



Complaint Management Procedure

1. Introduction

The College of Acupuncturists of Alberta (College) is responsible for regulating the Acupuncture Profession under the *Health Professions Act* (Act). Part of this role includes the management of complaints about its regulated members or former regulated members to ensure Albertans are receiving safe, competent, and ethical services.

The College supports the Minister of Health in the administration of the Act through the appointment of a Complaints Director who is responsible for determining the appropriate handling of complaints within their authority under Part 4 of the Act. In the event of a conflict between this procedure and the Act, the Act shall prevail.

2. Purpose

The purpose of this procedure is to describe the actions required by the Complaints Director in the management of complaints under Part 4 of the Act.

3. Definitions

Definitions are bolded the first time they appear within the Complaints Management Procedure.

Agreed statement of facts: means an agreement between the Complaints Director and the respondent on the facts of the case including an admission of unprofessional conduct by the respondent.

Alternative complaint resolution process (ACR): means a process to help the complainant, the College and the respondent settle a complaint.

Bias: means when a person has a preconceived preference that could lead them to favour one person's interests over another.

Complaint: means a formal written expression of dissatisfaction about the conduct or practice of a regulated member or former regulated member.

Complainant: means the person, organization, or group who makes a complaint.

Complaints Director: means the person appointed by the Council and responsible for the management of complaints under the Act.

Conflict of interest: means any actual, potential, or perceived situation where an impartial observer might reasonably question whether the actions or decisions made by the person would be influenced by a consideration of the person's own financial or personal interest or that of a family member.

Female genital mutilation (FGM): means as defined in s.(m.1) of the Act.

Former regulated member: means a person who was a regulated member with the College within the last two years.

Hearings Director: means the person appointed by the Council and responsible for the management of hearings under the Act.

Incapacitated: means suffering from a physical, mental, or emotional condition or disorder or an addiction to drugs or alcohol as defined in the *Pharmacy and Drug Act* or other chemicals that impairs the ability to provide professional services in a safe and competent manner.

Joint submission on sanction: means an agreement between the Complaints Director and the respondent where they recommend sanctions to be considered by the hearing tribunal in an uncontested hearing.

Regulated member: means an individual registered on the general, provisional, or courtesy register with the College of Acupuncturists of Alberta.

Respondent: means a person against whom a complaint has been made.

Sexual abuse: means as defined in s.1(1)(nn.1) of the Act.

Sexual misconduct: means as defined in s.1(1)(nn.2) of the Act.

4. Procedure

Complaint Management

- 4.1 The **Complaints Director** will manage **complaints** in accordance with Part 4 of the Act ensuring the timely and effective handling of all complaints while maintaining confidentiality as required and within the principles of natural justice outlined in the Complaints Management Policy.
- 4.2 At any point during the complaints management process wherein the Complaints Director determines they are unable to act due to a **conflict of interest** or the involvement of the Complaints Director may be perceived to give rise to a reasonable apprehension of **bias**, the Complaints Director will disclose this conflict of interest and/or recuse themselves and arrange for the appointment of another Complaints Director to handle the case.
- 4.3 The Complaints Director has a right to be represented by legal counsel at any point in the complaints management process.

Concern Inquiry

- 4.4 A person with a concern about a **regulated member** or a **former regulated member** may contact the Complaints Director to determine how to proceed. The Complaints Director will:
 - 4.4.1 Consider the information to determine if it falls within the jurisdiction of the College.
 - 4.4.2 Determine if there is an opportunity to resolve the matter informally.
 - 4.4.3 Recommend the person lodge a complaint.
 - 4.4.4 Consider actioning the concern as the **complainant** where the information received is of a serious nature or may be a risk to public safety.

