



A Guide for Members about Complaints Processing

Health Professions Act

Contents

- Introduction3
- General Inquiries about a Dentist3
- The Complaints Process3
- What Happens after a Letter of Complaint is received by the Complaints Director?4
 - Acting on a complaint.....4
 - Notification4
 - Resolution4
 - Why would a dentist want to resolve a complaint at the earliest possible stage?5
- What is the Purpose of an Investigation?5
- Obligations of a Dentist6
 - Provide a Response.....6
 - Meet Timelines6
 - Communicate.....6
 - Professional Approach6
- Who will be contacted about a Complaint?.....7
- Will Another Dentist Review the Information Gathered in an Investigation?7
- After the Investigation.....7
- Completion of Complaints Process7
- The Alberta Ombudsman8
- Hearing8
 - What is a Hearing?.....8
 - Who is part of a Hearing Tribunal and what do they do?8
- What Happens after the Dentist Receives the Letter that a Complaint is Going to Hearing?9
- Do I Have to Hire a Lawyer?.....9
- Who will be at the Hearing?9
- The Hearing.....9
- The Decision.....10
- Publication.....10
- Appeal10
- Appendixes12
 - Figure 112
 - Table 113
 - Table 214
 - Table 316

Introduction

Under Alberta's *Health Professions Act*, a person (patient/complainant) can write to the Alberta Dental Association and College (ADA&C) to complain about their experience with a dentist. The ADA&C has been governed by the *Health Professions Act* since December 31, 2001; all regulated health professionals in Alberta are regulated (or pending to be regulated) under the *Health Professions Act*. The *Health Professions Act* is legislation based on a patient advocacy model that was passed after concerns about all health care providers were raised by the public to the Government of Alberta in the 1990s.

If the Complaints Director receives a written and signed complaint about a dentist, it must be treated as a complaint, as required by the *Health Professions Act*. Once a complaint is received, certain steps must be taken, as required by this legislation and notification must be provided to the complainant and dentist about the complaint and the steps to be taken. Refer to Figure 1 for an outline of the Complaint Process in the *Health Professions Act*. A complainant may make a complaint about a dentist at any time because the *Health Professions Act* does not include time restrictions or a limitation period by which to make a complaint.

General Inquiries about a Dentist

The ADA&C receives many inquiries on a daily basis from patients about the complaint process and what to do about problems with a dentist. Patients are encouraged to first speak with their dentist about any problems that they are having rather than making a formal complaint to the ADA&C. Patients are informed that the ADA&C is not a patient advocacy group.

The Complaints Process

The ADA&C Complaints Director receives and reviews information from the patient and the dentist. On behalf of the patient and the dentist, and, where possible, the Complaints Director assists the dentist and patient with the resolution of the complaint. As noted in Figure 1, with the Alberta government's patient advocacy model (the *Health Professions Act*), the complainant must sign off on the resolution of the complaint.

What Happens after a Letter of Complaint is received by the Complaints Director?

Acting on a complaint

The *Health Professions Act* sets out timelines to respond to a letter of complaint. Within 30 days of receiving a complaint, the *Health Professions Act* states the Complaints Director must notify the complainant of the action taken.

At least one of the following actions must be taken after a complaint is received:

- encourage the parties to resolve the matter informally between themselves
- attempt to resolve the complaint with the assistance of the Complaints Director
- refer the matter for alternative complaint resolution
- commence an investigation of the complaint

The complete list can be found in Table 1.

Notification

If a complaint is investigated, the Complaints Director notifies the dentist that a complaint has been received and outlines the nature of the complaint and the complaint letter is enclosed for the dentist to respond to.

Notification of a complaint is provided by registered letter to the dentist and the complainant, which must be mailed within 30 days of the receipt of the complaint, as required by the *Health Professions Act*. Sometimes before an investigation is formally initiated, the Complaints Director calls the dentist to confirm certain facts about the complaint or to discuss whether resolution of the complaint would be possible.

