

## Chapter 6 Professional Conduct

### CHAPTER OVERVIEW

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### Defining Professional Conduct

It is the expectation of the public, other professionals, employers, and government that regulated professionals, including Registered Dietitians and Registered Nutritionists will provide competent, safe, ethical services. Professionals who maintain high standards in their practice and are conscious of their professional conduct build trust and confidence in their profession. In Chapter 4, the *Code of Ethics*, the *Standards of Practice*, the *Standards of Practice: Sexual Abuse and Sexual Misconduct Prevention* and the *Integrated Competencies for Dietetic Education and Practice* were introduced as important documents that outline the professional practice standards for Registered Dietitians and Registered Nutritionists licensed to practice by the College of Dietitians of Alberta (the College). Registered Dietitians and Registered Nutritionists, who conduct themselves in a professional manner, practice in accordance with these documents, legislated Acts, Regulations, bylaws, and guidelines.

When considering professional conduct, it is critical to understand the definition of patient or client. Each college that regulates a health profession must define who constitutes a “patient” in their *Standards of Practice: Sexual Abuse and Sexual Misconduct Prevention*. The College of Dietitians of Alberta has defined patient as:

“an individual is a patient of the Registered Dietitian if there is direct interaction between the Registered Dietitian and the individual and:

- a) the Registered Dietitian has, in respect of a health care/professional service to the individual, charged or received payment from the individual or third party on behalf of the individual, and/or
- b) the Registered Dietitian has contributed to a health record or file for the individual, and/or
- c) the individual has consented to the health care/professional service recommended by the Registered Dietitian.”

Further, our college has defined when an individual is not a patient as “an individual is not a patient if:

- a) there is an ongoing, pre-existing sexual relationship between the individual and the Registered Dietitian, or the individual is the Registered Dietitian’s spouse; and/or
- b) the Registered Dietitian provides the health care/professional service to the individual in emergency circumstances; and/or
- c) the Registered Dietitian has taken reasonable steps to transfer the care of the individual to another Registered Dietitian or alternate service provider, or there is no reasonable opportunity to transfer care to another Registered Dietitian/service provider.”<sup>17</sup>

To gain a better understanding of what professional conduct means, it is advantageous to review the definition of “unprofessional conduct” as used legislatively in the *Health Professions Act (HPA)*. The *HPA* definition of “unprofessional conduct” is as follows:

“Section 1(1)

- (pp) “unprofessional conduct” means one or more 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;

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<sup>17</sup> College of Dietitians of Alberta. *Standards of Practice: Sexual Abuse and Sexual Misconduct Prevention*. 2019.

- (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;
- (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);

**KEY PRACTICE POINT**

**Registered Dietitians and Registered Nutritionists who conduct themselves in a professional manner practice in accordance with legislated Acts, Regulations, bylaws, guidelines, the Code of Ethics, the Standards of Practice, the Standards of Practice: Sexual Abuse and Sexual Misconduct Prevention and the Integrated Competencies for Dietetic Education and Practice.**

- (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;<sup>18</sup>

Based on the *HPA* definition of “unprofessional conduct” it is apparent that the term refers to behaviour that is unskilled and/or unethical. Such behaviours are also inconsistent with expectations for professional conduct set out in the *Code of Ethics, Standards of Practice*, the *Standards of Practice: Sexual Abuse and Sexual Misconduct Prevention* and the *Integrated Competencies for Dietetic Education and Practice*.

## Complaints of a Sexual Nature

In 2018, the Alberta government introduced *Bill 21: An Act to Protect Patients* to amend the *Health Professions Act (HPA)*. Bill 21 speaks specifically to sexual abuse and sexual misconduct by regulated health professionals and introduced several new requirements for regulatory health colleges and its regulated members, ensuring consistent penalties are applied to all health professionals regulated under the *HPA* for findings of sexual abuse or sexual misconduct. Bill 21 received Royal Assent on November 19, 2018 and came into force on April 1, 2019.

A Registered Dietitian or Registered Nutritionist is in a position of power over a patient, by virtue of having professional knowledge and skill that a patient must rely on for their well-being. In addition, they have access to patients’ personal health information.

Registered Dietitians and Registered Nutritionists must always maintain professional boundaries with their patients (please see Chapter 12 Professional Boundaries for more on this topic). They are prohibited from engaging in any form of sexual abuse or sexual misconduct, as defined by law in the *Health Professions Act*, of a patient.<sup>19</sup>

**Sexual Abuse** “means the threatened, attempted or actual conduct of a regulated member towards a patient that is of a sexual nature and includes any of the following conduct:

- a) Sexual intercourse between a regulated member and a patient of that regulated member;
- b) Genital to genital, genital to anal, oral to genital or oral to anal contact between a regulated member and a patient of that regulated member;
- c) Masturbation of a regulated member by, or in the presence of, a patient of that regulated member;
- d) Masturbation of a regulated member’s patient by that regulated member;

<sup>18</sup> Province of Alberta. *Health Professions Act*; R.S.A. 2000, c. H-7. p. 12.

<sup>19</sup> Province of Alberta. *Health Professions Act*; R.S.A. 2000, c. H-7. p. 12.

- e) Encouraging a regulated member's patient to masturbate in the presence of that regulated member;
- f) Touching of a sexual nature of a client's genitals, anus, breasts or buttocks by a regulated member."

**Sexual Misconduct** "means any incident or repeated incidents of objectionable or unwelcome conduct, behaviour or remarks of a sexual nature by a regulated member towards a patient that the regulated member knows or ought reasonably to know will or would cause offence or humiliation to the patient or adversely affect the patient's health and well-being but does not include sexual abuse."

**Sexual nature** "does not include any conduct, behaviour or remarks that are appropriate to the services provided."

## The Top Ten Causes of Unprofessional Conduct

James T. Casey, Q.C. of Field Law practices in the areas of labor and employment law, administrative law, and professional regulation in Alberta. Based on his experience with hundreds of unprofessional conduct cases in a broad range of professions, he has developed what he refers to as his unscientific list of the top ten causes of unprofessional conduct. In no particular order, they are as follows (1):

### *1. Failure to maintain currency of professional knowledge and competence*

It is clear that professions and the health care system evolve over time. Professionals must keep pace with the change. There are many complaints of unskilled practice about professionals who once were very competent but who have not maintained their competence. "That's how we did it when I was trained 20 years ago" is not a valid defense.

