

## Legislation - Understanding the Complaints Process

The *Health Professions Act* provides a common regulatory framework for regulated health professions in Alberta. This legislation was created by the Government of Alberta to allow health professions to self-regulate their profession, while being accountable to the Government of Alberta.

One of the regulatory responsibilities of the Alberta Dental Association and College and all regulated health professions in the *Health Professions Act* is accepting complaints: investigating, adjudicating and resolving complaints.

Dentists in Alberta are able to practice dentistry by meeting the requirements for registration in Alberta. These requirements are found in the *Health Professions Act*. Upon registration in Alberta, a dentist is subject to and must abide by the laws outlined in the *Health Professions Act* and other legislation, such as the *Health Information Act*.

The complaints process is created by the *Health Professions Act*. It grants a right to a person to make a complaint about an Alberta dentist. Generally, the right to complain is conditional upon the complainant submitting a letter to the Complaints Director, and signing the letter, which requires the complainant to identify themselves. The Alberta Dental Association and College receives hundreds of calls every year from concerned callers and of these callers, a small percentage take the additional action of making a written and signed complaint. The vast majority of written complaints received do not proceed to a Hearing Tribunal as they are dismissed or resolved earlier in the process.

Once a complaint is received, the Complaints Director must follow the Government of Alberta legislated process found in the *Health Professions Act*. All health professions in Alberta that are regulated by the *Health Professions Act* must appoint a person to be the Complaints Director. The Complaints Director's authority and duties are set out in the *Health Professions Act*. The Complaints Director must accept complaints and then has the legal obligation to give notice to the person making the complaint about the actions that will be taken about the complaint. The actions available to the Complaints Director are set out in section 55(2) of the *Health Professions Act*.

As set out in the *Health Professions Act*, the Complaints Director cannot decide if a dentist has engaged in unprofessional conduct. The Complaints Director must determine if there is sufficient evidence of unprofessional conduct as defined in section 1(1)pp of the *Health Professions Act*. The complaint will be referred to a Hearing Tribunal if such evidence exists.

The Hearing Tribunal is a peer review with public input; they are the decision makers. The Hearing Tribunal has nothing to do with a complaint before it is referred to a hearing. The peers are three dentists. The public interest is represented by a member of the public appointed by the Lieutenant Governor in Council, Government of Alberta. The *Health Professions Act* requires that a Hearing Tribunal have a public member on the panel.

What this "jury" (of the Hearing Tribunal) can do is set out in the *Health Professions Act*. The Complaints Director does not participate in the decision making of the Hearing Tribunal because it is independent of the complaints process and the Alberta Dental Association and

College, as required by the *Health Professions Act*. Only a Hearing Tribunal can determine if the conduct of the dentist constitutes unprofessional conduct as defined in the *Health Professions Act*.

At a hearing, the Hearing Tribunal receives information from the complainant and the dentist and others. There may be experts involved who explain why or why not the conduct is acceptable or unacceptable. Ultimately, it is the Hearing Tribunal's purpose to decide if the dentist's conduct does or does not meet the expected conduct of a dentist in Alberta as defined in the *Health Professions Act*.

The *Health Professions Act* sets out timelines that the Complaints Director must follow 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.

There are several actions that can be taken that are outlined in section 55(2) of the *Health Professions Act* such as:

- Encouraging the parties to resolve the matter informally between themselves;
- Attempting to resolve the complaint with the assistance of the Complaints Director; and
- Commencing an investigation of the complaint.

If the 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's response.

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

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 such considerations as:

- Displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;
- Contravening the Health Professions Act, the Code of Ethics, or Standards or Practice;
- Representing or holding out that a 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;
- Contravening another enactment that applies to the dental profession;

- Failing or refusing to comply with or cooperate with an investigator or an inspector;
- Failing or refusing to comply with an agreement; and
- Carrying on the practice of dentistry on behalf of a corporation that does not meet the requirements or as a partnership that does not meet the requirements.

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. 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.

Resolution, depending on the type of complaint and the nature of the resolution, can occur at any time after a complaint is received and before the investigation is concluded. 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. The Alberta Dental Association and College encourages dentists to make every effort to resolve patient concerns directly with patients if possible, hopefully avoiding having the patient file a complaint.

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

- The dentist has control over the outcome of a complaint;
- It may; facilitate the quickest means of addressing a complaint and the conflict 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 of them; and
- It may assist the dentist and complainant to communicate with each other to understand why a complaint was made.

The obligation of the dentist is to provide a response to the letter of investigation. The letter will provide timelines for the response and details of what to provide to the Complaints Director.

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, the patient ledger, radiographs, and models.

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 upon request.

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.

Communication and conduct 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. If a complaint is referred to a hearing, the Hearing Tribunal will likely see the dentist's response.

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 inflammatory language such as threatening to sue or personally attacking the complainant. The tone in the response letter can have a significant impression on the complainant and their future responses in an investigation. As a regulated professional, a dentist's professional obligation includes responding to a complaint. Depending on the nature of the inflammatory language, a dentist may be subject to additional investigations.

Complainants' tone in letters may be inflammatory at times but the dentist must remain professional and should avoid language or a tone in their response that may actually make the situation worse or jeopardize or preclude the possibility of a satisfactory resolution being reached.

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.

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

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.

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, appointed by the Lieutenant Governor in Council, Government of Alberta. The Complaint Review Committee is an independent group or "jury" that assesses the complaint file independently and without direction from the Alberta Dental Association and College or the Complaints Director.

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.

If the complainant is not satisfied with the results of a review of the complaint by the Complaint Review Committee, they can 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 confirm the Hearing Tribunal decision or 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.

The Alberta Dental Association and College encourages dentists to make every effort to resolve patient concerns directly with patients. Good communication with patients and addressing concerns promptly greatly reduces the likelihood of a patient making a complaint to the Alberta Dental Association and College.