



HEALTH PROFESSIONS REVIEW BOARD 2022 ANNUAL REPORT

***COVERING THE REPORTING PERIOD FROM
JANUARY 1 – DECEMBER 31, 2022***



Health Professions Review Board

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July 31, 2023

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

Dear Minister Sharma:

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, 2022, to December 31, 2022.

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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Message from the Chair

The Year in Review

Applications for review overall

The Review Board's mandate is to respond to applications for review made under part IV of the *Health Professions Act*. For the past few years, overall applications for review have dropped from a pre-COVID-19 pandemic high of 237 in 2019, to 195 in 2020, and further to 142 in 2021. In 2022, this number rebounded, with the Review Board receiving a total of 174 applications for review. This number represents a year over year increase in applications for complaint disposition review (153 in 2019, up to 156 in 2022). This increase was offset by a large drop in applications for registration decision review (46 in 2019, down to 12 in 2022) and a similarly large drop in applications for review of delayed investigation (38 in 2019, down to six in 2022).

It is not clear why applications for review of registration decisions have dropped in the last three years, but like many other things, it is likely attributable to the COVID-19 pandemic. If so, then numbers can be expected to rebound as mobility and other issues associated with the pandemic subside.

It is clear, however, why reviews of delayed investigations have dropped significantly since 2019: On May 6, 2020, the Minister of Health suspended the requirement for colleges to provide complainants and registrants with notices of delay, for the duration of the COVID-19 public health emergency. Because this notice triggers the right to request review, the number of delayed investigation reviews dropped to only six in 2022. These six occurred because some colleges still opted to send notices. As of the date of this report, the public health emergency has not yet been lifted. When it is lifted, timelines for colleges to provide notices of delayed investigation will resume, and in turn, so will requests for review of delayed investigations.

Applications for Review of Complaint Dispositions (Three Largest Colleges)

As in previous years, the Review Board received the largest number of applications for review in relation to complaint dispositions. Of these the majority were related to dispositions made by inquiry committees of the three largest colleges – the College of Physicians and Surgeons of BC, the BC College of Oral Health Professionals, and the BC College of Nurses and Midwives.

The number of complaint disposition review applications related to the BC College of Oral Health Professionals remained stable in 2022. However, the number for the College of Physicians and Surgeons of BC and the BC College of Nurses and Midwives is trending upward to pre-pandemic levels.

Applications for review of complaint dispositions - three largest colleges

Year	College of Physicians and Surgeons	BC College of Oral Health Professionals*	BC College of Nurses and Midwives
2018	112	13	22
2019	101	14	11
2020	100	11	8
2021	93	14	10
2022	103	12	23

*In 2022, the College of Dental Surgeons amalgamated with the Colleges of Dental Hygienists, Denturists and Dental Technicians. There are few to no requests for review relating to these three smaller colleges.

The Review Board has noted an increase in the number of applications relating to complaints about termination of the patient-physician relationship. This is likely attributable to the COVID-19 pandemic which stressed both the health care system and the public. The pandemic inhibited accessibility to health care generally, and triggered an abrupt shift to virtual medical appointments arguably before the system was ready to accommodate them. This strained the health care system, and patient-provider relationships in particular.

Decisions Overall

Despite receiving 18 percent more applications for review than the previous year, the Review Board published 25 percent fewer decisions (98 decisions compared to 132 in 2021). This reduction reflects the residual lag related to the decrease in applications over the COVID pandemic.

Complaint Disposition Review Decisions

The Review Board issued 75 complaint disposition review decisions in 2022, 35 percent less than in 2021 (116 decisions). Of those, only 12 percent were remitted back to the college for reconsideration, which is consistent with previous years.

Complaint Disposition Reviews – Outcomes by College

College	Confirmed	Remitted	Total
BC College of Nurses and Midwives	10	0	10
College of Chiropractors of BC	1	0	1
BC College of Oral Health Professionals	10	1	11
College of Dietitians of BC	1	0	1
College of Naturopathic Physicians of BC	1	1	2
College of Occupational Therapists of BC	1	0	1
College of Physical Therapists of BC	1	0	1
College of Physicians and Surgeons of BC	34	5	39
College of Psychologists	4	0	4
College of Massage Therapists of BC	3	0	3
College of Pharmacists of BC	2	0	2

Registration Review Decisions

There were seven registration review decisions issued in 2022. Of these, the distribution among the colleges was College of Nurses and Midwives (two confirmed, one registration granted), College of Physicians (three confirmed), and College of Massage Therapists (one confirmed). Notably, the review board exercised its authority to grant registration (with conditions) in one case, based on the *Labour Mobility Act*.

Extensions of Time and other Applications for Review

In 2022, the Review Board adjudicated nine applications for extensions of time to file for review, of which only two were granted and seven denied. This is comparable to previous years: In 2021, 11 applications were adjudicated, with five granted and six denied; and in 2020, 12 applications were adjudicated, with three granted and nine denied.

The Review Board adjudicated five applications under s.42 of the Administrative Tribunals Act (requests for the Review Board to receive information in confidence to the exclusion of one or more of the parties). One was granted in full, and four were granted in part.

Time to Complete Reviews

In 2021, it took an average of 123 days from the time an application for review was received, to the time a decision was issued. In 2022, reviews were completed in less time: 105 days. This is well within the timelines set out in Practice Directive 1, which specify a usual time of 220 days for completing a review.

New Health Professions and Occupations Act

The Ministry of Health consulted the Review Board (along with health regulatory colleges and a number of other organizations) on major new health regulatory legislation, which represents a shift toward a more comprehensive health professions and occupations regulation scheme. The *New Health Professions and Occupations Act* received royal assent in November of 2022 but may not come into force for some time. The Review Board will continue with its core review work under the new legislation but, will be required to incorporate into its reviews some important new considerations.

COVID-19 Pandemic

In 2022, the Review Board's office building was re-opened to the public. Visitors to the board office continue to be uncommon. Review Board staff continued to have the option to work remotely and, as in 2021, tribunal operations were conducted almost exclusively

electronically. Other than this, the review board did not make any process adjustments related to the pandemic.

Improving Review Board Operations

New Review Board Website

In 2022, the Review Board launched a new, user-friendly website. The site was designed and programmed in-house, using WordPress software. Credit goes to Administrative Assistant Sophia Kent, and Business Analyst Jonathan Argue for their hard work on this major project.

The website was designed with Access to Justice principles in mind: accessibility, utility, ease of use, and scalability for mobile devices and tablets. The home page is easy to navigate and business-focused: it allows visitors to directly initiate requests for any of the three types of review that the review board conducts. A graphic representation of the review process is assigned its own tab. Frequently asked questions are also assigned their own tab, and are organized by subject.

With website content now user-focused and written in plainer language, review board staff have noted a significant reduction in applicant and complainant confusion about the review board process. The office looks forward to implementing further improvements to the website over time.

Communication with Parties and the Public

In 2022, the Review Board Office focused on updating its practice directives to be more helpful to colleges, registrants, complainants and applicants. All the review board's public facing material was re-written with a plain language focus. Model statements of points were developed for complainants and applicants, and the review board's *Rules of Practice and Procedure* were amended to clarify the two-stage review process.

Educating Board Members and Staff about Indigenous-specific Racism in BC Health Care

Toward the end of the year, the Review Board was fortunate to be able to offer staff and members the opportunity to take the highly regarded San'yas Indigenous Cultural Safety Course. This course is described as is an Indigenous-led, policy-driven, and systems-level educational intervention to foster health equity and mitigate the effects of systemic racism experienced by Indigenous people in health and other sectors. It aims to uproot anti-Indigenous racism and promote cultural safety for Indigenous people. It uses online facilitated learning, based on the principle of decolonizing, anti-racist, transformative and adult education theories. The response from members and staff was positive, and inspired staff to reach out to the First Nations Health Authority for guidance on future policy.

Review Board Members

The Review Board ended 2021 with 17 members, which number remained stable through 2022. Toward the end of the year, the Review Board posted a Notice of Position, seeking five new appointees. In keeping with government's goal of increasing diversity in board membership, the review board worked with the Ministry of Attorney General Tribunals and Independent Offices Branch to find ways to recruit a more diverse membership. As a result, in addition to posting on the Crown Agencies and Board Resourcing Office's website, the review board was able to distribute its Notice of Position directly to over twenty organizations in the administrative law community with a diversity and indigenous focus.

Thank you

In closing, I would like to recognize the Review Board members, our esteemed counsel Alison Latimer K.C., the staff of the Environmental Appeal Board which provides us with financial and administrative support, and the dedicated team at the Victoria office for their work on behalf of the Review Board.



David Hobbs, Chair
Health Professions Review Board

Rule Changes

On December 12, 2022, the Review Board passed amendments to clarify the two-stage written review process, and to emphasize the importance of an email address for delivery.

Rule	Previous	New
Rule 3 (1) definitions	“address for delivery” means a current postal address for purposes of delivery of any notices in respect of the review, and include an email address and/or a fax number;	“address for delivery” means a current postal address for purposes of delivery of any notices in respect of the review, and may must include an email address unless the review board permits otherwise and/or a fax number;
Rule 3 (1) Definitions	“stage 1 Hearing” means a hearing where the review board considers whether the application for review may be fairly, properly and finally adjudicated based only on the application for review, the college record, and submissions or evidence, if any, from the applicant or complainant. No order to refer the matter back to the college under s.50.6(8)(b) or (c) or 50.54(9)(b) or (c) of the Act will be made at a stage 1 Hearing. Reasons are given only if the review board dismisses the complaint or registration review. No reasons are given if the review board determines that the matter requires adjudication in a stage 2 Hearing; however, the review board panel may request in a written referral to a stage 2 hearing that the parties address specified issues. (See rule 44)	“stage 1 Hearing” means a hearing where the review board considers whether the application for review may be fairly, properly and finally adjudicated based only on the application for review, the college record, and submissions or evidence, if any, from the applicant or complainant. No order to refer the matter back to the college under s.50.6(8)(b) or (c) or 50.54(9)(b) or (c) of the Act will be made at a stage 1 Hearing. Reasons are given only if the review board dismisses the complaint or registration review. No reasons are given if the review board determines that the matter requires adjudication in a stage 2 Hearing; however, the review board panel may request in a written referral to a stage 2 hearing that the parties address specified issues. (See rule 44)