What a professional can do:

- Maintain competence on an ongoing basis; this is a central tenet of professionalism.
- Maintain a current knowledge base.
- Use Continuing Competence Programs; they are ideal tools.
- Take advantage of continuing education opportunities.
- Be familiar with your employer's policies and procedures.
- Understand the standards of practice for your profession.

- Be active in professional organizations; read professional publications.

## ***2. Failure to seek assistance or make appropriate referrals***

Professionals may encounter difficult situations for which they do not have the necessary skills. Unprofessional conduct may occur where the professional “ploughs ahead” without getting assistance.

What a professional can do:

- Recognize that we all have limitations.
- Realize that seeking assistance is not a form of weakness; it is a sign of professional strength.
- Where necessary seek assistance from trusted colleagues or from your supervisor. Do not be afraid to ask a colleague for a second opinion. Where appropriate, refer the client to someone with the necessary skills.

## ***3. Difficulties in a professional’s personal life affect their work-life***

People rarely have “water-tight compartments” in their lives. Work can affect personal and home-life; difficulties in personal and home-life can negatively affect work. Personal difficulties might be related to problems with marriages, relationships, children, finances, or depression. It is common for serious personal difficulties being experienced by a professional to “spill-over” into the workplace, giving rise to a risk of unprofessional conduct.

What a professional can do:

- If experiencing serious difficulties in your personal or home-life, then realize the potential for the “spill-over effect.”
- Realize that you might not be the most objective person with respect to whether your work is being adversely affected.
- If you are having difficulties coping with problems in your personal life and there begins to be a “spill-over” to work, then get help. Seek out family, friends, and trusted colleagues. Consider taking some time off work. Consider counseling through Employee Assistance Programs.

## ***4. Alcohol and drug addictions***

Alcohol and drug addictions are the root cause of some of the most serious cases of unprofessional conduct.

What a professional can do:

- Keep yourself well.
- Realize that addiction to prescription drugs is a danger for health care professionals because of easy accessibility.
- Many professionals with substance abuse problems have destroyed their entire professional career because they have either refused to seek help or sought help too late.
- Get help. Seek counseling. Contact Employee Assistance programs. There are addiction recovery programs in Alberta specially designed for health care professionals.

### ***5. Poor communication***

Many unprofessional conduct complaints are caused by poor communication between the professional and the client or between a professional and their colleagues.

What a professional can do:

- Appreciate that part of being a true professional is being a good communicator.
- Ask yourself: Are you a really good listener? Could you be a better communicator? Would it be useful to take an effective communication course?
- Realize that effective communication is at the heart of the “informed consent” process.
- Consider how your remarks are perceived by others. Avoid cavalier or “smart-aleck” comments in the presence of clients. These types of comments tend to startle and alarm clients and may prompt a complaint. Many comments that are appropriate when made only in the presence of colleagues are not appropriate in the presence of clients. “Don’t wash your dirty laundry in public.”
- You care about your clients. Do your clients understand that you care? Do your actions and your verbal and non-verbal communication demonstrate that you care? Retain professional distance and demeanor but demonstrate to your clients that you do care. How would you want to be treated if the situation was reversed and you were the client? What would you expect if the client was one of your family members? Very few clients file unprofessional conduct complaints about health professionals who they perceived to be caring. Clients who leave a health care facility feeling, “No one cared about me” are more likely to file complaints.

## ***6. Failure to appropriately address client concerns***

A client or a family member with a concern about a client's care or a professional's conduct will typically first approach the professional or a manager about their concerns. Many unprofessional conduct complaints are filed because the person felt that their concerns were not taken seriously by the institution or the professional.

What a professional can do:

- Take all concerns and complaints seriously. “Actively listen” to the person making the complaint.
- Be careful of labeling a client as a “whiner” or a “complainer”. Clients and their families can often be difficult and sometimes unreasonable. However, we must remember that the client and their family are often under significant emotional and physical stress in an environment which they do not fully understand. An individual who feels that a professional or an institution has been dismissive about their concerns is much more likely to file a formal professional conduct complaint.
- Understand the power of the “15 second apology” acknowledging the feelings of the person complaining. Example: “I am so sorry that all of this has resulted in you being distressed about your daughter's care. I will advise my manager of your concerns.” You can often effectively address a person's concerns without getting into a long debate about who was wrong or right.
- Persons who feel their complaint was taken seriously and effectively addressed rarely file a complaint of unprofessional conduct with a regulatory college. For most people, filing such a complaint is a last resort when they perceive that nothing else has worked.

## ***7. Environmental Factors***

Various environmental factors can be a contributing cause to a professional engaging in unprofessional conduct. For example, there may be excessive work demands, a lack of mentoring and supervision, or inappropriate workplace practices. A professional may also be assigned tasks by their employer which the professional is not completely competent to perform due to inexperience or lack of training in a particular area.

What a professional can do:

- Remember that regardless of the environment, it is the professional's personal obligation to ensure that their own work meets professional standards. If you have failed to maintain professional standards, a defense of “that's how we all do it at work” is unlikely to be successful.

- If you have concerns about the environment's effect on your ability to practice in a professional manner, seek advice from trusted colleagues. Raise the issue with your supervisor. If you do not obtain any assistance from your supervisor, seek the advice of your professional organization.

### ***8. Personality conflicts escalate to unprofessional conduct***

It is not unusual for the roots of unprofessional conduct to be in a personality conflict between a professional and a colleague, between a professional and his or her supervisor, or between a professional and a client. A serious personality conflict can cause a professional to lose their objectivity and a minor dispute which should have been resolvable may escalate to a major confrontation.

What you can do:

- Understand that there will always be colleagues, supervisors and clients with whom it is difficult to get along. However, this does not alleviate you of the central obligation of maintaining a professional demeanor and professional interactions. If you are experiencing a personality conflict, ask yourself honestly whether it is affecting the quality of your work. Are your interactions still meeting professional standards?
- If you are experiencing a personality conflict with a colleague, deal with the issue privately and not in the presence of clients.
- If there is a serious personality conflict with a client, consider arranging for the client's care to be provided by a different person. If you have been assigned to provide exclusive care to the client, then you should obtain the client's consent to the transfer.

### ***9. Complacency about professional standards***

Some professionals with a great deal of experience become complacent about professional standards and begin to develop "careless" practices.