Resolution

At any time after a complaint is received and depending on the type of complaint, it is possible to resolve it at any time. Resolution is a voluntary process and must be agreed to by both the dentist and complainant. Any resolution proposed by a dentist must be accepted by the complainant in order to close the complaint.

Why would a dentist want to resolve a complaint at the earliest possible stage?

Depending on the nature of the complaint and if resolution is proposed, there are many reasons why a dentist may want to consider it, including:

- The dentist has control over the outcome of a complaint.
- It may facilitate the quickest means of addressing a complaint at the least expense and time commitment.
- It may facilitate a result that both the dentist and complainant can live with, even if it is not the exact result desired by either party.
- It may assist the dentist and complainant to communicate with each other to understand why a complaint was made.

What is the Purpose of an Investigation?

The purpose of an investigation is to determine whether or not there is sufficient evidence that a dentist has engaged in unprofessional conduct. The term “unprofessional conduct” is a defined term in the *Health Professions Act* and its meaning includes one or more of the following:

- Displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services.
- Contravening the Act, the Code of Ethics, or Standards or Practice.
- Representing or holding out that person’s registration or practice permit is not subject to conditions when it is or misrepresenting the conditions.
- Failing or refusing to comply with the Continuing Education program.
- Failing or refusing to comply with a practice visit.
- Failing or refusing to comply with or cooperate with an inspector.
- Failing or refusing to comply with an agreement.
- Failing or refusing to comply with a request of or cooperate in an investigation.
- Contravening any conditions on a practice permit.

The complete list can be found in Table 2. In an investigation, all information and evidence submitted is reviewed and assessed in an objective way. The Complaints Director does not favour the evidence of the complainant or the dentist but must assess it to determine what events actually transpired.

Obligations of a Dentist

Provide a Response

After a dentist receives a letter of investigation, the dentist must provide a written response to the complaint, and a copy of all the records requested. This is an opportunity for the dentist to put forth their side of the complaint and explain the approach and circumstances of what transpired with the complainant. The requested records typically include a copy of the complainant's entire clinical record, which includes sedation or anesthetic records, radiographs, and models.

Meet Timelines

Generally, a dentist has 35 days from the date of the letter of investigation to provide a response and a copy of the requested documents. There could be circumstances when a dentist is unable to meet this timeline and additional time may be provided.

If a dentist does not respond at all to a complaint, or provide the documents requested, this failure to respond or to address the complaint may result in another investigation of unprofessional conduct. Under the *Health Professions Act*, it is unprofessional conduct for a dentist to refuse to comply with a request in an investigation.

Communicate

Communication in the complaint process and during an investigation is very important. In an investigation, the dentist's response will be forwarded to the complainant who will be provided an opportunity to respond to the letter of response. The exchange of information between the dentist and the complainant is a key component of the regulatory process which requires that the process is fair to both the dentist and complainant.

Professional Approach

It is understood that it can be stressful and upsetting to receive a letter of complaint and to be notified that a complaint is being investigated. In any response letter it is important to consider the tone of the letter and the avoidance of threatening to sue or personally attacking the complainant. The tone in the response letter can have a significant impression on the patient and their future responses in an investigation. As a regulated professional, your professional obligations include responding to a complaint.

Who will be contacted about a Complaint?

During an investigation and depending on the complaint, other dentists, health care professionals or individuals who have had contact with the complainant may be asked to provide information and records. The ADA&C agrees not to disclose individually identifying diagnostic, treatment and care information to any other person except as authorized by and under the *Health Professions Act*. Generally, these people will receive a copy of the complaint so that they are able to provide complete information. The dentist and complainant will receive a copy of any letters received from these people who are not the subject of a complaint, and both will have an opportunity to respond and comment about the letters. Everyone involved is informed that an investigation is confidential.

Will Another Dentist Review the Information Gathered in an Investigation?

At the end of an investigation, the information provided will be assessed. Depending on the type of complaint, a dental advisor to the Complaints Director may be asked to provide a written report about the dental treatment and the conduct of the dentist. If a dental advisor provides a report, generally the dentist is provided with a copy of the report and an opportunity to respond to the dental advisor's comments.