Rule 44 Hearing process	Rule 44	<p>(1) Subject to the discretion of the Chair or the Chair's delegate to order otherwise, the review board will conduct a stage 1 hearing before determining whether to conduct a stage 2 hearing.</p> <p>(2) The review board may confirm an inquiry committee disposition under s. 50.6(8)(a) or a registration decision under s. 50.54(9)(a) at a stage 1 hearing.</p> <p>(3) No order will be made under s.50.6(8)(b) or (c) [directing the inquiry committee to make a disposition that could have been made by the inquiry committee in the matter, or sending the matter back to the inquiry committee for reconsideration with directions] or s. 50.54(9)(b) or (c) [directing the registration committee to make a decision that could have been made by the registration committee in the matter, or sending the matter back to the registration committee for reconsideration with directions] of the Act at a stage 1 hearing.</p> <p>(4) If the review board determines to conduct a stage 2 hearing:</p> <ul style="list-style-type: none"> (a) the review board will notify the parties by letter; (b) the review board may request that the parties address specified issues or questions; and (c) no decision will be made until the stage 2 hearing is concluded. <p>(25) Where a stage 2 hearing is conducted, and the hearing proceeds in writing, subject to the panel's direction</p>
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		<p>otherwise, the college and then, where applicable, the registrant(s), will be invited to provide submissions in response to those provided by the applicant or complainant at stage 1, and in relation to issues specified by the panel at the conclusion of the stage 1 hearing. The applicant or complainant will then have the final opportunity of reply.</p> <p>(3 6) At an oral stage 2 hearing, the panel may alter the ordinary order of presentation, and allow the college to present first if the panel concludes that this is necessary owing to unique circumstances relating to the applicant or complainant, the complexity of the record or agreement of the parties. In such a case, the panel will ensure that the complainant or applicant is given a fair opportunity to respond to the evidence and submissions of the college and registrant.</p> <p>(4 7) At any time before or during a hearing, the review board, on the request of a party or on its own initiative, may:</p> <ul style="list-style-type: none"> a) require the production of documents or other material; b) require the attendance of witnesses; c) make a determination as to the admissibility of evidence; d) adjourn the hearing; e) proceed in the absence of a party who has had notice of the hearing; f) ask questions; g) require written submissions; or h) make any direction the review board considers necessary for the conduct of the review, or a just and timely resolution of the matter.
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About the Review Board

The Health Professions 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. At time of writing, there are 26 regulated health professions, of which 25 are governed by 15 regulatory colleges under the Act. The Review Board is responsible for conducting reviews of certain decisions of the Inquiry and Registration Committees of these 15 colleges. As such, the Review Board is an integral component of the health professions regulatory system in British Columbia. It is a 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 health-related 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
- Oral Health Professionals (Dental Hygienists, Dental Surgeons, Dental Technicians, and 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.bchrpb.ca>

A New Health Professions and Occupations Act

Bill 36, now known as the *Health Professions and Occupations Act* (HPOA), received royal assent on November 24, 2022, although as at the time of writing, it is not yet in force.¹

Adrian Dix, Minister of Health for the Government of British Columbia notes that the changes in the HPOA:

...will streamline the process to regulate new health professions, provide stronger oversight, provide more consistent discipline across the professions, act in the public interest and protect patient care in the province while also laying the groundwork to further reduce the number of regulatory colleges.²

According to Minister Dix, the HPOA is a response to three recent legislative initiatives. First, the HPOA partly responds to concerns raised in the “Inquiry into the performance of the College of Dental Surgeons of British Columbia and the Health Professions Act”³ undertaken by Harry Cayton at the Minister’s request. Mr. Cayton’s report offered suggestions for reforming the statutory framework for health professional regulation in BC.⁴ Second, the legislation is intended to reflect and implement some of the recommendations of the 2020 report titled “In Plain Sight Report: Addressing Indigenous-specific Racism and Discrimination in B.C. Health Care” and the “Declaration on the Rights of Indigenous Peoples Action Plan.”⁵ Third, the amendments attend to the recommendations put forth by the multi-party Steering Committee on Modernization of Health Professional Regulation which included, among other things, a commitment to cultural safety and humility, competence based board appointments, a reduction in the number of regulatory colleges, the creation of an oversight body, and the creation of a new independent discipline process.⁶

¹ <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/42nd-parliament/3rd-session/votes-and-proceedings/v221124>

² <https://news.gov.bc.ca/releases/2022HLTH0202-001566>

³ <https://www2.gov.bc.ca/assets/gov/health/practitioner-pro/professional-regulation/cayton-report-college-of-dental-surgeons-2018.pdf>

⁴ <https://news.gov.bc.ca/releases/2022HLTH0202-001566>

⁵ <https://news.gov.bc.ca/releases/2022HLTH0202-001566>

⁶ <https://news.gov.bc.ca/releases/2022HLTH0202-001566>

The new HPOA represents a comprehensive shift in the way in which regulatory colleges manage their internal processes and will in turn require substantive changes to the way in which the Review Board fulfills its mandate. The HPOA exceeds the Act in terms of the size and scope of the legislation. The Act was comprised of five parts and approximately 56 sections. Comparatively, the HPOA spans 12 parts and 645 sections. This expansion is indicative that the HPOA covers some new territory and adopts a more comprehensive regulation regime, governing an increased scope of health service providers working in “health service occupations” designated by the Minister of Health. The Review Board’s authority does not extend to decisions in relation to these occupations.

General Changes

According to the Ministry of Health, the legislation enables the following:

1. A path to reduce the number of regulatory colleges through amalgamation

The HPOA will amalgamate the regulatory colleges, ultimately reducing the number of colleges to six. By doing so, the Ministry of Health continues to implement the recommendations set out by the above noted Multi-Party Steering Committee. The Government asserts that the amalgamation will enhance the colleges’ abilities to regulate and make it less confusing for patients as to where to submit their complaints.

2. Creation of an oversight body across colleges

The HPOA establishes the Office of the Superintendent of Health Profession and Occupation Oversight. The superintendent/oversight body is responsible for “preparing performance standards for regulators and guidelines with respect to regulatory best practices.” In addition to setting these standards, the oversight body will be responsible for governance of all regulatory colleges. This includes conducting routine audits of the regulatory colleges, processing and investigating complaints about regulatory colleges’ actions, and making recommendations to the minister on health occupations that would be suitable candidates for further regulation. Colleges will no longer have discipline committees. Instead, a “discipline tribunal” will be embedded in the Office of the Superintendent.

3. Improved transparency around complaints

The HPOA provides for new requirements that particular outcomes be posted publicly. For example, if an applicant's licence is varied or rescinded under prescribed circumstances, that information must be posted on a college registry. The HPOA also requires it to be posted if a disciplinary order is made (disciplinary orders include any order that disposes of administrative matters, regulatory complaints, or citations).

4. A commitment to cultural safety and humility

The HPOA sets out a duty for persons who exercise powers or perform duties under the Act (including the review board) to support and promote awareness of reconciliation with Indigenous peoples, and United Nations Declaration on the Rights of Indigenous Peoples, and the need to address racism and anti-racism issues that are specific to Indigenous peoples.

The HPOA defines discrimination as conduct contrary to the Human Rights Code, and further delineates discriminatory acts as instances of misconduct. Conduct is not discrimination if the conduct is undertaken for a prescribed purpose, in prescribed circumstances or in accordance with a prescribed process.

Section 70(2) of the HPOA requires a college's board to make bylaws respecting ethics standards, including anti-discrimination measures. The objectives of such measures in conducting regulatory processes should be aimed at fostering physically, culturally, socially, emotionally, and spiritually safe practices; and adopting anti-racist approaches and tools to support them.

5. Information sharing

Under the HPOA, colleges will be able to share information more easily between each other and with other agencies to enhance public safety and protection

6. Improved governance

The HPOA represents a shift away from an election system for registrant board members and a corresponding move to a competency-based appointment system.²³ Similarly, the HPOA now prescribes disclosure requirements for

circumstances where a board member may have a conflict of interest and how to proceed in the face of that.²⁴ The HPOA also expressly prohibits board members from influencing or interfering with a college's registrar, an investigation committee, or an investigator when it comes to the handling of a complaint, among other matters.

Impact on Review Board

1. Removal of Concept of "Serious Matter"

The Registrar is empowered under the HPOA to make a summary dismissal order in certain circumstances. This is a slightly different power than under the Act.

Under the HPOA, the circumstances that may lead to a summary dismissal include where:

- (a) the respondent does not practise, and has never practised, a designated profession or occupation governed by the regulator;
- (b) the complainant has failed to provide information or records as required under an order made under the Act; or,
- (c) in the opinion of the registrar, investigation committee or health occupation director,
 - (i) the complaint is trivial, frivolous, vexatious, the complaint is an abuse of process or made in bad faith, or
 - (ii) the allegations made in the complaint, if admitted or proven, do not indicate that the respondent is not fit to practise or has committed an act of misconduct or actionable conduct.

Thus, the HPOA has removed reference to the concept of a "serious matter" which has been addressed in a number of judicial reviews of review board decisions. A "serious matter" is defined in s.26 of the Act as "a matter which, if admitted or proven... would ordinarily result in an order being made under section 39(2) (b) to (e)." The serious matter sanction orders referred to in s.39(2)(b)–(e) are those that impose limits or conditions on the registrant's practice, suspend the registrant and impose limits on management of their practice, or cancel their registration. The serious matter designation has further consequences under the HPA because consent agreements would be published by the registrar only if they related to a "serious matter." Under the HPOA, the registrar is required to post information regardless of the seriousness of the matter. This requirement is consistent with the Ministry's goal to increase transparency around complaints.

2. Requirement to consider compliance with the Act, Regulations or Bylaws

The recommendation from the Steering Committee on the Modernization of Health Professional Regulation was that the Review Board's role should not be changed. Under the new HPOA, then, the Review Board retains the power to review registration (now referred to as licensing) decisions, the timeliness of inquiry committee (now referred to as investigation committee) investigations, and inquiry committee (now referred to as investigation committee) dispositions. However, there are some new features to some of these reviews.

In addition to the current requirement to consider the adequacy of the investigation conducted respecting a complaint, and the reasonableness of the disposition, the Review Board must consider, at the least, whether an action was taken or a decision was made that was contrary to the HPOA or the regulations or bylaws, or was not in accordance with the principles of procedural fairness.

This new responsibility is important because the HPOA requires that colleges make bylaws covering a wider scope of subject matters, including procedures for making regulatory complaints, and provisions for varying procedures to accommodate the individual circumstances of complainants. As such, there may be a duty for the Review Board, when it reviews a complaint disposition, to evaluate whether the regulatory college complied with its own policy framework and perhaps even the reasonableness of its procedural accommodations. Whether or not such consideration might be grounds for a finding that an investigation was inadequate or disposition unreasonable remains to be seen.

The HPOA goes further – s.70 also requires a college's board to make bylaws respecting ethical standards, including, but not limited to, bylaws addressing anti-discrimination measures, sexual misconduct, and the spread of misinformation to patients or the public about health-related matters. The language of ss.318 and 319 suggests that the review board will need to be evaluating a college's compliance with these bylaws with respect to a complaint during its adequacy and reasonableness review. What this will look like in practice is uncertain.

3. Factors for consideration in a Reasonableness Analysis

Sections 265 and 266 of the HPOA now list factors that “must” and “may” be considered by the registrar, investigation committee, and discipline panel when selecting the appropriate disciplinary course of action for a respondent. These factors for consideration are relevant to the mandate of the review board because they will likely inform the reasonableness analysis of a complaint disposition.

Of particular interest in factors that “must” be considered, are the nature, scope and gravity of the respondent’s conduct, including whether the respondent caused harm or other adverse effects to any person, deliberately or recklessly caused harm, or was wilfully blind to actual or potential harm, or gained an advantage from the conduct, or repeated the conduct.

The Act permits a decision maker to consider past action taken against a respondent but does not expressly require that such a record comprise part of the investigation. The HPOA, on the other hand, says a decision maker must also consider a respondent’s disciplinary record, including past allegations, patterns of conduct, and discipline for similar conduct, and the need to ensure the public’s confidence in the integrity of the profession. Further, a decision maker must look at the bigger picture, and consider both the types of disciplinary action taken in similar cases; and whether these types of actions are adequate for specific and general deterrence.

