



COLLEGE OF  
LICENSED PRACTICAL NURSES  
OF ALBERTA

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## HEARINGS INFORMATION SHEET

### WHAT IS A DISCIPLINE HEARING

A Discipline Hearing is a formal legal process used to resolve complaints received by the CLPNA against Investigated Members.

Once a complaint has been investigated, the investigation report is submitted to the Complaints Director. After reviewing the investigation report, and the Complaints Director determines there is sufficient evidence, the matter is referred to the Hearings Director in accordance with section 66(3)(a) of the *Health Professions Act*.

### **Health Professions Act (HPA):**

**66(3)** If, on reviewing a report prepared under this section, the complaints director determines that the investigation is concluded, the complaints director must

- (a) refer the matter to the hearings director for a hearing,

When the Hearings Director receives a referral to hearing, a letter is sent to the Investigated Member advising of the referral. Included with this letter are the Statement of Allegations, the Investigation Report with attachments, HPA – Definition of Unprofessional Conduct, the Code of Ethics and Standards of Practice, and Summary of Witnesses being called (if applicable).

The Investigated Member is entitled to be represented by legal counsel, a union representative, or an agent should they desire.

The Investigated Member is required to attend the hearing to give evidence and produce any document, substance or thing related to the subject matter of the hearing. In the event that the Investigated Member does not attend at the said time and place, the Hearing Tribunal may proceed in their absence and the Investigated Member will not be entitled to any further notice of the proceedings.

**72(1)** The investigated person must appear, may be compelled to testify and may be represented by counsel at a hearing before the hearing tribunal.

**79(6)** Despite section 72(1), if the investigated person does not appear at a hearing and there is proof that the investigated person has been given a notice to attend the hearing tribunal may

- (a) proceed with the hearing in the absence of the investigated person, and
- (b) act or decide on the matter being heard in the absence of the investigated person.

The hearing can proceed either by way of a contested hearing or by way of different types of agreements.

### **Contested Hearings**

The Investigated Member has the right to contest the allegations that have been made against them in the Statement of Allegations. If they do not accept or agree with the allegations and wish to contest them, then in all likelihood, the Hearing before the Hearing Tribunal would proceed by way of a contested Hearing.

In a contested Hearing, CLPNA will present the Statement of Allegations to the Hearing Tribunal and will call

evidence related to the allegations. Normally the evidence will consist of the testimony of witnesses who will be called to testify before the Hearing Tribunal. CLPNA will ask questions of each of these witnesses so that they can share with the Hearing Tribunal the knowledge that they have that relates to the conduct alleged in the Statement of Allegations.

Once CLPNA has asked its questions of a witness, the Investigated Member (or union representative, agent, or legal counsel) would be given the opportunity to cross-examine the witness by asking the witness their own questions about their knowledge of the conduct alleged in the Statement of Allegations. The Investigated Member (or Representative) would also have the opportunity to call any other witnesses they think might have relevant knowledge of the conduct in the Statement of Allegations, if these witnesses have not been called already by CLPNA.

The Investigated Member would also have the opportunity to share their account of events with the Hearing Tribunal by giving their evidence under oath about what happened with respect to the complaint.

Once all the evidence has been heard, both the Investigated Member (or Representative) and CLPNA will be given the opportunity to make arguments before the Hearing Tribunal with respect to whether the conduct alleged did, in fact, occur and if the conduct did occur, whether it amounts to unprofessional conduct under the *HPA*.

The Hearing Tribunal will then make a determination about whether or not the Investigated Member is guilty of unprofessional conduct on all or some of the allegations.

If the Hearing Tribunal finds that the Investigated Member has engaged in unprofessional conduct, both the Investigated Member (or Representative) and CLPNA will have the opportunity to make arguments as to what would be an appropriate penalty or penalties arising from the unprofessional conduct.

### **Agreed Statements**

#### **Agreed Statement of Facts**

The Investigated Member may decide to proceed by way of an Agreed Statement of Facts. The Agreed Statement of Facts would set out the facts underlying the conduct that is alleged in the Statement of Allegations. Both the Investigated Member and CLPNA would sign the Agreed Statement of Facts indicating that both parties agree these are the facts that occurred with respect to the complaint in question. The Agreed Statement of Facts would form the evidence that is presented to the Hearing Tribunal and is intended to describe for the Hearing Tribunal what happened. If all of the facts are agreed, there will be no need to call witnesses to provide evidence at the Hearing.

