

# A review conducted for the Royal College of Dental Surgeons of Ontario

June 2013

## About the Professional Standards Authority

The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and voluntary registration of people working in health and care. We are an independent body, accountable to the UK Parliament.

We oversee the work of nine statutory bodies that regulate health professionals in the UK and social workers in England. We review the regulators' performance and audit and scrutinise their decisions about whether people on their registers are fit to practise.

We also set standards for organisations holding voluntary registers for people in unregulated health and care occupations and accredit those organisations that meet our standards.

To encourage improvement we share good practice and knowledge, conduct research and introduce new ideas including our concept of right-touch regulation. We monitor policy developments in the UK and internationally and provide advice to governments and others on matters relating to people working in health and care. We also undertake some international commissions to extend our understanding of regulation and to promote safety in the mobility of the health and care workforce.

We are committed to being independent, impartial, fair, accessible and consistent. More information about our work and the approach we take is available at [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk)

## About The Royal College of Dental Surgeons of Ontario<sup>1</sup>

'The Royal College of Dental Surgeons of Ontario (RCDSO) has a long and illustrious history. On March 4 1868 the first Dental Act in the world received Royal Assent in the Ontario Legislature.

Today our mission is to protect the public's right to quality dental services. Our goal is a responsible and responsive system of self-regulation in partnership with the public. We are committed to the principles of transparency, accessibility, openness and fairness.

The College issues certificates of registration to dentists to allow them to practise dentistry, monitors and maintains standards of practice, investigates complaints against dentists who may be incompetent or have committed an act of professional misconduct.

The governing Council of the College is composed of 12 dentists, elected by dentists, nine to 11 members of the public nominated by the provincial government, and two further dentists who are appointed one each from the university dental faculties in Ontario. The public members play a vital part in the College's work. Their full involvement is central to the College's desire for inclusiveness and accountability.'

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<sup>1</sup> Description adapted from the College's Annual Report 2012

## Contents

1. Introduction.....	1
2. The scope of the review and our methodology .....	2
3. Executive summary .....	4
4. The role of the Royal College of Dental Surgeons of Ontario and the regulatory context in Canada.....	7
5. Guidance and standards .....	14
6. Registration .....	20
7. Handling complaints .....	26
8. Other standards.....	41
9. Recommendations .....	45
10. People we spoke to in the course of the review .....	47
11. The standards.....	48
12. Complaints and reports flowchart.....	50

# 1. Introduction

- 1.1 This report follows a request from the Royal College of Dental Surgeons of Ontario, Canada for a review of their performance as a regulator of dental surgeons in Ontario against our Standards of Good Regulation. The College wished to benchmark its performance against other regulators, to confirm where it was performing well and to identify any areas for improvement. The *Standards of Good Regulation*<sup>2</sup> were adapted to reflect the particular context and statutory responsibilities of regulators in Ontario. The review was carried out between February and May 2013.
- 1.2 The Professional Standards Authority undertakes annual performance reviews of the nine health professional regulatory bodies in the UK as part of our statutory responsibilities. We publish the outcome of those reviews annually to the UK Parliament and the devolved administrations. We have also, following requests from the organisations concerned, conducted reviews for the Medical Council of New Zealand, the General Teaching Council for England, the General Social Care Council in England, the Nursing Council of New Zealand and for the UK's Nursing and Midwifery Council. All of these reports are available on our website. We welcome the willingness of the RCDSO to submit itself to this review and the active co-operation we received.
- 1.3 Although the Authority has no statutory oversight of the RCDSO, we consider that there are mutual benefits in this review. There are benefits to the RCDSO in having an independent assessment which benchmarks its performance in relation to other regulators internationally. At the same time we have the opportunity to learn about different approaches to professional regulation and regulatory practice, which, following publication of this report will be shared with regulatory bodies in the UK, Canada and internationally. This was a welcome opportunity to study a regulator in Ontario given the long standing international interest in the Ontario model, and it has been our first such exercise in Canada. There is value to the international community of regulators from learning from each other and we are grateful to the RCDSO for its contribution to this by commissioning this report.
- 1.4 We thank the Council and staff of the RCDSO for their positive engagement and co-operation with this review, for their readiness to provide us with the background information, paperwork and case files we needed and for the many hours they spent between them answering our questions and explaining their processes. This report has depended greatly on their openness and co-operation and regular contact between us over a period of four months. We have also benefited from the perspectives of other stakeholders who we met in Toronto.

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<sup>2</sup> Council for Healthcare Regulatory Excellence, June 2010. *The Performance Review Standards: Standards of Good Regulation*.

