BRITISH COLUMBIA
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# Health Professions Review Board 2010 Annual Report

Covering the reporting period from
January 1 – December 31, 2010

BRITISH COLUMBIA
The Best Place on Earth

Health Professions Review Board

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July 29, 2011

The Honourable Michael de Jong
Minister of Health
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Dear Minister de Jong:

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, 2010 to December 31, 2010.

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

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

Yours truly,

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

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# Message from the Chair

Having opened our doors for business in March of 2009 as the newly-created **Health Professions Review Board** (the "Review Board"), 2010 will be remembered as our first full year of operation. Comparing 2010 with our 'inaugural year' we can discern some positive trends.

First and foremost, we are carrying out in an effective manner the task assigned to us by the Legislature when it amended the *Health Professions Act* (the "Act") by adding the provisions of Part 4.2, thereby creating the Review Board and giving it specific powers and duties. The incremental growth in our caseload suggests that demand for our services will remain stable or increase in the coming years. For the first time, British Columbians have a forum in which their concerns about health college transparency (or lack thereof, real or perceived) can be heard and addressed.

While we do not have direct jurisdiction over the conduct of health professionals, we administer a process in which complainants have direct access to the record of investigation compiled by health college inquiry committees. Access to the record compiled by the College in investigating a complaint against a health professional ("registrant" in the language of the Act) is a large step forward in opening up the college investigation process to scrutiny by the public, the colleges are mandated to serve and protect. Access to the record also provides a fair mechanism by which the complainant can challenge the adequacy of the investigation or reasonableness of the outcome ("disposition" in the Act) in front of an independent body before whom they can present their concerns fully, and be heard respectfully.

Our emphasis on early non-adversarial dispute resolution – for example, informal discussions among the parties, or mediation with the assistance of a neutral party – has been effective in a number of cases. While not every application for review filed with the Review Board is an appropriate candidate for mediation, many are.

Post-mediation survey feedback confirms that complainants value the opportunity to meet face-to-face with the health professional with whom they have a concern, and tell their story in a structured setting that emphasizes respectful communication. For consumers of health profession services this can be a true catharsis. For many registrants, it can be an equal relief to explain the challenges and difficulties associated with the professional decision-making and treatment process. Some review cases are resolved at this point, and many parties regard the outcome as a win for all concerned, not least because the resolution avoids a stressful adversarial hearing process that inevitably produces a "winner" and a "loser."

Persons who have been refused registration by a college have the right to have the Review Board review the college's registration decision. In our mediation of such registration disputes, there are often productive results as the applicant begins to understand the scope of the statutory obligations the college has to fulfill. On occasion this results in the applicant adjusting his/her demands such that a "win-win" solution is possible.

The Act also gives jurisdiction to the Review Board to address complaints about delays by health colleges in the completion of complaint investigations. The Act prescribes specific time limits for the completion of complaint investigations; this is intended to ensure, for both complainants and registrants, that the investigation is completed in a timely manner.

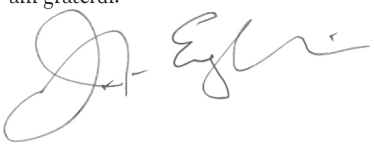
Section 50.53 of the Act provides the Review Board with authority to publish guidelines for the assistance of the colleges, and permits the Review Board to consult with colleges and other

persons toward that end. Meeting annually with the registrars of the colleges and their staff, and bi-monthly with several members of the Health Regulators Organization (an informal communications network for the self-regulating health colleges in British Columbia) allows the Review Board to work with the colleges to refine and improve processes on both sides, with the result that the Act works more efficiently and effectively in practice.

Fair and effective adjudication of individual complaints remains the focus of the Review Board. The busy members of the Review Board continue to provide an independent review of complaint dispositions and registration matters, and through their decisions produce a cogent body of law that is posted to our website on a timely basis. This body of decisions provides guidance to the colleges and to legal counsel in interpreting the Act, and allows complainants the opportunity to learn about the principles that the Review Board applies systematically in adjudicating the issues before it. Board members attend seminars, conferences and private training sessions with legal counsel each year to ensure that their skills as statutory decision-makers are maintained at a high level.

In the coming year our goal is to make our processes and resources more accessible. We will be making our website and the resources on it more user-friendly. We will be introducing more efficient internal tools for electronic file management. We will be examining improved ways of assessing and reporting on our own performance, both internally and externally, and we will continue to work with colleges, and with those complainants who take the time to share their thoughts with us, to refine our processes for maximum efficiency and minimum burden on the parties involved in a review.

I would be remiss in concluding these remarks without expressing my gratitude to the staff of the Review Board and in particular to our Executive Director, Michael Skinner, and to our legal counsel Frank Falzon, Q.C. Together we have had many productive discussions on how best to fulfill our mandate. I would also like to acknowledge the continuous hard work and expertise provided to the Review Board by the staff of the Environmental Appeal Board and Forest Appeals Commission, who effectively function as our "back office" with respect to matters of finance and administration. They help keep us running smoothly, and for that I am grateful.



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

# Executive Director's Report

## Acknowledgment and thanks

It was a privilege to sign on as the Review Board's Executive Director in the summer of 2010. It was also a pleasure, as I was the beneficiary of a solid foundation constructed by my predecessor, Lauri Balson. As Acting Executive Director, Lauri took the organization from words on paper (Part 4.2 of the *Health Professions Act*) to a fully functioning administrative law office. Happily, Lauri remains available to us for informal consultations through her current role working out of the offices of the Environmental Appeal Board/Forest Appeals Commission as Executive Director of "Supported Boards" – a cluster of small tribunals who share access to her expertise and guidance. Thank you, Lauri!

## Process is what we're about

Some readers could find the "administrative law office" phrase somewhat jarring, as it might not fit with the mental picture created by the words "health professions." Administrative law – concerned with the fair conduct of public sector decision-making and review/appeal processes – is what the Review Board is about. The Review Board's mandate is not about bringing specialized professional knowledge of health practices to an issue. Rather, the Review Board is composed of process specialists, many of whom have legal backgrounds, who review a health college's compliance with the requirements of the Act, focusing on those areas entrusted to the Review Board under Part 4.2: fair registration decisions, timely investigations, adequate complaint investigations, and reasonable disposition of complaints.

The emphasis on process provides many opportunities to collaborate with health colleges on issues that are process-related. A prime example is the "front end" of our review procedure: the application filing stage. One of the first things the Review Board office does after a review application is validly filed is to issue what we call the "NARR" (**N**otice of **A**pplication and **R**equest for **R**ecord) to the relevant college. The NARR formally informs the college and registrant of the existence and details of the application for review, and requests from the college copies of the investigative record for distribution to the parties, according to a time limit set out in the Review Board Rules of Practice and Procedure.

A potential weakness of this practice is that, while procedurally efficient, it may set an adversarial tone that could inhibit subsequent attempts to achieve a collaborative solution to the problem. It also can be burdensome to the colleges, as preparing multiple copies of a complex investigative record under a time deadline can be labour-intensive. In late summer of 2010 we crafted what has proven to be a versatile option to address NARR-related issues: it is a suspension of process referred to as a Notice of Abeyance (NoA). The NoA informs the college, the applicant, and the registrant about the existence and details of the review application and describes the potential benefits of a collaborative, solution-oriented approach to problem solving. It invites the parties to consider communicating with one another toward this end, and gives them 30 days to do that. The request for production of the record does not go to the college until after the 30 day abeyance period has expired.

The NoA is not employed in all cases. Where there is a documented history of major conflict or animosity among the parties, or obvious capacity issues, the NoA is not used and the

conventional NARR process is followed. However, where the NoA is used, it has proven successful in encouraging parties in a number of cases to enter into a respectful dialogue early in the process. Prior to the NoA, some applicants may have felt that once their review application was filed with the Review Board, they were past the point of no return – they were in a "state of war" in which the only option was a hearing and a Review Board decision declaring the winner. The NoA has caused some applicants to rethink this and to venture into collaborative territory. It also gives colleges a basis ("here's what the review board recommends") for inviting applicants to discuss the college's process and findings, sometimes with productive results. And it gives busy colleges more breathing room when it comes to producing the investigative record for the parties.

