



## **Complaints Process**

### Definitions

In this Part,

**"conduct"** includes an act or omission;

**"investigated member"** means a member or a former member who is the subject of an investigation or whose conduct is the subject of a hearing under this Part.

### **COMPLAINTS COMMITTEE**

#### Complaints committee

The council shall appoint a complaints committee consisting of

- (a) a member of the college who shall be the chair of the committee; and
- (b) other members of the college and public representatives appointed from time to time.

#### Public representatives

At least 1/3 of the persons appointed to the complaints committee must be public representatives.

#### Complaints against members

Any person may make a complaint in writing to the registrar about the conduct of a member, and the complaint shall be dealt with in accordance with this Part.

#### Complaints against former members

If, after a member's registration is cancelled, suspended or not renewed under this Act,

- (a) a complaint is made about the former member; and

- (b) the complaint relates to conduct occurring before the cancellation, suspension or non-renewal occurred;

the complaint may, notwithstanding the cancellation, suspension or non-renewal, be dealt with within three years from the date of the cancellation or non-renewal as if the former member's registration were still in effect.

#### Referral to complaints committee

The registrar shall refer to the complaints committee

- (a) a complaint made
- (b) any other matter that the registrar considers advisable.

#### Informal resolution

On referral of a complaint or other matter to the complaints committee, the complaints committee may attempt to resolve it informally if the committee considers informal resolution to be appropriate.

#### Investigation

If informal resolution of a complaint has been attempted and the complaint is not resolved to the complainant's satisfaction, the complaints committee shall direct that an investigation into the conduct of the member be held and shall appoint an investigator to conduct the investigation. The committee may also direct an investigation and appoint an investigator in respect of any complaint or other matter that is referred to it if the committee considers it appropriate to do so.

#### Records and information

An investigator appointed may

- (a) require the investigated member or any other member to produce to the investigator any records in his or her possession or under his or her control that may be relevant to the investigation;
- (b) require the investigated member or any other member to be interviewed for the purpose of the investigation; and
- (c) direct an inspection or audit of the practice of the investigated member.

#### Failure to produce records

The college may apply to the court for an order

- (a) directing any member to produce to the investigator any records in his or her possession or under his or her control, if it is shown that the member failed to produce them when required to do so by the investigator; or
- (b) directing any person to produce to the investigator any records in his or her possession or under his or her control that are or may be relevant to the complaint being investigated.

#### Investigation of other matters

The investigator may investigate any other matter related to the professional conduct or the skill in practice of the member that arises in the course of the investigation.

#### Report to complaints committee

On concluding the investigation, the investigator shall report his or her findings to the complaints committee.

### **DECISION OF COMPLAINTS COMMITTEE**

#### Decision of complaints committee

The complaints committee may, after review or investigation,

- (a) direct that the matter be referred, in whole or in part, to the inquiry committee;
- (b) direct that the matter not be referred to the inquiry committee;
- (c) accept the voluntary surrender of the member's registration;
- (d) censure the member if
  - (i) at least one member of the committee has met with the member and the member has agreed to accept the censure, and
  - (ii) the committee has determined that no action is to be taken against the member other than the censure;
- (e) refer the matter to mediation if the committee determines that the complaint is strictly a matter of concern to the complainant and the member and both parties agree to mediation; or
- (f) enter into an agreement with the member that provides for one or more of the following:
  - (i) assessing the member's capacity or fitness to practise podiatry,
  - (ii) counselling or treatment of the member,

- (iii) monitoring or supervising the member's practice of podiatry,
- (iv) the member's completing a specified course of studies by way of remedial training;
- (v) placing conditions on the member's right to practise podiatry.

#### Matter not resolved by mediation

If a matter referred for mediation cannot be resolved, it must be referred back to the complaints committee, which may make any other decision that it considers appropriate.

#### Decision served on member and complainant

The complaints committee shall serve on the member and the complainant a written notice setting out its decision and the reasons for the decision.

#### Hearing not required

The complaints committee is not required to hold a hearing or give any person an opportunity to appear or to make formal submissions before making a decision under this section.

#### Costs

The complaints committee may order the member to pay all or part of the costs incurred by the college in monitoring compliance with conditions imposed on a member's right to practise podiatry under an agreement entered into. It may also order the member to pay all or part of the costs of the investigation.

### CENSURE

#### Personal appearance

The complaints committee may require a member who is censured to appear personally to be censured before the committee.

#### Publication of censure

The complaints committee may publish the fact that a member has been censured, and publication may include the member's name and a description of the circumstances that led to the censure.

#### Order for costs

The complaints committee may order a member who is censured to pay all or part of the costs of the investigation.