What a professional can do:

- Remember that a commitment to professionalism is a life-long commitment. Professional standards apply as much to a new graduate as a professional with 30 years' experience.
- Regularly work on refreshing your understanding of professional standards.
- Don't count on your experience and seniority to help you get away with careless practices.

## 10. Professional Documentation

A failure to adequately chart or document causes significant problems for professionals. If you have acted professionally and appropriately, then proper documentation will be your best defense. Many unprofessional conduct complaints are referred to a hearing because of significant disagreements about what actually happened. If a case comes down to, “He said, she said,” then you are at risk. Appropriate documentation can objectively demonstrate what really happened.

What a professional can do:

- Follow professional charting and documentation practices.
- Understand and follow your employer’s documentation practices with respect to critical incidents, client complaints, etc.
- Document in accordance with professional standards: write legibly, write accurately, record concisely, record events chronologically, record information immediately or as soon as possible, ensure all documentation is dated and signed or initialed, write in ink, use uniform terminology, and correct errors in documentation openly and honestly.
- When you know that concerns are being raised by a client or family member, ensure that every step you take is adequately documented.

Professionalism is not about perfectionism. All professionals make mistakes. However, we all need to ensure that we learn from our mistakes. By being alert to some of the root causes of unprofessional conduct we can do our very best in ensuring that we act as “true professionals”.

## Misuse of Social Media

An emerging cause of unprofessional conduct found across regulatory colleges relates to the misuse of social media and/or use of online communication tools. As the use and functionality of social media technologies in particular continues to evolve, they offer almost unlimited opportunity to influence Dietetic practice and therefore the health and safety of the population. The downside of combining these technologies with professional practice and/or personal interactions and communications is that the line between the professional and the personal (and the private and public) can become blurred without careful attention.

For more information, please refer to Chapter 14 on Social Media, Virtual and Cross Border Practice, found later in this handbook, and the *Social Media Practice Guidelines* found on the College website.

## Processes for Handling Complaints

As previously mentioned, it is the expectation of the public, other professionals, employers and government that regulated professionals, including Registered Dietitians and Registered Nutritionists will provide competent, safe, ethical services. All regulated professionals, including Registered Dietitians and Registered Nutritionists are subject to a high degree of accountability to the public.

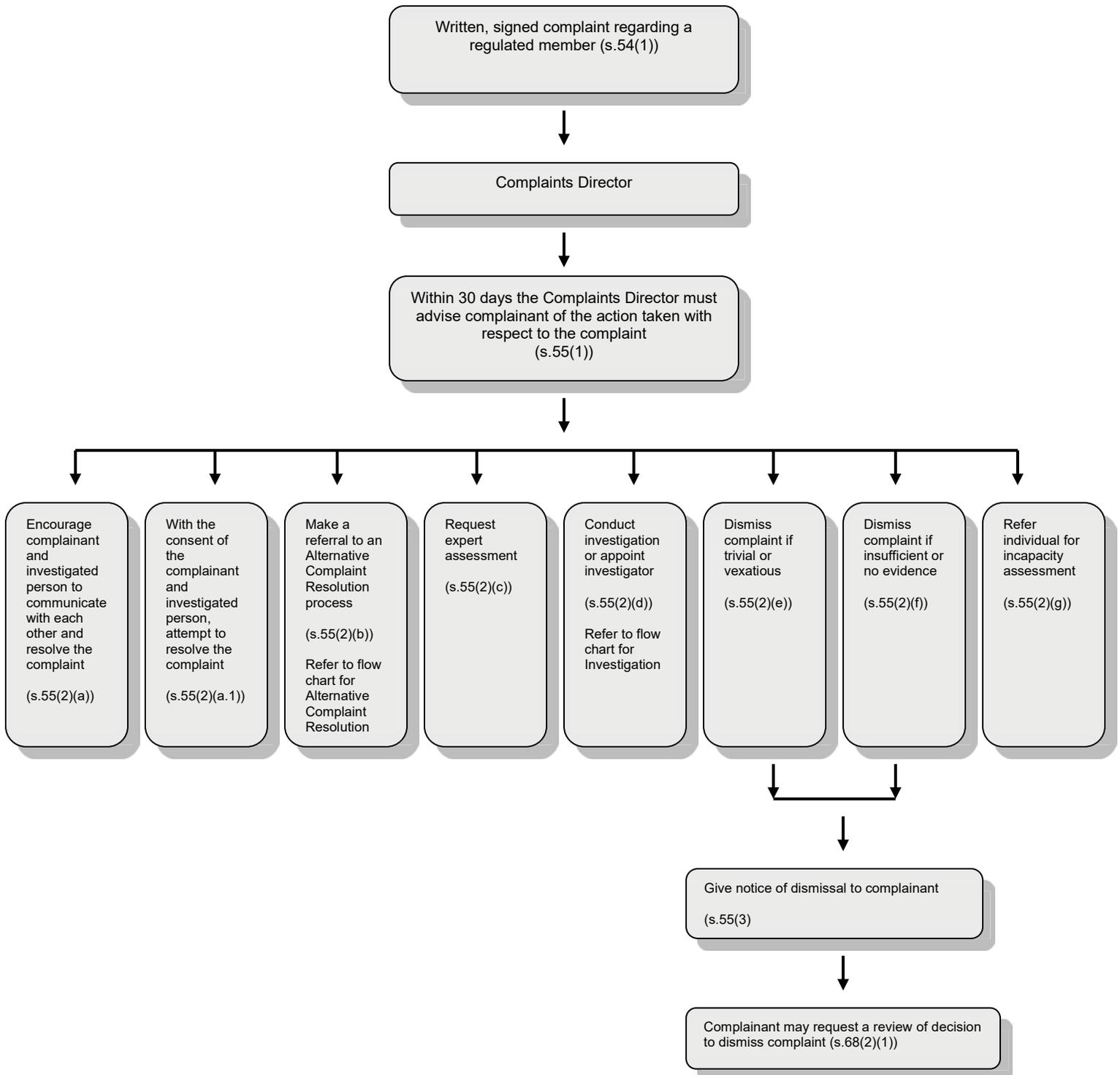
On occasion, a client or family member, other member of the public, other professional or an employer may not feel that their expectations for competent, safe, ethical services have been met and may choose to file a complaint against a practitioner. The College is mandated under the *HPA* to deal with allegations of unprofessional conduct lodged against their registrants. Under the *HPA*, a person who wishes to make a complaint against a regulated member of a college must make the complaint to the Complaints Director of the particular college. Complaints must be made in writing and must be signed. Complaints may come from any person including a client or family member, regulated or unregulated health care provider or employer. It should also be noted that under the *HPA*, employers have a legal obligation to inform a college if a practitioner's employment is terminated or suspended, or if the employee has resigned for reasons related to unprofessional conduct (2).

