

# Hearings Management Procedure

## 1. Introduction

The College of Acupuncturists of Alberta (College) is responsible for regulating the acupuncture profession under the *Health Professions Act* (Act). Part of this role includes facilitating a fair, transparent, and efficient process for addressing matters that warrant adjudication by a Hearing Tribunal.

## 2. Purpose

The purpose of the procedure is to describe the actions for the conduct of hearings within the College in accordance with the provisions outlined in the Act.

## 3. Definitions

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

**Appeal Panel:** means a panel established under Part 1 of the Act to carry out the powers and duties with respect to an appeal under Part 4 of the Act.

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

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

**Complaint Review Committee:** means a complaint review committee established under Part 1 of the Act.

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

**Hearing Tribunal:** means a hearing tribunal established under Part 1 of the Act.

**Investigated Member:** means a current or former regulated member against whom a complaint has been made.

## 4. Procedure

### Hearing Process

4.1 The hearing process begins when the **Hearings Director** receives:

4.1.1 a referral to a hearing from the **Complaints Director**;

- 4.1.2 a request from the **complainant** for a review of dismissal by the Complaints Director;
  - 4.1.3 an appeal request of a **Hearing Tribunal's** decision from the complainant or the **investigated member**; or
  - 4.1.4 a request from the Complaints Director for an alternative decision where the Hearing Tribunal Order does not provide the Complaints Director with discretion on sanctions.
- 4.2 The Hearings Director must schedule a hearing within ninety (90) days of receiving a referral to a hearing.
- 4.3 The Hearings Director, within thirty (30) days prior to the hearing, will issue a Notice to Attend and Produce.
- 4.3.1 The Notice to Attend and Produce must include the date, time, location, and other particulars of the hearing.
  - 4.3.2 A copy of the Notice to Attend and Produce is provided to the investigated member (and their legal counsel, if applicable), the complainant, witness(es), and the Complaints Director using registered mail or other secure and verifiable communication methods.
  - 4.3.3 A copy of the Notice to Attend and Produce is retained by the College.
- 4.4 Investigated members must appear, may be compelled to testify, and may be represented by legal counsel at a hearing before the Hearing Tribunal.
- 4.5 If the investigated member fails to appear at a hearing, and there is proof that they were properly notified, the Hearing Tribunal may:
- 4.5.1 Proceed with the hearing in their absence; and
  - 4.5.2 Make decisions or act on the matter being heard without the investigated person's participation.

### **Hearing Formats**

- 4.6 Conduct hearings can proceed either by way of a contested hearing or by way of different types of agreements.
- 4.6.1 Contested Hearing – Occurs if the investigated member disputes the allegations outlined in the Statement of Allegations; they have the right to contest them. In this case, the matter proceeds as a contested hearing before the Hearing Tribunal and may involve calling witnesses to provide evidence.
  - 4.6.2 Consent Hearing – Occurs if the investigated member accepts some or all the allegations; the hearing may proceed as a streamlined consent hearing, involving one or more agreements.
    - 4.6.2.1 Agreed Statement of Facts is a document outlining the agreed-upon facts underlying the alleged conduct.
    - 4.6.2.2 Admission of Unprofessional Conduct is a formal admission of unprofessional conduct as defined under s.70 of the Act.

- 4.6.2.3 Joint submission on sanction outlines an appropriate penalty or penalties if the Hearing Tribunal finds that the investigated member has engaged in unprofessional conduct.
- 4.7 The investigated member or their legal counsel may request an adjournment, subject to applicable legal principles and the Hearing Tribunal's discretion.