After the Investigation

At the completion of an investigation, a decision will be made to either dismiss the complaint or to refer the complaint to a hearing. A complaint will be dismissed if there is insufficient evidence of unprofessional conduct. The dentist and the complainant will be notified in writing, by registered mail, of the results of an investigation. Generally, if a complaint is referred to a hearing, the dentist and complainant will receive notice of this and a description of the formal charges against the dentist.

Completion of Complaints Process

If a complaint is dismissed, the complainant must be advised that they have the right to appeal the dismissal by requesting a review of the complaint by the Complaint Review Committee. The Complaint Review Committee is required by the *Health Professions Act* to include three dentists and a member of the public. The Complaint Review Committee is an independent group or "jury" that assesses the complaint file independently and without direction from the ADA&C.

If a complainant appeals a dismissal, the Complaint Review Committee will assess the complaint and may uphold the dismissal, ask for further investigation by the Complaints Director or send the complaint to a hearing.

The Alberta Ombudsman

The authority of the Ombudsman in the complaint and hearing processes of the health professions is new to the *Health Professions Act*. It was not part of the Dental Profession Act.

After a complainant requests a review of the complaint to the Complaint Review Committee and is not satisfied with the results, they can then proceed to the next level of review which is a complaint to the Alberta Ombudsman. The Alberta Ombudsman's role includes investigating the administrative process undertaken in response to a complaint. As outlined in the *Health Professions Act*, the Alberta Ombudsman may recommend that the Complaints Director or Hearing Tribunal reconsider any previous decisions it has made about a complaint. This could involve a new investigation, or a new hearing.

Hearing

What is a Hearing?

A hearing is a public process that involves a formal determination by a Hearing Tribunal of the charges against a dentist. The Hearing Tribunal will hear all of the information and evidence presented by a dentist or against a dentist and will ultimately decide if a dentist is guilty or not guilty of unprofessional conduct. A hearing is not held in a court room but is a formal process that is recorded. All witnesses must give their testimony under oath.

Who is part of a Hearing Tribunal and what do they do?

A Hearing Tribunal is composed of three registered dentists of the ADA&C and a member of the public, appointed by the Government of Alberta. This "jury" is independent of the complaints process and the ADA&C, as required by the *Health Professions Act*.

If the Hearing Tribunal concludes that a dentist is guilty of unprofessional conduct, the Hearing Tribunal will decide what should constitute the punishment, or sanction, against the dentist.

What Happens after the Dentist Receives the Letter that a Complaint is Going to Hearing?

The dentist will receive additional information from the ADA&C about the investigation that is called “disclosure”. Disclosure includes copies of all letters between the dentist and the complainant and the ADA&C on file. The dentist will also be notified at least 30 days prior to the date of the hearing about the date and time of the hearing, the location, and the charges. Notification will also be provided with the names of the members of the Hearing Tribunal, after the date of the hearing is confirmed by the ADA&C and the dentist, or the dentist’s lawyer.

Do I Have to Hire a Lawyer?

It is up to the dentist. The dentist may appear at the Hearing without a lawyer, although it is very common for a dentist to hire a lawyer to assist with the hearing process and the actual hearing. The dentist is entitled to have legal representation, at their own cost.

Who will be at the Hearing?

Initially, the Complaints Director, the lawyer for the Complaints Director, the dentist, the dentist’s lawyer (if retained), the Hearing Tribunal members and a lawyer for the Hearing Tribunal will be present. There will also be a court reporter present for the entire hearing who will transcribe the entire proceeding. Generally, as required by law, a hearing is open to the public but it is not likely that the public will attend.

The ADA&C may call witnesses, such as a dental advisor and the complainant. The dentist will provide evidence at the hearing and may also call witnesses. Except for the dentist, any witness would be excluded from the hearing until they provide evidence. A witness must be advised that they will swear an oath and their evidence is under oath. A witness must give evidence on matters relevant to the hearing.