In cases where the NoA is not used, there remains some good news for colleges regarding the record production timeline: we amended the relevant Rule to change the deadline from 21 to 35 days.

## Always room for improvement

In the coming year we will be instituting refined case management software, making our website more user-friendly, and, through possible amendments to the Act, introducing simplified application processes that will benefit the public, health colleges, and registrants.

In the coming months we will also be participating in a University of Victoria research project on complaint investigation practices. This will, not surprisingly, involve canvassing the health colleges about how they do their work under the Act, as well as their opinions as to what practices have proven most effective and efficient. What has become clear through the Review Board's work is that there are differences of approach among large and small (and new and old) colleges.

It appears that all colleges are to varying degrees still coping with a learning curve as they adapt to the demands of the Act, and gain experience on the front lines of the investigative process. It is our hope that this project, a practical expression of the Review Board's duty under Section 50.53(1)(d) of the Act to "develop and publish guidelines and recommendations for the purpose of assisting colleges...", will be of practical benefit to all of the colleges under our jurisdiction, and will add depth to the Review Board's understanding of what constitutes an "adequate investigation." Importantly, we hope also that what is learned from this exercise will help colleges address concerns about the cost (real or perceived) of managing cases under the Act.

We recently received welcome news that a particular college is examining means of opening up its investigative process so that information (for example, the registrant's response to the substance of the complaint) is shared at an early stage with the complainant. This is a potentially significant advance over the older style of investigation that excludes the complainant from participating in the investigative process. It may also herald the advent of processes that are not only procedurally transparent, fair and compliant with the Act, but that make allowance for communication opportunities that can lead to better fact-finding and possible consensual resolution of disputes.

## Mediation and the "conflict triangle"

Looking beneath the surface of events, a frequently-observed scenario that gives rise to an application for review starts with a lack of communication between the registrant and the complainant. The complainant, perhaps labouring under a misunderstanding about the advice or treatment provided by the registrant (a product of inadequate communication), then files a complaint with the college. The college then carries out an investigation employing what may, to the complainant, seem to be an opaque process in which all the complainant sees is the final reporting letter from the college – perhaps 6 to 12 months or more after the complaint was filed. For both complainant and registrant, the dominant feelings during this process may be stress, uncertainty and resentment. The complainant's motivation to seek a review of the college's investigation may have as much (or more) to do with delay and lack of transparency as it does with the substance of the reporting letter from the college.

In this setting, mediation may make a significant impact by reversing the cycle. It is facilitated communication by a neutral third party skilled in the process. The mediator establishes agreed ground rules assuring that all parties have an opportunity to hear one another and to be heard in a respectful, safe and structured environment. It is the paradigm of good communication. A resolution reached in this manner carries with it the added

significant bonus of being a solution crafted by the parties, as opposed to being a declaration imposed by a fact-finder with order-making powers. As such, all parties will be more likely to adhere to the terms of settlement.

This is why the Review Board attempts to bring the parties together for mediation or for non-binding settlement discussions wherever possible in the review process. Review Board case managers are skilled in both mediation and in identifying mediation/settlement opportunities; in such cases they either lead the mediation process themselves or (more commonly) arrange for mediation to be conducted by a Review Board member, sometimes with the case manager assisting. It is cost-effective and can result in a high level of participant satisfaction, while still ensuring the college meets its responsibility to protect the public. In the years ahead we anticipate seeing an increased use of mediation by health colleges as an adjunct to their statutory investigative processes, and in the area of registration disputes as well.

## A service-oriented organization

It is appropriate to conclude this note with my thanks to the members of the Health Professions Review Board for their principled guidance in the resolution of challenging cases, and to the staff of what our legal counsel refers to as "the registry" for outstanding service to the Review Board and to the province. We are in fact a registry, in that we receive applications for review, open files, communicate with parties, and provide the administrative process that moves a case from initial filing to resolution and closure. However, we are also much more than a registry – case managers and administrative support staff alike are enthusiastically alert for opportunities to resolve a matter in a productive way, and are continuously engaged in reflective analysis as to how we can make our processes more streamlined, more effective, and less burdensome. In this they do a superb job.

Michael Skinner
Executive Director
Health Professions Review Board

# About the Review Board

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

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

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

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

# The Mandate of the Review Board

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

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

## 1. On request to:

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

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

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

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

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

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

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

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

# Review Board Members

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

The Review Board consists of a part-time Chair and 13 part-time members. The members of the Review Board, drawn from across the Province, are highly qualified citizens from various occupational fields who share a history of community service. These members apply their respective expertise and adjudication skills to hear and decide requests for review in a fair, impartial and efficient manner. In addition to adjudicating matters that proceed to a hearing, members also conduct mediations and participate on committees to develop policy, guidelines and recommendations.

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

## Tribunal Members as of December 31, 2010

| Member | Profession | From |
|---|---|---|
| Michael J.B. Alexandor | Business Executive / Mediator | Vancouver |
| Lorianna Bennett | Lawyer/Mediator | Kamloops |
| Judith J. Berg | Health Professional | West Vancouver |
| D. Marilyn Clark | Consultant/Business Executive | Sorrento |
| Barbara L. Cromarty | Lawyer | Trail |
| Helen Ray del Val | Lawyer | North Vancouver |
| J. Thomas English, Q.C. (Chair) | Lawyer | Vancouver |
| David A. Hobbs | Lawyer | North Vancouver |
| Victoria (Vicki) Kuhl | Communications Consultant/Nursing | Victoria |
| Lori McDowell | Consultant/Lawyer | Vancouver |
| Michael J. Morris | Business Executive/RCMP Officer (Ret.) | Prince George |
| Maurice R. Mourton | Business Executive | Vancouver |
| J. Karin Rai | Consultant | Surrey |
| Donald A. Silversides, Q.C. | Lawyer | Prince Rupert |

# 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
- 2 Administrative Assistants
- Finance, Administration and Website Support (provided by EAB/FAC)

The Review Board may be contacted at:

**Health Professions Review Board**
Suite 900 – 747 Fort Street
Victoria, BC V8W 3E9

Telephone: 250-953-4956
Toll-free number: 1-888-953-4986
Facsimile: 250-953-3195

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

**Mailing Address:**

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

# 2010 Events – The First Full Year of Operation

## Registration Matters

The Review Board published a ***Best Practices Pilot Study on Health Professions Registration***, intended to provide colleges with a range of progressive ideas on how to cope with some of the more formidable challenges associated with the registration process. Applicants should note that this is a discussion paper, and that the ideas put forth in the paper are not binding on colleges – they do not have the force of law. Over time, it is the Review Board's hope that this paper will spark continuing discussion over how to solve registration-related problems in innovative ways that continue to respect the framework established by the *Health Professions Act*.

## Gold Star, Registration Department

On the subject of registration generally, we consider it appropriate to give credit where credit is due, and to publicly recognize those colleges that have distinguished themselves in this area. In this regard the College of Registered Nurses of BC is worth mentioning. The College and its independent legal counsel have demonstrated an enduring commitment to resolving registration complaints through a process of cooperative discussion and collaborative problem solving, an approach that the Review Board appreciates and that we think bears fruit both for the College and potential registrants. Well done!

## Delayed Investigation Challenges

The task of conducting complaint investigations is not easy. Colleges that find themselves embroiled in a series of complex investigations – or who must cope with a large volume of investigations – can also find that there is a cumulative delay effect, especially with limited investigative resources. The College of Dental Surgeons found itself in that position in 2010, with a significant backlog of major investigations, some of which were the subject of orders from the Review Board made under Section 50.58(1)(a) of the *Health Professions Act*. These orders require the College to complete specific complaint investigations within a specific time; however, they can also be a graphic example of the reality that simply ordering something does not necessarily make it happen. While the Act provides for more drastic measures by the Review Board in the event of College non-compliance (for instance, taking over conduct of specific investigations), that is not the Review Board's preferred option.

