny him registration in the full-specialty class based on that determination. The Registration Committee reached its decision based on an erroneous interpretation of Chapter 7 and the Registration Committee's obligations as a regulator in implementing the CFTA under the LMA, so the Panel found it unnecessary to determine the reasonableness of the Registration Committee's decision to deny the Applicant registration in the provisional-specialty class. Under s. 50.54(9) of the Act the Panel directed the Registration Committee to grant the Applicant registration in the "full-specialty" class of registration without limits or conditions.*

**4. Applications received after 30-day deadline, for extensions of time to file**

***Complainant v. College of Physicians and Surgeons of British Columbia (No. 1), 2021 BCHPRB 28***

*The application for a time extension is accepted as falling within the 30-day statutory deadline under s.50.6(2) of the Health Professions Act.*

*It appeared that the application was received by the Review Board 60 days past the accepted timeline, but the Complainant claimed she did not receive the College file copy of the decision until November 3, 2020. Though the Complainant's postal code was correct in earlier correspondence, the mailed decision revealed an invalid postal code. This error suggests a real possibility that the letter delivery was delayed or potentially never delivered. The applicant requested the disposition letter quickly after being alerted to its existence, behaving as someone who had not received the disposition letter and tried to remedy that quickly. The application documents demonstrate the Complainant was very engaged with her complaint, and dissatisfied with the College, and it seems unlikely she would jeopardize her right to a review by missing a deadline. The Review Board accepts November 3, 2020 as the date the Complainant received her application materials. As such, her application for review was made within the 30-day statutory time limit and the Review Board must accept it as properly made under s. 50.54(3) of the Act.*

## Delayed Investigation Reviews

### Background

Upon receipt of an application from a party, the 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.

### Running of Timelines for Notices of Delay Suspended due to COVID-19 Pandemic

In May, 2020, section 7 of the *Health Professions General Regulation* was amended by Ministerial Order M146 to add a new subsection. This new s.7(3) suspends the running of notice periods during complaint investigations while the [Notice Declaring COVID-19 Public Health Emergency – March 17, 2020](#) declared under s.52 (2) of the *Public Health Act* is in force. The COVID-19 provincial state of emergency declared under the *Emergency Program Act* was lifted in June 2021, but the public health emergency is ongoing. Until the public health officer's notice is repealed, then, colleges do not have to issue delayed investigation notices.

### 2021

In 2021, the Review Board received 295 notices of delay, and only one application for review of a delayed investigation (in which the Review Board directed the college to complete its investigation within a specified time). As expected, with the suspension of timelines for notices, this was fewer than in 2020 (726 received) and 2019 (1,325 received).

## 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

***Maroofi v. Health Professions Review Board, et al, 2021 BCCA 111 (Petition filed June 12, 2020)***

Summary: The appellant sought judicial review of a decision of the Health Professions Review Board ("Decision 212"), which dismissed his application to reopen a previous Review Board decision concerning his registration with the College of Physicians and Surgeons of British Columbia and denied his application to extend time to file an application for review. The judge upheld the Review Board's decision as not patently unreasonable. The appellant appealed. The appeal was dismissed. The Review Board has exclusive jurisdiction to review registration decisions made by the College. The judge applied the correct standard of review. Review Board's decisions are not to be disturbed absent patent unreasonableness. To the contrary, Decision 212 was well reasoned and carefully considered. The appellant can point to no basis on which it could be said that Decision 212 was in error, let alone patently unreasonable. Although the appellant attempted to seek leave to appeal to the Supreme Court of Canada, to date the application has not been perfected.

### 2. Petitions Discontinued

***Cheng, Le, and Schneck v. Health Professions Review Board and College of Traditional Chinese Medicine Practitioners and Acupuncturists of British Columbia (petition filed March 8, 2017)***

Petition dismissed by Consent Order April 28, 2021.

### **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. As recently as November 2021, in response to a notice of change of address and despite no action on this file since 2014, Ms. Ouimet has communicated her intention to proceed with her judicial review.

#### ***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 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. Dr. Lohr's last attempt to set down the petition was January 2017. There has been no further action on the file.

