



# ***A Primer on the Health Professions Act***

**What Every Registrant Needs to Know**

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1. Self-Regulation of Health Professions under *HPA*
2. Duty to Protect the Public
3. Use of Title Protection
4. Restricted Activities
5. College Board and Governance
6. Regulatory Committees
7. Registration
8. Investigation and Discipline
9. Health Professions Review Board

- *Health Professions Act*
  - Introduced in 1990
  - Umbrella statute, provides common regulatory framework for health professions in BC
  - Common provisions for conduct of complaint investigations and discipline hearings
  - Preserves principle of professional self-regulation
  - 25 self-regulating professions governed by 25 regulatory colleges under *HPA*
- College of Psychologists of BC
  - Governed by *Psychologists Act* from 1977 to 1999
  - Brought under *HPA* on January 1, 2000

- Duty of every health profession college:
  - to serve and protect the public
  - to exercise its powers and discharge its responsibilities in the public interest
- Self-regulation is a privilege granted by the Legislature
- To maintain that privilege, the College must regulate the profession in the public interest
  - The public as a whole, not individual members of the public
  - Interests of the public, not the interests of the profession or its members
  - Theory: Public interest is best served when members of the profession are empowered to regulate themselves through a self-regulating professional body

- College's public protection role is constrained by other legal requirements
  - Common law procedural fairness
  - Statutory confidentiality requirements under *HPA* (s. 53)
  - *Freedom of Information and Protection of Privacy Act*
    - public right to request access to College records (FOI requests)
    - regulation of collection, use and disclosure of personal information by public bodies
  - Labour mobility requirements
    - *Labour Mobility Act*
    - Agreement on Internal Trade
    - New West Partnership Trade Agreement
  - *Human Rights Code*

- Regulations establish reserved titles for each profession
  - Colleges have authority to apply to court, if necessary, to prevent non-registrants from using reserved titles
  - Signals to the public that a practitioner
    - is a registrant of the College
    - has requisite education, qualifications and competence to practise
    - is subject to College's regulatory oversight, including complaint investigation and discipline processes
- Reserved Titles for Psychology
  - “Registered Psychologist”
  - “Psychologist” - subject to exemptions for school psychologists, employees of government institutions (e.g. Correctional Service of Canada), university professors/instructors

- Ministry of Health has power to make regulations regulating scope of practice of health professionals
- “Restricted activities” model
  - Enabling legislation approved in 2003, but not yet implemented
  - Scope of practice of all health professions to be regulated based on common list of “restricted activities”
  - Registrants of different professions are entitled to perform different, overlapping subsets of restricted activities
  - Restricted activities list posted by Ministry of Health in 2010, but not yet in force
- Restricted Activity for Psychology
  - “Diagnosis” - expected to be granted as restricted activity
  - College will have authority to apply to court, if necessary, to prevent non-registrant from performing restricted activity of diagnosis

- Board: sets policy; manages business and affairs of College
  - Board members have fiduciary duty to act in the best interests of the College
  - Board exercises bylaw-making authority
  - establishes standards of practice and professional ethics
- Registrar: responsible for day-to-day operations of College
  - implements Board policy and statutory requirements
- The Board brings together perspectives of the profession and the public
  - Registrant Board members elected by the membership of the profession
  - Non-registrant Board members appointed by Ministry as “public representatives”

- Registration Committee
  - registration, reinstatement and renewal
- Quality Assurance Committee
  - continuing competence program; compliance audits
- Inquiry Committee
  - investigation and disposition of complaints against registrants
- Discipline Committee
  - formal disciplinary hearings of complaints that cannot be resolved consensually
- Patient Relations Committee
  - prevention of abuse of clients, including sexual misconduct by registrants

- College Board makes bylaws establishing classes of registration and prescribing registration requirements
- For non-routine applications, Registration Committee considers and determines applicants' eligibility for registration

- Registered Psychologist Registration
  - Doctoral degree in psychology + pre-doctoral internship
  - EPPP, Oral Examination and WJE
  - Registration Committee has discretion to consider substantial equivalency of an applicant's knowledge, skills and abilities
  - Labour mobility applications by applicants registered in other Canadian provinces
  - US applicants with Certificate of Professional Qualification from ASPPB or registered with National Register of Health Service Psychologists

- Associate Psychologist (Corrections) Registration
  - Applicants with master's level training who cannot establish they meet requirements for full registration as Registered Psychologist
  - WJE and Readiness for Practice Examination -- no requirement to complete EPPP or Oral Examination
  - Practice restrictions:
    - restricted to practising correctional psychology
    - can only practise in the course of employment with a federal or provincial government corrections agency, and in accordance with a supervision plan approved by the Registration Committee