## 2. The scope of the review and our methodology

- 2.1 The Authority has an established process for undertaking performance reviews. This is based on a set of standards, which we developed in liaison with the UK health professional regulators and other stakeholders including patients and the public. These are called the standards of good regulation<sup>3</sup>.
- 2.2 In early discussions with the RCDSO we discovered that both the scope of their activities and the terminology used to describe them varied in some significant ways from the UK regulators. We therefore worked with the College to adapt the standards of good regulation to ensure they were relevant to the work of the RCDSO and to the legislative framework in Ontario. In this review therefore we have looked at the RCDSO's performance only in relation to:
- the setting of standards and provision of guidance for dentists
  - the registration and renewal of dentists, and
  - the investigation and resolution of complaints about dentists.
- 2.3 We have set out the standards we agreed with the RCDSO would form the focus of this report in section 11. The standards are those which are required to be met by any effective regulator, and do not reflect the full range of the College's activities. At an early stage of the process the College sent us voluminous information about the full range of its activities and subsequently in the course of the review we have had opportunities to learn about the depth and range of the College's work, not all of which falls within the standards against which we are judging it. In some areas, such as the College's Quality Assurance Programme, we offer an assessment to some extent under the standards, but have not explored the programme in full. The report that follows is structured around and focuses on our assessment of the College's performance against each of the agreed standards.
- 2.4 We have also looked at the context in which regulation operates in Ontario as set out in particular in the Regulated Health Professions Act 1991 and the Dentistry Act 1991. We have taken account of the respective roles of the Health Professions Appeal and Review Board, the Health Professions Regulation Advisory Committee and the Fairness Commission.
- 2.5 In brief, the procedure followed in this review involved preparation and consideration of the written evidence which the RCDSO provided in January 2013, a scoping meeting with the President and Registrar in London on 1-2 February, the Review Team working at the College in Toronto between 14-17 April 2013 and a further meeting with the President and Registrar on 2-3 May 2013. During this period we:
- reviewed substantial documentary evidence provided by the RCDSO

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<sup>3</sup> See footnote 2.

- examined a limited sample of case files, which included reasons, outcomes and records of investigation
- reviewed documentation relating to the development of guidance and standards
- read a sample of minutes of Council, Executive Committee and other statutory committees including the Quality Assurance Committee and the Patient Relations Committee
- observed a meeting of a panel of the Inquiries, Complaints and Reports Committee
- met with members of the Executive Committee and public members of Council
- met with the Registrar and individually with senior members of staff
- met with the President
- met with external stakeholders of the RCDSO.

2.6 The names of the individuals we met and spoke with appear in section 10.

2.7 We consider that the information which we have been given, the examination of the RCDSO's work in practice and our discussions with its Council members, President, Registrar and staff have enabled us to come to a fair assessment of its performance against the standards of good regulation.

2.8 We have set out our approach to effective regulation in our paper *Right-touch regulation*<sup>4</sup>. Right-touch regulation means using only the regulatory force necessary to achieve the desired effect. It sees regulation as only one of many tools for ensuring safety and quality and therefore that it must be used judiciously. Professional regulation exists not to promote or protect the interests of professional groups but to enhance patient safety and protect the public. The general approach to regulation set out in that paper underlies our standards of good regulation and our judgement about the performance of the RCDSO.

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<sup>4</sup> Council for Healthcare Regulatory Excellence, August 2010. *Right-touch regulation*.

## 3. Executive summary

- 3.1 The Royal College of Dental Surgeons of Ontario is an effective regulator. It is strongly focussed on patient safety and the public interest. It meets or exceeds all of the standards of good regulation, as adapted for this review.
- 3.2 In this report we identify a number of areas of good practice. We commend the College for its efforts in these areas and for its responsiveness to recommendations from ourselves and others. In particular the College demonstrates agility in its reaction to developments in clinical practice and risk, and a strong focus on public protection. The high quality of its advice and guidance to dentists is widely recognised.
- 3.3 As well as recognising good practice we also make 11 recommendations on matters where we consider the College could improve the way it works. These recommendations appear in the relevant sections of the report and are summarised in section 8, below.
- 3.4 In section 4 of this report we set out some of the key features of the Ontario model of regulation and the legislation underpinning it.
- 3.5 In sections 5-8 we set out the standards of good regulation, as amended for the Ontario model. We state the standard and describe the evidence we have considered in coming to the view that the standard is met. We also highlight areas of good practice which other regulators may wish to note, and any recommendations arising from our analysis and discussion of the evidence.
- 3.6 The framework for health professional regulation in Ontario is set out in the Regulated Health Professions Act (RHPA) 1991, which sets out a list of 'controlled acts', which may only be performed by regulated health professionals. Each regulated profession also has its own legislation, which sets out the scope of practice and which of the controlled acts may be performed by members of that profession and how. Regulated health professionals may also delegate the performance of a controlled act within their own scope of practice to another person.
- 3.7 The regulation of each profession is conducted by a college. The membership, powers, committees and processes of a college are set out in legislation. There are a significant number of other pieces of legislation and regulations with which the regulatory colleges must comply, including but not limited to the Canada Agreement on Internal Trade 1995 and the Ontario Freedom of Information and Protection of Privacy Act 1990. We are confident that the RCDSO is fully aware of and compliant with the complex legislation within which it operates.
- 3.8 Professional regulation is overseen to some extent by three other bodies; the Health Professions Regulatory Advisory Council, which advises the Minister on new groups to be regulated and on other matters, the Health Professions Appeal and Review Board, which conducts reviews and hearings of appeals about registration and complaints, and the Office of the Fairness Commissioner which promotes fairness in the registration of health professionals.