Section 55 of the *HPA* outlines the processes for dealing with a complaint related to the professional conduct of a practitioner. When a complaint is received by the College, the Complaints Director will review the allegations and determine the most appropriate course of action to be taken. The Complaints Director must give notice to the complainant of the course of action that will be taken in regards to the complaint within 30 days of receiving a complaint. The processes outlined in the *HPA* for acting on a complaint include the following:

- Informal communications to resolve issues surrounding a complaint
- Provisions for an Alternative Complaint Resolution (i.e. mediation)
- Provisions for an assessment or investigation
- Dismissal of the complaint if considered trivial or vexatious or if there is insufficient evidence to support the complaint

The possible courses of action for dealing with a complaint with references to the *HPA* are summarized in the “Professional Conduct Flow Chart – Initial Disposition of a Complaint” diagram.

## Professional Conduct Flow Chart<sup>20</sup> Initial Disposition of a Complaint



<sup>20</sup> Casey, James T., *A Guide to the Health Professions Act*. (VII – 12).

### *Informal Communications*

Many complaint situations can be resolved through simple communication between the parties involved. When appropriate, the Complaints Director will encourage the complainant and investigated person to communicate with each other and resolve the issues surrounding the complaint. With the consent of the complainant and the investigated person, the Complaints Director may also work with both parties in an attempt to resolve the complaint.

Informal Communications will not apply to allegations that may cause further harm to a complainant including, but not limited to, allegations of sexual abuse or sexual misconduct.

### *Alternative Complaint Resolution Process*

In situations where informal communications are inappropriate to resolve a complaint, the *HPA* allows for an Alternative Complaint Resolution (ACR) Process. The basic requirements for the ACR Process are outlined in the *HPA* while specific details for the process are provided in the Regulation of each college. The ACR Process may be initiated at any time after a complaint has been received by the College with the exception of when a formal hearing has commenced. Participants in the ACR Process must agree to treat all information shared during the process as confidential. Participation in the ACR Process is voluntary and participants may choose to exit at any time (2, 3).

Alternative Complaint Resolution will not apply to allegations that may cause further harm to a complainant including, but not limited to, allegations of sexual abuse or sexual misconduct.

When a complainant and an investigated person agree to enter into the ACR Process, the Complaints Director of the College will appoint a regulated member of the College or a trained third-party mediator to conduct the process. As per Section 19 of the *Registered Dietitian and Registered Nutritionist Profession Regulation*, “The person conducting the alternative complaint resolution process must in consultation with the complainant and the investigated person establish the procedures for and objectives of the alternative complaint resolution process, which must be set out in writing and signed by the complainant, the investigated person and the representative of the College”<sup>21</sup>. The ACR Process must involve a representative of the College. During the ACR Process, the participants will work towards resolving the complaint; the outcome of the process must be seen to be in the best interests of the public and must be ratified.

Upon reaching agreement on resolving a complaint, the person conducting the ACR Process will report the proposed settlement to the Complaint Review Committee of the College. Based on their review, the Complaint Review Committee may choose one of the following actions, as outlined in the *HPA*:

- To ratify the settlement

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<sup>21</sup> Province of Alberta. *Registered Dietitians and Registered Nutritionists Profession Regulation*; 2002, s. 19.

- With the consent of the complainant and the investigated person, to amend and then ratify the settlement
- To refuse to ratify the settlement

Agreements that are reached through the ACR Process are enforceable and must be adhered to. In the event that the ACR Process does not result in a settlement that is ratified, the College may, depending upon the circumstances, dismiss the complaint, initiate a formal investigation or proceed with a formal hearing.

Colleges are required to retain copies of all ratified settlements and may publish them in accordance with their bylaws.

The ACR Process with references to the *HPA* is summarized in the “Alternative Complaint Resolution (ACR) Flow Chart” diagram, on the following page.

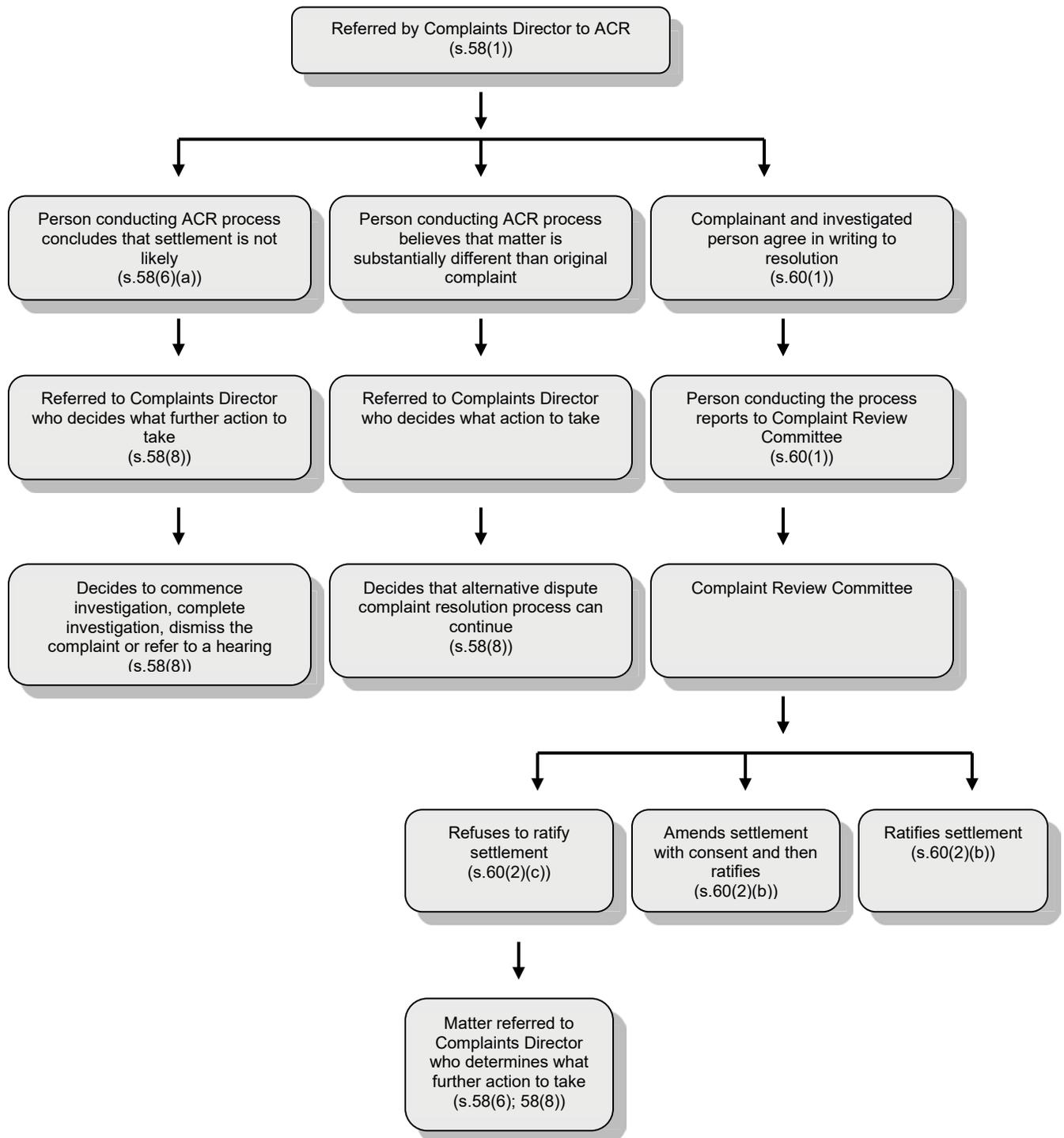
### ***Assessments and Investigations***