The Hearing

In some instances, other issues not addressed in the original charges may arise during a hearing. The Hearing Tribunal, under the *Health Professions Act*, is entitled to hear evidence on any other matter that arises, even if this is not evidence relating to the particulars given to the dentist before the hearing starts. If this happens, there will be an opportunity to respond to the new issues and the process will be outlined by the Hearing Tribunal.

The Decision

Under the *Health Professions Act*, the Hearing Tribunal must decide whether or not the conduct of the investigated dentist is or is not unprofessional as outlined in the Act. The Hearing Tribunal will not make a decision at the end of a Hearing, but will provide a written decision sometime after the hearing is over. The dentist can expect a copy of the decision within one to three months from the last day of the hearing.

If the Hearing Tribunal concludes that the dentist is guilty of unprofessional conduct, the dentist and the Complaints Director will be asked to make additional written submissions about what orders should be made against the dentist. Ultimately, the Hearing Tribunal will decide what should constitute the punishment and will provide a written decision within one to three months from the date they receive the final submissions from the parties.

The Hearing Tribunal may order any one or more of the following punishments, or sanctions, against the dentist who is guilty of unprofessional conduct:

- A reprimand
- Impose conditions on your practice permit
- Suspend the dentist's practice permit
- Require the dentist to undertake counseling or a treatment program
- Cancel the registration and practice permit of the dentist
- Direct the dentist to waive, reduce or repay the fee for professional services provided by the dentist
- Direct the dentist to pay costs, expenses and fees relating to the investigation or hearing or both
- Direct the dentist to pay a fine, as set out in the Act.

The complete list as outlined in the *Health Professions Act* can be found at Table 3.

Publication

If a dentist is guilty of unprofessional conduct, a summary of the decision and the orders against the dentist will be publicly available and will be published on the public and members' websites. This is required by section 19(7) of the Bylaws of the ADA&C.

Appeal

The dentist or the Alberta Dental Association and College may appeal a final decision of the Hearing Tribunal by delivering a written notice of appeal that identifies the appealed decision and the reasons for appeal. This notice must be delivered to the Hearings Director within 30 days of receipt of the final decision of the Hearing Tribunal. The Hearings Director will notify all parties of the appeal and provide the disclosure required within the

timelines set out in the *Health Professions Act*.

The *Health Professions Act* requires that an appeal of a decision of a Hearing Tribunal is made to Council or a Panel of Council, consisting of a minimum of three registered Alberta dentists and a member of the public.

Like the hearing, a dentist is entitled to be represented by a lawyer at an appeal. Likewise, the Complaints Director and the Council or Panel of Council will also have legal counsel present.