### **Hearing Tribunal**

- 4.8 The Hearings Director will establish a Hearing Tribunal, **Complaint Review Committee**, or **Appeal Panel** consisting of four (4) individuals, of which two (2) are public members and two (2) are regulated members. They are selected from:
  - 4.8.1 the membership list appointed by the Council for a conduct hearing or review; or
  - 4.8.2 the appeal committee list appointed by the Council for appeal hearings.
- 4.9 The Hearing Tribunal functions in a quasi-judicial role actively participating in the adjudication of complaints. Its responsibilities include:
  - 4.9.1 Hearing the allegations presented by the Complaints Director's legal counsel, the response from the investigated member, and evidence from any necessary witnesses if the matter is proceeding as a contested hearing.
  - 4.9.2 Assessing the information presented to determine whether the investigated member's actions or omissions constitute unprofessional conduct as defined by the Act.
- 4.10 To ensure fairness, no member of the Hearing Tribunal may participate if they have been involved in investigating, reviewing, or making decisions regarding the complaint or any related matters.

### **Witnesses – Conduct Hearings**

- 4.11 The investigated person has the right to call any individual, including the complainant, as a witness and is responsible to serve a Notice to Attend and Produce to their witness(es).
- 4.12 The Complaints Director may request any individual, including the complainant or the investigated person, to serve as a witness if they have knowledge relevant to the hearing.
- 4.13 Witnesses are served with a Notice to Attend and Produce, signed by the Hearings Director, to ensure the presentation of pertinent documents, substances, or items during the hearing.
- 4.14 Witnesses are generally not called when an Agreed Statement of Facts (ASF) or Joint Submission on Sanction (JSS) has been reached or during a complaint dismissal review.
- 4.15 Witnesses, including the investigated member, may:
  - 4.15.1 Be examined under oath,
  - 4.15.2 Provide testimony on matters relevant to the hearing, and
  - 4.15.3 Be required to answer questions.

- 4.16 Witnesses must be informed that hearings are open to the public unless the Hearing Tribunal directs otherwise.
- 4.17 If a witness fails to attend a hearing, produce requested items, swear an oath, or answer direct questions, the College or the investigated member may apply to the Court of King's Bench for an enforcement order.
- 4.18 The Court may issue an order without notifying the non-compliant witness if deemed appropriate.
- 4.19 For witnesses located outside Alberta, the Court of King's Bench may direct evidence to be obtained in accordance with the Alberta Rules of Court regarding out-of-province testimony.

### **Access to Hearings**

- 4.20 Hearings are open to the public unless the Hearing Tribunal decides, either on its own motion or in response to an application, to hold all or part of the hearing in private. A hearing may be closed to the public for the following reasons:
  - 4.20.1 To prevent prejudice to a civil action or prosecution,
  - 4.20.2 To protect the safety of an individual or the public,
  - 4.20.3 To safeguard a person's confidential personal, health, property, or financial information when the need for confidentiality outweighs the benefit of a public hearing,
  - 4.20.4 To ensure the presence of the public or complainant does not compromise a witness's ability to testify, or
  - 4.20.5 For other reasons deemed satisfactory by the Hearing Tribunal.
- 4.21 The hearing or part of it must also be held in private if required by another Act.
- 4.22 When a hearing or part of it is held in private, the Hearing Tribunal must clearly state the reasons for the decision and include them in the official record.
- 4.23 If a hearing is held in private, the following individuals may still attend:
  - 4.23.1 The investigated person and their legal counsel,
  - 4.23.2 The complainant, unless otherwise directed by the Hearing Tribunal,
  - 4.23.3 The Complaints Director and their legal counsel,
  - 4.23.4 The Hearing Tribunal and their legal counsel, and
  - 4.23.5 The Hearings Director and the court reporter.
- 4.24 In public hearings, witnesses, except the investigated person, may be excluded until they have given their testimony and have been released or dismissed by the Hearing Tribunal.