When dealing with a complaint related to the professional conduct of a regulated member, the Complaints Director of the College may request an expert to assess the issues surrounding the complaint and provide a written report on the matter. The Complaints Director may also initiate an investigation for the purpose of gathering relevant information related to the complaint. The *HPA* outlines the process for the investigation of a complaint and specifies the following (2):

- The regulated member of the College who is being investigated and the complainant are notified that an investigation will take place and that an investigator has been assigned. The College must name the investigator and provide reasonable details of the complaint to the investigated member unless the information could significantly harm the investigation.
- The College Investigator will meet with the complainant and others who have direct knowledge of the investigated member’s conduct for the purposes of gathering information and documents that relate to the complaint.
- The College Investigator will interview the investigated member of the College against whom the complaint has been filed; the investigated member may wish to be accompanied by a representative and / or support person.
- During the course of the investigation, the College Investigator may require any person to answer any relevant questions (if necessary, under oath) and to provide any documents, substances or items relevant to the investigation.
- The College Investigator may at any reasonable time enter and inspect any building (except a private dwelling) where a regulated member provides services.

- The College Investigator has the authority to investigate other matters unrelated to the original complaint that could lead to a finding of unprofessional conduct.

### Alternative Complaint Resolution (ACR) Flow Chart<sup>22</sup>



<sup>22</sup> Casey, James T., *A Guide to the Health Professions Act*. (VII – 14).

- During the investigation process, the investigated member may be subject to conditions on their practice permit or suspension of their practice permit, pending the outcome of a professional conduct hearing.

Upon completion of the investigation, the College Investigator must prepare and submit a report of their findings to the Complaints Director. Based on the information provided in the report, the Complaints Director will choose one of the following courses of action.

- If the Complaints Director finds that the report does not contain sufficient information with which to make a decision, a request for further investigation or for an expert assessment may be made.
- If the Complaints Director finds that the report provides sufficient evidence to support the complaint, the matter will go to a formal professional conduct hearing process and will be referred to the Hearings Director who will make arrangements for the hearing.
- If the Complaints Director finds that there is insufficient evidence, that the complaint is considered trivial or vexatious or that the matter is not within the College's jurisdiction to address, the matter will be dismissed.