Happily, the College made admirable progress with its backlog of investigations in 2010, largely eliminating it through the determined efforts of its new Director of Investigations and College investigative staff. Kudos to the College for prevailing in a difficult task.

Practice note to colleges on delayed investigation matters: keep the Review Board informed of your progress and the reality of any logistical challenges you are facing – you will find that we are generally supportive and more than willing to consult on solutions.

# Mediation at the Review Board – Evolution & Application

The many benefits of mediation have been documented in detail earlier in this report. One of the advantages that has not been discussed in detail is its flexibility. In mediation, parties can agree, within the bounds of law and public policy, to do things that the Review Board may not be empowered to order under the *Health Professions Act*. For example, the Review Board cannot order a registrant to offer an apology to a complainant. Yet the simple act of apologizing can, in the eyes of the complainant, be more powerful than anything the Review Board could order the college to do. In similar fashion, a registrant and complainant may choose to agree on a financial resolution in order to settle a matter. This is something entirely between the registrant and the complainant, as the Review Board cannot order the payment of money from one party to another – the Review Board has no authority under the Act to award monetary damages or direct that one party refund money to another.

*"…we certainly appreciated the efficiency of your facilitation and negotiation skills…"*

The place of health colleges in the mediation process has been the subject of considerable discussion between the Review Board and the colleges. Under the Act, the powers of the Review Board are limited to reviewing the work of the colleges with respect to complaints about registration matters or investigation of complaints about registrants. Yet for the latter instance, the complaints arise because a complainant is upset about the conduct of, or services provided by a registrant. The college investigates the complaint, but the complainant's primary concern typically remains with the registrant; the complainant usually desires some measure of interaction with the registrant and acknowledgment of the validity of the complainant's concerns.

When a matter proceeds to mediation, the college can, in light of the obvious desire of the complainant to resolve the matter directly with the registrant, feel a bit like a "fifth wheel." In practice, the Review Board has dealt with this by encouraging college representatives to share their knowledge of practice and ethical standards with the parties to encourage the parties to acknowledge particular "grey areas" in the practice of a health profession, or to provide a measure of expert commentary to resolve a contentious factual aspect of a dispute. While the colleges may not be negotiating or reviewing the position taken by a college committee – particularly a complaint inquiry committee – the college nonetheless has a potentially valuable role to play in explaining the role of the college and assisting the parties to craft a resolution to their conflict.

We have also heard from colleges that, as a party to the mediation, they consider that there is nothing to mediate, as the college has completed its work and declared its position following what is usually a complex investigation documented with detailed reasons. In addition, some colleges have expressed considerable discomfort with the terms of the mediation agreement that requires all parties to hold the terms of any settlement in the strictest confidence; these colleges believe that such restrictive agreements could possibly prevent the college from carrying out its mandate to regulate the profession in the public interest, should information arise in the course of mediation that reveals a practice issue about which the college should take some sort of action. The Review Board has, on a provisional basis, accommodated to this concern by including, on request, a provision in the mediation agreement

that acknowledges the duty of the college under the Act to act in the public interest, and that permits the college to make use of information disclosed in the course of the mediation for the specific purpose of meeting its statutory responsibilities.

*"The most positive aspect of the meeting for me was having the ability and space to speak from my heart, feel heard, and consider this to be an experience of closure after a four year long journey."*

For a more detailed and very useful discussion on the practicalities of mediation, the reader should review Review Board Practice Directive No. 5 that was published on the Review Board website in January 2010:
http://www.hprb.gov.bc.ca/HPRB_practice_directive_5.pdf

# Mediation Summaries

The very brief mediation summaries that follow are intended to provide a flavour of what has been achieved by Review Board members and staff in the resolution of health practices disputes in 2010. Because of the clear requirement that such resolutions be absolutely confidential, only the most general comments about the nature of the resolution have been provided – no information has been included in this report that would identify the parties, the college, or the nature of the dispute such that the participants in the matter can be identified.

Some encouraging resolutions in 2010:

- in light of a recognized miscommunication, a registrant waived a missed appointment fee and wrote a letter of apology to the complainant;
- a registrant wrote a letter of apology to the complainant to deal with an embarrassing miscommunication concerning administration of the registrant's new patient policy;
- on a registration complaint, a college agreed to provide special assistance to a student candidate who had written a qualification exam several times under difficult circumstances – some of which were attributable to college policies and practices;
- on a registration complaint, a registrant who was the subject of fitness to practice questions was restored to full status after an agreement was reached whereby the registrant would be subject to periodic independent third party assessment of personal fitness;
- in response to a customer complaint on a matter that had its basis in miscommunication, a registrant's employer agreed to monitor the employee's performance and provide to the customer a refund on a particular product;
- in several mediations involving fee-for-service issues (i.e., non-MSP matters), the parties agreed to full or partial reimbursement/refund for products or services that were the subject of the complaint;
- in several registration matters, colleges agreed to receive additional evidence of a registration applicant's qualifications, and to permit the applicant to consult with college staff for guidance as to how to present such additional evidence; the college agreed that upon receiving such additional submissions it would reconsider the application for registration;
- a registrant with supervisory responsibilities agreed to recommend further training for staff in the care and management of a particular class of patients, and to provide the complainant with a sympathy letter of apology;
- a registrant agreed to provide a written expression of sympathy to a complainant, and the college agreed to the publication of educational materials for the profession on issues arising out of the complaint;
- a college agreed that a letter from the complainant regarding the failure by the college inquiry committee to interview the complainant would be provided to the members of the inquiry committee and kept on file with the college; and

- an agreement was reached whereby it was acknowledged that treatment of the complainant by a registrant was based on flawed information provided by third parties, and that the clinical records produced subsequent to such treatment should not be relied on by treatment providers. In addition, and for the protection of the patient, a memo documenting this understanding would be kept on top of the patient's record.

## Mediation Feedback

(from Mediation Questionnaires distributed after mediation):

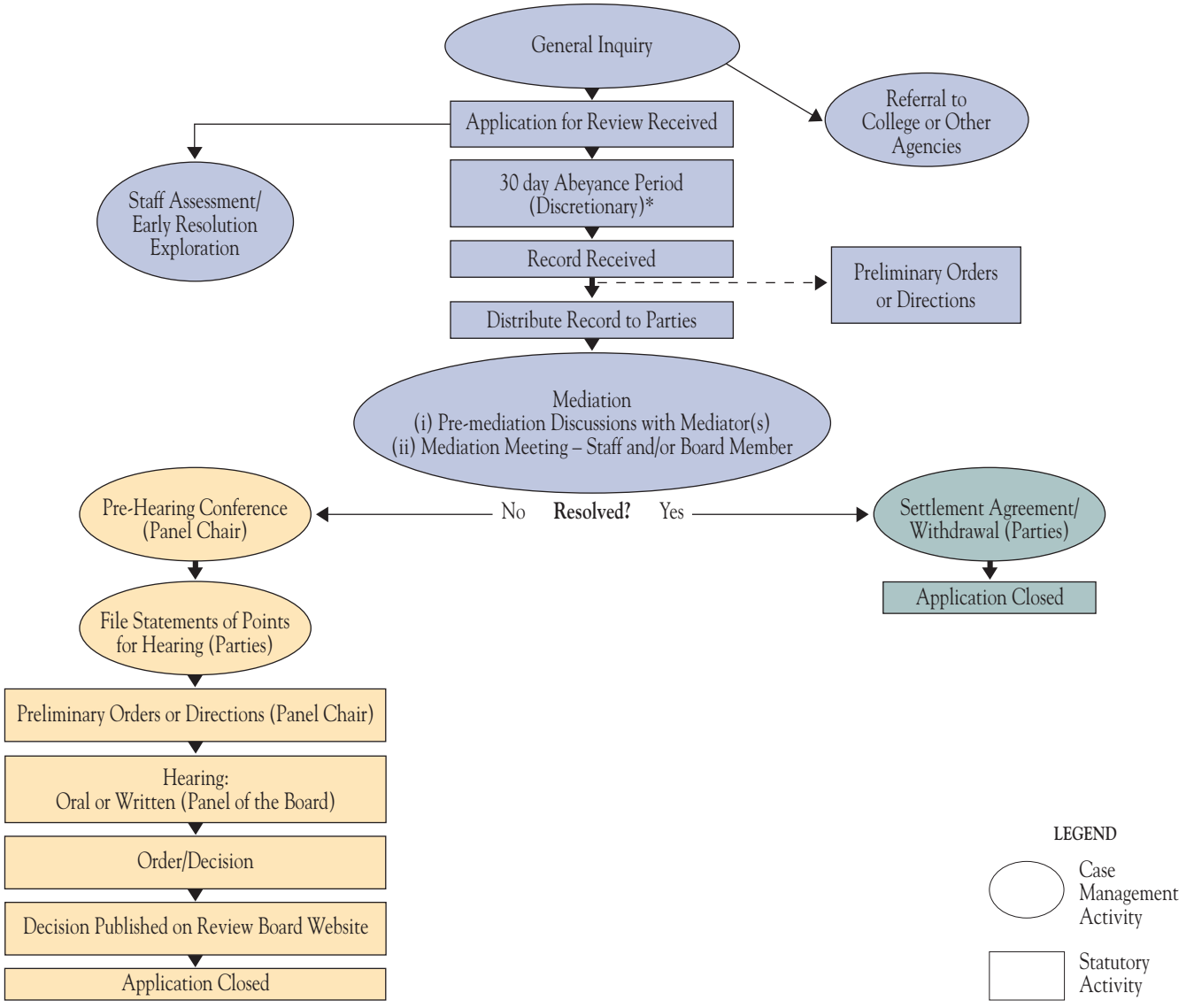
### Question 4: "Taken as a whole, how would you rate the mediation process?"

