

# **The Osgoode Certificate in Health Law**

## **Osgoode Hall Law School**



**Role of the Colleges/Processes  
Before the Colleges and Role of the  
Health Professions Appeal and  
Review Board**

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## **ROLE OF THE COLLEGES UNDER THE REGULATED HEALTH PROFESSIONS ACT**

- **Self-Regulation of Professionals to Serve and Protect the Public Interest**
  - **Establishing the standards of qualification for registration**
  - **Setting of standards of practice and ethical standards**
  - **Administering quality assurance programs to ensure the continuing competence of Members**
  - **Enforcing the standards through investigative and adjudicative process**



## **PROCESSES BEFORE THE COLLEGES**

- **Registration**
- **Complaints and Discipline**
- **Incapacity**
- **Quality Assurance**
- **Patient Relations Program**

# REGISTRATION

- Application to the Registrar (s. 15(1))
- Referral by Registrar to the Registration Committee (s. 15(2))
  - Reasonable doubts re fulfillment of requirements
  - Proposed terms and/or conditions
  - Refusals
- Registration Committee – Paper Review on Submissions (s. 16)
  - Order (s. 18)
  - Direct the issuance of a Certificate of Registration
  - Subject to examinations
  - Additional training
  - Terms, conditions and limitations
  - Refusal
- Applications for Variation (s. 19)
- Appeals to the Health Professions Appeal and Review Board (s. 21)



## **COMPLAINTS**

- **Complaint – in Written Form or Recorded**
- **Investigation of complaints mandatory unless they are deemed to be frivolous, vexatious or without merit**
- **Parties – Complainant and Member**
- **Alternative Dispute Resolution Process**



## **MANDATORY REPORTS – Investigation is Not Mandatory**

- By employer for terminations (or resignations) for professional misconduct, incompetence or incapacity**
- By facility operators (including employers) on reasonable and probable grounds for sexual abuse of a patient, incompetence or incapacity**
- By regulated health professionals on reasonable grounds, obtained in the course of practice, that a member of a College has sexually abused a patient**



## MANDATORY REPORTS

- By regulated health professionals on an incident of unsafe practice or unethical conduct by a health care provider if the matter if not reported to the employer
- Self-report by regulated health professionals of findings of guilt of an offence (limited to findings under the *Criminal Code*, the *Food and Drugs Act*, the *Controlled Substances Act* and provincial offences that could result in jail time) (s. 85.6.1)
- Self-report by regulated health professions of findings of professional negligence or malpractice made against the Member (s. 85.6.2)

## **PROFESSIONAL MISCONDUCT**

- **Guilty of Offence Relevant to Practice**
- **Found Guilty of Misconduct in Another Jurisdiction**
- **Failure to Cooperate with the Quality Assurance Committee**
- **Sexual Abuse of a Patient**
- **Professional Misconduct as Defined in the Regulations**

## **INCOMPETENCE**

- **“the member’s professional care of a patient displayed a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates that the member is unfit to continue to practise or that the member’s practice should be restricted”**

## **INCAPACITATED**

- **The member “is suffering from a physical or mental condition or disorder that makes it desirable in the interest of the public that the member no longer be permitted to practise or that the member’s practice be restricted.**





## **THE INQUIRES, COMPLAINTS AND REPORTS COMMITTEE (ICRC)**

- **Not required to hold a hearing**
- **Decisions may include:**
  - **Take no action**
  - **Issuance of non-disciplinary caution/concern/remediation**
  - **Referral to the Discipline Committee**
  - **Referral to the incapacity process – Fitness to Practise Committee**
- **Appeal to the Health Professions Appeal and Review Board**



## **DISCIPLINE COMMITTEE**

- **Serious allegations of Professional Misconduct or Incompetence**
- **Parties to the Proceeding – the College and the Member**
- **Natural Justice Hearing – Panel**
  - With notice**
  - Based on sworn evidence**
  - Expert testimony**
- **Open to the Public**
- **Decision: Dismissal or Finding of Guilt**



## **DISCIPLINE COMMITTEE**

- **Penalties**
  - **Oral Reprimand**
  - **Imposition of a fine**
  - **Requirement to undertake specific remediation**
  - **Imposition of conditions**
  - **Suspension of Certificate of Registration**
  - **Revocation of Certificate of Registration**
  - **Costs**
  
- **Appeal to Divisional Court**

## **FITNESS TO PRACTISE COMMITTEE**

- **“Incapacitated” means a Member “is suffering from a physical or mental condition or disorder that makes it desirable in the interest of the public that the Member no longer be permitted to practice or that the Member’s practice be restricted”**
- **Substance Abuse or Mental Health Issues**
- **Investigation of Health Issues / Independent Health Examinations**
  - **Interim Suspensions**
  - **Natural Justice Hearing: Not Open to the Public**
  - **Decision: Dismissal or Finding of Incapacity**
  - **Orders:**
    - Revocation or Suspension of Certificate**
    - Imposition of terms and conditions**
- **Appeal to Divisional Court**



## QUALITY ASSURANCE

- Establishment of a Program is Mandatory
- Must Have
  - Continuing education
  - Self, peer and practice assessments
  - Mechanism to monitor compliance
- Quality Assurance Committee
  - Participation in education/remediation
  - Imposition/removal of terms, conditions or limitations on Certificates
  - Referral to the ICRC
- Cooperation with Committee and Assessors
- Confidentiality of Information/Use in Other Proceedings



# HEALTH PROFESSIONS APPEAL AND REVIEW BOARD

- A. Appeals from Decisions of the Registration Committee
  - Review of the documentary evidence or hearing
  - Powers of the Board on Review/Appeal of Registration Decisions
    - Review of application and documentary evidence
    - Limited re-exemptible registration requirements
  - Orders
    - Confirmation of decision of Registration Committee
    - Referral to Registration Committee for further consideration
    - Direction regarding decision to the Registration Committee



# HEALTH PROFESSIONS APPEAL AND REVIEW BOARD

## B. Reports of Delay in Investigations from the Registrar

### C. Review of decisions of the ICRC except for

- Referral to Discipline Committee
- Referral for incapacity proceedings
- **Hearing**
- **Powers of the Board on review of ICRC decisions**
  - Adequacy of investigation
  - Reasonableness of result
- **Orders**
  - Confirmation of decision
  - Referral to ICRC for investigation
  - Direction regarding decision to the ICRC



## THE PUBLIC RECORD

- The Registrar
- College Websites
- Decisions of the ICRC
  - The Complainant and the Member
  - Applications to other jurisdiction
- Referral to Discipline/Fitness to Practise Committee
  - Notation on the public record
  - Schedule of discipline hearings





## THE PUBLIC RECORD

- **Decisions of the Discipline Committee**
  - **Register**
  - **Website**
  - **Publication**
- **Decisions of the Fitness to Practise Committee**
  - **Exclusion of personal health information**
- **Decisions of the Health Professions Appeal and Review Board**
- **Decisions of the Court**