Complaint Initiation

- 4.5 Complaints must be in writing, include the signature of the complainant, as set out in s.54 of the Act, and relate to a regulated member or former regulated member.
- 4.6 Complaints may be submitted via email if they contain the signature of the complainant, which may include an electronic signature as defined in s.1(c) of the *Electronic Transactions Act*.
- 4.7 Anonymous complaints will not be accepted.
- 4.8 Should a case file be opened, the respondent will receive a copy of the complaint and any relevant evidence associated with the complaint, as appropriate and asked to respond and provide all relevant evidence in a secure manner.
- 4.9 Any person can make a complaint about a regulated member or former regulated member, including the regulated member's employer subject to the mandatory reporting requirements under the Act, which are triggered when:
 - 4.9.1 The employer believes the regulated member's conduct constitutes unprofessional conduct resulting in the suspension or termination of employment or where the regulated member resigns because of this conduct.
 - 4.9.2 The employer has reasonable grounds to believe the conduct of the regulated member constitutes unprofessional conduct based on the procurement or performance of **FGM, sexual abuse, or sexual misconduct**.
- 4.10 Regulated members acting within a professional capacity must report the conduct of another regulated member, where there are reasonable grounds to believe the conduct of the other regulated member governed under the Act constitutes unprofessional conduct based on the procurement or performance of FGM, sexual abuse, or sexual misconduct.
- 4.11 In cases where multiple complaints are filed against a regulated member or former regulated member concerning their conduct within a closely related timeframe at a single business location, a single file will be opened, and an investigation report will be completed. However, each complainant within this file will be treated as a separate complaint.
- 4.12 In situations where multiple complaints arise against a regulated member or former regulated member within a similar timeframe but relate to conduct across different business locations, a distinct file will be opened for each complaint.
- 4.13 The Complaints Director may action information received orally under s.56 of the Act if there are reasonable grounds to believe that the subject matter of the complaint is of a serious nature and may be a risk to public safety.
- 4.14 The Complaints Director may make a direction under s.65 of the Act prior to a hearing tribunal's order, granting the authority to impose conditions on the respondent or suspend the practice permit of the respondent. The respondent has the option to seek a stay of the decision by applying to the Court of King's Bench.

Assessment

- 4.15 Upon receipt of a written complaint that meets the criteria of s.54 of the Act, the Complaints Director will complete an assessment of the complaint to determine whether:
 - 4.15.1 The authority exists to action the complaint.

- 4.15.2 More information is required.
- 4.15.3 There is an opportunity to resolve the complaint informally if appropriate.
- 4.16 Once the Complaints Director completes the assessment and assuming the complaint is not informally resolved, the Complaints Director will within thirty (30) days provide notice to the complainant of the action taken with respect to the complaint.

Informal Resolution

- 4.17 Depending on the nature of the complaint, the Complaints Director may elect to attempt an informal resolution.
- 4.18 An informal resolution is only utilized where the subject matter of a complaint is not of a serious nature or not a risk to public safety.
- 4.19 Complaints alleging the procurement or performance of FGM, sexual abuse, or sexual misconduct cannot be handled informally.
- 4.20 An informal resolution may involve one or more of the following:
 - 4.20.1 The Complaints Director acting as a facilitator to encourage the complainant and the respondent to reach a resolution.
 - 4.20.2 The Complaints Director negotiating an agreement and undertaking with the respondent upon receiving consent from the complainant and respondent to do so.
- 4.21 Where a complaint is informally resolved, the Complaints Director will require confirmation from the complainant that they are satisfied with the outcome and no longer wish to take action. This does not prevent the Complaints Director from taking further action if the matter is of a serious nature and a risk to public safety.
- 4.22 In situations wherein the complainant and respondent are unable to reach an informal resolution, or the Complaints Director is unable to either obtain the consent of the complainant or agreement of the respondent to an agreement and undertaking, the Complaints Director will seek a written response of the respondent before determining next steps.