## Figure 1: Mediation Feedback Questionnaires received in 2010

| Rating: | % |
|---|---|
| Excellent | 38 |
| Good | 21 |
| Fair | 14 |
| Poor | 21 |
| No Response | 7 |
| Total | 100 |

# The Review Process and Activity

The following is an 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 obtained from the Review Board Office or the website. See Executive Director's report for further details about the 30 day abeyance period.



# The Adjudication Process

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

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

A formal review before the Review Board is 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. The Review Board may direct that a review hearing be conducted in person, in writing or teleconferencing or by any combination of these formats. Reviews that are conducted by way of an oral hearing are generally open to the public, unless the Review Board orders otherwise.

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

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

# Key Decisions

The Review Board conducted 54 hearings in 2010, and a selection of significant decisions are summarized below. Note that the bulk of the Review Board's decisions are preliminary in nature. The Review Board process, which finds its authority in Part 4.2 of the *Health Professions Act* and in the provisions of the *Administrative Tribunals Act* (ATA), is codified in the Review Board's *Rules of Practice and Procedure*. These Rules provide for the efficient adjudication of questions arising at the beginning of a Review Board proceeding, such as:

- Does the Review Board have jurisdiction (legal authority) to hear this particular complaint?
- Is this complaint clearly without merit? (i.e., is it frivolous, vexatious, or trivial)
- Was the complaint filed late; do special circumstances exist to grant an extension of time for filing?
- Should specific confidential or sensitive third party information in a health college record of investigation be withheld from an applicant?

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

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

The reader will note that final hearings "on the merits" are listed below under the headings of "Adequacy" and "Reasonableness." Note also that some decisions from the 2009 calendar year have been included, for the reason that the decisions are noteworthy and were not described in detail in the Review Board's 2009 Annual Report.

## Preliminary issue: Jurisdiction

### 2009-HPA-0057(a), June 18, 2010, College of Physicians & Surgeons (Chair English)

A physician alleged that another physician, his former business partner (with whom he was still in legal dispute) made false statements to the Medical Services Plan, causing damage to the complainant. The College dismissed the complaint, holding that "the matters related to your final and business arrangements do not fall under the mandate or jurisdiction of the College". The Review Board Chair found that the Review Board did not have jurisdiction to adjudicate the matter (paras. 10–14):

> *In my opinion, the allegation by one registrant that another registrant (his former business partner) caused him financial harm – in the form of what the Complainant's statement of points describes as the "mis-dating and resubmission of a previously signed assignment of payment form" to the Medical Services Plan, and the failure to inform the complainant of such – is not the type of complaint that falls within the focus of the Review Board. Nor is the allegation that the Registrant improperly cut off the Complainant's phone and internet service, used "profane and insulting language" in one meeting solely attended by the two associates and another physician, and that the Complainant "suspects" that the Registrant vandalized a stethoscope.*
>
> *I agree with the College that its regulatory focus (and the purpose of this Review Board) is properly understood in light of the governing statutory direction that the College is to be concerned*

*with the service and protection of the public: Health Professions Act, s. 16(1)(a). The Complainant does not in this case allege that any patient or member of the public was harmed, directly or indirectly, by any medical treatment, or by the conduct he alleges. The statutory direction that the College must exercise its mandate "in the public interest" (Act s. 16(1)(b)) does not foist upon the College the duty to investigate and resolve business disputes between physicians involving claims of "recklessness" in dealings with billing agencies, rudeness as between partners, or suspicions involving a stethoscope.*

*This is self evidently a financial dispute between two former business associates who have remedies available to address any financial losses one seeks to claim against the other. The courts, not this Review Board, are the proper forum for that sort of litigation.*

### 2009-HPA-0039(a), April 27, 2010, College of Denturists (Member Hobbs)

An applicant seeking registration as a member of the College applied to review a decision of the registration committee refusing to register him as a denturist following a "fail" on a clinical exam.

The College argued that the Review Board had "no jurisdiction" over the application because it is not the Review Board's statutory role to reassess the conclusions of the registration committee. The Review Board held (para. 17):

*The College's argument that the Review Board lacks jurisdiction cannot be sustained. To argue that the Review Board has no "jurisdiction" to entertain the Applicant's challenge to the correctness of the Registration Decision is not a jurisdictional argument. Jurisdiction, if arguable, which it is not here, would refer to lacking jurisdiction to entertain the application for review at all. This is looking at the issue of jurisdiction in the narrow sense.*

## Preliminary issue: Extending time for filing application

### 2010-HPA-0055(a), July 22, 2010, College of Physicians & Surgeons (Member del Val)

In determining whether the Review Board should grant an extension of time for an applicant to file an application for review, there must be criteria that can be fairly and consistently applied. In looking for and applying appropriate criteria, Review Board member del Val wrote (paras. 19–20):

**The test**

Following the recent British Columbia Court of Appeal decision in Clock Holdings Ltd. v. Braich Estate, [2009] B.C.J. No. 2464 (C.A.), the Review Board has established that:

a) *The five factors to be considered in determining whether special circumstances exist to justify extending the time to file an application for review are:*

   *(1) whether there was there a bona fide intention to appeal,*

   *(2) when the other parties were informed of the intention to request a review,*

   *(3) whether the other parties would be unduly prejudiced by an extension,*

   *(4) whether there is merit in the request for review, and*

   *(5) whether it is it in the interest of justice that an extension be granted.*

b) *The fifth question of whether it would be in the interest of justice to grant an extension is the most important one as it encompasses the other four.*

*I concur with this statement of the factors to be considered and I adopt this test for the purposes of deciding this matter.*

**Application of the test**

The Applicant's original complaint was about the infertility she experienced following medical treatment she received from two registrants. The inquiry committee's decision found no fault with the medical practice of the registrants but was critical of the record keeping of one of the registrants.

The Inquiry Committee's decision was dated December 29, 2009, and delivered to the complainant in Alberta. On March 15,

2010, the Review Board received the applicant's letter advising she intended to appeal the decision.

The Review Board held delivery was deemed to have taken place by mid-January, making the deadline for application February 15, 2010. The delay was therefore one month.