- 3.9 Professional regulators in all jurisdictions work within more or less complex legal frameworks. There is an inherent tension between these and the needs of a global economy for the free movement of labour and the protection of quality and public safety.
- 3.10 This review examined the RCDSO's approach to and compliance with 23 standards of good regulation covering three regulatory functions; the setting of guidance and standards, registration and complaints.
- 3.11 The RCDSO meets all the standards in relation to the development of guidance and standards for dentists and demonstrates good practice in this area of its work.
- 3.12 The process for identifying new areas of practice that need attention or existing areas that need revision is robust. The College draws on the best possible advice and makes sure a wide range of expertise is engaged. It has strong internal quality assurance and makes sure that standards and guidance when finalised are widely published and accessible.
- 3.13 We consider that the College could do more to engage patients and the public with the development of standards and guidance.
- 3.14 In order to be registered by the RCDSO it is necessary to pass the exam of the National Dental Examining Board (NDEB). There are different routes to eligibility to take the exam. Canada, and through reciprocal agreements, the United States, Australia, New Zealand and Ireland, operate according to a system of mutual recognition of accreditation of dental training.
- 3.15 Dentists who have not qualified in Canada or in countries covered by the reciprocal agreements may apply through the NDEB equivalency process and must pass the NDEB exam, a necessary precursor to registration by the College.
- 3.16 The information provided to potential applicants for registration is comprehensive and clear. The registration process is fair and effective.
- 3.17 The register is informative, accessible to anybody and easily searchable.
- 3.18 The College is committed to ensuring equal access. We think it could build on its strengths in this area by further work to enable dentists with disabilities to practise safely.
- 3.19 We consider that the RCDSO meets all the standards in relation to the registration of dentists and demonstrates good practice in some areas of this function.
- 3.20 The complaints process that the RCDSO must follow is prescribed in the Health Professions Procedural Code which is Schedule 2 of the Regulated Health Professions Act. The complaints and reports process has many stages and numerous options and internal checks and balances. We have set this out diagrammatically in a complaints and reports flowchart in section 12 of this report.
- 3.21 There is no doubt that the College is committed to patient safety and that it meets all the standards for handling complaints. However we have some comments on it achieving greater efficiency in this area.

- 3.22 The College is required to investigate every complaint that it receives. Of the 362 decisions issued in 2011 on complaints, we note that in only three cases was a referral to the Discipline Committee necessary. In six cases a Specified Continuing Education or Remediation Programme (SCERP) was ordered; in 41 cases an oral caution was delivered; a further 41 cases were ratification of the outcome of an ADR process; and in 56 cases the decision was agreement to no further action following satisfactory completion of at least two years of monitoring following a remedial course. The remaining 220 decisions, or 61 per cent, were complaints which resulted in no further action.
- 3.23 We consider this legislative requirement to be inherently inefficient and time-consuming. We also note that the legislation sets an entirely unrealistic target of 150 days for the conclusion of cases. In relation to the very small number of cases that proceed to the Discipline Committee the median time taken according to 2011 statistics is 570.5 days. For the larger number of cases which are concluded by the Inquiries, Complaints and Reports Committee the median time taken is 315 days.
- 3.24 Within the limits of its legislation we think the College should review its administrative processes in the handling of complaints to identify if the process could be expedited to achieve a swifter and more efficient resolution.
- 3.25 We found the College to be active and outward looking in its engagement with other regulators, professional bodies, universities, statutory organisations, government and international organisations.
- 3.26 The College has a clear commitment to continuing professional development. The new Quality Assurance Programme was launched in December 2011. It is backed up by an on-line self-assessment programme which is a requirement of all dentists and is designed to ensure dentists remain up to date in their practice.
- 3.27 The engagement of public members in the work of the College is a great strength. Public members are valued, respected, and supported and play important roles in the College's work.
- 3.28 The College has strong and effective communications and its website is outstandingly good.
- 3.29 We have made a number of recommendations to the College in this report which centre on its internal processes and its engagement of patients and the public in its work. Overall, given some constraints of the regulatory framework in Ontario, the RCDSO is a good regulator with a clear commitment to public safety and meets all the standards of good regulation.