Factors that “may” be considered include:

- (a) the possibility of rehabilitating the respondent or remediating any harm caused, including considering whether the respondent
 - (i) has acknowledged that the respondent lacks competence or has committed an act of misconduct or actionable conduct, or
 - (ii) has voluntarily taken rehabilitative or remedial steps;
- (b) whether there are other aggravating or mitigating circumstances.

4. Guiding Principles

Section 14 of the HPOA, which applies to the Review Board, sets out that:

(2) In exercising powers and performing duties under this Act, a person must act in accordance with the following principles:

...

- (d) to act in a fair manner, including by demonstrating respect for the principles of procedural fairness;

(e) to act in a manner that is respectful of the privacy of persons who participate in regulatory processes

(3) Unless it would otherwise conflict with a principle under subsection (2), in exercising powers and performing duties under this Act, a person must act in accordance with the following principles:

(a) to promote a holistic health care system that encourages collaboration between regulators and between persons who provide different types of health services;

(b) to identify and remove barriers to the practice of a designated profession or occupation, in British Columbia, by extra-jurisdictional practitioners;

(c) to act in a manner that is transparent, including by providing opportunities for meaningful public engagement.

(4) If, in applying the principles under this section, a conflict arises or a balance must be struck between the interests of the public or an individual and the interests of a regulated health practitioner, the conflict must be resolved or the balance must be weighted, to the extent reasonable in the circumstances, in favour of the public or the individual.

The imposition of these “guiding principles” suggests that the review board will be required to consider – as part of a reasonableness review – whether a decision-maker’s conduct and ultimate decision explains why it accords with the principles and anti-discrimination framework overall.

5. Remedial Powers

The HPOA limits the Review Board’s remedial powers. The Review Board will still be able to confirm a complaint disposition or send it back to the investigation committee with or without directions. However, the Review Board will no longer have the authority to make a disposition that could have been made by the investigation committee.

The Review Board maintains jurisdiction to conduct licencing decision reviews under the HPOA. However, the Review Board will no longer have the authority to direct a college to licence an applicant. Instead, the remedial authority of the Review Board is limited to confirming the licencing decision or returning the matter to the licencing committee with directions.

6. Timeliness Reviews

The Review Board maintains jurisdiction to supervise the timeliness of certain college decision-making processes. In contrast to the Act which provides a convoluted formula for calculating timeliness, the HPOA provides a more general standard for a timeliness review. The standard for the timeliness of a complaint process will now whether the steps in the process have been completed within a period that is “reasonably practicable in all of the circumstances.” With the introduction of the “reasonably practicable” standard, the HPOA imports a case-by-case analysis.

Despite the discretionary standard, the HPOA sets out some contours of a timeliness review. The Review Board must not determine that a process was conducted in an untimely manner because of a delay that occurred due to specific directions from an investigation committee under s.129(2) – e.g. a direction to delay the investigation until a capacity assessment is complete – or in under a public health emergency. If the review board is satisfied that the processes have been conducted in a timely manner, it is empowered to take no further action upon completing a review. Otherwise, the review board can direct the registrar to provide the review applicant with information related to the progress of the complaint or refer the matter back to the investigation committee to complete the processes within a directed period.

Time limits have been suspended under the Act since 2020 in light of the declaration of the COVID public health emergency. This ability to suspend the running of time is built into the HPOA and there is an ability to prescribe other reasons to suspend time.

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 s.50.51(3) of the Act which states that Review Board members may not be registrants in any of the designated colleges or government employees.

The Review Board consists of a part-time Chair and 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, 2022

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 (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.bchprb.ca

Mailing Address:

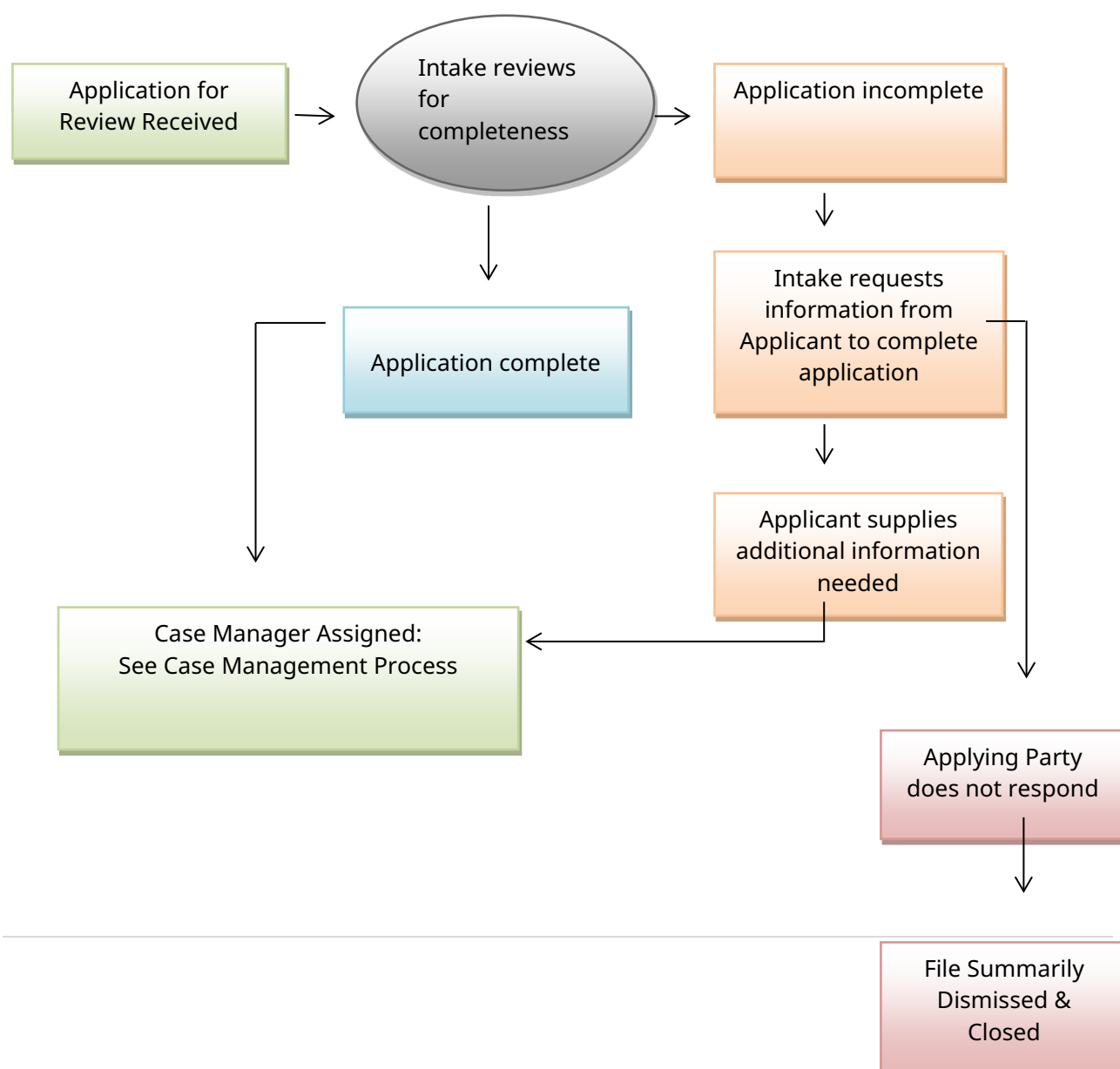
Health Professions Review Board
PO Box 9429 STN PROV GOVT
Victoria, BC V8W 9V1

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.

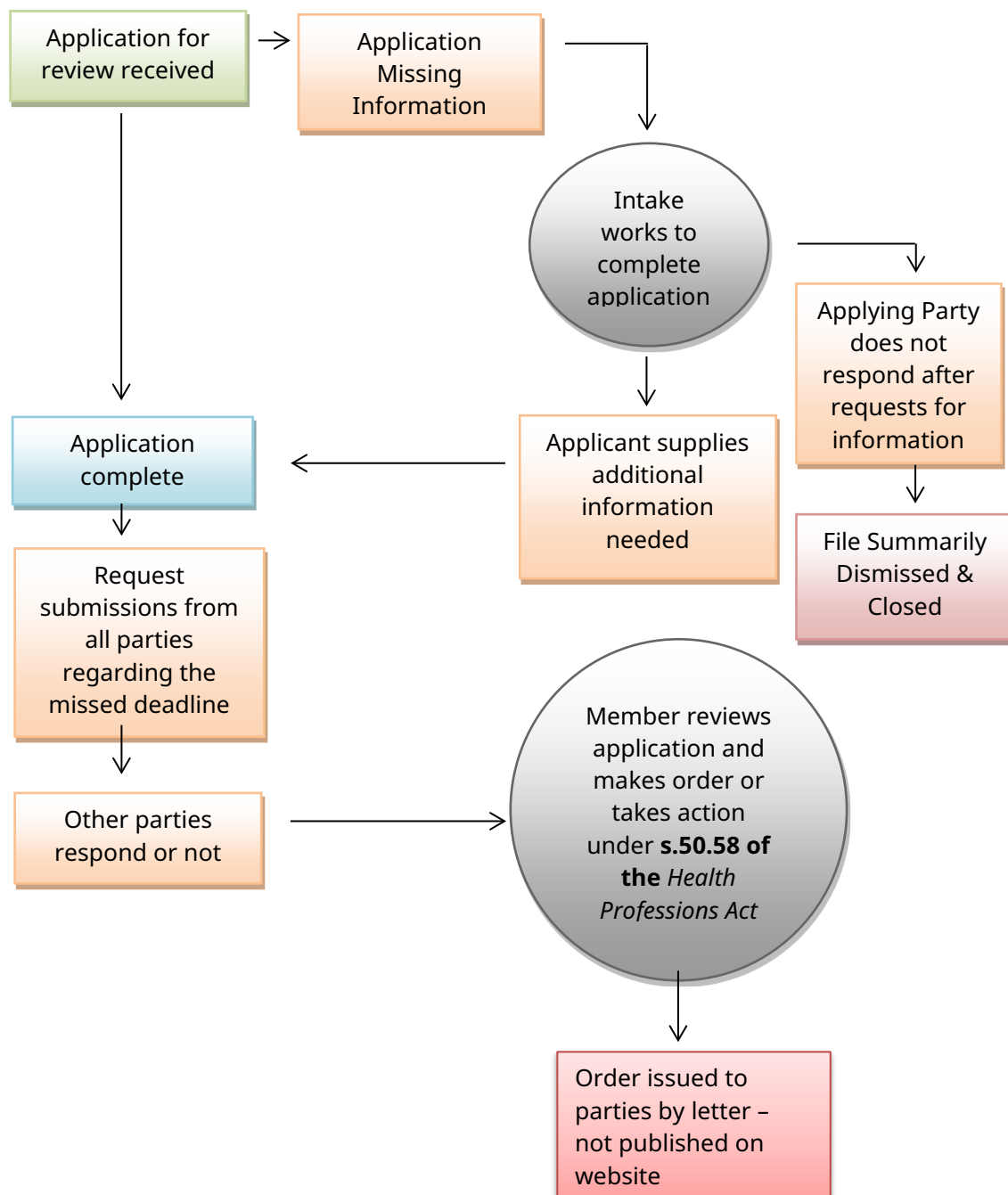
Few applicants who submit applications for review to the Review Board have had any exposure to administrative law or process. For that reason, intake staff assist applicants to go through the steps necessary to “perfect” an application so that it meets the requirements of the *Health Professions Act*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