The Panel held that: (i) There was no evidence of an intention to file before February 15, 2010, but the Complainant explained that she was not advised of a deadline and was experiencing personal challenges: *"In light of all the circumstances I am prepared to give the Complainant the benefit of the doubt. Therefore, I am not prepared to find that the Complainant did not have an intention to file a request for review within the time intended."* (para. 25); (ii) The Record was not yet produced, and there is insufficient evidence on which to conclude that the application for review is bound to fail; (iii) There was no "undue prejudice to either the Registrant or the College (paras. 35–41):

> *It is true that the "mere existence" of a proceeding is prejudicial to any defendant. The issue, though, is not whether there is prejudice; the key question is whether that prejudice is undue.*
>
> *[The Review Board then cited various cases on "prejudice" submitted by the registrant]*
>
> *The common theme that runs through the above cases where the court refused to grant an extension or postponement is that the doctors had already been subjected to years of process and/or delay. That is not the case in the review process the Complainant seeks to start.*

The Review Board rejected the submission that the extension should be refused because the application was not properly supported (para. 44):

> *I agree with counsel for the Registrants that the Complainant did not expressly and specifically address each of the factors to be considered in determining whether special circumstances exist to justify an extension. However, I do not agree with counsel's view … that the Complainant offered no reason at all for her delay. All of the submissions the Complainant has made, to date, though imperfect, do enable an assessment of the factors that must be examined. On balance, for the Review Board to stop the review from being launched at this time would not serve justice.*

## Preliminary issue: Application to Review Board filed in 30 days, but not delivered to other parties

### 2010-HPA-G02(a); 2010-HPA-0002(a), June 24, 2010, College of Physicians and Surgeons (Chair English)

The Review Board held (para. 6):

> *In my view, the failure to serve the Registrants does not result in the Review Board losing jurisdiction over an application that has been filed in time. The remedy where delivery has not taken place in time is to require the proper delivery and notification of the College and the Registrant as soon as possible to ensure fairness to all parties.*

The Chair held that *"whether a provision is obligatory does not answer the question whether non-compliance with the obligation results in a loss of jurisdiction"* (para. 12). To find a loss of jurisdiction because an application that was filed on time was not served on time *"would be contrary to legislative intent, justice and common sense"* (para. 14). The Decision provides detailed reasons in support of each factor.

> *"The purpose of the delivery provisions is to ensure natural justice to respondents. If delivery does not take place in a timely fashion as may be directed by the Review Board, the Review Board has several tools at its disposal, including summary dismissal under s. 31(1)(e) ["applicant failed to diligently pursue the application or failed to comply with an order of the tribunal"]*[1] (para. 20).

The Review Board has dismissed applications under s. 31(1)(e) of the *Administrative Tribunals Act* due to an applicant's failure to comply with the Review Board requirement to confirm delivery the application to the registrant and the College: see Letter Decision 2009-HPA-0012.

[1] Section 31(1)(e) of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 applies to the Review Board on registration and complainant initiated reviews by virtue of s. 50.64 of the *Health Professions Act*.

## Preliminary issue: application for extension of time – Extension Refused

**2009-HPA-0001(a)–0004(a), March 17, 2010, College of Registered Nurses (Chair English, Members del Val, Morris)** (paras. 87–89)**:**

> *As s. 50.6(5) makes clear, an inquiry committee's disposition may be challenged on the ground either that the disposition was unreasonable or that the investigation was not adequate. The "reasonableness" criterion focuses on the disposition of the inquiry committee. The "investigation" criterion, by contrast, focuses on the investigation that took place, usually by other officials within the college, before the matter was prepared and presented to the inquiry committee for decision.*
>
> *Colleges are thus required to be accountable to the Review Board both for their substantive dispositions and for their investigations prior to those dispositions. Just as a complainant must have a remedy where an inquiry committee has made an unreasonable decision, so too should they have a remedy where a decision might be seen as "reasonable" based solely on the information known to the inquiry committee, but where the decision was based on a record produced under an investigation process that was inadequate.*
>
> *The Legislature's choice of the words "reasonable" and "adequate" make clear that the Legislature has not tasked the Review Board with the role of determining whether the Inquiry Committee has made the "ideal" disposition or conducted the "perfect" investigation. A disposition will only be unreasonable and an investigation will only be inadequate if it falls below the appropriate standard of review.*

## Preliminary issue: Considering "Merit" on an application for extension of time

**2009-HPA-0006(a), July 16, 2009, College of Traditional Chinese Medicine Practitioners and Acupuncturists (Member Silversides)** (paras. 40–41)**:**

> *The issue of whether there is merit in an application for an appeal was dealt with by Lambert J.A. in Davies v. Canadian Imperial Bank of Commerce 15 B.C.L.R. (2d) 256 (at 258) where he said the following:*
>
> *An assessment of the merits of the appeal is relevant to a decision about whether to grant an extension of time for perfecting the appeal, and it is relevant in other cases where a request is made for an exemption from a penalty for non-compliance with the rules. But the relevance is confined to the question of whether the appeal is bound to fail, just as it is on the question of striking out an appeal as being vexatious, frivolous, or entirely without merit. If the appeal is bound to fail, then that is a good reason for refusing an extension of time. But if the appeal is not bound to fail, and therefore has some bona fide arguable issue, the question of whether to grant an extension of time for perfecting the appeal should not be any further influenced by an assessment of the merits, but should instead turn on a consideration of the other factors, particularly the overriding factor of an assessment of the interests of justice, as those interests affect both parties.*
>
> *This Panel finds the appropriate test for determining whether there is merit in the application for review for the purposes of an application to extend time for filing an application for a review is whether the review, if conducted, is bound to result in an order confirming the decision of the inquiry committee. Applying this test to the Complainant's application for review of the decision of the inquiry committee, and considering the positions taken and not taken by the College and the Registrant, this Panel is unable to conclude that the review, if conducted, would necessarily result in an order confirming the disposition. The Panel is therefore satisfied that there is merit in the Complainant's application for purposes of this preliminary application.*

## Preliminary issue: Summary Dismissal

**2009-HPA-0050(a), March 4, 2010, Registered Psychiatric Nurses (Member Hobbs)**

A complainant brought a quality of care complaint against a psychiatric nurse. The Inquiry Committee concluded that there was no breach of the standards of professional practice. The complainant applied for review alleging inadequate investigation, an unfair process and evidentiary issues.

The College argued that the application should be summarily dismissed on the basis that it had no reasonable prospect of success.

The Review Board held (paras. 13, 16, 18–19):

*It is not necessary in this decision to review in detail the submissions made by the College or the Complainant in this Application…*

*Clearly, a serious issue has been raised in this matter in that a complaint has been made about the conduct of a registrant nurse of the College in relation to patient care…*

*Here the application for review raises legitimate issues, the outcomes of which are not clear or obvious. To attempt to adjudicate this matter or make findings of fact in dispute at this stage would be to wrongly engage in an exercise more properly undertaken by a hearing panel.*

*I have assessed the arguments and supporting materials filed by the parties. I have done so recognizing it is not my role at this stage to finally adjudicate the merit of the arguments on either side. I am not satisfied that the College has met the test to persuade me that this application for review does not warrant a hearing. This matter is particularly unsuitable for summary dismissal as there are disputed facts as to the registrar's conduct which should be considered. I am not satisfied the Complainant's application for review is bound to fail.*

### 2009-HPA-0010(a), January 25, 2010, Traditional Chinese Medicine Practitioners and Acupuncturists (Member Ostrowski)

A complainant objected to the College that five students registered by the College were registered with inferior qualifications and using forged transcripts. The objection led to decisions by both the Inquiry Committee and the Registration Committee. The Complainant argued that the actions taken were insufficient to address the concerns regarding the use of "fake documents". For the Inquiry Committee's part, it decided not to accept the training hours claimed from a foreign institution, and sent the matter to the registration committee for review.

The Review Board held that, insofar as the complainant purported to challenge a decision of the registration committee, the application was properly dismissed as being outside the Review Board's jurisdiction (ATA, s. 31(1)(a)) – a complainant has no standing to challenge a decision of the registration committee.