The Investigated Member may also choose to proceed by way of a Partial Agreed Statement of Facts if they agree with some but not all of the facts. For the facts that are not agreed on, evidence will need to be called (usually by way of witnesses at the Hearing), and the Hearing Tribunal will decide, based on its assessment of the evidence, which facts have been established. On the day of the Hearing, the Agreed Statement of Facts would be presented to the Hearing Tribunal. At all times, it remains up to the Hearing Tribunal to decide whether or not it will accept the Agreed Statement of Facts. In the normal course, the Hearing Tribunal shows deference to both parties' agreement on the facts and will accept the Agreed Statement of Facts.

#### **Admission of Unprofessional Conduct**

If the Investigated Member agrees that the conduct alleged in the Statement of Allegations amounts to unprofessional conduct as defined in the *HPA*, they may choose to provide an admission of unprofessional conduct. This would require the Investigated Member to sign a document indicating that they agree that the conduct alleged in the Statement of Allegations amounts to unprofessional conduct.

As with the Agreed Statement of Facts, the Investigated Member may choose to agree that certain

allegations amount to unprofessional conduct and may disagree that other allegations amount to unprofessional conduct. If they disagree that certain allegations amount to unprofessional conduct, both the Investigated Member (or Representative) and CLPNA will be given the opportunity to present arguments on whether or not the conduct in question amounts to unprofessional conduct under the HPA. Witnesses may also be called.

On the day of the Hearing, any admission of unprofessional conduct would be presented to the Hearing Tribunal. It remains up to the Hearing Tribunal to decide whether or not it will accept the admission of unprofessional conduct. Again, in the normal course, the Hearing Tribunal shows deference to the member's admission and will accept admissions of unprofessional conduct.

### Joint Submission on Penalty

The Investigated Member may also choose to enter into an agreement with CLPNA as to what would be an appropriate penalty or penalties if the Hearing Tribunal finds that they have engaged in unprofessional conduct. In this document, the Investigated Member and CLPNA would set out what they agree are appropriate penalties for the unprofessional conduct.

If the Hearing Tribunal finds that the Investigated Member engaged in unprofessional conduct, the Joint Submission on Penalty would then be presented to the Hearing Tribunal for its consideration. Again, it is up to the Hearing Tribunal whether or not it accepts the Joint Submission on Penalty. If the Hearing Tribunal accepts the Joint Submission on Penalty, the penalties contained in the Joint Submission will be the penalties that are ordered. If the Hearing Tribunal does not accept the Joint Submission on Penalty, it may choose to order different penalties instead but is required to provide reasons for their decision.

If the Investigated Member disagrees with the penalties recommended by CLPNA, they do not need to enter into a Joint Submission on Penalty and may instead choose to argue before the Hearing Tribunal that different penalties should be ordered instead.

The Hearings Director must set the date for the hearing within 90 days after receiving a referral for a hearing.

- 69 The hearings director must, within 90 days after receiving a referral for a hearing, set a date for a hearing with respect to the complaint unless
- (a) the complaints director dismisses the complaint under section 66(4),
  - (b) the president grants, on reasonable grounds, an extension on application by the hearings director, or
  - (c) the complaints director and the investigated person agree to an extension.

### **WHO ARE THE HEARING TRIBUNAL**

The Hearing Tribunal is a legislated committee established under the *Health Professions Act*. Their role is to adjudicate in a particular matter: they are the decision makers. It is the Hearing Tribunal who determines whether the Investigated Member has committed unprofessional conduct.

The Hearing Tribunal panel consists of LPNs who are appointed by CLPNA's Council and public members who are appointed by the Government of Alberta. The panel generally consists of 2-3 LPNs. At least 25% of the panel is represented by public members. The Hearings Director appoints one member of the panel to act as Chair.

- 12(1) Twenty-five percent of the voting members of a council, a complaint review committee and a hearing tribunal and of a panel of any of them must be public members but with the consent of the council the percentage of the public members may be greater than 25%.
- 16(1) The hearings director may establish a hearing tribunal and a complaint review committee consisting of
- (a) 2 or more members from the membership list established under section 15, and

(b) the number of public members required by section 12(1),  
and if a hearing tribunal or complaint review committee is established, the hearings director must designate a member of that tribunal or committee to act as chair.

### **HEARING TRIBUNAL RESPONSIBILITIES**

The Hearing Tribunal functions in a quasi-judicial role, which is similar to the court system. The Hearing Tribunal has no prior knowledge of the matter to be heard except for the Investigated Member's name and the facility where the complaint originated.

### **NOTICE OF HEARING**

A Notice of Hearing, with the date, time and location of the hearing is sent to the Investigated Member at least 30 days prior to the hearing.