Intake Process



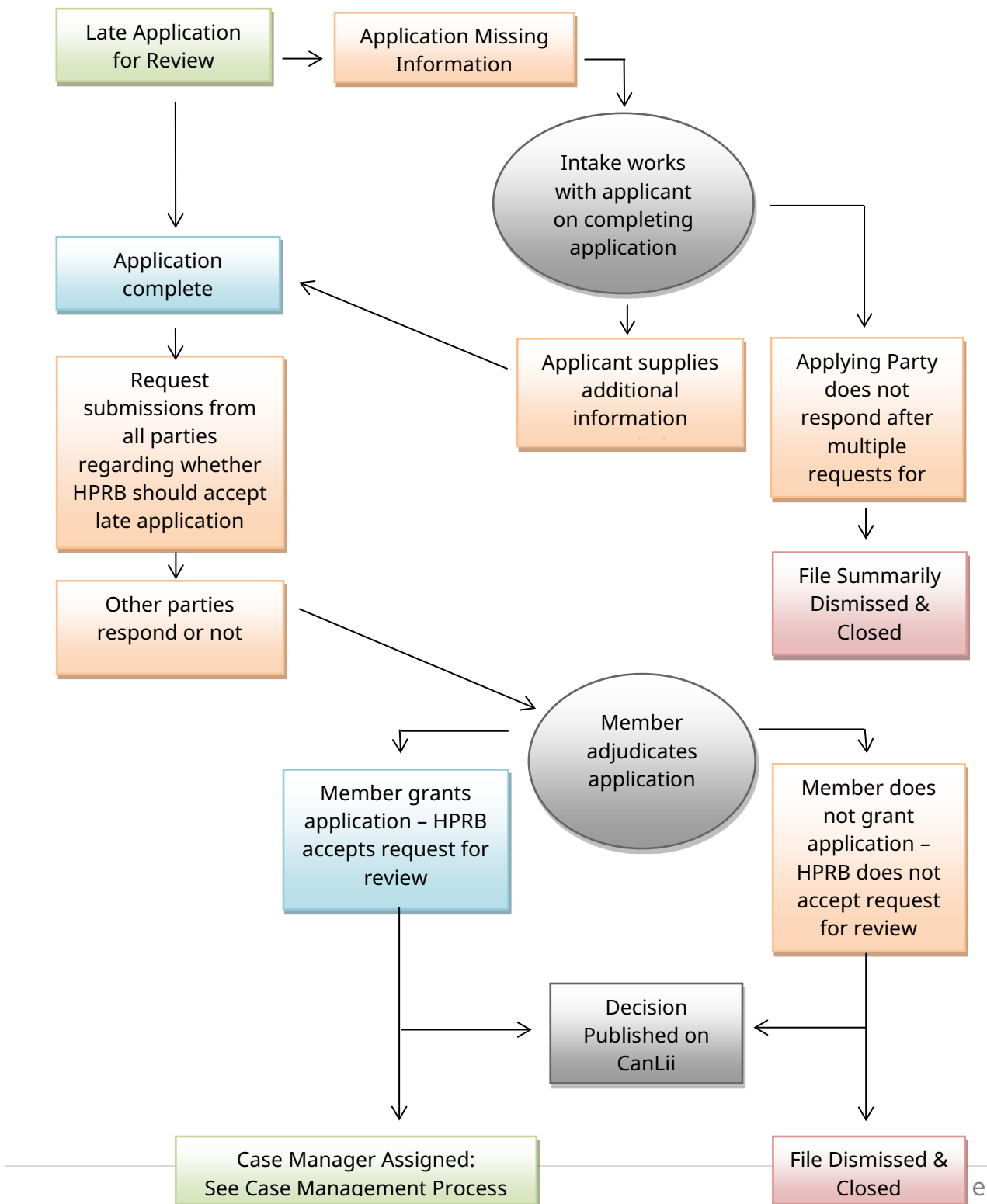
Process for Review of Investigations Not Completed within Statutory Deadlines

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.



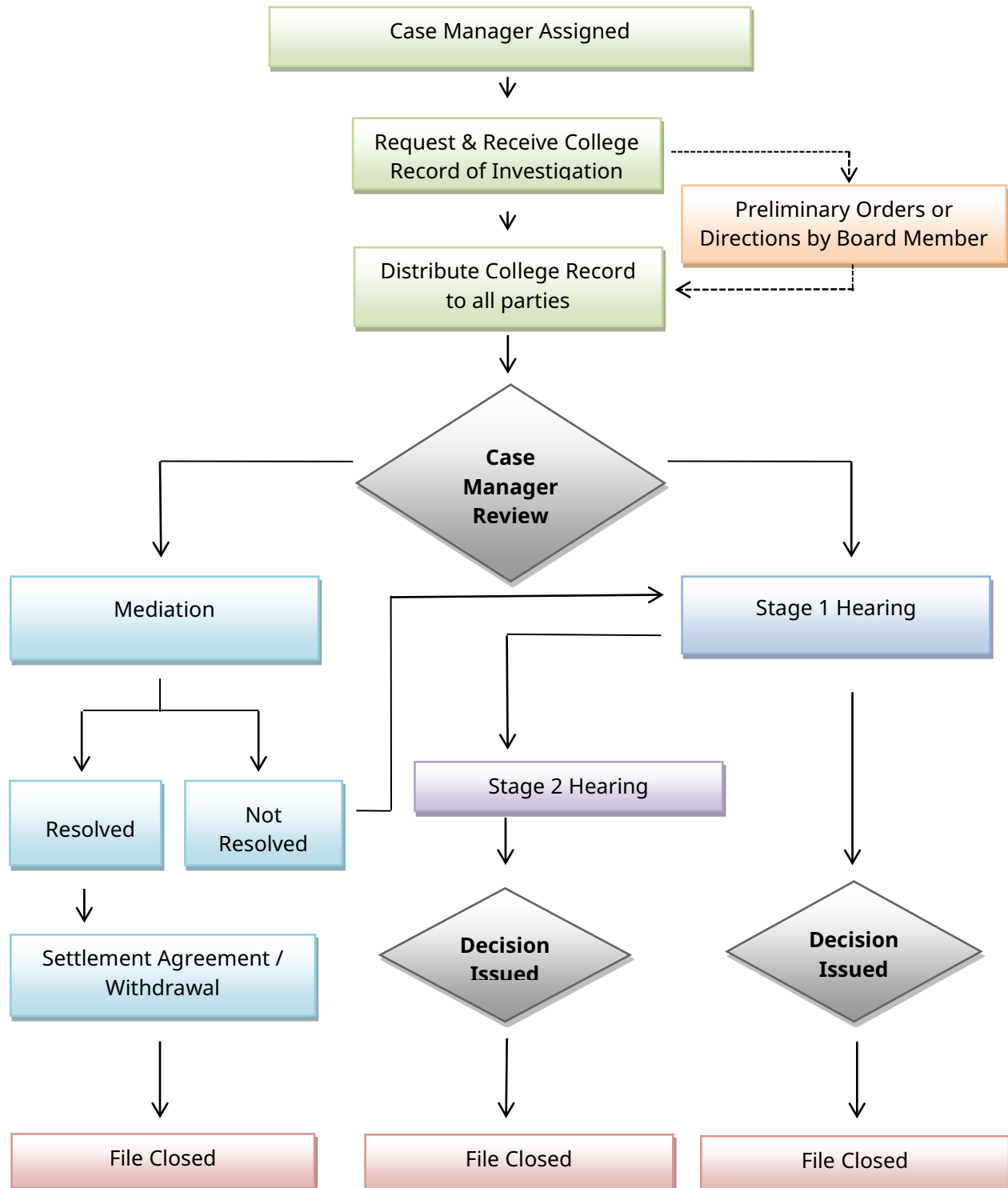
Process for Applications Submitted Outside Legislated Deadline

The Review Board has authority under s.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)

In 2022, the Review Board was unable to realize its goal of increasing the number of successful mediations.

Registration Decision Mediations

Historically, the Review Board achieves a number of successful facilitated settlements in registration review matters each year. However, the smaller number of applications for review of registration decisions in 2022 provided little to no opportunity for mediation; and the tension in the health sector from the COVID pandemic was a further disincentive to engage in mediation.

Efforts to increase mediations.

In 2021, Review Board case managers renewed their focus on mediations as a primary way to resolve applications for review of complaint dispositions. They encouraged parties to consider mediation before the review was set down for hearing and directed parties to state specifically whether or not they wished to take advantage of the mediation services offered by the review board. Matters with any possibility of mediated settlement were referred to a member, so they could help move parties toward that option.

With no successful mediations completed in 2022, it appeared that hope for the success of these measures was perhaps unrealistic. Further, the Review Board's rule 37, which provides for the possibility for mandatory mediations, was tested in a couple of cases when complainants asked the review board to compel the college and registrant to participate in a mediation. It was determined that mandatory mediation was not appropriate in either case. Because mediation is grounded in collaborative communication, compelling parties to participate in mediation can only be considered for exceptional situations where the parties' reluctance to mediate has a high possibility of being successfully overcome in mediation.

Why are mediations decreasing?

The reason for the gradual decrease in successful complaint disposition review mediations likely lies in process improvements at the college and Review Board levels, including:

- More openness to resolution at the college level - cases amenable to mediation have already been resolved, so the applications for review that reach the Review Board are more intractable
- Two-stage Review Board hearing process - allows colleges time to consider the record of investigation and offer reconsideration of a disposition where warranted
- Ease of production of the record of investigation due to improvements in document management – possibility of avoiding production of the record not a driver for mediation, as it used to be years ago
- Review Board materials being re-written to de-mystify the written hearing process, making it more straightforward and accessible; at the same time, mediation materials clarify that mediation does not save time or money, but requires considerable effort, and openness to shifting positions
- Mediation is necessarily conducted with college staff, and must be presented to the inquiry committee or registration committee for ratification, at which time terms arrived at during the mediation process can be rejected

Arguably, mediation is inconsistent with the Review Board's role – the Act confers a right of review in order to make college complaint processes more transparent, but mediation aims to have complainants withdraw their application for review, and does not result in a published decision or direction to colleges. There is a body of anecdotal evidence that some participants in mediation felt cheated of their statutory right to review or coerced into withdrawing.

Successful Alternative Dispute Resolution

On the bright side, creative and satisfactory solutions after application for registration review still do occur regularly. The review board notes that the two-stage hearing process gives colleges an opportunity to take back registration decisions if a member seeks clarification on any issue, while preserving the applicant's right to review. The BC College of Nurses and Midwives, for example, has been noted as one of the colleges that are more amenable to considering whether it might be reasonable to take a second look at some of

its registration decisions, with a view to supporting applicants to successfully fulfill registration requirements rather than proceeding with the written review process.