The College also argued that, insofar as the complainant was challenging the Inquiry Committee's decision, the application should be dismissed as having no reasonable prospect of success under s. 31(1)(f) of the ATA. With regard to the test, the Member held (paras. 15, 18, 21):

*Section 31(1)(f) of the ATA states that the tribunal may dismiss all or part of an application if it determines that "there is no reasonable prospect that the application will succeed". The language of s. 31(1)(f) has been applied for many years by appeal court judges in addressing applications for leave and applications for indigency status. The courts have held that the phrase should be construed as meaning that the appeal is "bound to fail"…*

*There is a question as to whether the "bound to fail" test differs significantly from the "out of the realm of conjecture" test. Whatever the answer, both tests require a preliminary dismissal decision to take considerable care in distinguishing between the gatekeeper role on summary dismissal and the role of the panel on the merits. The underlying policy of the legislation is that a complainant is entitled to have his matter heard on the merits unless it is not worthy to be put before a panel. Only the latter question is properly before a member on a summary dismissal application under s. 31(1)(f)…*

*In the context of a "gatekeeper", I will first deal with the adequacy of the investigation conducted by the Inquiry Committee and consider the issue of procedural fairness as to whether the investigation was sufficiently incomplete so as to deny the Complainant the right to an adequate investigation. I will not be weighing evidence but will be examining what inferences can be fairly drawn from the information provided in order to determine whether the Complainant has a reasonable prospect of success.*

The Review Board Member undertook a detailed assessment of the investigation conducted by the Inquiry Committee in light of the Record, on the premise the that test of "adequacy" includes whether "obviously crucial evidence was missed" or whether "several lesser deficiencies add up to an unreasonable investigation" (para. 27). The Member concluded (para. 35):

*The undisputed fact is that the College did its own investigation and that part of the investigation was the hiring of an international credential evaluation service. The use of such a service is consistent with the demands of administrative efficacy. In its investigation the College also asked for input from the Registrants. I further note the documentation specific to wrongdoing by the*

*Registrants (an allegation of forgery of transcripts) was sent to [the evaluation service] and [those] investigators could not come to any solid conclusions to confirm the Complainant's allegation. The transcripts were verified for authenticity. To conclude, there is no evidence whatsoever for me to draw any inference that there was an inadequate investigation by the College.*

The Review Board member then turned to the "reasonableness of the disposition" and held that there was no reasonable prospect that the disposition would be overturned (para. 40):

*…in the report from *the evaluation service+, the investigators were not able to come up with any solid conclusions from the allegations from the Complainant even with the receipt of submissions and documents directly from him. The Inquiry Committee accepted the [external] report. In any event, the Inquiry Committee did not have the authority to expel the Registrants as its remedies are limited and set out in sections 33(6) and 36 of the Act. Given those two conclusions, I find that there is no reasonable prospect that he application would succeed before a hearing panel…*

## Hearing on the merits: Adequacy – factors to be considered

### 2009-HPA-0001(a)–0004(a), March 17, 2010, College of Registered Nurses (Chair English, Members del Val, Morris) (paras. 96–98, 110):

*As noted earlier, a reasonable decision does not necessarily mean an adequate investigation. For this reason, the Legislature has also enabled complainants to challenge the adequacy of the investigation conducted by the College.*

*A College's investigation of a complaint occupies an important place in the legislation, as that investigation will inform an inquiry committee disposition, which disposition can range from taking no further action to directing the registrar to issue a citation: Act, s. 33(6).*

*A complainant is not entitled to a perfect investigation, but he or she is entitled to adequate investigation. Whether an investigation is adequate will depend on the facts. An investigation does not need to have been exhaustive in order to be adequate, provided that reasonable steps were taken to obtain the key information that would have affected the Inquiry Committee's assessment of the complaint.*

*The degree of diligence expected of the College – what degree of investigation was adequate in the circumstances – may well vary from complaint to complaint. Factors such as the nature of the complaint, the seriousness of the harm alleged, the complexity of the investigation, the availability of evidence and the resources available to the college will all be relevant factors in determining whether an investigation was adequate in the circumstances.*

### 2009-HPA-0036(a), May 25, 2010, College of Registered Nurses (Chair English, Members McDowell and Stewart)

This was the third of three Review Board decisions arising from complaints lodged with the College by a complainant following her attendance at the Vancouver General Hospital ER on October 23, 2007 for the treatment of an asthma attack.

In this case, the Complaint alleged, and the Inquiry Committee agreed, that the Registrant made unprofessional and inappropriate comments to the Complainant – in effect, that, after an exchange with the Complainant: "he did not care if she died if she continued to act like this". The Registrant gave a written undertaking not to repeat similar conduct, and his name was published on the website. The Complainant was dissatisfied with this outcome, and alleged there should be a discipline hearing.

The Complainant alleged that the College's investigation was inadequate because it relied heavily on the Hospital's own internal investigation.

The Review Board held (paras 63–64):

*…The College is entitled to review the Hospital's record of investigation. Indeed, requiring the College to reinvent the wheel by interviewing the same personnel regarding the same incidents when sufficient evidence exists in the record could be a misuse of the College and the Hospital resources. However, once it has acquainted itself with the Hospital's investigation record the College must ensure that it continues to pursue its own investigation. That may well require the College to revisit the same individuals in order to satisfy itself that all the details regarding the complaint are investigated adequately.*

*…The review of the Hospital's investigation is an appropriate first step in the process. In this case, the College reviewed the Hospital's investigation findings and then delved deeper by interviewing and corresponding with individuals involved in the Complainant's care.*

## Hearing on the merits: factors to be considered in assessing what is "Reasonable"

**2009-HPA-0001(a)–0004(a), March 17, 2010, College of Registered Nurses (Chair English, Members del Val, Morris),** paras. 90–94**:**

> *The Legislature's choice of the word "reasonable" cannot have been accidental, particularly when it has been employed in a Board whose statutory role has been described as that of "review" (and mainly a review on the record) rather than appeal. "Reasonableness" is a term of art in administrative law. In Canada (Citizenship and Immigration) v. Khosa, 2009 SCC 12 at para. 59, the Supreme Court of Canada described the reasonableness standard this way:*
>
> > *Where the reasonableness standard applies, it requires deference. Reviewing courts cannot substitute their own appreciation of the appropriate solution, but must rather determine if the outcome falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (Dunsmuir, at para. 47). There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome.*
>
> *In Dunsmuir v. New Brunswick, 2008 SCC 9 at paras. 47 and 49, the Supreme Court of Canada had earlier stated as follows:*
>
> > *Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.…*
>
> > *Deference in the context of the reasonableness standard therefore implies that courts will give due consideration to the determinations of decision makers. As Mullan explains, a policy of deference "recognizes the reality that, in many instances, those working day to day in the implementation of frequently complex administrative schemes have or will develop a considerable degree of expertise or field sensitivity to the imperatives and nuances of the legislative regime": D. J. Mullan, "Establishing the Standard of Review: The Struggle for Complexity?" (2004), 17 C.J.A.L.P. 59, at p. 93. In short, deference requires respect for the legislative choices to leave some matters in the hands of administrative decision makers, for the processes and determinations that draw on particular expertise and experiences, and for the different roles of the courts and administrative bodies within the Canadian constitutional system.*
>
> *In our view, these passages reflect the approach the Review Board should take in reviewing the reasonableness of an inquiry committee's disposition. While the Review Board's application of the test will necessarily reflect its expertise as a specialized administrative tribunal rather than a Court, the Review Board's focus is nonetheless not to step into the shoes of the Inquiry Committee, but rather to determine whether the Inquiry Committee's disposition falls within the range of acceptable and rational solutions, and is, viewed in the context of the whole record, sufficiently justified, transparent and intelligible to be sustained.*
>
> *It is only if the Review Board finds the Inquiry Committee to have acted unreasonably that it can then go on to consider granting one of the remedies set out in s. 50.6(8)(b) or (c) of the Act:*
>
> > *50.6(8) On completion of its review under this section, the review board may make an order…*
> >
> > *(b) directing the inquiry committee to make a disposition that could have been made by the inquiry committee in the matter, or*
> >
> > *(c) sending the matter back to the inquiry committee for reconsideration with directions.*