### **Decisions and Record Retention**

- 4.25 The Hearing Tribunal, Complaint Review Committee, or Appeal Panel must provide a written decision within a reasonable time after the conclusion of the hearing. The written decision must include reasons for each finding made.
- 4.26 Upon receiving the Hearing Tribunal's decision, the Hearings Director must provide a copy to all relevant parties or their legal counsel, if applicable, as set out in s.84(2) of the Act, and include details on the right of appeal.
- 4.27 Hearing decisions and appeal decisions rendered by a Hearing Tribunal under s.83 of the Act or an Appeal Panel are available to the public, and either the decision or a written summary of the decision will be published on the College website once all appeal periods have passed and subject to the discretion of the Chief Executive Officer as set out in the College bylaws.
- 4.28 If the Hearing Tribunal determines that the investigated person's conduct constitutes unprofessional conduct wholly or partially based on sexual abuse or sexual misconduct, the Hearing Tribunal must:
  - 4.28.1 Immediately suspend the investigated person's practice permit, pending further orders under s.82 of the Act.
  - 4.28.2 Provide the complainant with an opportunity to present an impact statement either in writing or orally.
  - 4.28.3 Consider the impact statement before issuing an order under s.82 of the Act.
- 4.29 If the Hearing Tribunal believes there are reasonable and probable grounds to conclude that the investigated person has committed a criminal offence, it must:
  - 4.29.1 Direct the Hearings Director to provide a copy of the written decision to the Minister of Justice and Solicitor General.
  - 4.29.2 Upon request from the Minister of Justice and Solicitor General, also provide a copy of the hearing record.
- 4.30 All information regarding a complaint file, including investigation reports and attachments, records of hearings, and hearing tribunal decisions, will be retained for ten (10) years. After ten (10) years, all documents will be shredded, except for an electronic version of the Hearing Tribunal's written decision, which will be retained permanently.

### **Appeals**

- 4.31 In accordance with s.87(1) of the Act, an appeal of a Hearing Tribunal's decision may be initiated by the investigated member or the Complaints Director on behalf of the College.
- 4.32 The appeal must be filed through a written notice of appeal that clearly identifies the decision being appealed and outlines the reasons for the appeal.
- 4.33 The notice of appeal must be submitted to the Hearings Director within thirty (30) days from the date the Hearing Tribunal's decision is delivered to the investigated member.
- 4.34 When a notice of appeal is received, the Hearings Director must:

- 4.34.1 Establish an Appeal Panel consisting of four (4) Council members, two (2) who are regulated members of the College and two (2) who are public members appointed by the government.
  - 4.34.2 Set a date for the appeal hearing within ninety (90) days. If conditions have been imposed on the investigated members practice permit or if their registration has been suspended or cancelled, the appeal shall be set within forty-five (45) days.
  - 4.34.3 Provide a copy of the notice of appeal and make the decision and hearing record available to the Appeal Panel assigned to hear the appeal.
  - 4.34.4 Issue a notice of the appeal hearing to the Complaints Director, the investigated member, and the complainant. The notice must specify the date, time, and location of the appeal hearing.
  - 4.34.5 Ensure the investigated member and the Complaints Director receive a copy of the hearing record.
- 4.35 The Appeal Panel reviews the decision based on submissions from the investigated member and the complainant, the record of the original hearing, and any additional information permitted by the Act.
- 4.36 After deliberation, the Appeal Panel may:
- 4.36.1 Uphold the original decision,
  - 4.36.2 Overturn or modify the decision, or
  - 4.36.3 Refer the matter back to the Hearing Tribunal for reconsideration.
- 4.37 The Appeal Panel provides a written decision, including the rationale, within ninety (90) days following the conclusion of the appeal, to the Hearings Director to provide the investigated member and complainant.
- 4.38 The investigated member or the Complaints Director may appeal the decision of the Appeal Panel by filing a Notice of Appeal with the Court of Appeal within thirty (30) days from the date the Appeal Panel's decision is delivered to the investigated member.

## 5. Authority

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

## 6. Scope

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

## 7. Related Policies and Procedures

- R.1.5 Hearings Management Policy
- R.1.4 Complaints Management Policy
- R.1.4.1 Complaints Management Procedure

## 8. Version History

Date	Notes
April 25, 2025	New procedure