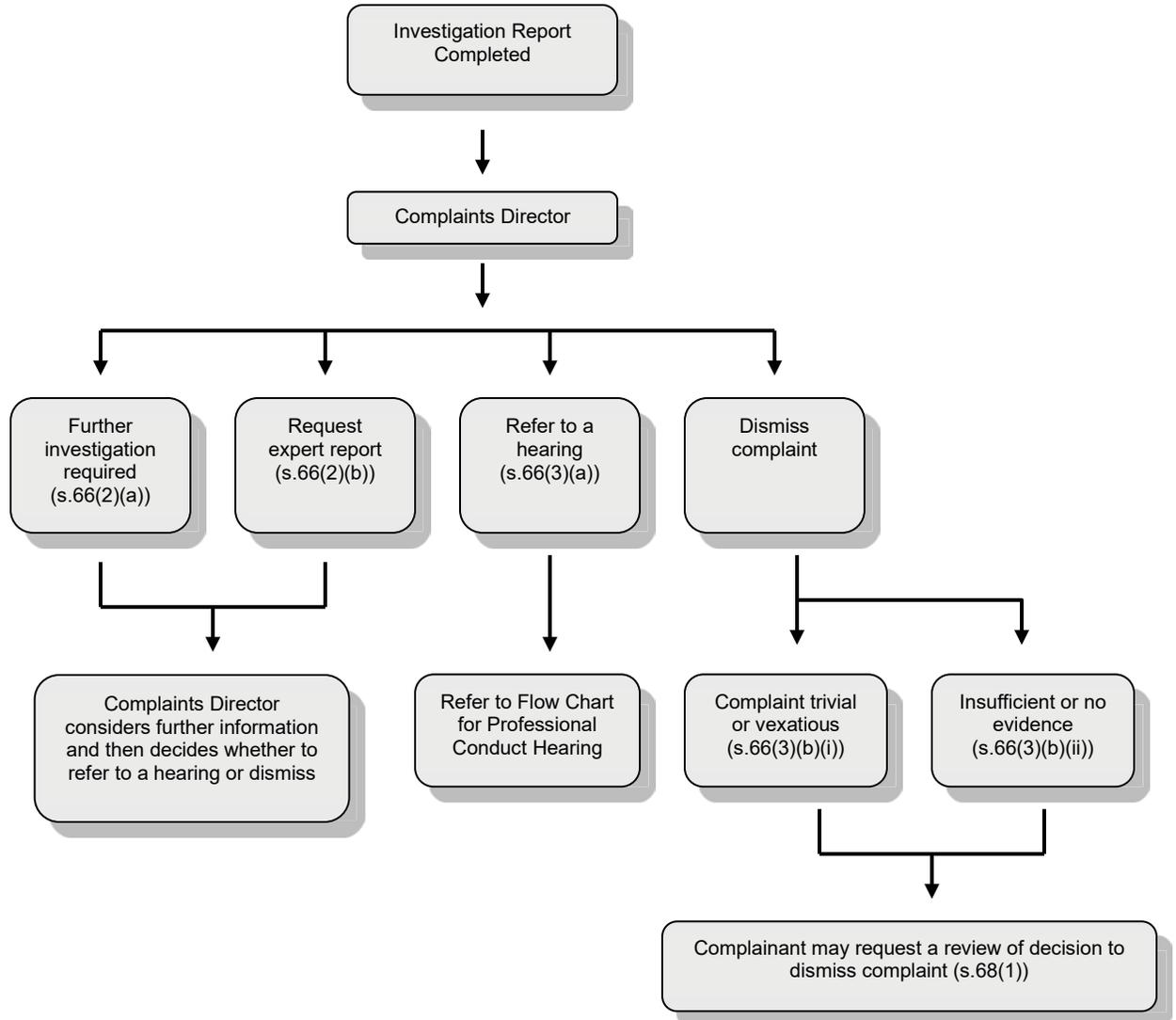
### *Dismissal of a Complaint*

The Complaints Director may dismiss a complaint if they are of the opinion that there is insufficient or no evidence to support the claim or if the complaint is deemed trivial or vexatious. Upon being advised of the decision to dismiss a complaint, the complainant has the right to request a review of the decision. Such a review would be conducted by the Complaint Review Committee of the College and would result in one of the following three actions, as outlined in the *HPA*:

- Referral of the matter to the Hearings Director for a hearing
- Request for further investigation of the matter
- Confirmation that the complaint is dismissed

The Investigation Process with references to the *HPA* is summarized in the "Investigation Flow Chart" diagram.

## Investigation Flow Chart<sup>23</sup>



<sup>23</sup> Casey, James T., *A Guide to the Health Professions Act*. (VII – 16).

### *Incapacity Assessments*

Under the *HPA*, a regulated member of a college is considered incapacitated if they are “suffering from a physical, mental or emotional condition or disorder or an addiction to alcohol or drugs 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”.<sup>24</sup> If the Complaints Director of the College has grounds to believe that a regulated member of the College is incapacitated, they may direct that individual to submit to a physical and / or mental examination. If it is determined that the regulated member is incapacitated, the Complaints Director may direct the individual to submit to treatment and to cease practice until such time that the Complaints Director is satisfied that the regulated member is no longer incapacitated (2).

### **Professional Conduct Hearings**

A hearing is a “legal proceeding where evidence is taken for the purpose of determining an issue of fact and reaching a decision based on that evidence”<sup>25</sup>. The implications of a professional conduct hearing can be considerable for the regulated professional accused of unprofessional conduct and may range from reprimands, fines, suspensions, or revocation of an individual’s registration with the College. The *HPA* outlines requirements to ensure fairness in hearing procedures; these are as follows (2):

- The investigated person has the right to know the precise allegations so that they are able to fully and adequately defend themselves. The investigated person has the right to be represented by legal counsel if they so choose.
- The investigated person has the right to a hearing before an impartial and unbiased tribunal.
- The investigated person has the right to present comprehensive arguments, present supportive witnesses / documents and to cross-examine witnesses.

All those individuals who are called to a professional conduct hearing are provided with a formal notice to attend the hearing, the date and time of the hearing and the allegations against the investigated person. During a hearing, the following people are typically present:

- The investigated person
- Legal counsel for the investigated person (if applicable)
- The Complaints Director of the College
- Legal counsel for the College

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<sup>24</sup> Province of Alberta. *Health Professions Act*, R.S.A. 2000, c. H-7. p. 9.

<sup>25</sup> <http://wordnet.princeton.edu/>

- The members of the Hearing Tribunal
- Legal counsel for the Hearing Tribunal
- A court reporter
- Witnesses who are called to testify (witnesses are generally excluded from the hearing except during the time when they are called to provide their evidence)

Hearings are open to the public unless the Hearing Tribunal closes all or part of the hearing for reasons as specified in the *HPA*.

Upon completion of its deliberations, the Hearing Tribunal may arrive at one of the following decisions:

- That the conduct of the investigated person ***does not*** constitute unprofessional conduct.
- That the conduct of the investigated person ***does*** constitute unprofessional conduct. In this case, the Hearing Tribunal will determine if and how the investigated person will be dealt with. Possibilities include but are not limited to the following:
  - A caution
  - A reprimand
  - Conditions being placed on the practice permit
  - Suspension of the practice permit
  - Requirement for counseling or treatment
  - Requirement for course of study or supervised practical experience
  - Cancellation of registration and the practice permit
  - Payment of a fine and / or costs related to the hearing

If the Hearing Tribunal finds allegations of sexual abuse are proven, the regulated member's registration will be cancelled, and they will not be allowed to practice for life.

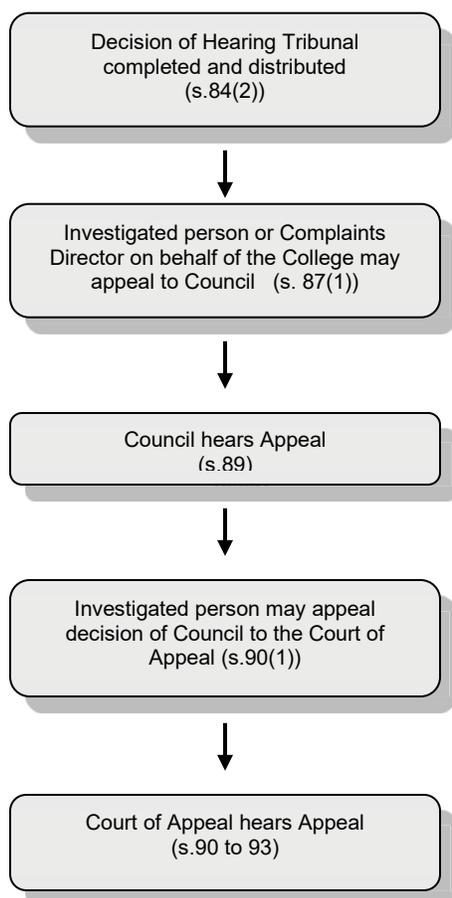
If the Hearing Tribunal finds allegations of sexual misconduct proven, the regulated member's registration will be suspended, and timelines imposed will depend on the circumstances of the case.