Incapacity

- 4.23 Where the Complaints Director has reasonable grounds to believe that the regulated member is **incapacitated** at any point throughout the complaints management process, the Complaints Director has the authority to make a direction under s.118 of the Act; however, a duty of fairness is owed to the regulated member if this action is considered. This duty includes:
 - 4.23.1 The right to notice that the Complaints Director is considering making a direction under s.118 of the Act.
 - 4.23.2 The right to notice of the information the Complaints Director possesses to suggest that the regulated member may be incapacitated.
 - 4.23.3 The right to respond before the Complaints Director makes a direction.
 - 4.23.4 The right to receive reasons for why the Complaints Director is actioning this direction.
- 4.24 Subject to the right of appeal, the Complaints Director can direct the regulated member to:

- 4.24.1 Submit to a specified physical and/or mental evaluation at a facility specified by the Complaints Director with a report of the evaluation provided to the Complaints Director within a specific timeframe.
 - 4.24.2 Submit to the treatment plan in accordance with the recommendations within the report.
 - 4.24.3 Cease providing services until the report is received or until the Complaints Director is satisfied that the regulated member is no longer incapacitated.
- 4.25 Should the Complaints Director make a determination of incapacity, and where the Complaints Director is of the belief that the matter arose due to this incapacity and the regulated member is complying with recommendations for treatment, the complaints management process may be suspended for a specified period of time and the complainant will be provided written notice with reasons within fourteen (14) days of the decision.
- 4.26 The Complaints Director may either resume the complaints management process or suspend the process indefinitely, with or without conditions, subject to respondent no longer being incapacitated.

Expert

- 4.27 At any time in the complaints management process and prior to a hearing being held, the Complaints Director may request at least one expert opinion where the information received is of a technical nature relating to the practice of acupuncture.
- 4.28 Prior to the appointment of an expert(s), the Complaints Director will provide the expert(s) with the name of the complainant and the respondent to confirm whether there is a conflict of interest or there would be a perceived conflict of interest, and the expert(s) will be expected to acknowledge this determination in writing.
- 4.29 Expert(s) will be selected from the Competence Committee of the College and/or externally at the discretion of the Complaints Director.
- 4.30 Geographic location of the expert(s) will be a consideration when selecting an expert(s) to reduce any risk of a conflict of interest, where possible.
- 4.31 Once an expert(s) is appointed, they will be provided a copy of the complainant's submissions, the respondent submissions, including the patient file records, any billing information and pictures, relevant rules in place at the time of the incident, and subject matter expert guidelines.
- 4.32 The Complaints Director may also include specific questions for the expert(s) to provide their opinion on to inform the Complaints Director's knowledge of the issue.
- 4.33 The expert's report will assist the Complaints Director in making a decision regarding a complaint and may be provided as part of an evidence exhibit package to the respondent or their legal counsel in cases where the matter is referred to a hearing and the report is central to supporting one or more of the allegations.

Investigation

- 4.34 A complaint investigation is subject to the discretion of the Complaints Director and may not be conducted in all instances, such as scenarios where the complaint is determined to be trivial, frivolous, vexatious, or in bad faith.
- 4.35 All complaint investigations will be conducted in a consistent, fair, objective, timely, transparent, and unbiased manner.

