

## RECENT CHANGES TO THE *HEALTH PROFESSIONS ACT*

Most health care professionals in British Columbia will be impacted by significant changes to the *Health Professions Act* that came into force in spring 2009. The changes also deeply affect the regulatory organizations responsible for those professions. The *Act* governs the conduct of health professionals including dental hygienists, dental technicians, denturists, dietitians, nurses, massage therapists, midwives, naturopaths, occupational therapists, opticians, pharmacists, physical therapists, psychologists and traditional Chinese medicine practitioners. The changes to *the Act* relate mainly to the powers of regulatory bodies, scope of professional practice and procedures regarding handling of complaints against professionals.

This summary discusses the potential impact of some of those changes on your profession.

### 1. Health Professions Review Board

The most significant change to the *Act* is the creation of the Health Professions Review Board (“Review Board”). The stated purpose of the Review Board is to monitor the activities of health profession Colleges regarding registration and complaint disposition, by ensuring those activities accord with the public interest and the legislative mandate. The Review Board is touted as a neutral forum for complainants and health care professionals to seek review of College decisions, such as those that affect licensure and credentialing.

The Review Board started accepting applications for reviews on March 16, 2009. It is appointed by the British Columbia Minister of Health, and chaired by a member, or former member, of a Canadian Law Society. Members of the Review Board cannot be government employees or members of any health profession subject to the *Act* or an equivalent enactment in another jurisdiction. The restrictions on composition may impact the established self-government of health professions, especially in cases where specific professional expertise informs decisions regarding registrations and complaints.

The Review Board has the power to review the action or inaction of a College in three key areas: (a) registration, (b) informal resolution of complaints and (c) timeliness of complaint investigation by an Inquiry Committee.

#### (a) Registration

Decisions regarding registration of professionals are subject to review by the Board when an application for registration has been refused (or where only a conditional registration has been granted) by the Registration Committee of a College or a person acting on their behalf. There are restrictions on the types of refusal decisions that can be reviewed.

If the Review Board receives a proper application for review, it must revisit the registration decision. It has the power to confirm the refusal, direct the Registration Committee to make a different decision, or allow the Registration Committee to reassess the application but with directions from the Review Board.

There are limited circumstances where the Review Board can direct the Registration Committee to grant registration. The refusal must have been improper and the Review Board must be satisfied that the applicant has the necessary skill and knowledge for registration.

#### (b) Timelines for Disposition of Complaints

The *Act* now contains prescribed time periods within which the Inquiry Committee of a College must address complaints. If a complaint has not been dealt with by the College within these time periods, the Inquiry Committee must notify the complainant and the member that the deadline has passed and inform the parties about their rights to seek a review of the complaint investigation.

If a complainant or member applies for a review of the investigation, the Inquiry Committee must stop investigating the complaint. In response to this type of review application, the Review Board can send the matter back to the Inquiry Committee with directions or act in the place of the Inquiry Committee by investigating the complaint and deciding how to deal with it.

### **(c) Inquiry Committee Informal Resolutions**

If the Registrar or the Inquiry Committee of a College decide to dismiss a complaint or resolve it by way of a consent agreement, the complainant can apply to the Review Board to seek its review of the decision.

A complainant must receive notice of decisions made in respect of their complaint. They can apply for a review within 30 days of receiving the notice. Upon receiving one of these applications, the Review Board must conduct a review and consider the adequacy of the investigation and the reasonableness of the disposition. It can also hear new evidence. After the review, it may confirm the previous decision, direct another disposition, or send the matter back for reconsideration.

## **2. Publication of Consent Resolutions**

Colleges are now required to notify the public in most, if not all, situations where a complaint is resolved by a consent agreement. Notification may be done by a brief notice on the College's website that generally identifies the member by name and outlines the nature of the complaint.

## **3. Certified Non-Registrants**

The *Act* now contains a new class of membership referred to as "certified non-registrant". "Certified non-registrants" are people who are not registrants of a College but will be granted the authority to perform some of the services that College members were previously authorized to perform. The standards for qualification for these individuals have not yet been established. This new category may increase the regulatory burden on the Colleges.

## **4. Funding for Therapy**

The *Act* now contains a requirement that Colleges establish a program for providing funding to complainants who are psychologically or emotionally harmed by the professional misconduct of registrants of that College.

## **5. Complaints in Other Jurisdictions**

Colleges are now entitled to restrict the practice of their members if they learn that another regulatory body for health professions found the person committed an act that the College views as professional misconduct. Before the College takes steps against the member in such circumstances, the member is entitled to notice and the opportunity to provide a response.

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Want to know more? Contact any member of the Professional Regulation group at Harper Grey LLP.

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Harper Grey LLP's Professional Regulation group has extensive experience advising regulators and Colleges of health care professions in respect of bylaw drafting, statutory compliance and general advice. We also act for health care professionals before their Colleges on issues including registration, complaints, disciplinary proceedings and remedial resolutions. Group lawyers have significant experience representing clients before tribunals in non-health profession areas including economic and financial regulation, human rights, environmental law and aviation.