In future, the new HPOA will give colleges more tools to resolve complaints (for example, navigators and provisions for complainant supports), and improve the experience of complainants as they move through the complaint disposition process.

The Adjudication Process

The Review Board's written review 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 under the Health Professions Act*, R.S.B.C. 1996, c.185. These Rules provide for the efficient adjudication of questions that may arise at the beginning of a Review Board proceeding, such as:

- Does the Review Board have jurisdiction (legal authority) to hear this particular complaint?
- 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. What constitutes the "Record" is defined in the Rules.

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. An oral hearing gives the parties an opportunity to present their information, evidence, and submissions to the Review Board in person. Reviews conducted by way of an oral hearing are generally open to the public unless the Review Board orders otherwise. Since 2018, all review board hearings have been written.

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.

The Chair of the Review Board designates one or more members of the Review Board to sit as a Panel for each individual hearing. After a written or oral review hearing, the Review Board will issue a written decision, deliver a copy to each party and as required by the Rules, post it to the CanLII website.

Noteworthy Decisions

Adequacy of the Investigation and Reasonableness of the Disposition

Complainant v. College of Naturopathic Physicians of British Columbia (No. 1), 2022 **BCHPRB 12**

In *Complainant v. College of Naturopathic Physicians of British Columbia (No. 1), 2022 BCHPRB 12*, the Review Board demonstrated the interaction between the adequacy of the investigation and the reasonableness of the disposition.

The Complainant, the father of a Patient who sought naturopathic treatment for acne, took issue with matters pertaining to the Registrant's practice including consent forms, charting, unethical and reckless prescription of medication, making false statements to the federal revenue agency regarding GST and practicing out of scope procedures. The Complainant made three complaints: one was withdrawn; one had been dealt with by another Review Board member; and the third was at issue in this case. To have the full history, the Panel member requested that the College send her the Record of Investigation for the other two complaints. The Panel then determined that more information was required from the Registrant and College, and elevated the matter to Stage 2. The Panel member sent letters to the College and Registrant, asking them to answer a series of questions and address what investigative steps the College took in ascertaining various findings.

The Panel member determined that the investigation was not only inadequate but largely absent. There was no investigation with respect to various aspects of the complaint. For example, the Patient's medical charts were never requested by the College even though the Inquiry Committee was made aware that the full patient record had yet to be produced to the Complainant.

In commenting on the importance of conducting an investigation, the Panel wrote:

A failure to conduct any investigation of a complaint undermines a number of important goals of an investigation including public accountability, uncovering the truth and gathering sufficient information to allow an effective remedy to be crafted. The Committee itself recognized that additional information might alter the trajectory of the complaint in respect of the consent issue. I cannot find the College undertook an adequate investigation. In fact, the College undertook no investigation of these aspects of Complaint 3: para 97.

The Panel's finding with respect to the (in)adequacy of the College's investigation was dispositive of the determination on the reasonableness of the disposition. Without an adequate investigation, the Panel found the College's decision was not reasonable:

[101] Given that I have found that the investigation of this complaint was inadequate, I am unable to find that the disposition was reasonable. The Inquiry Committee simply did not have a sufficient factual basis to render its decision. As such, it was not alert and sensitive to the matter before it, and it could not justify its decision or grapple in a meaningful way with the issues raised by the Complainant.

The Panel referred the matter back to the College with directions that the College seek the Patient's complete medical file from the Registrant, and further, after reviewing the medical file, the Inquiry Committee undertake a new investigation.

Complainant v. College of Physicians and Surgeons of British Columbia (No. 1), 2022 BCHPRB
26

In *Complainant v. College of Physicians and Surgeons of British Columbia (No. 1), 2022 BCHPRB* 26, the Panel demonstrated that while adequacy of the investigation and reasonableness of the disposition are connected, an adequate investigation can nonetheless give rise to an unreasonable decision.

The Complainant sought judicial review of the Inquiry Committee's decision that her 3 healthcare providers (Registrant 1: an obstetrician gynecologist; Registrant 2: a radiologist; and Registrant 3: a second radiologist) met the expected standard of care when caring for her pregnancy which resulted in a stillbirth. The Complainant submitted that ultrasounds

should have detected danger to the baby, that Registrant 1 should have referred the Complainant to a high-risk pregnancy or perinatologist specialist, and that “violent” fetal hiccups towards the end of the pregnancy should have been recognized as a sign of Umbilical Cord Accident requiring different management by Registrant 1.

The Panel found that the Inquiry Committee had sufficient information for an adequate investigation, including the complaint, responses by the Registrants, and the Complainant’s reply to each of the Registrants’ responses. However, the disposition was not reasonable. The College had sufficient information to undertake an adequate investigation; however, there is little indication the Inquiry Committee seriously considered any of the information provided by the Complainant. A reasonable decision is “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65). The Inquiry Committee failed in its obligation to transparently and intelligibly justify its disposition in light of the evidence and arguments advanced by the parties, especially the Complainant. The Panel returned the matter to the Inquiry Committee with directions to address the key issues raised by the parties, including the Complainant, and consider the standard of care received by the Complainant in light of the complete record.

Complainant v. College of Physicians and Surgeons of British Columbia (No. 1), 2022 BCHPRB 39

In *Complainant v. College of Physicians and Surgeons of British Columbia (No. 1), 2022 BCHPRB 39*, the Complainant was a prisoner who was held in segregation, otherwise known as solitary confinement, for periods between 2014 and 2015. During that time the Complainant was assessed by the Registrant, a consulting psychiatrist, twice. The Complainant complained to the College that the Registrant did not identify that holding him in segregation was a human rights violation and that as a result of this failure, the Registrant did not comply with paragraph 9 of the Canadian Medical Association Code of Ethics (the “Code”) which required her to “refuse to participate in or support practices that violate basic human rights”. Furthermore, the Complainant argued the Registrant did not consider the United Nations

Standard of Minimum Rules for the Treatment of Prisoners known as the “Mandela Rules.”

The Inquiry Committee was satisfied that the Registrant’s conduct and competence were satisfactory and dismissed the complaint with no further action.

On an initial review to the Review Board in 2018 [*Complainant v. College of Physicians of British Columbia*, 2018 BCHPRB 75], the Panel concluded that while the College’s investigation was adequate and its disposition regarding certain aspects of the Registrant’s clinical decision-making was reasonable, the College failed to address the Complainant’s objection that the Registrant violated her duty to “refuse to participate in or support practices that violate basic human rights”. The Panel Chair stated that to address this issue, the Inquiry Committee would have had to answer the following questions:

- A. Is para [9] of the *CMA Code of Ethics* applicable as a professional standard in British Columbia?
- B. Does the Inquiry Committee accept, as professional standards in British Columbia, paras [33, 34 and 46] of the Mandela Rules?
- C. As a matter of professional standards, does the Inquiry Committee accept the Mandela Rules’ statement that “prolonged solitary confinement” – defined in Rule 44 as solitary confinement for 22 hours or more a day without meaningful human contact for a time period in excess of 15 consecutive days – is a form of “torture or other cruel, inhuman or degrading treatment or punishment” within the meaning of Rule 33?
- D. Does the Committee reject the Registrant’s position that the Mandela Rules have no application to her because she is not contracted to Corrections?
- E. Did the Registrant know or should she have known that the Complainant was in prolonged solitary confinement during the period when she was treating him?
- F. As a matter of professional standards in relation to human rights protection, do the Mandela Rules apply to registrants whether or not a particular registrant agrees with the Mandela Rules as a matter of policy, and despite the registrant’s conclusion about the impact of solitary confinement on the particular patient’s

mental health?

G. How did the Inquiry Committee assess the Registrant's conduct in relation to the Mandela Rules 33, 34, and 46?

The Review Board considered that the Inquiry Committee had provisionally answered questions A-D "yes" but had failed to address the key issues set out in questions E-G. The Review Board remitted the matter to the College, directing that it address the application of the Mandela Rules.

Once more at the College, the Inquiry Committee found that the *CMA Code of Ethics* was engaged because it was adopted by the College as a professional standard for all registrants. However, the Mandela Rules were not engaged because they were not enforceable in British Columbia. The Inquiry Committee noted that in *BC Civil Liberties Association* the British Columbia Supreme Court ruled that provisions of the *Corrections and Conditional Release Act* authorizing prolonged segregation violated s.7 of the *Charter*, but that was not the state of the law in 2014 to 2015 and as such was not applicable. Furthermore, while the *CMA Code of Ethics* applied, the Registrant did not depart from the *Code*. The Registrant's role was limited given that she worked in a team, and that there was no evidence that the Complainant was subjected to torture or cruel or unusual treatment.

The Complainant applied to the Review Board a second time to have this second College disposition reviewed [*Complainant v. College of Physicians and Surgeons of British Columbia* (No. 1), 2022 BCHPRB 39]. The Review Board agreed with the College and Registrant that the applicable standard of practice was the *Code*. However, the Review Board found that the *Code* is informed by international instruments including the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations in 1957 and endorsed by Canada in 1975, the Istanbul Protocol of 2004, and other examples of international law that are antecedents to the Mandela Rules. The Review Board wrote that the Inquiry Committee has a duty to protect the public by enforcing standards of professional ethics which includes addressing factual and legal constraints such as international norms that bear upon the determination of whether a Registrant has met those standards. In this case, the Mandela

Rules were found to inform paragraph 9 of the CMA Code of Ethics. The Panel held:

[114] The conclusion that the Mandela Rules do not apply directly does not provide a complete answer to the question in this review, nor does it mean they are completely irrelevant. It was still necessary for the Inquiry Committee to consider whether the conditions the Complainant was subjected to constituted “conduct that violates basic human rights” as that phrase was understood at the time, and, if so, whether the Registrant participated in or supported that conduct. I do not think those questions can be answered solely by reference to purely domestic law. Paragraph 9 of the CMA Code of Ethics is not restricted to conduct that is contrary to law. The Inquiry Committee, the College, and the Registrant have acknowledged that para 9 is “informed” by the Mandela Rules, which they also strenuously argue are not part of the law of Canada. The Registrant submitted that the College looks to multiple sources in determining professional standards, including legislation and case law, but also including standards of practice adopted by and customarily expected of members the profession or particular specialty, guidelines adopted by professional colleges and societies, and medical literature.

The Board held that the Inquiry Committee should have considered whether the conditions of segregation in which the Complainant was held constituted a practice that violated basic human rights, and whether the Registrant participated or supported such a practice. In short, the Review Board found the Inquiry Committee’s decision unreasonable:

[157] I conclude that the Inquiry Committee’s disposition was unreasonable. The reasoning is internally inconsistent because the Inquiry Committee, having said the Mandela Rules inform the interpretation of para 9 of the CMA Code of Ethics, then failed to consider in any meaningful way how the Mandela Rules or their historical underpinnings bear on that interpretation. The disposition is also unreasonable because the reasons provided do not address in an adequately intelligible and transparent way whether the Bacon decision or the international law and norms that existed at the relevant time operate as legal constraints that bear on the interpretation of paragraph 9 of the CMA Code of Ethics

In respect of a second element of the Disposition, the Board held:

[158] The second element of the disposition was the determination of whether the Registrant breached the applicable standard. The Inquiry Committee determined that the Registrant did not depart from her ethical obligations under para 9 of the CMA Code of Ethics.