#### ***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 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 BCSC. Decision issued November 16, 2018. Notice of appeal filed with the BCCA November 20, 2018. The appeal was argued in February 2020 and the decision was still under reserve as of December 2021. This decision was issued January 12, 2022. See the Chair's message for details.

***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 Review Board Decision No. 2012-HPA-116(b) dismissing an application for review from a college complaint disposition. The petition alleges procedural unfairness.

Status: Court filings have been completed. No date has been set for the hearing of the petition. There has been no action on this file since 2017.

***Battie v. College of Physicians and Surgeons of British Columbia and HPRB (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 this petition. The last activity on the file was in 2017. In April 2021, Mr. Battie indicated by phone that he intended to proceed with the petition but probably not this year and probably not next year.

***The Society of Canadians Studying Medicine Abroad, Kostanski, and Falconer v. The College of Physicians and Surgeons of British Columbia, Her Majesty the Queen in Right of the Province 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 Wellburn.

***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 challenged 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: The petition was argued June 22-23 and August 18, 2021 and the decision is still under reserve. Justice Gall expressed an interest in seeing the Dawson decision if it comes down in advance of his own.

***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 to be set aside.

Status: No date has been set for the hearing of the petition. There has been no action on this file since 2019.



***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).

Status: The Review Board was not served until a year after the petition was filed. At that time, counsel for the petitioner indicated he was seeking instructions about whether to amend the petition. He agreed the Review Board could hold off filing a response until that was resolved. There has been no further action on this file.

***Abraham aka Friesen v Health Professions Review Board, John O'Fee, College of Physicians and Surgeons of British Columbia, Dr. Campana, Dr. Kiri Simms, Dr. Andrea Bardell (Petition filed December 5, 2019)***

Summary: Petition challenges Review Board Decision 2019-HPA-G09. The petition was dismissed in 2020.

Status: The file is still “open” because the petitioner refuses to sign the final order.

**4. Petitions filed**

***Afridi v Health Professions Review Board (Petition filed March 9, 2021)***

Summary: Petition challenges Review Board Decisions HPRB-HPA-20-A 188; HPRB-HPA-20-A 189; HPRB-HPA-20-A 190; HPRB-HPA-20A 191; HPRB-HPA-20-A 193; HPRB-HPA-20-A 194 that made certain orders and directions including directing the Alberta College to resume its investigation and to complete it as soon as possible and expedite its report. The petition seeks to quash or set aside the Review Board's orders and seeks an order requiring the Review Board to investigate and dispose of the matter under s. 33(6) of the HPA or, in the alternative, an order setting aside the Review Board orders and an order directing the Review Board to reconsider those orders in accordance with the Court's judgment.

Status: Court filings have been completed. The Alberta College has issued its report and a disposition has been rendered. No date has been set for the hearing of the petition.

***Ooms v Health Professions Review Board, College of Psychologists of British Columbia, Dr. Gregory Feehan (Petition filed March 24, 2021)***

Summary: Petition challenges Review Board Decision 2019-HPA-G06 in which the Review Board confirmed two dispositions made by the Inquiry Committee by accepting an undertaking and consent from one registrant and concluding both dispositions without regulatory criticism.

Status: Court filings have been completed. The matter is scheduled to be heard between February 28 and March 4, 2022.

***Abraham aka Friesen v Honourable Lisa Beare, Ministry of Citizens' Services, Office of the Information & Privacy Commissioner for British Columbia, Health Professions Review Board, Collage [sic] of Physicians and Surgeons (Requisition filed April 29, 2021)***

Summary: This requisition was filed without notice seeking court orders to have the Ministry of Citizens' Services designate an adjudicator under s. 60(1) of the Freedom of Information & Protection of Privacy Act to investigate and review and enforce rights under that Act. Although the proceeding is styled as an action, the Health Professions Review Board's position is that it is properly a judicial review and has been improperly constituted.

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

***Wissink v Health Professions Review board, College of Naturopathic Physicians of British Columbia, and Dr. Jane Reside (Petition filed May 25, 2021)***

Summary: Petition challenges Review Board Decision HPRB-HPA-20-A157 in which the Review Board granted the College's application to withhold certain documents in the Record from the complainant pursuant to s. 42 of the Administrative Tribunals Act.