## **VOLUNTARY SURRENDER OF REGISTRATION**

### Voluntary surrender of registration

If the complaints committee accepts a voluntary surrender of a member's registration, it may direct the member to do one or more of the following to the satisfaction of any person or committee that the complaints committee may determine, before the member's right to practise podiatry may be reinstated:

- (a) obtain counselling or treatment;
- (b) complete a specified course of studies;
- (c) obtain supervised experience.

### Order for costs

The complaints committee may direct the member to pay any costs incurred by the college in monitoring compliance with a direction given and to pay all or part of the costs of the investigation up to the time that the voluntary surrender takes effect.

### Conditions on re-instatement

A voluntary surrender remains in effect until the complaints committee is satisfied that the conduct or complaint that was the subject of the investigation has been resolved, at which time the committee may impose conditions on the member's entitlement to practise podiatry, including conditions that the member do one or more of the following:

- (a) limit his or her practice;
- (b) practise under supervision;
- (c) not engage in sole practice;
- (d) permit periodic audits of his or her practice;
- (e) permit periodic audits of records;
- (f) report to the committee or the registrar on specific matters;
- (g) comply with any other conditions that the committee considers appropriate in the circumstances;

and may order the member to pay all or any part of the costs incurred by the college in monitoring compliance with those conditions.

## **APPEAL BY COMPLAINANT**

Appeal by complainant to council

When the complaints committee makes a decision, the complainant may appeal the decision to the council.

Notice

An appeal is to be made by mailing a written notice of appeal to the registrar within 30 days after the date the complainant is notified of the complaints committee decision.

Power on appeal

On an appeal under this section, the council shall do one or more of the following:

- (a) make any decision that in its opinion ought to have been made by the complaints committee;
- (b) quash, vary or confirm the decision of the complaints committee;
- (c) refer the matter back to the complaints committee for further consideration in accordance with any direction that the council may make.

Notice of decision

The council shall give the member and the complainant a written notice setting out its decision and the reasons for the decision.

Hearing not required

The council is not required to hold a hearing or to give any person an opportunity to appear or to make oral submissions before making a decision, but it shall give the investigated member and the complainant an opportunity to make a written submission.

## **SUSPENSION OF REGISTRATION PENDING DECISION**

Suspension of registration pending decision

Notwithstanding other conditions, the complaints committee may, when there is a question that a member's conduct exposes or is likely to expose the public to serious risk, direct the registrar to suspend the member's certificate of registration or place conditions on his or her practice of podiatry pending the outcome of proceedings under this Part.

## Notice of suspension or conditions

On receiving a direction, the registrar shall promptly serve a notice of the suspension or the conditions of practice on the member and, where appropriate, the member's employer.

## Application for stay

The member may, by filing an application with the court and serving a copy on the registrar, apply for an order of the court staying a decision of the complaints committee to suspend the member's certificate of registration or to place conditions pending the outcome of proceedings under this Part.

## **MISCELLANEOUS**

### Referral to inquiry committee

Notwithstanding any other action it may have taken, with the exception of a censure, the complaints committee may at any time refer the conduct or complaint that was the subject of the investigation to the inquiry committee.

### Disclosure of information to authorities

Notwithstanding any other provision of this document, the complaints committee may disclose to a law enforcement authority any information respecting possible criminal activity on the part of a member that is obtained during an investigation into the member's conduct.

## **INQUIRY COMMITTEE**

### Inquiry committee

The council shall appoint an inquiry committee consisting of

- (a) a podiatrist who is a member of the college, who is to be the chair; and
- (b) other members of the college, former members of the college and public representatives appointed from time to time.

### Public representatives

At least 1/3 of the persons appointed to the inquiry committee must be public representatives.

### Selection of panel

Within 30 days after a matter is referred to the inquiry committee, the chair shall select a panel from among the members of the inquiry committee to hold a hearing.

## Composition

A panel is to be composed of at least three members, one of whom must be a public representative.

## Exclusion from panel

No person may be selected for a panel who has taken part in the review or investigation of what is to be the subject-matter of the panel's hearing.

## Effect of member being unable to continue

If a hearing has begun and a member of the panel is unable to continue to sit as a member, the panel may complete the hearing if at least three members remain and one of them is a public representative.

## **HEARING**

### Hearing

When a panel is selected, it shall hold a hearing.

### Date of hearing

The hearing must begin within 120 days after the date on which the matter is referred to the inquiry committee, unless the investigated member consents in writing to a later date.

### Notice of hearing

At least 30 days before the date of the hearing, the registrar shall serve a notice of hearing on the investigated member and the complainant stating the date, time and place of the hearing and identifying in general terms the complaint or matter about which the hearing will be held.

### Public notice of hearing

The registrar may issue a public notice of the hearing in any manner he or she considers appropriate, but the notice must not include the name of the investigated member.