*The Registrant and the College made submissions regarding the relationship between the reasons for decision given by an Inquiry Committee and the reasonableness of its disposition. For purposes of this case, we do not need to address that issue in detail. It will suffice to say that while we do not expect Inquiry Committees to give the detailed reasons one would expect of a court, Inquiry Committees are well advised to explain themselves and their key findings in sufficient detail so that the complainant and the Review Board will understand the key findings of fact, law and discretion that gave rise to the decision on the complaint.*

This passage has been cited with approval in several subsequent Review Board decisions:

- **2009-HPA-0035(a), April 13, 2010, College of Registered Nurses (Members Ostrowski and McDowell)**
- **2009-HPA-0034(a), April 30, 2010, College of Registered Nurses (Chair English, Members McDowell and Stewart)**
- **2009-HPA-0036(a), May 25, 2010, College of Registered Nurses (Chair English, Members McDowell and Stewart)**
- **2010-HPA-0008(a), 0009(a), 0010(a), 0011(a), October 25, 2010, College of Physicians & Surgeons (Member Morris)**
- **2010-HPA-0003(a), November 18, 2010, College of Dental Surgeons (Member Hobbs)**
- **2010-HPA-0017(a); 2010-HPA-0018(a), January 5, 2011, College of Opticians (Member Cromarty)**

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

# Judicial Reviews of Review Board Decisions

Just as the Review Board was created by statute 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. The court's role on judicial review is specialized: it is a review, not an appeal. The court's role is to ensure that the Review Board had the jurisdiction (legal authority) to make a decision, used a fair and impartial process, and made a decision within its jurisdiction that was not "patently unreasonable."

To date, no College or complainant has applied to court to challenge a decision of the Review Board. However, in 2010, several Registrants launched judicial review challenges to Review Board decisions on preliminary decisions made by the Review Board:

- In one case, a registrant challenged a preliminary decision of the Review Board refusing to receive evidence in private (to the exclusion of the complainant) regarding a registrant's past conduct history with the college;
- In two cases, registrants challenged preliminary decisions of the Review Board finding that the Review Board has jurisdiction to deal with an application by a complainant that is filed in time, even if it is not delivered in time to the registrant; and
- In a fourth case, registrants challenged a preliminary decision of the Review Board agreeing to extend the time for a complainant to file an application for review based on "special circumstances."

The first case was argued in February and March 2011. On June 27, 2011 the Supreme Court of British Columbia issued the first-ever judgment considering a decision of the Review Board: **http://www.canlii.org/en/bc/bcsc/doc/2011/2011bcsc832/2011bcsc832.html** This judgment dismissed a challenge to a decision of the Chair of the Review Board who had determined that a complainant should be entitled to access to certain documents in the College Record of investigation that make reference to the registrant physician's 'past conduct history.' In summarizing the essence and impact of the Chair's decision, Mr. Justice Goepel stated that "What he [the Chair] did was allow certain information to be released to the complainant so the complainant could make proper representations on the review to which the complainant is a party."

The second, third and fourth cases were abandoned by the registrants after the Court refused to allow them to proceed with their court challenges by way of pseudonym rather than using their real names. The Supreme Court's decision refusing this permission was issued on December 31, 2010. The registrants applied to the British Columbia Court of Appeal for leave to appeal that decision. Leave to appeal was denied on April 1, 2011, following which the registrants formally notified the Review Board that they were abandoning their judicial review Petitions.

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

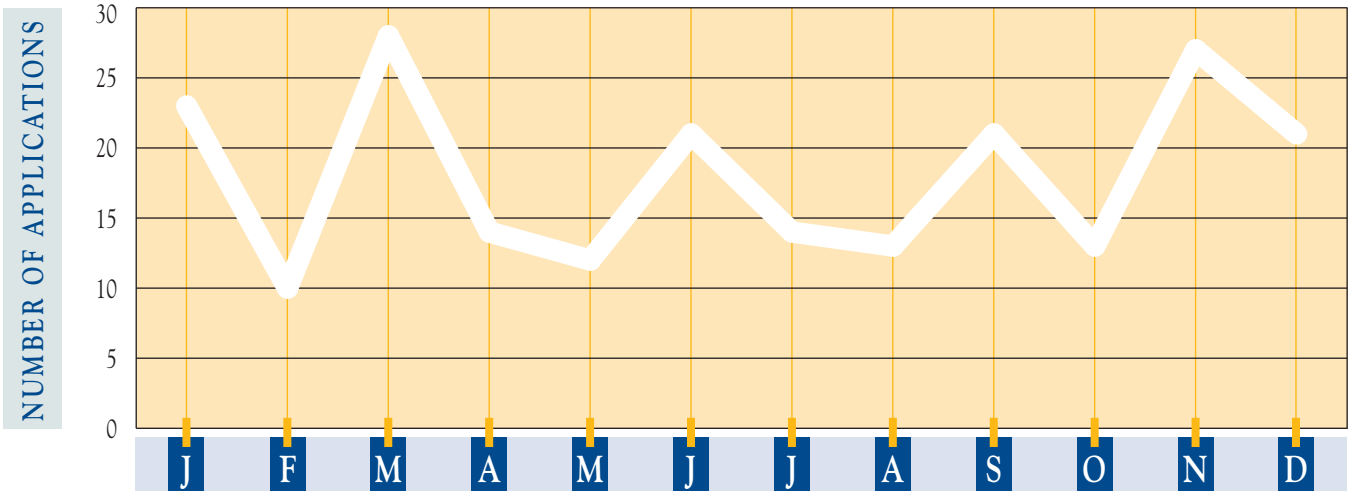
# Review Activity Statistics

## For the reporting period from January 1, 2010 – December 31, 2010

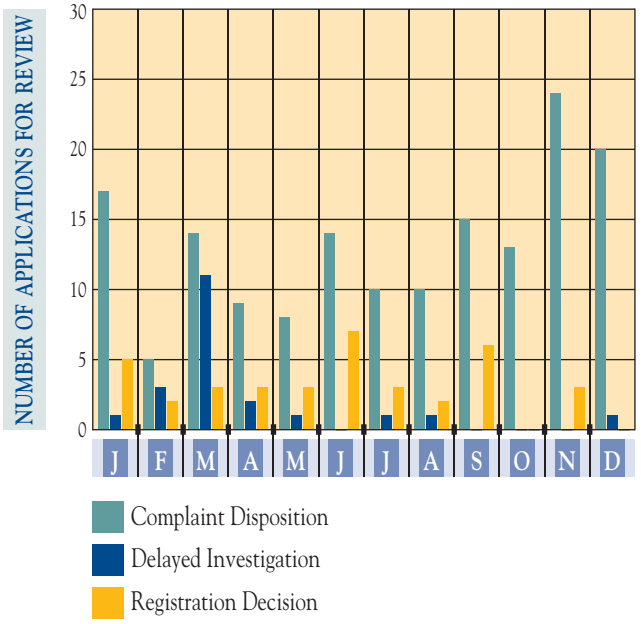
### Figure 2: Number of Applications, by type and month

| Month | Complaint Disposition | Delayed Investigation | Registration Decision | Total Number of Applications | % |
|---|---|---|---|---|---|
| January | 17 | 1 | 5 | 23 | 11 |
| February | 5 | 3 | 2 | 10 | 5 |
| March | 14 | 11 | 3 | 28 | 13 |
| April | 9 | 2 | 3 | 14 | 6 |
| May | 8 | 1 | 3 | 12 | 6 |
| June | 14 | 0 | 7 | 21 | 10 |
| July | 10 | 1 | 3 | 14 | 6 |
| August | 10 | 1 | 2 | 13 | 6 |
| September | 15 | 0 | 6 | 21 | 10 |
| October | 13 | 0 | 0 | 13 | 6 |
| November | 24 | 0 | 3 | 27 | 12 |
| December | 20 | 1 | 0 | 21 | 10 |
| **Total** | **159** | **21** | **37** | **217** | 100 |
| % of Total Applications | 73 | 10 | 17 | 100 | |