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

***College of Dental Surgeons of British Columbia v Health Professions Review Board, Bonnie Evans, and Dr. John Pappel (Petition filed June 21, 2021)***

Summary: Petition challenges Review Board Decision HPRB-HPA-20-A070. It asks to set aside certain directions made by the Review Board and for a declaration that those directions exceeded the jurisdiction of the Review Board. It seeks to have the matter remitted to the Inquiry Committee in accordance with the Review Board's order but without the impugned directions or, in the alternative, remitted to the Review Board.

Status: Court filings have been completed, although the registrant and the complainant have filed no responses. No date has been set for the hearing of the petition, but it may be set for the week of February 1-4, 2022.

***Ooms v Health Professions Review Board, College of Physicians and Surgeons of British Columbia, Dr. Laura Chapman (Petition filed July 16, 2021)***

Summary: Petition challenges Review Board Decision 2019-HPA-198 in which the Review Board found a decision of the Inquiry Committee to be reasonable and confirmed its disposition.

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

***Clancy v. College of Physicians and Surgeons of British Columbia, Health Professions Review Board, and Dr. Kelly Allan Gomez (Petition filed September 13, 2021)***

Summary: Petition challenges a resolution made by the College that its investigation be placed in abeyance. It seeks declarations that the College proceed with its investigation and make a disposition.

Status: The petition initially named the wrong College and the College sought and obtained a consent order to change the style of cause. As a result, court filings are delayed and not yet complete. No date has been set for the hearing of this matter.

***Ooms v Health Professions Review Board, College of Psychologists, Drs. Worth and McGuire  
(Petition filed November 25, 2021)***

Summary: Petition challenges Review Board Decision HPRB-HPA-20-G016 only to the extent that it determined that the Registrar correctly and reasonably dismissed one issue as frivolous and vexatious.

Status: Court filings are not yet complete. No date has been set for the hearing of this matter.

***Chandra v. Health Professions Review Board (Petition filed December 17, 2021)***

Summary: Petition challenges Review Board decision HPRB-HPA-21-G004 believing that the decision was wrongfully made without looking at the evidence of negligence and that the two doctors involved did not receive informed consent for the treatment provided.

Status: Petition filed.