Appendixes

Figure 1

Complaint Process

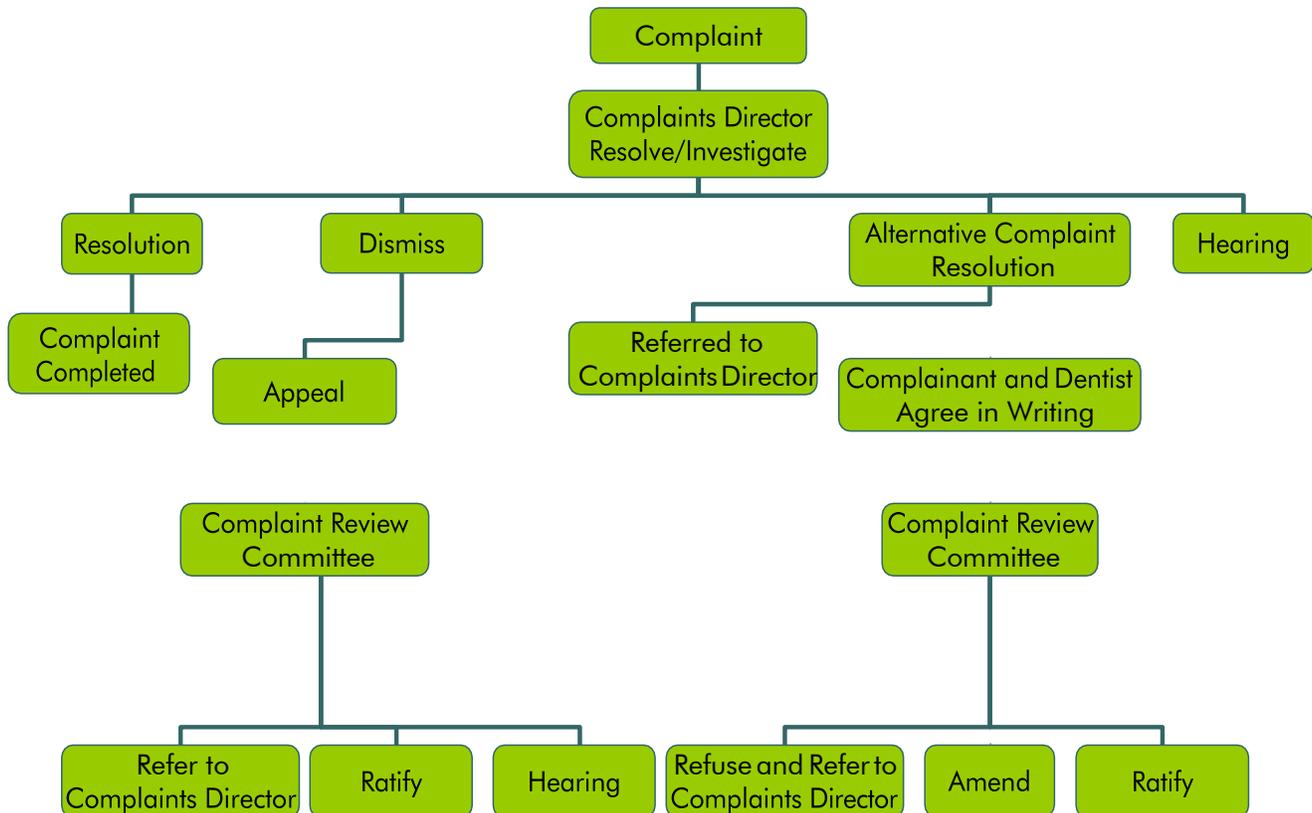


Table 1

Health Professions Act Section 55

Acting on a complaint

55(1) Within 30 days after being given a complaint or treating information as a complaint, the complaints director must give notice to the complainant of the action taken with respect to it.

(2) The complaints director

(a) may encourage the complainant and the investigated person to communicate with each other and resolve the complaint,

(a.1) may, with the consent of the complainant and the investigated person, attempt to resolve the complaint,

(b) may make a referral to an alternative complaint resolution process under Division 2,

(c) may request an expert to assess and provide a written report on the subject-matter of the complaint,

(d) may conduct, or appoint an investigator to conduct, an investigation,

(e) if satisfied that the complaint is trivial or vexatious, may dismiss the complaint,

(f) if satisfied that there is insufficient or no evidence of unprofessional conduct, may dismiss the complaint, and

(g) may make a direction under section 118.

(3) If the complaints director dismisses the complaint, the complaints director must, within 30 days, give notice to the complainant of the dismissal and the right to apply for a review by the complaint review committee under section 68.

Table 2

Health Professions Act Section 1(1)(pp)

“unprofessional conduct” means any or all of the following whether or not it is disgraceful or dishonourable:

- (i) displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;
- (ii) contravention of this Act, a code of ethics or standards of practice;
- (iii) contravention of another enactment that applies to the profession;
- (iv) representing or holding out that a person was a regulated member and in good standing while the person’s registration or practice permit was suspended or cancelled;
- (v) representing or holding out that person’s registration or practice permit is not subject to conditions when it is or misrepresenting the conditions;
- (vi) failure or refusal
 - (A) to comply with the requirements of the continuing competence program, or
 - (B) to co-operate with a competence committee or a person appointed under section 11 undertaking a practice visit;
- (vi.1) failure or refusal
 - (A) to comply with a request of or co-operate with an inspector;
 - (B) to comply with a direction of the registrar made under section 53.4(3);
- (vii) failure or refusal
 - (A) to comply with an agreement that is part of a ratified settlement,
 - (B) to comply with a request of or co-operate with an investigator,
 - (C) to undergo an examination under section 118, or
 - (D) to comply with a notice to attend or a notice to produce under Part 4;
- (viii) contravening an order under Part 4, conditions imposed on a practice permit or a direction under section 118(4);
- (ix) carrying on the practice of the regulated profession with a person who is contravening section 98 or an order under Part 4 or conditions imposed on a practice permit or a direction under section 118(4);
- (x) carrying on the practice of the regulated profession of physicians, surgeons, osteopaths, dentists, chiropractors or optometrists on behalf of a corporation that does not meet the requirements of sections 104 to 115 or as a partner of a partnership that