- Psychology Assistant Registration
  - Any psychology degree acceptable to Registration Committee
  - WJE and Readiness for Practice Examination -- no requirement to complete EPPP or Oral Examination
  - Practice restrictions:
    - restricted to declared area of practice
    - can only practise under supervision of another registrant in accordance with a supervision plan approved by the Registration Committee
- Grandparented Registration
  - Sunset clause: will be eliminated January 1, 2019
  - Restrictions that were imposed on practice before September 1, 2014 continue to apply

- Any member of the public may make a complaint to the College against a registrant
  - Complaint must be in writing
  - Must involve an identifiable registrant
  - Must raise a concern within the investigative jurisdiction of the Inquiry Committee
    - unprofessional conduct
    - competence to practise
    - compliance with professional standards
    - conviction for criminal offence in circumstances giving rise to concern about registrant's competence or fitness to practise
    - alleged impairment of ability to practise due to addiction or other health condition

- Registrar has narrow authority to dismiss complaints or to take other action to resolve complaints consensually without referring them to Inquiry Committee
  - Complaint is trivial, frivolous, vexatious or made in bad faith
  - Complaint does not allege a matter within the investigative jurisdiction of the Inquiry Committee
  - Facts alleged by complainant (if assumed to be true) do not constitute “serious matter”
    - i.e. they are not of such a nature as would ordinarily warrant suspending or cancelling of the registrant’s registration or imposing limits or conditions on the registrant’s practice

- Where a matter is referred to Inquiry Committee, the Committee must complete an adequate investigation
  - Includes requirement to give registrant opportunity to respond and to provide any information he or she would like the Committee to consider
  - Extent of investigation reasonably required may vary depending on circumstances
    - nature and seriousness of complaint
    - availability of evidence
    - resources available to College / proportionality
  - Inquiry Committee frequently requires registrant to provide copies of relevant practice records
  - Where appropriate, additional information or documents may be requested from complainant or other sources

- Inquiry Committee may also investigate matters on its own motion
- After completing an adequate investigation, Inquiry Committee has several options to dispose of the matter:
  - No further action
    - if matter is trivial, frivolous, vexatious or made in bad faith
    - if Committee concludes the evidence does not give rise to a concern about the registrant's professional conduct or competence
  - Request for registrant to enter into undertaking or consent agreement, to resolve any concerns arising from complaint
  - Other action to resolve matter between registrant and complainant
  - Issuance of Citation for Discipline Committee hearing

- Discipline Committee hearing
  - similar to a trial
  - Panel of Discipline Committee functions as independent tribunal
  - College has burden of proof, as prosecutor, to establish its case based on clear, cogent and convincing evidence
  - If the Panel concludes the registrant committed professional misconduct, is incompetent, or breached professional standards, the Committee can cancel or suspend registrant's registration, or impose other sanctions (such as limits or conditions on registrant's practice)

- HPRB established in 2009
- Independent administrative tribunal
- Provides regulatory oversight of registration decisions and complaint investigations for all health profession colleges under *HPA*
  - Registration Reviews
  - Delayed Investigation Reviews
  - Complaint Disposition Reviews
- Conducts reviews using panels of adjudicators
- Panels do not contain members of any health profession
  - exclusively public representatives

- HPRB is required to extend deference to expertise of college Registration Committees and Inquiry Committees
- Complaint Disposition Reviews
  - confined to reviewing adequacy of investigation and reasonableness of disposition
  - investigations are not to be held to standard of perfection
  - HPRB must not “step into the shoes” of Inquiry Committee, or substitute its views for the reasonable judgment of the Committee
  - Court decisions require the HPRB to afford a high level of deference, both when reviewing the adequacy of a college investigation and the reasonableness of the Inquiry Committee’s disposition
    - *Moore v. College of Physicians and Surgeons of BC*
    - *College of Dental Surgeons of BC v. Health Professions Review Board*

- Registration Reviews
  - Relatively few HPRB decisions in this area
  - HPRB has said it will defer to registration decisions if they are reasonable
  - HPRB may intervene in appropriate circumstances
    - if the Registration Committee acts unreasonably
    - if the Committee fails to give good faith consideration to the exercise of its discretion in determining an applicant's eligibility for registration (in circumstances where the *HPA* or the bylaws require the Committee to consider the exercise of its discretion)
  - Usual remedy is to send a matter back to Registration Committee for further review and reconsideration

- Registration Reviews
  - HPRB would only ever have jurisdiction to require a College to grant registration in very narrow circumstances, where a three-part test is met:
    - applicant was denied a fair process, AND
    - registration was made arbitrarily, in bad faith, or for an improper purpose, or based on irrelevant factors, or without taking the requirements of the *HPA* and College bylaws into account, AND
    - the applicant is able to establish that his or her knowledge, skills and abilities are substantially equivalent to the competencies and qualifications required by the College for registration, and meets all other applicable registration requirements
  - Exception: labour mobility applicants registered in another province who are entitled to registration under *Labour Mobility Act*