- 4.36 The Complaints Director may investigate or appoint an investigator dependant upon the complexity of the matter.
- 4.37 The Act and s.10(n) of the *Security Services and Investigators Act* do not require an investigator to be licensed; however, the College will not appoint an investigator without:
- 4.37.1 Experience in investigations under the Act.
 - 4.37.2 An agreement that sets out expectations including, but not limited to, compliance with all applicable privacy laws and confirmation that they do not have a conflict of interest or perceived conflict of interest as it relates to the complainant or respondent in the case.
- 4.38 The Complaints Director is required to give notice of an investigation to the complainant and respondent, except in circumstances where it is determined that a covert investigation is necessary. Circumstances that may require this type of investigation may include:
- 4.38.1 The potential risk to the safety of those involved.
 - 4.38.2 A belief by the Complaints Director that the respondent may alter a patient file.
 - 4.38.3 A belief by the Complaints Director that the respondent may influence or intimidate the complainant or other key witness upon notification of the complaint prior to an investigator interviewing them.
- 4.39 Notices of investigation to the complainant and the respondent must include the name of the investigator and, where this notice is provided to the respondent, it must also include reasonable particulars of the complaint to be investigated.
- 4.40 The respondent must cooperate with the investigator and failure to do so may result in further action being taken by the Complaints Director through the initiation of a new complaint under s.56 of the Act and/or applying to the Court of King’s Bench for an order compelling the respondent to comply as set out under s.63(3) of the Act.
- 4.41 In some cases, an investigator may seek to expand the scope of the investigation beyond the original complaint where the evidence suggests there may be additional violations.
- 4.42 Where the Complaints Director determines the investigation report is incomplete or the investigation was not properly conducted, the Complaints Director will direct the investigator, or appoint another investigator to undertake further investigation and re-submit the investigation report.
- 4.43 The Complaints Director and/or the investigator will provide the complainant and the respondent a status update on the investigation process every sixty (60) days as needed.
- 4.44 A complaint can only be referred to a formal hearing after an investigation and where the Complaints Director believes there is sufficient evidence to substantiate unprofessional conduct as defined in s.1(1)(pp) of the Act.
- 4.45 Investigation reports are confidential and will only be shared as needed should a matter proceed to a hearing.

Alternative Complaint Resolution (ACR)

- 4.46 Complaints may be resolved via the **ACR** process with the agreement of the complainant and the respondent prior to the commencement of a hearing.

- 4.47 Complaints alleging FGM, sexual abuse, or sexual misconduct cannot be handled through the ACR process.
- 4.14 Should a settlement not be reached or is not likely to be reached, the matter will be referred back to the Complaints Director to determine next steps.

Dismissal

- 4.48 Where the Complaints Director determines a dismissal is the appropriate action regarding a complaint, a notice of the dismissal will be communicated in writing to the complainant and the respondent providing the reasons for dismissal.
- 4.49 A dismissal does not prohibit the Complaints Director from issuing an educational letter to the respondent in cases that do not meet the criteria of unprofessional conduct but where providing education would be beneficial to the respondent.
- 4.50 The complainant has the right to request a review of this decision through the **Hearings Director** pursuant to s.68(1) of the Act within thirty (30) days of service.
- 4.51 Service of this decision will be determined in accordance with the Act and the *Interpretation Act*:
- 4.51.1 Delivered by email: counting thirty (30) days from the day after the acknowledgement of receipt of the decision by the complainant.
- 4.51.2 Registered mail: counting thirty (30) days from the date of written receipt by the complainant or counting thirty (30) days from the sent date where the complainant does not sign for or pick up the registered mail and it is returned to the College.
- 4.51.3 Personal service: counting thirty (30) days from the date of written receipt by the complainant and can include courier or process server delivery method.
- 4.52 The case file will be closed by the Complaints Director and communicated to the complainant and the respondent where a review request is not received by the Hearings Director within thirty (30) days.
- 4.53 Where a review application is received from the complainant, the Hearings Director will provide a copy of this application to the Complaints Director and the respondent and send a copy of this request to the Complaints Review Committee, who is responsible to hear and make a decision on these applications as set out in the Hearing Management Policy and Procedure.

Referral to a Hearing

- 4.54 Where the Complaints Director determines there is sufficient evidence on which to pursue allegations of unprofessional conduct, legal counsel will be engaged prior to sending the referral to the Hearings Director, the complainant, and the respondent.
- 4.55 The Hearings Director has ninety (90) days after receiving a referral for a hearing pursuant to s.69 of the Act to set a date for a hearing, subject to an extension granted or agreed upon. This does not apply to hearings held for the purpose of reviewing a dismissal as determined by the Complaints Director.
- 4.56 Approximately six weeks prior to the scheduled hearing date, the Complaints Director will follow up with the respondent to determine if they will consider entering an **agreed statement of facts** and **joint submission on sanction** if deemed appropriate.
- 4.57 Should the Complaints Director and respondent be unable to reach an agreement or where the respondent disagrees with the allegations, the hearing will proceed as a contested hearing.