### Right to appear and be represented

The college and the investigated member may appear and be represented by counsel at a hearing and the committee may have counsel to assist it.

### Adjournments

The chair of the panel may adjourn a hearing from time to time.

## Recording of evidence

The oral evidence given at a hearing must be recorded.

## Member may examine documentary evidence

Before the day of the hearing, an investigated member must be given opportunity to examine any written or documentary evidence that will be produced and any report the contents of which will be given in evidence at the hearing.

## Member to provide documentary evidence

If the member intends to rely on any written or documentary evidence or any report at the hearing, he or she shall provide a copy of that evidence or report to the college before the day of the hearing.

## Evidence of expert without report

If either the member or the college intends to call an expert as a witness at the hearing and there is no report from the expert, a summary of the expert's intended evidence, including his or her findings, opinions and conclusions, must be provided to the other party before the day of the hearing.

## Failure to provide summary

If the summary is not provided, the expert may testify at the hearing only with the leave of the panel.

## Investigation of other matters

The panel may investigate and hear any other matter concerning the conduct of an investigated member that arises in the course of its proceedings, but in that event the committee shall declare its intention to investigate the further matter and shall permit the investigated member sufficient opportunity to prepare a response.

## Hearing open to public

Except as otherwise provided in this section, a hearing of the panel shall be open to the public, but there shall be no reporting in the media of anything that would identify the investigated member, including the member's name, the business name of the member's practice or partnership, or the location of practice, unless and until the panel makes a finding

## Request for a private hearing

The member or the college may request that the hearing or any part of it be held in private.

## When private hearing may be held

When a request is made, the panel may make an order excluding the public from the hearing or any part of it or directing that the member, the complainant, or any witness be identified only by initials, if the panel is satisfied that

- (a) matters involving public security may be disclosed;
- (b) financial or personal or other matters may be disclosed at the hearing that are of such a nature that the desirability of avoiding public disclosure of those matters in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that meetings be open to the public;
- (c) a person involved in a criminal proceeding or a civil suit or proceeding may be prejudiced; or
- (d) the safety of a person may be jeopardized.

## Reasons for excluding the public to be available

The panel shall ensure that any order it makes and its reasons are either given orally at the hearing or are available to the public in writing.

## Evidence

At a hearing, the oral evidence of witnesses must be taken on oath or affirmation, and the parties shall have the right to cross-examine witnesses and call evidence in defence and reply.

## Power to administer oaths and affirmations

For the purpose of an investigation or hearing under this Act, the registrar and the chair of the panel have the power to administer oaths and affirmations.

## Witnesses

Any person, other than the investigated member, who in the opinion of the panel has knowledge of the complaint or matter being heard is a compellable witness in any proceeding before the panel.

## Notice to attend and produce records

The attendance of witnesses before the panel and the production of records may be enforced by a notice issued by the registrar requiring the witness to attend and stating the date, time and place at which the witness is to attend and the records, if any, that the witness is required to produce.

## Registrar to provide notices

On the written request of the member or his or her counsel or agent, the registrar shall provide any notices that the member requires for the attendance of witnesses or the production of records.

## Witness fees

A witness, other than the member, who has been served with a notice to attend or a notice for production under this section is entitled to be paid the same fees in the same manner as a witness in an action in the court.

## Failure to attend or give evidence

Proceedings for civil contempt of court may be brought against a witness

- (a) who fails to attend before the panel in compliance with a notice to attend;
- (b) who fails to produce any records in compliance with a notice to produce them; or
- (c) who refuses to be sworn or to affirm or to answer any question he or she is directed to answer by the panel.

## Hearing in absence of member

The panel, on proof of service on the investigated member of the notice of hearing, may

- (a) proceed with the hearing in the absence of the member or his or her agent; and
- (b) act, decide or report on the matter being heard in the same way as if the member were in attendance.

## **DECISION OF PANEL**

### Findings of panel

If, at the conclusion of a hearing, the panel finds that the member

- (a) is guilty of professional misconduct;
- (b) has contravened the regulations, the by-laws or the code of ethics of the college;
- (c) has been found guilty of an offence that is relevant to the member's suitability to practise;
- (d) has displayed a lack of knowledge of or lack of skill or judgement in the practice of podiatry;

- (e) has demonstrated an incapacity or unfitness to practise podiatry;
- (f) is found to be suffering from an ailment that might, if the member continues to practise, constitute a danger to the public; or
- (g) is guilty of conduct unbecoming a member;

it shall deal with the member in accordance with this document.