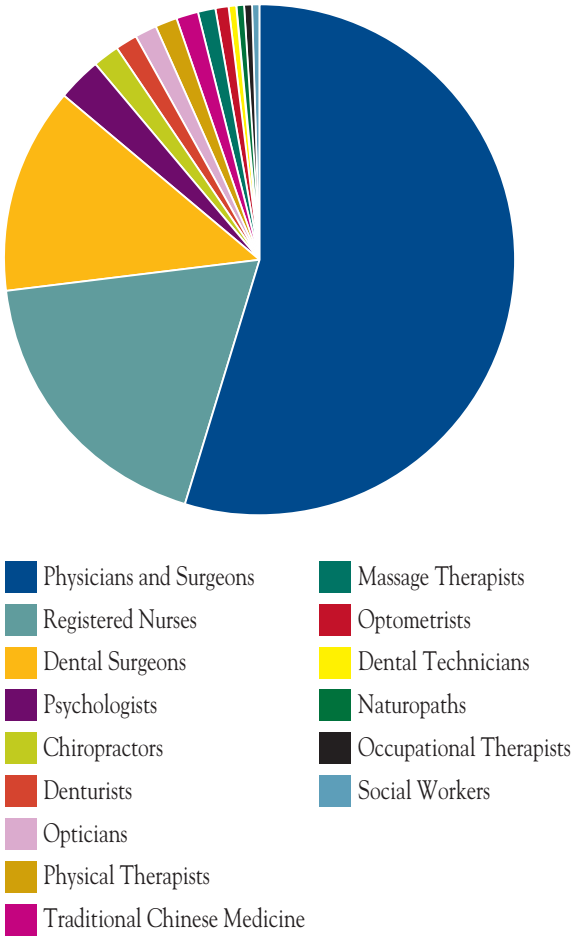
## Figure 3: Seasonal trend line – Number of Applications for Review, by month




## Figure 4: Applications for Review, by type and month




## Figure 5: Total Applications for Review, classified by respondent College



## Figure 6: Applications for Review, by college and type

| Respondent College | Complaint Disposition | Delayed Investigation | Registration Decision | Total Number of Applications | % |
|---|---|---|---|---|---|
| Physicians and Surgeons | 113 | 2 | 4 | **119** | 55 |
| Registered Nurses | 12 | 0 | 28 | **40** | 18 |
| Dental Surgeons | 11 | 17 | 0 | **28** | 13 |
| Psychologists | 5 | 1 | 0 | **6** | 3 |
| Chiropractors | 4 | 0 | 0 | **4** | 2 |
| Denturists | 1 | 0 | 2 | **3** | 1.3 |
| Opticians | 2 | 0 | 1 | **3** | 1.3 |
| Physical Therapists | 3 | 0 | 0 | **3** | 1.3 |
| Traditional Chinese Medicine | 1 | 1 | 1 | **3** | 1.3 |
| Massage Therapists | 2 | 0 | 0 | **2** | 1 |
| Optometrists | 2 | 0 | 0 | **2** | 1 |
| Dental Technicians | 0 | 0 | 1 | **1** | 0.5 |
| Naturopaths | 1 | 0 | 0 | **1** | 0.5 |
| Occupational Therapists | 1 | 0 | 0 | **1** | 0.5 |
| Social Workers* | 1 | 0 | 0 | **1** | 0.5 |
| **Total** | **159** | **21** | **37** | **217** | 100 |
| % of Total Applications | 73 | 10 | 17 | 100 | |

* One application for review of an Inquiry Committee Disposition of the College of Social Workers of British Columbia was also received, but was dismissed as the HPRB does not have jurisdiction over that college under the *Health Professions Act*.

## Figure 7: Applications for Review – by status

| Applications for Review | Number |
|---|---|
| Number of applications open at January 1, 2010 (Case Management in Progress) | 75 |
| Number of applications for review received in 2010 | 217 |
| Applications closed in 2010 | 128 |
| • 2009 Applications | 52 |
| • 2010 Applications | 74 |
| Number of applications open at December 31, 2010 (Case Management in Progress) | 143 |

## Figure 8: Number of Applications for Review Closed in 2010

| Closed files | 2009 Applications | 2010 Applications | Total |
|---|---|---|---|
| Number of applications refused | 2 | 0 | 2 |
| Number of applications withdrawn by applicant prior to early dispute resolution[1] | 16 | 26 | 42 |
| Number of files settled, resolved or withdrawn through early dispute resolution/mediation | 12 | 14 | 26 |
| Signed Settlement Agreements | 9 | 8 | 17 |
| Number of applications summarily dismissed[2] | 12 | 12 | 24 |
| • ATA s. 17(1) | 0 | 1 | 1 |
| • ATA s. 18(c) | 1 | 0 | 1 |
| • ATA s. 31(1)(a) | 2 | 4 | 6 |
| • ATA s. 31(1)(b) | 1 | 1 | 2 |
| • ATA s. 31(1)(c) | 1 | 0 | 1 |
| • ATA s. 31(1)(d) | 0 | 0 | 0 |
| • ATA s. 31(1)(e) | 6 | 6 | 12 |
| • ATA s. 31(1)(f) | 3 | 0 | 3 |
| Final Hearings | 10 | 25 | 35 |
| • Dismissed | 8 | 5 | 13 |
| • Referred Back to IC | 2 | 19 | 21 |
| • Consent Order | 0 | 1 | 1 |

[1] Note that an abeyance period of 30 days was introduced by the HPRB in October 2010

[2] Note that one 2009 application was summarily dismissed under both s. 31(1)(a) and (f)

## Figure 9: Disposition of Closed Applications for Review

| Closed Files by College | Application Refused | Withdrawn by applicant prior to early dispute resolution | Settled, resolved or withdrawn through early dispute resolution/ mediation | Summarily Dismissed | Full Hearing (Outcome) |
|---|---|---|---|---|---|
| Physicians and Surgeons | 2 | 14 | 10 | 14 | 1 (referred back)<br>5 (dismissed) |
| Nurses (Registered) | | 11 | 12 | 5 | 7 (dismissed) |
| Denturists | | 2 | 1 | | |
| Chiropractors | | 1 | | | 1 (referred back)<br>1 (consent order) |
| Nurses (Licensed Practical) | | 1 | | | |
| Optometrists | | 1 | 2 | | |
| Physical Therapists | | 1 | 2 | | |
| Dental Surgeons | | | 2 | 1 | 17 (delayed investigation orders)<br>1 (dismissed) |
| Nurses (Registered Psychiatric) | | | 1 | | |
| Opticians | | | | 1 | |
| Pharmacists | | | 2 | | |
| Psychologists | | | 2 | 1 | 1 (referred back) |
| Traditional Chinese Medicine Practitioners and Acupuncturists | | | 2 | 1 | 1 (referred back) |
| Social Workers | | | | 1 | |
| **Total** | **2** | **31** | **36** | **24** | **35** |

# Financial Performance

## Second Year Expenditures

This reporting period covers the second fiscal year of operation for the Review Board. Expenses in terms of staffing and processing applications for review have grown steadily over the course of this year, due to an increase in applications and as greater numbers of review applications make their way to Review Board members for decisions. As noted in our last Annual Report, a substantial part of the budget is based on the board member fees and expenses for conducting mediations, pre-hearing conferences, hearings and writing decisions but, as it takes time for applications to work their way through the process to mediation or a hearing there is a lag for those expenses to be fully realized. We are now in a position where review files are making their way in a routine and timely fashion to Review Board members for the conduct of mediation or an adjudicative hearing, as the case may be. Expenses for member orientation, training and development undertaken in the second year are included here.

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

### Health Professions Review Board

| Operating Costs: April 1, 2010 – March 31, 2011 | |
|---|---|
| Salary & Benefits | $ 412,495 |
| Operating Costs | $ 612,271 |
| Other Expenses | $ 57 |
| **Total Operating Expenses** | **$ 1,024,822** |

## Shared Services Administrative Support Model

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

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

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