- 4.58 Where the respondent is represented by legal counsel, all communications will be sent through the Complaints Director's legal counsel to the respondent's legal counsel.

Sanctions

- 4.59 If a member is found guilty of unprofessional conduct after a contested hearing or in cases where the respondent admits unprofessional conduct in an agreed statement of facts, the Complaints Director will consider various factors when making sanction-related representations to the hearing tribunal. These factors are grounded in legal precedent and commonly include:
- 4.59.1 The nature and gravity of the proven allegations.
 - 4.59.2 The respondent's age, experience, and previous conduct history.
 - 4.59.3 The age and vulnerability of the patient(s) involved.
 - 4.59.4 The frequency of the proven unprofessional conduct.
 - 4.59.5 The respondent's acknowledgement of what occurred.
 - 4.59.6 Whether the member has received other serious penalties or financial consequences for their unprofessional conduct.
 - 4.59.7 The impact of the proven unprofessional conduct on patient(s) and other parties.
 - 4.59.8 The presence or absence of mitigating circumstances.
 - 4.59.9 The need to promote deterrence and protect the public.
 - 4.59.10 The need to maintain public confidence.
 - 4.59.11 The degree to which the offensive conduct is outside the range of permitted conduct.
 - 4.59.12 The range of sanctions in similar cases.
- 4.60 Sanctions may include:
- 4.60.1 A percentage of costs associated with the complaint and hearing processes.
 - 4.60.2 Fines based on accepted or proven allegations pursuant to the fines table set out in the Act.
 - 4.60.3 Educational courses at the cost of the respondent.
 - 4.60.4 A letter of reprimand such as the decision of the hearing tribunal posted on the College's website.
 - 4.60.5 Mandatory supervision of the respondent at their cost for a stipulated timeframe.
 - 4.60.6 A suspension of the respondent's practice permit for a stipulated timeframe.
 - 4.60.7 A termination of the respondent's practice permit.
 - 4.60.8 Submission of a reflective paper within a stipulated timeframe.
 - 4.60.9 A random practice inspection.
 - 4.60.10 Any other requirements set out in the Act or as determined as appropriate.

Compliance

- 4.61 The respondent is responsible to comply with the requirements set out in any agreement or in an order of the hearing tribunal served upon them.
- 4.62 Should a respondent fail to comply with the requirements set out in an agreement or order, the Complaints Director may consider taking further action pursuant to s.82(3) of the Act.
- 4.63 The Complaints Director will follow up on compliance requirements of respondents as a courtesy and may, if the authority exists to do so and within reason, grant the respondent an extension of time to complete the requirements.

Closure

- 4.64 A case file will be closed in the following circumstances:
- 4.64.1 Where the complainant requests to withdraw a complaint and the Complaints Director determines that no further action is required.
 - 4.64.2 Where an informal resolution is reached, and the Complaints Director determines that no further action is required.
 - 4.64.3 Upon successful completion of all terms within an agreement and undertaking.
 - 4.64.4 Within thirty (30) days of dismissal of a complaint where a review is not requested.
 - 4.64.5 Upon the service of the decision of the Complaints Review Committee upholding the dismissal.
 - 4.64.6 Upon compliance by the respondent of all requirements set out in an agreement or in the order of a hearing tribunal.
 - 4.64.7 Upon the service of the decision of the appeal hearing tribunal upholding the decision of the original hearing tribunal, subject to the Complaint Director's and respondent's right to appeal to the Court of Appeal.
 - 4.64.8 Where no further action is required to be taken by the Complaints Director.

5. Authority

This procedure is established under the authority of Corporate Governance Policy G.1.2, which delegates authority to the Executive Director/Registrar to establish policies and procedures for the management and operation of the College regarding corporate operations, and operating programs.

6. Scope

This procedure applies to the complainant, regulated members, and former regulated members of the College.

7. Related Policies and Procedures

- R.1.4 Complaints Management Policy

8. Version History

Date	Notes
January 2, 2024	New procedure