The decision of a Hearing Tribunal may be appealed by either the investigated person or the Complaints Director to the College Council. Under the *HPA*, there are also provisions for the investigated person to appeal the decision of the College Council to the Court of Appeal. The complainant does not have the right to appeal.

The Professional Conduct Flow Chart for Hearings and Appeals with references to the *HPA* is summarized in the “Professional Conduct Hearings – Professional Conduct Flow Chart for Hearings and Appeals” diagram.

### Professional Conduct Hearings<sup>26</sup>

#### Professional Conduct Flow Chart for Hearings and Appeals



### **Actions a Professional Should Take If a Complaint is Filed**

When a complaint arrives at the College, the Complaints Director is required by law to review the complaint to determine if it is valid. If it is determined that the complaint merits further examination, the regulated member who has had the complaint filed against them

<sup>26</sup> Casey, James T., *A Guide to the Health Professions Act*, (VII – 20).

will receive notice of the complaint and directions for how to proceed from the College.

In 1997, Richard Steinecke, LLB presented “How to Avoid Being Disciplined or Sued” through a Telemedicine course. In his presentation, Steinecke recommended that if a professional receives notice of a complaint filed against them, they should take the following steps (4):

- Decide whether to retain a lawyer. Although a lawyer is expensive, they can ensure that the professional receives full legal protection.
- Gather as much information as possible about the complaint.
- Respond to the College promptly, providing a full, detailed and fair response.
- Decide whether to offer constructive solutions to the complaint or a letter of apology or regret.
- Do not refuse to respond as this is unprofessional conduct in and of itself.
- Do not approach the complainant directly.
- Avoid revealing emotion in the response.
- Submit all documents required by the College unless they are considered confidential and consent to release them has not been obtained.
- Do not alter any documents.

**KEY PRACTICE POINT**

**If a complaint is filed against a Registered Dietitian or Registered Nutritionist, they are advised to give full cooperation to the College.**

## **Professional Liability Insurance**

Professional liability insurance also referred to as “errors and omissions” or “malpractice” insurance refers to insurance that covers errors, omissions or negligence that could occur as a professional carries out their normal duties. Registered Dietitians and Registered Nutritionists often work as employees within the confines of their employer’s property and hours of operation. However, Registered Dietitians and Registered Nutritionists carry with them their special set of skills and knowledge wherever they go. In addition, a Registered Dietitian may work as a contractor and not as an employee, and they may or may not be covered depending on the company’s errors & omissions policy. Additionally, situations such as working part-time with another company, when self-employed, i.e., private practice, or when engaging in volunteer work would not be covered unless the Registered Dietitian carries their own third-party liability insurance. There is very little preventing someone from seeking legal advice or from filing a lawsuit or complaint against a Registered Dietitian

therefore it is important for the professional and the public that Registered Dietitians and Registered Nutritionists carry insurance.

All Registered Dietitians and Registered Nutritionists are required to carry professional liability insurance in an amount not less than two-million dollars per occurrence. Although most Registered Dietitians work in organizations where they have professional liability insurance coverage through their employer, according to Brian J. Curial of Miller Thomson LLP it may be advantageous for health care professionals to obtain their own separate third-party insurance coverage in addition to their employer's coverage (5). The reasons he cites are as follows:

- “1. All of the activities you perform at your job may not be covered by your employer's insurance policy. If your employer argues that damages caused or contributed to by yourself were caused outside of the course of your employment, you may be liable for legal fees to argue that your actions were in the course of your employment or you may not even be covered under your employer's insurance policy.
2. Most employers' liability insurance policies do not cover independent contractors. Although you may consider yourself an employee, in law you may be considered an independent contractor and therefore may not be eligible for coverage under your employer's insurance policy.
3. Insurance policies provided by your employer may not always cover expenses such as paying for your legal defense in professional disciplinary matters, paying for representation at coroner's inquests, or providing coverage for financial penalties such as fines and cost awards at disciplinary hearings.
4. An individual's personal policy would generally cover any legal expenses if coverage under your employer's insurance is disputed.
5. If your employer's insurance company pays out on claims made against you, that insurance company may have the right to go after you personally to reimburse them for any money they have paid out as a result of your actions.
6. Your employer's insurance policy may require you to contribute to the compensation for the harm you have caused.
7. Your own personal insurance policy may cover more claims against yourself, above and beyond negligence claims which your employer's insurance policy may not cover.”<sup>27</sup>

**KEY PRACTICE POINT**

**Registered Dietitians and Registered Nutritionists practicing in Alberta are advised to carefully consider the purchase of third-party Professional Liability Insurance.**

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<sup>27</sup> Curial, Brian, Professional Liability Insurance, *Communiqué for the Health Industry*, May 21, 2004.

Registered Dietitians and Registered Nutritionists should seek information from their employer's administration or risk management department regarding their liability coverage. Employers should provide Registered Dietitians with the details of their insurance coverage. A regulated member may ask their employer:

- Am I covered under the facility's policy?
- What is the maximum I am covered for?
- What losses are covered for? Am I covered only for claims and actions for negligence or for criminal and disciplinary proceedings too?
- Are my legal fees covered?
- What, if any, are the exceptions to my coverage?

Once the Registered Dietitian has the answers to these questions, they will be able to decide whether or not additional coverage is required.

In past years, there has been a dramatic increase in litigation against professionals in Canada. Some provincial dietetic regulatory bodies, including the College of Dietitians of Alberta, require that all practicing registrants carry professional liability insurance. Registered Dietitians and Registered Nutritionists practicing in Alberta are advised to carefully consider the purchase of additional third-party professional liability insurance; it is a requirement particularly if you are self-employed, or do volunteer or contract work, to protect you in these situations. Professional liability insurance may be purchased through the program of the College of Dietitians of Alberta, Dietitians of Canada, as well as other carriers.