#### Orders of panel

If the panel makes any findings, it may make one or more of the following orders:

- (a) reprimand the member;
- (b) suspend the member's certificate of registration for a stated period;
- (c) suspend the member's certificate of registration until he or she has completed a specified course of studies or supervised practical experience, or both, to the satisfaction of any person or committee that the panel may determine;
- (d) accept, in place of the suspension of the certificate of registration, the member's undertaking to limit his or her practice;
- (e) impose conditions on the member's entitlement to practise podiatry, including conditions that he or she
  - (i) practise under supervision,
  - (ii) permit periodic inspections of his or her practice,
  - (iii) permit periodic audits of records,
  - (iv) report on specified matters to any person or committee that the panel may determine,
  - (v) not engage in sole practice;
- (f) require the member to satisfy the panel of his or her competence to practise podiatry;
- (g) require the member to satisfy a person or committee that the panel may determine that a disability or addiction can be or has been overcome, and suspend the member's certificate of registration until the person or committee is satisfied;
- (h) require the member to take counselling or treatment;
- (i) direct the member to waive, reduce or repay money paid to the member that, in the opinion of the panel, was unjustified for any reason; and

- (j) cancel the member's certificate of registration.

#### Panel may consider censure

To assist the panel in making an order under this section, the panel may be advised of any censure or order previously issued to the member and the circumstances under which it was issued.

#### Ancillary orders

The panel may make any ancillary order that is appropriate or required in connection with an order, or may make any other order that it considers appropriate in the circumstances, including an order that

- (a) a further or new investigation be held into any matter; or
- (b) the panel be convened to hear a complaint without an investigation.

#### Costs when conditions imposed

If the panel imposes conditions on a member's entitlement to practise podiatry, it may also order the member to pay all or any part of the costs incurred by the college in monitoring compliance with those conditions.

#### Contravention of order

If the council is satisfied that a member has contravened an order made, it may, without a further hearing, cancel the member's certificate of registration.

#### Costs and fines

The panel may, in addition to or instead of dealing with the member's conduct, order that the member pay to the college, within the time set by the order,

- (a) all or part of the costs of the investigation, hearing and appeal;
- (b) a fine not exceeding \$10,000.; or
- (c) both the costs under clause (a) and the fine under clause (b).

#### Nature of costs

The costs may include, but are not limited to,

- (a) all disbursements incurred by the college, including
  - (i) fees and expenses for experts, investigators and auditors whose reports or attendances were reasonably necessary for the investigation or hearing,

- (ii) fees, travel costs and reasonable expenses of any witnesses required to appear at the hearing,
  - (iii) fees for retaining a reporter and preparing transcripts of proceedings,
  - (iv) costs of service of documents, long distance telephone and facsimile charges, courier delivery charges and similar miscellaneous expenses;
- (b) payments made to members of the panel or the complaints committee; and
- (c) costs incurred by the college in providing counsel for the college and the panel, whether or not counsel is employed by the college.

#### Failure to pay costs and fines by time ordered

If the member is ordered to pay a fine or costs or both, and fails to pay within the time ordered, the registrar may cancel his or her certificate of registration until the payment is made.

#### Filing of order

The college may file an order in the court, and on the order being filed it may be enforced in the same manner as a judgement of the court.

#### Written decision

Within 90 days following the completion of a hearing, the panel shall make a written decision on the matter consisting of the reasons for its decision and a statement of any order made by it.

#### Decision forwarded to registrar

The panel shall forward to the registrar

- (a) the decision; and
- (b) any record of the proceedings and all exhibits and documents.

#### Service of decision

On receiving the decision and record, the registrar shall serve a copy on the member and the complainant.

#### Copies of transcript

The member may examine the record of the proceedings before the panel, and is entitled to receive, on payment of the cost of providing it, a transcript of the oral evidence given before the panel.

## Publication of decision

Notwithstanding that any proceeding or part of a proceeding under this Part may have been held in private, the college may, after the decision and any order has been served on the member, publish the circumstances relevant to the findings and any order of the panel . If the panel makes an order against the member, the college may also publish the member's name.

## **APPEAL TO COURT**

### Appeal to Court of Appeal

A member in respect of whom a finding or order is made by the panel may appeal the finding or order to The Court of Appeal.

### Commencement of appeal

An appeal shall be commenced

- (a) by filing a notice of appeal; and
- (b) by giving a copy of the notice of appeal to the registrar;

Within 30 days after the date on which the decision of the panel is served on the member.

### Appeal on the record

An appeal must be founded on the record of the hearing before the panel and the decision of the panel.

### Powers of Court on appeal

On hearing the appeal, the Court of Appeal may

- (a) make any finding or order that in its opinion ought to have been made;
- (b) quash, vary or confirm the decision of the panel or any part of it; or
- (c) refer the matter back to the panel for further consideration in accordance with any direction of the Court.

### Stay pending appeal

The decision and any order of the panel remains in effect pending an appeal unless the Court of Appeal, on application, stays the decision and any order pending the appeal.