[159] I do not think any useful purpose would be served by analyzing the Inquiry

Committee's reasons for this element of the disposition because I have concluded that the disposition is unreasonable in respect of the first element – the determination of the standard of conduct the Registrant was required to meet. It is not possible to review the reasonableness of the Inquiry Committee's disposition in the face of that conclusion.

The Review Board remitted the decision again to the Inquiry Committee, directing the Committee to address how the interpretation of the Code is informed by international law, conventions and norms respecting solitary confinement. The Review Board further directed that if the Inquiry Committee finds the Code prohibits a registrant from participating in or supporting holding a prisoner in conditions that amount to solitary confinement, to determine whether the Complainant was held in such conditions and whether the Registrant participated in or supported holding the Complainant under such conditions.

Additional Evidence

Section 50.6(7) of the *Act* provides that the review board may hear evidence that is not part of the record as reasonably required by the review board for a full and fair disclosure of all matters related to the issues under review. The Review Board considers a threshold for receiving new evidence. The test articulated in ***Complainant v. College of Dental Surgeons of British Columbia*, 2022 BCHPRB 13, para 19**, is “whether the information is relevant to the matters at issue in this review, whether it would be fair to all parties to admit it, and whether it renders the disclosure more full or complete to allow me to render a full, fair, and proper decision”.

“Relevance” is here concerned with *the issues on review* which, in a complaint review, are usually the adequacy of the investigation and the reasonableness of the disposition.

The majority of applications to adduce additional evidence in 2022 were denied on the basis of relevance¹ or on the basis that the additional documents contained substantially similar information to that already produced in the Record, i.e. they were not required to allow the Board to render a full, fair and proper decision.² To the extent documents were admitted, fairness concerns were addressed by ensuring parties had adequate notice of and an opportunity to address the documents.³

¹ *Complainant v. College of Physicians and Surgeons of British Columbia* (No. 1), 2022 BCHPRB 4; *Complainant v. College of Physicians and Surgeons of British Columbia* (No. 1), 2022 BCHPRB 18; *Complainants v. College of Physicians and Surgeons of British Columbia* (No. 1), 2022 BCHPRB 10; *Complainant v. College of Physicians and Surgeons of British Columbia* (No. 1), 2022 BCHPRB 24; *Complainant v. College of Physicians and Surgeons of British Columbia* (No. 1), 2022 BCHPRB 49; *Complainant v. College of Massage Therapists of British Columbia* (No. 1), 2022 BCHPRB 5; *Complainant v. College of Physicians and Surgeons of British Columbia* (No. 1), 2022 BCHPRB 33

² *Complainant v. College of Physicians and Surgeons of British Columbia* (No. 1), 2022 BCHPRB 4; *Complainant v. College of Physicians and Surgeons of British Columbia* (No. 1), 2022 BCHPRB 18; *Complainant v. College of Dental Surgeons of British Columbia*, 2022 BCHPRB 13; *Complainant v. College of Physicians and Surgeons of British Columbia* (No. 1), 2022 BCHPRB 2

³ *Complainant v. College of Physicians and Surgeons of British Columbia* (No. 1), 2022 BCHPRB

Administrative Tribunals Act s.42 applications

Administrative Tribunals Act, s.42 is a statutory exception to the general rule that, as a matter of procedural fairness, all parties to an adjudicative proceeding are entitled to the same information. It reads:

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

Section 42 allows the Review Board to make an order, grounded in the “proper administration of justice”, that it will consider certain evidence effectively on an *ex parte* basis.

To make an order under s. 42, the Review Board must be of the opinion that the nature of the information or documents requires that direction to ensure the proper administration of justice. Unless that test is met, the ordinary rule applies – full and equal disclosure of all relevant evidence to all parties: *Complainant v. College of Registered Nurses of British Columbia*, 2009 BCHPRB 5, paras. 20-21.

Complainant v. College of Physicians and Surgeons of British Columbia (No.1), 2022 BCHPRB 17

The Complainant applied for review of the Inquiry Committee’s disposition regarding her Complaint that the Registrant’s failure to adequately diagnose and treat the Patient (the Complainant’s husband) caused his death. The College and Registrant each applied to withhold from the Complainant portions of the Record of the College’s investigation that they argued primarily disclosed matters involving public security or jeopardized the safety of a person.

One interesting aspect of this decision was that some of the material that the Registrant sought to withhold from the Complainant was inadvertently disclosed to her by counsel for

the Registrant. The Complainant destroyed the material at the request of the Registrant's counsel, but only after she read it. One issue for the Panel to wrestle with was whether this inadvertent disclosure should affect the outcome of the section 42 application.

With respect to the College's application, the Panel found there was no reason for withholding pages concerning the coroner's inquest from the Complainant. However, material relating to events postdating the Patient's death which were unrelated to events leading to his death should be withheld. The Panel determined the absence of those documents did not impact the ability of the Complainant to make her case and their inclusion risked distracting the parties from the issues on review: para 15. The Panel also noted that the benefit of the Complainant having glimpsed much of the material the College seeks to withhold should assure her that it does not relate to the treatment provided by the Registrant to the Patient, or to the investigation conducted by the Inquiry Committee and the resulting decision.

In terms of the Registrant's application, the Panel found the application was overbroad, particularly with respect to the inclusion of information that the Registrant believed may inflame the Complainant's feelings towards him: para 20. The Panel granted the application in part, declining to withhold unspecified documents that if withheld would impair the Complainant's ability to advance her case.

Complainant v. College of Dental Surgeons of British Columbia, 2022 BCHPRB 25

The College applied to withhold from the Complainant any document in the Record of the Inquiry Committee's investigation that concerned patients of the Registrant who were not parties to the review. The Panel found that the patient information fell into two categories: 1) patient records from the Registrant's office, and 2) documents generated by the College, the Complainant and the Registrant's legal counsel which referred to patients. The Panel held that the former but not the latter would be withheld from the Complainant. The Panel wrote that the privacy interests of the patients outweighed all other interests and that those pages should be withheld to ensure the proper administration of justice: para 21-22. The remaining

documents were held to be necessary for the Complainant to advance her case. To protect the privacy of the patients, the names, initials, radiographs, and photographs were removed.

Complainant v. College of Pharmacists of British Columbia (No. 1), 2022 BCHPRB 35

The Complainant filed a complaint with the College about the disclosure of his personal health information in a civil action commenced by the Registrant against the Complainant and another defendant. During the College's investigation of the complaint, the Registrant submitted documents relating to the civil action to the College. The Registrant's counsel asserted that the documents were privileged and expected the College to hold the material in confidence. The College ultimately disposed of the complaint without further action.

On review to the Review Board, both the Registrant and the College made s. 42 applications regarding the privileged documents, seeking that it be excluded, or, in the alternative, that references to the documentation be redacted from the Record provided to the Complainant.

The Review Board granted the s. 42 application in part. The Panel Chair wrote that while the documentation was protected by common-interest privilege, a form of litigation privilege, the information of interest was not personal and that there was no privacy interest that outweighed the Complainant's interest in full disclosure. The Panel Chair directed that the Review Board was to receive and maintain in confidence the documentation and that the College was to redact only certain elements.

Complainant v. College of Pharmacists of British Columbia (No. 1), 2022 BCHPRB 36

The Complainant complained to the College that the Registrant breached her privacy by disclosing personal health information in a court document. The Registrant and the College applied to have the document in question excluded from the Record all together or at least from distribution to the Complainant. The College also applied to redact the Registrant's personal information from documents.

The Panel granted the application in part, finding that the document was protected by

common-interest privilege which was not waived. However, regarding the Registrant's "personal information", the Panel found that the information was professional rather than personal and that there were no privacy interests that outweighed the Complainant's interest in full disclosure. The redaction was not granted, and the Panel directed that the Complainant be given summary information of the privileged document.

Complainant v. College of Massage Therapists of British Columbia (No. 1), 2022 BCHPRB 41

The College applied to withhold from both the Complainant and the Registrant portions of the record having information about an unrelated Registrant and patient records of the Complainant's wife who did not give consent to have her information released to the parties. The Panel granted the application, holding that because the treatment records had no bearing on the matter under review, which related to billing and scheduling, withholding them from the Complainant would not impact his ability to advance his case.

Registration Reviews

Applicants v. College of Physicians and Surgeons of British Columbia (No. 2), 2022 BCHPRB 6

The Review Board was faced with a lengthy and complex set of facts. Three Applicants, two individuals and one society, sent a letter to the College of Physicians and Surgeons of British Columbia asking for systemic changes to the registration process. They sought the College to remove barriers for individuals with medical degrees from outside of Canada and the US. This request would require amending the College bylaws. The Registrar responded, informing the applicants that the issue was outside the College's jurisdiction. On an application to review the Registrar's letter, the Review Board informed the Applicants it could not assist without a specific decision from the College's Registration Committee.

A year after their initial letter to the College, the Applicants sent a second letter, asking both the Registration Committee and the College Board to grant the relief sought in the first letter, along with additional broad relief that the College establish eligibility policies and criteria for entry into the Residence Class.

Both the Registration Committee and the Board found the issue was outside their jurisdiction. The Registration Committee and Board are both bound by the College bylaws which are made by the Board under the *Act* and approved by the Minister of Health. The Registration Committee's role is to interpret and apply those bylaws. It cannot amend them. For its part, the Board cannot amend the bylaws without the Minister of Health.

The Applicants applied for review of both decisions to the Review Board. The Review Board dismissed the application for review of the College Board's decision. The Registration Committee's decision was the subject of this application and review.

The Panel confirmed the decision of the Registration Committee, finding it carefully considered each of the requests for relief sought by the Applicants. For each request, the Registration Committee performed an analysis to determine whether it was within the scope of its regulatory authority to grant as set out in the *HPA* and the Bylaws. The Panel found the

Registration Committee was correct in its interpretation of the Bylaw and its jurisdiction, and that the Registration Committee “has no power to look behind a bylaw and must take the College's bylaws as it finds them.” Para 71.

The Panel also examined its own jurisdiction, noting that the Review Board has the statutory authority to review any registration decision by a registration committee however, it does not have the power under the *HPA* to review decisions of the College’s Board. The Review Board can make a decision that could have been made by the registration committee in the matter but cannot go further. Just as a Registration Committee is bound by the Bylaws, so too the Review Board cannot refuse to apply them or direct that the Registration Committee does not follow them.

As noted above, this decision is now subject to judicial review in *The Society for Canadians Studying Medicine Abroad, Oliver Kostanski and Harris Falconer v The Health Professions Review Board and the College of Physicians and Surgeons* (Petition filed April 4, 2022).