A Notice of Hearing is also sent to the complainant. If the hearing is proceeding as an Agreed Statement of Facts, the Notice of Hearing is for information purposes only, as the complainant has not been called as a witness. If the hearing is proceeding as Contested, the complainant will receive a Notice to Attend and Produce as a witness.

**77** The hearings director must

- (a) at least 30 days before the hearing, give the investigated person a notice to attend and give reasonable particulars of the subject-matter of the hearing,
- (b) prior to the hearing, advise the complainant of the date, time and location of the hearing,
- (c) as requested under section 74 give any person a notice to attend, and
- (d) as requested under section 74 give any person who is to produce documents or any substance or thing a notice to attend and a notice to produce.

### **ACCESS TO A HEARING**

Disciplinary Hearings are usually open to the public; however, the Hearing Tribunal may order all or part of the Hearing to be held in private.

**78(1)** A hearing is open to the public unless

- (a) the hearing tribunal holds the hearing or part of the hearing in private on its own motion or on an application of any person that the hearing or part of the hearing should be in private
    - (i) because of probable prejudice to a civil action or a prosecution of an offence,
    - (ii) to protect the safety of the person or of the public,
    - (iii) because not disclosing a person's confidential personal, health, property or financial information outweighs the desirability of having the hearing open to the public,
    - (iv) because the presence of the public or complainant could compromise the ability of a witness to testify, or
    - (v) because of other reasons satisfactory to the hearing tribunal,
- or
- (b) another Act requires that the hearing or part of the hearing be held in private.

**(2)** If a hearing or part of a hearing is held in private, the hearing tribunal must state the reason why and must include the reason in the record.

**(3)** Even if a hearing is held in private,

- (a) the investigated person and the investigated person's counsel may attend,
- (b) the complainant may attend unless the hearing tribunal directs otherwise, and
- (c) the complaints director and hearing tribunal's, complaints director's and college's counsel may attend.

- (4) Even if a hearing is open to the public, a witness, except for the investigated person, may be excluded from the hearing until the witness has given evidence and has been released or dismissed from the hearing.

### HEARING TRIBUNAL DECISION

The Hearing Tribunal is faced with a two-part task in considering whether an Investigated Member is guilty of unprofessional conduct. First, the Hearing Tribunal must make factual findings as to whether the alleged conduct occurred. If the alleged conduct occurred, it must then proceed to determine whether that conduct rises to the threshold of unprofessional conduct in the circumstances.

**83** The hearing tribunal must, within a reasonable time after the conclusion of a hearing before it, make a written decision on the matter in which it

- (a) describes each finding made by it,
- (b) states the reasons for each finding made by it, and
- (c) states any order made under this Part.

### HEARING TRIBUNAL ORDERS

The Hearing Tribunal is authorized under s. 82(1) of the *HPA* to make orders in response to findings of unprofessional conduct.

**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 regulated members,
  - (iii) not practise in an area of the practice of the regulated professional 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.
- (2)** The hearing tribunal may, in an order under subsection (1), stay the order or a portion of the order on conditions set out in the order.
- (3)** If the complaints director is satisfied that a person has not complied with an order under this section or section 89(5)(b), the complaints director may
- (a) treat the matter as information under section 56,
  - (b) refer the matter to the hearings director to schedule a hearing before the hearing tribunal, or
  - (c) in the case of non-payment of a fine described in subsection (1)(k) or expenses described in subsection (1)(j) or section 89(6), suspend the practice permit of the investigated person until the fine or expenses are paid in full or the complaints director is satisfied that they are being paid in accordance with an agreement entered into with the investigated person.
- (4)** A fine or expenses ordered to be paid under this section and section 89 are a debt due to the college and may be recovered by the college by an action in debt.

## WRITTEN DECISION

The Hearing Tribunal must provide a written decision to the Hearings Director. The written decision must include reasons for the findings of the Hearing Tribunal. All written decisions are a matter of public record.

**84(1)** The hearing tribunal must forward to the hearings director

- (a) the written decision under section 83, and
- (b) the record of the hearing, consisting of all evidence presented before it, including
  - (i) the reports, exhibits and documents presented before it, and
  - (ii) a record of the evidence, including all testimony given before it, however recorded.

(2) The hearings director must, on receiving the decision and the record described in subsection (1), give a copy of the decision to

(a) the complaints director and the registrar, (b) the complainant,

(c) the investigated person, and

(d) the Minister of Justice and Solicitor General, if so directed or requested under section 80(2)

and notify the investigated person of the right to appeal the decision to the council.

#### **APPEAL TO COUNCIL**

An Investigated Member or the Complaints Director, on behalf of the College, may commence an appeal to the council of the decision of the Hearing Tribunal.

For more information, see: [Appeal to Council Fact Sheet](#)