does not meet the requirements of section 98(3);

- (xi) carrying on the practice of the regulated profession of physical therapists on behalf of a corporation that does not meet the requirements of Schedule 20;
- (xii) conduct that harms the integrity of the regulated profession.

Table 3

Orders of tribunal

Health Professions Act Section 82(1)

82(1) If the hearing tribunal decides that the conduct of an investigated person constitutes unprofessional conduct, the hearing tribunal may make one or more of the following orders:

- (a) caution the investigated person;
- (b) reprimand the investigated person;
- (c) impose conditions on the investigated person's practice permit generally or in any area of the practice of the regulated profession, including conditions that the investigated person
 - (i) practise under supervision,
 - (ii) practise with one or more other regulated members,
 - (iii) not practise in an area of the practice of the regulated profession until the investigated person has successfully completed a specific course of studies or obtained supervised practical experience of a type described in the order,
 - (iv) not practise in an area of the regulated profession, or
 - (v) report on specific matters to the hearing tribunal, council, committee or individual specified in the order;
- (d) direct the investigated person to satisfy the hearing tribunal, committee or individual specified in the order that the investigated person is not incapacitated and suspend the investigated person's practice permit until the hearing tribunal, committee or individual is so satisfied;
- (e) require the investigated person to undertake counselling or a treatment program that in its opinion is appropriate;
- (f) direct that within the time set by the order the investigated person must pass a specific course of study, obtain supervised practical experience of a type described in the order or satisfy the hearing tribunal, committee

or individual specified in the order as to the investigated person's competence generally or in an area of the practice of the regulated profession;

- (g) suspend the practice permit of the investigated person for a stated period or until
 - (i) the investigated person has successfully completed a specific course of studies or obtained supervised practical experience of a type described in the order, or
 - (ii) the hearing tribunal or a committee or individual specified in the order is satisfied as to the competence of the investigated person generally or in a specified area of the practice of the regulated profession;
- (h) cancel the registration and practice permit of the investigated person;
- (i) if, in the opinion of the hearing tribunal, the investigated person's fees for professional services were improper or inappropriate or the professional services that the investigated person provided were improperly rendered or required the complainant to undergo remedial treatment, the hearing tribunal may direct the investigated person to waive, reduce or repay the fee for professional services provided by the investigated person;
- (j) direct, subject to any regulations under section 134(a), that the investigated person pay within the time set in the order all or part of the expenses of, costs of and fees related to the investigation or hearing or both, including but not restricted to
 - (i) the expenses of an expert who assessed and provided a written report on the subject-matter of the complaint,
 - (ii) legal expenses and legal fees for legal services provided to the college, complaints director and hearing tribunal,
 - (iii) travelling expenses and a daily allowance, as determined by the council, for the complaints director, the investigator and the members of the hearing tribunal who are not public members,
 - (iv) witness fees, expert witness fees and expenses of witnesses and expert witnesses,
 - (v) the costs of creating a record of the proceedings and transcripts

and of serving notices and documents, and

- (vi) any other expenses of the college directly attributable to the investigation or hearing or both;
- (k) direct that the investigated person pay to the college within the time set in the order a fine not exceeding the amount set out in the column of the unprofessional conduct fines table that is specified for the college in a schedule to this Act for each finding of unprofessional conduct or the aggregate amount set out in that column for all of the findings arising out of the hearing;
- (l) any order that the hearing tribunal considers appropriate for the protection of the public.