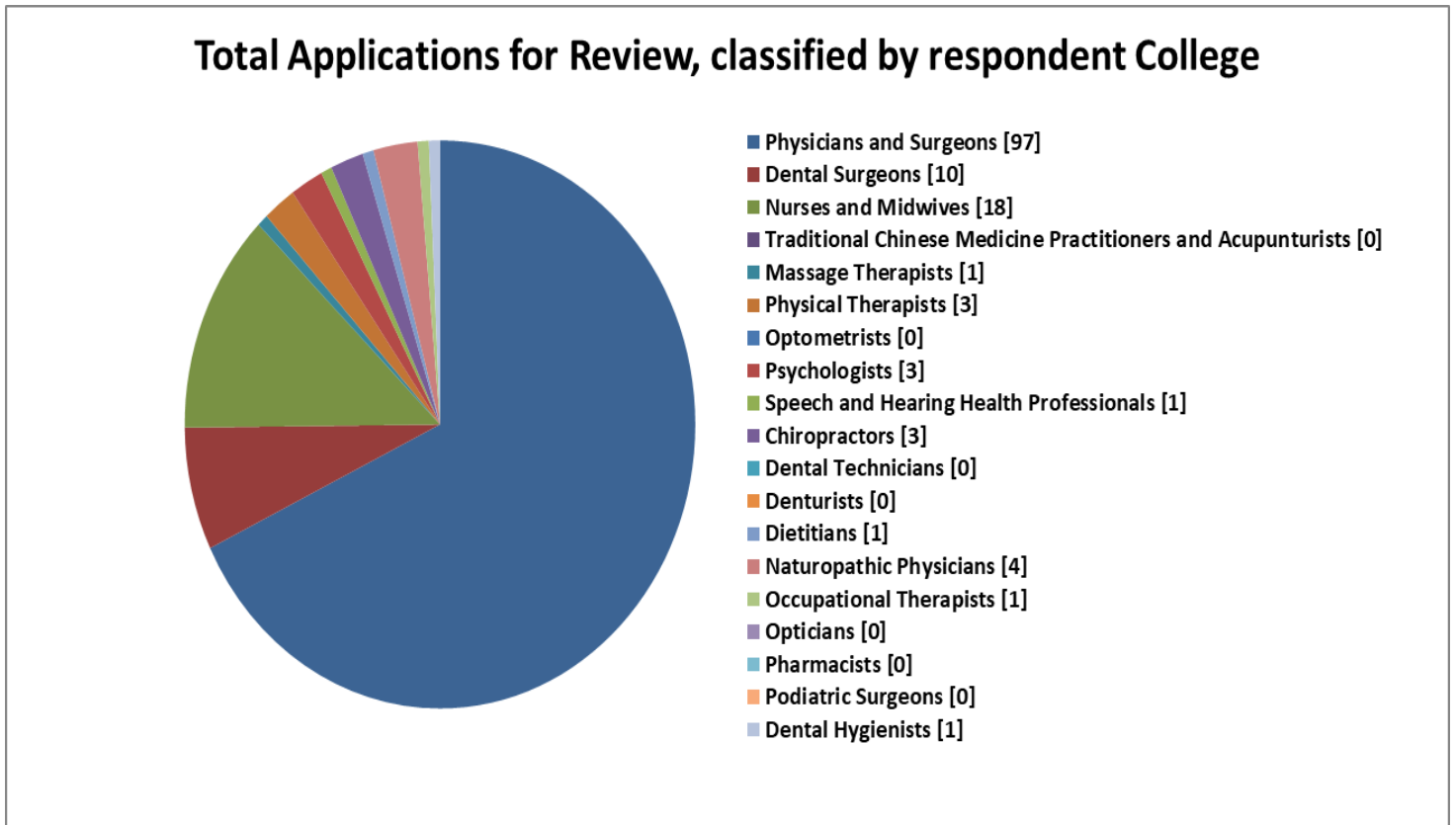
## Review Activity Statistics

For the reporting period from January 1, 2021 – December 31, 2021

**Figure 1: Number of Applications, by type and month**

Month, Year	Complaints (IC)	Delayed Investigation (DI)	Registration (REG)	Total # of Applications	%
January, 2021	8	0	2	10	7%
February, 2021	12	0	1	13	9%
March, 2021	12	0	0	12	8%
April, 2021	11	0	2	13	9%
May, 2021	15	0	0	15	10%
June, 2021	29	1	0	30	21%
July, 2021	9	0	1	10	7%
August, 2021	8	0	1	9	6%
September, 2021	7	0	0	7	5%
October, 2021	8	0	1	9	6%
November, 2021	8	0	1	9	6%
December, 2021	5	0	1	6	4%
<b>Total</b>	<b>132</b>	<b>1</b>	<b>10</b>	<b>143</b>	
<b>% of Total Applications</b>	<b>92%</b>	<b>1%</b>	<b>7%</b>		<b>100%</b>

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



**Figure 3: Applications for Review, by college and type**

Respondent College	Complaints (IC)	Delayed Investigation (DI)	Registration (REG)	Total # of Applications	%
BC College of Nurses and Midwives	14	0	4	18	13%
College of Chiropractors of BC	3	0	0	3	2%
College of Dental Hygienists of BC	1	0	0	1	1%
College of Dental Surgeons of BC	10	0	0	10	7%
College of Dietitians of BC	1	0	0	1	1%
College of Massage Therapists of BC	1	0	0	1	1%
College of Naturopathic Physicians of BC	3	1	0	4	3%
College of Occupational Therapists of BC	1	0	0	1	1%
College of Physical Therapists of BC	2	0	1	3	2%
College of Physicians and Surgeons of BC	93	0	4	97	68%
College of Psychologists of BC	3	0	0	3	2%
College of Speech and Hearing Health Professionals of BC	0	0	1	1	1%
<b>Total</b>	<b>132</b>	<b>1</b>	<b>10</b>	<b>143</b>	
<b>% of Total Applications</b>	<b>92%</b>	<b>1%</b>	<b>7%</b>		<b>100%</b>

## 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, 2021 – March 31, 2022

Salary & Benefits	\$ 545,412
Operating Costs	\$ 694,075
Other Expenses	\$ 0
Total Operating Expenses	\$1,239,487

### **Shared Services Administrative Support Model**

Administrative support for the 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.