Applicant v. British Columbia College of Nurses and Midwives (No. 1), 2022 BCHPRB 14

The Applicant applied for review of the Registration Committee’s decision to refuse her registration as a Licensed Practical Nurse (“LPN”) under the provisions of the Canadian Free Trade Agreement (the “CFTA”) and the Labour Mobility Act (“LMA”). The Applicant was trained as a registered nurse in her country of origin and practiced there from 2009 to 2013. In 2020 she was registered in Ontario in a class equivalent to an LPN in this province, but she never practiced there. The College was unable to confirm the Applicant’s competency to practice as an LPN because she last practiced in 2013 and did not have the requisite minimum of 1,125 practical nursing hours in the past five years. The Applicant asked whether she was eligible for a temporary registration as an LPN and whether supervised practice experience was an option as she worked to transfer her licence to British Columbia. The College decided that completing a formally structured supervised practice experience under s.93 of the Bylaws was not an option available to the Applicant because “she has never practiced as an LPN or

the equivalent in any jurisdiction” and that option is only available to applicants applying for renewal or reinstatement of their registration. To provide evidence of her competency to practice, the Applicant chose to undergo a Nursing Community Assessment Service (“NCAS”) Performance Report which showed her demonstrated performance to be “on the border of undemonstrated and emergent range of proficiency”.

On review of the Record, the Panel found that the College acknowledged that the Applicant is certified for an equivalent occupation in Ontario, with no limitations, restrictions or conditions imposed on her entitlement to practice that occupation in Ontario. Although the Applicant met all the applicable registration requirements except for “competence/continuing competence,” the College’s Registration Advisor erroneously advised the Deputy Registrar that this requirement was to be considered pursuant to sections 79 and 91 of the College’s Bylaws and its Competence and Education policies. The Panel found that the College cited s.79 of the Bylaws concerning English language proficiency in error since the College had already determined that the Applicant met that requirement, and the s.91 Bylaw applies to registration in the class of practicing LPN registrants who are not labour mobility applicants; it does not apply to LMA applications which are governed by s.3 of the LMA, Chapter Seven of the CFTA and s.95 of the College’s Bylaws.

The Panel found that the College’s requirement for additional training, experience, examinations, or assessments was a disguised restriction on labour mobility; it was not imposed by the Registration Committee as a condition of certification. The Applicant was eligible for registration under the terms of the LMA and the CFTA, and the Panel directed the Registration Committee to grant the Applicant’s registration. The Registration Committee was entitled to impose additional training, experience, examinations, or assessments upon the Applicant as a condition of certification because she has not practiced the occupation sufficiently within the past five years. With the information before the Registration Committee at the time of its decision, it is in the public interest to impose the requirement for additional training, experience, examinations, or assessments upon the Applicant as a

condition of her certification. The Panel further directed that, as a condition of certification, the Applicant must successfully complete a practical nursing practice experience under the guidance and supervision of a preceptor.

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. A 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, colleges do not have to issue delayed investigation notices.

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. The below information is current to December 31, 2022.

1. Judicial Decisions Since Last Annual Report

The College of Physicians and Surgeons of British Columbia v. The Health Professions Review Board, 2022 BCCA 10 [Dawson]

The Court of Appeal's decision in *Dawson*, issued in the early days of 2022, remains the leading judgment on a number of issues including Review Board jurisdiction, adequacy review, and reasonableness review.

On jurisdiction, the Court held that the Review Board is not authorized to consider whether the Registrar had jurisdiction to dispose of a complaint: *Dawson*, para 199-200. The Review Board's powers to review decisions made by the inquiry committee (or Registrar) on complaints are circumscribed. It is only entitled to consider the adequacy of the investigations and the reasonableness of the disposition: *Dawson*, para 185. The Review Board has direct authority to remedy any deficiencies in the investigation and to ensure that unreasonable dispositions are not allowed to stand. What the Review Board is not entitled to do is to pre-emptively restrict the procedures that the College may adopt to deal with a complaint: *Dawson*, para 195. 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: *Dawson*, para 196.

This does not mean that exercises of statutory power by the College are immune from review if they do not directly impact the adequacy of investigations or the disposition of the complaint. For those matters that are beyond the exclusive authority of the Review Board, judicial review is available: *Dawson*, para 197. In so holding, the Court overturned *Ridsdale v. Anderson*, 2016 BCSC 942 and *Maroofi v. College of Physicians and Surgeons of B.C.*, 2017 BCSC 1558 insofar as they held that dispositions by the inquiry committee were not subject to judicial review.

If a process complaint is made, for example, that the Registrar acted without jurisdiction, the panel member will have to consider and determine whether this alleged process error impacts the adequacy of the investigation or the reasonableness of the disposition. If not, the Review Board is not authorized to consider the issue further. If the process error has impacted the adequacy of the investigation or the reasonableness of the disposition, that can be remedied by remitting the matter back to the College. Such remittals should not pre-emptively restrict the procedures the College may adopt to address the problem.

The Court's ruling may have wider implication than simply to the question of whether the Registrar acted with jurisdiction under s. 32(3). Many different kinds of process errors have been alleged from time to time by complainants – for example, about quorum of inquiry committees, or the manner in which votes are conducted – all such process errors should only be considered through the lens of adequacy or reasonableness.

In considering the adequacy of investigations, the Review Board is entitled to consider the nature and depth of inquiries that a College has made in dealing with a complaint: *Dawson*, para 191. The Review Board is to make its own findings of adequacy. It is not to defer to the College: *Dawson*, para 192.

In respect of adequacy, the Court said:

[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.

The Review Board must ensure that its findings are articulated in light of a clear understanding of what are the fundamental goals and purposes of a college investigation. Reasons rather than conclusory statements continue to be critically important. For example, the Court at paragraph 136 suggests that the Review Board should relate its call for a more thorough investigation to an investigative goal and identify functional deficiencies in the investigation of the complaint. At paragraph 140, the Court suggests reasons might indicate aspects of the investigation that were deficient or identify additional information that would be helpful that is not in the investigative materials. At paragraph 143, the Court offers an example where additional investigation may be warranted such as where the account of two witnesses diverges and there is a third witness who was present but not interviewed. At paragraph 150-152 the Court makes clear that it is not enough that there may be more evidence, but the Review Board must explain whether such additional evidence will address specific deficiencies in the record.

In considering the reasonableness of the disposition of the complaint, the Review Board is entitled to consider both the findings made by the inquiry committee and the sanctions that it imposes. When assessing the reasonableness of the disposition, the leading common law case governs. The current leading common law case is *Vavilov*.

The Review Board sought leave to appeal to the Supreme Court of Canada. That application was denied in November 2022.

Ooms v Health Professions Review Board (Review Board), 2022 BCSC 488

Dawson has been applied by the Court in a number of cases. The first was *Ooms v HPRB*, 2022 BCSC 488. In *Ooms*, following a workplace injury, the Petitioner argued there was bias and unfair reporting between an external healthcare professional and the Worker's Compensation Board ("WorkSafeBC"). The petitioner also argued there were issues with consent, submitting that his health information was reviewed after he withdrew consent. Finally, the petitioner argued against the validity of the College's procedure regarding email voting.

The petitioner sought judicial review of a decision of the Health Professions Review Board relating to two decisions of the Inquiry Committee of the College of Psychologists of British Columbia. The College decisions disposed of both complaints and the Review Board dismissed the Petitioner's application for review.

On judicial review at the BC Supreme Court, and although the Panel did not have the benefit of *Dawson* in making its decision, Edelman J., applied the approach to both focus and standard of review set out *Dawson*. In terms of adequacy of the investigation, he acknowledged there is no deference from the Review Board to the College and that a reviewing court considers the Review Board decision on the standard of patent unreasonableness. With respect to the College's disposition, Edelman J., again following *Dawson*, stated the Review Board applies the reasonableness standard, as described in *Vavilov*, while a reviewing court applies the patent unreasonableness standard.

The petition was ultimately dismissed. Edelman J. found the Inquiry Committee's process was not unreasonable and it was not required to expand its investigation into a broader sense of collusion absent something more than the petitioner's perceptions of nefarious dealings. Turning to the consent issue, Edelman J. found that the deference afforded to the College by the Review Board was appropriate. Finally, Edelman J. upheld the Review Board's decision that the email vote impugned neither the reasonableness of the decision nor the adequacy of the investigation.

No appeal has been filed and the time-period for doing so has passed.

College Of Dental Surgeons of British Columbia v. Health Professions Review Board, 2022

BCSC 941

In a second decision applying *Dawson*, the College brought a petition for judicial review following a Review Board decision remitting a matter back to the Inquiry Committee. The Inquiry Committee dealt with the complaint by proposing a Memorandum of Undertakings for the Registrant (the “First Disposition”). The Registrant requested to meet with the Inquiry Committee to discuss a potential revision to the decision. A second panel of the Inquiry Committee was convened, during which and the Registrant delivered oral submissions. The Complainant was not invited to participate. The second panel of the Inquiry Committee decided to vary the First Disposition, disposing of the Complaint by taking no further action (the “Second Disposition”). The Complainant then applied to the Review Board for a review of the Second Inquiry Disposition.

The Panel member decided that the College’s investigation was adequate, but that the Second Disposition was unreasonable. The Panel remitted the matter to the Inquiry Committee with a series of directions including, inter alia, that the College appoint an orthodontist (experienced specific to the treatment at issue) to this new Inquiry Committee (direction b); and, following an incident of the Registrant phoning the Complainant, that the new Inquiry Committee require, under its s.36(1)(d) power, the Registrant to have no direct contact with the Complainant (direction d).

The College sought a limited judicial review in respect of directions b and d. It did not dispute that the Second Disposition was unreasonable. Applying Dawson’s restrictive approach to the Review Board’s jurisdiction, Wilkinson J. held:

[30] When considering the reasonableness of the Inquiry Committee’s disposition, the Board is entitled to consider only the Inquiry Committee’s findings and the sanctions it imposes. The Board has no authority to address issues that do not impact the reasonableness of the disposition: *Dawson* at paras. 192, 196. Thus, while the Board

can give directions pursuant to s. 50.6(8)(c) of the HPA when returning a matter for reconsideration, those directions must relate to the Inquiry Committee's reconsideration of the matter that was before it.

[31] The Board does not have authority to pre-emptively fetter the College's internal discretionary processes for managing and disposing of complaints, even when the Board remits a complaint back to the Inquiry Committee for reconsideration: *Dawson* at paras. 195-196. The Board acts outside its authority where it undertakes an assessment of the College's internal procedures that do not bear on the reasonableness of the College's disposition under review.

Turning to the particular directions at issue, Wilkinson J. found directions b and d were outside the Review Board's statutory authority, either express or implied. With respect to direction b, Wilkinson J. determined that the HPA does not confer authority on the Board to control the composition of the Committee, writing:

[36] [...] The enabling statute does not confer onto the Board any authority to control the composition of the Committee or a panel of the Committee reconsidering a matter sent back to the Inquiry Committee. It does not fall within the mandate of the Board to determine who should be on the Committee or what members of the Committee should reconsider a matter. The Board's authority under section 50.6(8) of the HPA is limited to sending the matter back to the Inquiry Committee, but the composition and structure of the Inquiry Committee is a matter to be determined by the College.

[37] Section 19(1)(t) and (u) of the *HPA* gives the College exclusive authority to determine the size and composition of the Inquiry Committee by bylaw, and whether or not the Inquiry Committee may meet in panels. Pursuant to this authority, in s. 4.02 of the Bylaws of the College of Dental Surgeons of British Columbia (the "Bylaws"), the Board has established the Inquiry Committee and has provided that it meet in panels.

Sections 4.02 and 4.06 set out the parameters for the composition of the Inquiry Committee and panels of the Committee.