## Chapter Summary

It is the expectation of the public, other professionals, employers and government that self-regulated professionals, including Registered Dietitians and Registered Nutritionists will provide competent, safe, ethical services. The College of Dietitians of Alberta defines “patient” in the *Standards of Practice: Sexual Abuse and Sexual Misconduct Prevention*: “an individual is a patient of the Registered Dietitian if there is direct interaction between the Registered Dietitian and the individual and: a) the Registered Dietitian has, in respect of a health care/professional service to the individual, charged or received payment from the individual or third party on behalf of the individual, and/or b) the Registered Dietitian has contributed to a health record or file for the individual, and/or c) the individual has consented to the health care/professional service recommended by the Registered Dietitian.” Based on the *Health Professions Act (HPA)* definition, the term “unprofessional conduct” refers to behaviour that is unskilled and / or unethical. Such behaviours are inconsistent with expectations for professional conduct set out in the *Code of Ethics, Standards of Practice*, the *Standards of Practice: Sexual Abuse and Sexual Misconduct Prevention* and the *Integrated Competencies for Dietetic Education and Practice*, Acts and Regulations. The top ten causes of unprofessional conduct relate to failure to maintain professional knowledge and competence, failure to seek assistance or make appropriate referrals, difficulties in a professional’s personal life, alcohol and drug additions, poor communication, failure to appropriately address client concerns, environmental factors, personality conflicts, complacency about professional standards and professional documentation. Under the *HPA*, the College of Dietitians of Alberta (the College) is required to deal with allegations of unprofessional conduct lodged against their registrants. All complaints must be reviewed and acted upon. Complaints may be dealt with through informal communications, an Alternative Complaint Resolution Process, an investigation or incapacity assessment; in some instances, a complaint may result in a professional conduct hearing. A complaint may also be dismissed if it is considered trivial or vexatious or if there is insufficient evidence for its support. A professional who has a complaint filed against them is advised to give full cooperation to the College. Registered Dietitians and Registered Nutritionists practicing in Alberta are required to carry professional liability insurance in an amount not less than two-million dollars per occurrence.

## Case Scenario 6.1

BB is a new RD who has been hired by the hospital in a mid-size Alberta Community on a .5 FTE basis. Her position was created to augment the services provided by their long-term RD, SS. BB receives a call from SS early one Monday morning indicating that her son is ill and that she won't be in for most of the week. SS asks if BB would check in on her clients at the hospital and at the auxiliary hospital to which BB agrees.

At the auxiliary hospital, BB explains SS's absence and requests to see the charts on all the residents that are being followed for dietary concerns. The nurse gives her a funny look, informing her that she has only seen SS once during the past three weeks.

BB begins to review patient charts, noticing that there have been no entries in the majority of charts in the last three weeks or so, even though SS has indicated to her that she was providing both direct care and consultation services to the residents of the auxiliary hospital two afternoons every week. It appears that some of the charts have had the "dietary" sections removed. BB also came across one chart in which SS had entered a nutrition care plan. As BB studied the chart, she realized that a complete nutrition assessment had never been completed on that particular resident. Furthermore, the nutrition care plan developed for the resident was completely inappropriate for their medical condition. Chart notes from nursing indicated that the resident was suffering from chronic diarrhea and had lost a significant amount of weight.

Extremely upset by her findings, BB decides to file a complaint against SS with the College of Dietitians of Alberta.

### Case Scenario 6.1 Questions

1. Outline the process that the College of Dietitians of Alberta would undertake upon receiving the complaint from BB.
2. Describe the types of information that may be collected in the event that the Complaints Director initiates an investigation.
3. Is SS practicing in accordance with the *Code of Ethics*, the *Standards of Practice*, the *Standards of Practice: Sexual Abuse and Sexual Misconduct Prevention* and the *Integrated Competencies for Dietetic Education and Practice*? If not, identify the specific areas that she would have contravened.
4. What do you think the outcome would be if the matter went to a Professional Conduct Hearing?

## Chapter Quiz

1. All of the following statements are true *except* for the following:
  - a) Poor communication is among the top ten causes of unprofessional conduct.
  - b) Unprofessional conduct refers to behaviour that is unskilled and / or unethical.
  - c) The Alternative Complaint Resolution Process is an informal communication process in which the complainant and the investigated person communicate with each other and resolve the issues surrounding the complaint.
  - d) The purpose of a professional conduct hearing is to determine if the actions of a professional constitute unprofessional conduct or not.
  
2. When dealing with a complaint related to the professional conduct of a regulated member, the Complaints Director of the College of Dietitians of Alberta (the College) may:
  - a) request an expert to assess the issues surrounding the complaint.
  - b) initiate an investigation for the purpose of gathering relevant information related to the complaint.
  - c) dismiss the complaint if it is considered trivial or vexatious or that the matter is not within the College's jurisdiction to address.
  - d) All of the above
  - e) Answers a and b only
  
3. In the event that a Registered Dietitian or Registered Nutritionist receives notification from the College that a complaint has been filed against them, they should do all of the following *except*:
  - a) Work cooperatively with the College, providing a full, detailed and professional response.
  - b) Contact the complainant to determine why the complaint was filed.
  - c) Gather as much information as possible related to the complaint.
  - d) Decide whether to retain a lawyer.
  
4. All of the following statements are true *except* for the following:
  - a) Registered Dietitians and Registered Nutritionists practicing in Alberta are not required to carry third party professional liability insurance.
  - b) Registered Dietitians and Registered Nutritionists who conduct themselves in a professional manner practice in accordance with legislated Acts, Regulations, bylaws, guidelines, the *Standards of Practice*, the *Standards of Practice: Sexual Abuse and Sexual Misconduct Prevention*, the *Integrated Competencies for Dietetic Education and Practice* and the *Code of Ethics*.
  - c) A professional conduct hearing is a legal proceeding.
  - d) The Hearing Tribunal is responsible for making a decision regarding the conduct of a Registered Dietitian or Registered Nutritionist based on the evidence presented during a professional conduct hearing.

## References

1. James T. Casey, Q.C. of Field LLP, based on a Presentation made to the College of Dietitians of Alberta, April 30, 2007.
2. Province of Alberta. *Health Professions Act*; R.S.A. 2000, c. H-7.
3. Province of Alberta. *Registered Dietitians and Registered Nutritionists Regulation*; 2002.
4. Richard Steinecke, LLB, Telemed Presentation: “How to Avoid Being Disciplined or Sued,” 1997.
5. Curial, Brian, Professional Liability Insurance, *Communiqué for the Health Industry*, May 21, 2004.