[38] Thus, while the dispositions of the Inquiry Committee are subject to review by the Board, under the HPA the College determines the composition of its committees and internal procedures.

Turning to direction d, Wilkinson J. held that:

[45] Any directions made by the Board to the Inquiry Committee under s. 50.6(8)(c) of the HPA must be in relation to the Committee's reconsideration of the matter that is being sent back to it. The Board does not have authority to direct the Committee to take action that does not relate to that reconsideration.

Given that the phone call happened after the Inquiry Committee dispositions and correspondingly, the Inquiry Committee did not consider any complaint related to it, it was outside the Review Board's authority to make a direction related that matter.

No appeal has been filed and the time-period for doing so has passed.

2. Petitions Discontinued

Ooms v Health Professions Review Board (Review Board), (Victoria Registry, No. 213662)

The third notable court case to date that has applied *Dawson* is the unreported decision noted above. The petitioner sought judicial review of a decision made by the Review Board upholding the disposition of the College of Psychologists.

The petitioner had sustained a workplace injury and made a WorkSafeBC claim. During the course of the WorkSafeBC hearings, he relied on certain materials and conducted research into the reliability and credibility of that material. He discovered a citation error in a manual and he filed a complaint against two psychologists who were identified as authors of that manual. Neither psychologist had ever treated the petitioner and neither had any clinical relationship with him, nor did they conduct any assessment or file review or otherwise have any specific involvement with his file.

The Registrar dismissed the complaint as trivial, frivolous and vexatious. The Review Board confirmed that disposition.

The Court followed *Dawson* in describing the Review Board's role in assessing the reasonableness of the Registrar's disposition. The Board must show deference to the College.

In a situation like this where the Review Board properly showed deference to the College, the shortcut offered in *Dawson* can be applied.

The review was also decided by the Review Board without the benefit of *Dawson* and included consideration of procedural issues surrounding the Registrar's exercise of jurisdiction. The Court confirmed that when the College dismisses a complaint under s. 32(3)(a) there is no obligation to assume the truth of the allegations. The Registrar is entitled to conduct preliminary investigations without reference to the Inquiry Committee. This is an issue that is arguably outside of the Review Board's purview in the wake of *Dawson*, although it would inform the review of adequacy.

In this case, the Registrar took steps to test the veracity of the complaint. The Registrar sought input from the Registrants and considered their response. She reviewed the manuals and considered the error in question to be a minor, trivial oversight that gave rise to no concerns about competence. The Court found the steps taken were sufficient to satisfy the adequacy of the investigation and that it was not patently unreasonable for the Review Board to deal with that issue summarily. There was no basis to question the reasonableness of the College's disposition and it would have been patently unreasonable to decide otherwise.

No appeal was filed and the time-period for doing so has passed.

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 challenged Review Board Decision 2019-HPA-G09. The petition was dismissed in 2020 but the petitioner refused to sign the related order.

Status: The order has been settled and entered and the file was closed in 2022.

Chandra v HPRB (Petition filed December 17 2021 and served February 3, 2022)

Summary: Petition challenged Review Board Decision HPRB-HPA-21-G004.

Status: Notice of Discontinuance filed by complainant December 2022.

3. Petitions Outstanding

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

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

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

***Lohr v Health Professions Review Board and the College of Chiropractors
(Petition filed June 29, 2015)***

Summary: The Petitioner applied for registration to the College of Chiropractors. The Petitioner applied to the Review Board for a review of the College's registration decision. In Decision No. 2015-HPA-202(a), the Review Board held that it had no jurisdiction to conduct a review 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.

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.

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 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: An order has been obtained so that this petition will be heard together with a second petition that was filed in 2022.

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 with further submissions August 18, 2021, to address *Dawson*. The decision remains under reserve.

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.

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. In June 2021, the petitioner delivered a notice of intention to proceed and an incomplete application for substituted service.

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.

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 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.

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: No date has been set for the hearing of this matter.

College of Chiropractors of British Columbia v Health Professions Review Board and Dr. Michael Desaulniers, Dr. Johnny Suchdev and Dr. Hafeez Merani (Petition filed December 16, 2021)

Summary: Petition challenges Review Board Decision HPRB-HPA-20-G020.

Status: Court filings are complete. Hearing set for 2023.

4. Petitions filed

The Society for Canadians Studying Medicine Abroad, Oliver Kostanski, and Harris Falconer v. The Health Professions Review Board and The College of Physicians and Surgeons of British Columbia (Petition filed April 4, 2022)

Summary: Petition challenges Review Board decision 2019-HPA-G23 contesting that the decision was patently unreasonable, results from the Review board acting unfairly and contrary to common law rules of natural justice and procedural fairness and is *ultra vires* or otherwise invalid. They seek a declaration that the review board order improperly declines jurisdiction to consider and balance Charter values, an order pursuant to s.7 of the JRPA setting aside the review board order, an order substituting the decision of the court of the review board order, an declaration that Drs Kostanski and Falconer be eligible to compete on an equal medical basis with Canadian Medical Graduates in future residency matching programs, and an order granting SOCASMA public interest standing in this proceeding.

Status: Petition filed.

Review Activity Statistics

For the reporting period from January 1, 2022 – December 31, 2022

Figure 1: Number of Applications, by type and month

Month, Year	Complaints (IC)	Delayed Investigation (DI)	Registration (REG)	Total # of Applications	%
January, 2022	28	1	0	29	17%
February, 2022	12	0	3	15	9%
March, 2022	9	0	0	9	5%
April, 2022	4	0	1	5	3%
May, 2022	16	0	2	18	10%
June, 2022	9	3	0	12	7%
July, 2022	5	0	0	5	3%
August, 2022	14	2	1	17	10%
September, 2022	18	0	0	18	10%
October, 2022	8	0	0	8	5%
November, 2022	11	0	4	15	9%
December, 2022	22	0	1	23	13%
Total	156	6	12	174	
% of Total Applications	90%	3%	7%		100%

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

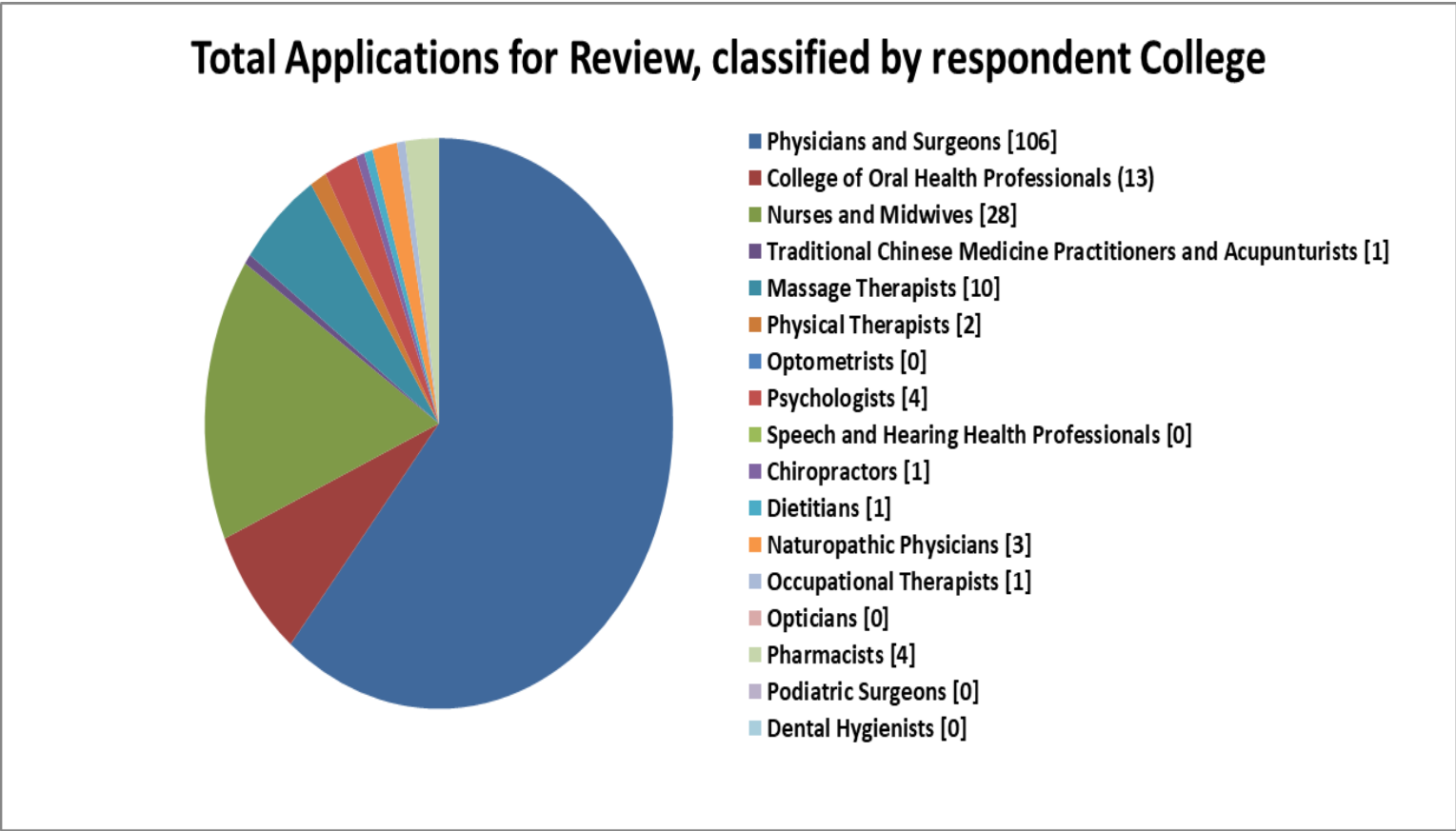


Figure 3: Applications for Review, by college and type

Respondent College	Complaints (IC)	Delayed Investigation (DI)	Registration (REG)	Total # of Applications	%
BC College of Nurses and Midwives	23	0	5	28	16%
BC College of Oral Health Professionals	12	1	0	13	7%
College of Chiropractors of BC	1	0	0	1	1%
College of Dietitians of BC	1	0	0	1	1%
College of Massage Therapists of BC	4	5	1	10	6%
College of Naturopathic Physicians of BC	2	0	1	3	2%
College of Occupational Therapists of BC	1	0	0	1	1%
College of Pharmacists of BC	4	0	0	4	2%
College of Physical Therapists of BC	2	0	0	2	1%
College of Physicians and Surgeons of BC	103	0	4	106	61%
College of Psychologists of BC	4	0	0	4	2%
College of traditional Chinese Medicine Practitioners and Acupuncturists of BC	0	0	1	1	1%
Total	157	6	12	174	

% of Total Applications	90%	3%	7%		100%
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Financial Performance

2021/2022 Year Expenditures

This reporting period covers the 2022 fiscal year of operation for the Review Board.

Following is a table showing the expenditures made by the Review Board during its 2022/2023 fiscal year.

Health Professions Review Board

Operating Costs - April 1, 2022 – March 31, 2023

Salary & Benefits	\$ 573,446
Operating Costs	\$ 649,609
Other Expenses	\$ 863
Total Operating Expenses	\$1,223,918

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.