## 4. The role of the Royal College of Dental Surgeons of Ontario and the regulatory context in Canada

- 4.1 The Royal College of Dental Surgeons of Ontario is the regulator of dentists in the province. There are some 9,000 members (or registrants) of the College, working in a province which has a population of 13.5 million. The regulatory system of which the RCDSO is part has been of considerable interest to regulators internationally and in this chapter we set out some its key features. The description that follows is intended to be general to all professions, and is not intended as a specific description or commentary on the RCDSO.
- 4.2 The Regulated Health Professions Act (RHPA) 1991 establishes the legal framework for the regulation of health professionals in Ontario. There is also a profession-specific act for each of the regulated professions. Other acts with which Colleges must comply are set out below at paragraph 4.10.
- 4.3 Schedule 1 of the Act, *Self Governing Health Professions*, sets out the statutorily regulated health professions in Ontario: audiology and speech-language pathology; chiropody; chiropractic; dental hygiene; dental technology; dentistry; denturism; dietetics; homeopathy; kinesiology; massage therapy; medical laboratory technology; medical radiation technology; medicine; midwifery; naturopathy; nursing; occupational therapy; opticianry; optometry; pharmacy; physiotherapy; psychology; psychotherapy; respiratory therapy; and traditional Chinese medicine.
- 4.4 The RHPA sets out a list of 'controlled acts'. A fundamental feature of the legislation is that only regulated health professionals can perform a controlled act. The profession-specific legislation sets out the scope of practice, and which of the controlled acts may be performed by members of that profession, and how: the authorised acts. Regulated health professionals may also delegate the performance of a controlled act within their own scope of practice to another person.
- 4.5 For illustration, Table 1 below sets out the full list of controlled acts from the RHPA, and the scope of practice and list of authorised acts for dentists as defined in the Dentistry Act 1991.

Table 1: Controlled acts, scope of practice and authorised acts

Controlled acts (RHPA 1991)	Scope of practice for dentists (Dentistry Act 1991)	Authorised acts for dentists (Dentistry Act 1991)
<ol style="list-style-type: none"> <li>1. Communicating to the individual or his or her personal representative a diagnosis identifying a disease or disorder as the cause of symptoms of the individual in circumstances in which it is reasonably foreseeable that the individual or his or her personal representative will rely on the diagnosis</li> <li>2. Performing a procedure on tissue below the dermis, below the surface of a mucous membrane, in or below the surface of the cornea, or in or below the surfaces of the teeth, including the scaling of teeth</li> <li>3. Setting or casting a fracture of a bone or a dislocation of a joint</li> <li>4. Moving the joints of the spine beyond the individual's usual physiological range of motion using a fast, low amplitude thrust</li> <li>5. Administering a substance by injection or inhalation</li> <li>6. Putting an instrument, hand, or finger               <ol style="list-style-type: none"> <li>i. beyond the external ear canal</li> <li>ii. beyond the point in the nasal passages where they normally narrow</li> <li>iii. beyond the larynx</li> <li>iv. beyond the opening of the urethra</li> <li>v. beyond the labia majora</li> <li>vi. beyond the anal verge</li> <li>vii. into an artificial opening into the body</li> </ol> </li> </ol>	<p>The practice of dentistry is the assessment of the physical condition of the oral-facial complex and the diagnosis, treatment and prevention of any disease, disorder or dysfunction of the oral-facial complex</p>	<p>In the course of engaging in the practice of dentistry, a member is authorised, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to perform the following:</p> <ol style="list-style-type: none"> <li>1. Communicating a diagnosis identifying a disease or disorder of the oral-facial complex as the cause of a person's symptoms</li> <li>2. Performing a procedure on the tissue of the oral-facial complex below the dermis, below the surface of the mucous membrane or in or below the surfaces of the teeth, including the scaling of teeth</li> <li>3. Harvesting tissue for the purpose of surgery on the oral-facial complex</li> <li>4. Setting a fracture of a bone of the oral-facial complex or setting a dislocation of a joint of the oral-facial complex</li> <li>5. Administering a substance by injection or inhalation</li> <li>6. Applying or ordering the application of a prescribed form of energy</li> <li>7. Prescribing, dispensing or compounding a drug</li> <li>8. Selling a drug in accordance with the regulations</li> </ol>

<p>7. Applying or ordering the application of a form of energy prescribed by the regulations under this Act</p> <p>8. Prescribing, dispensing, selling or compounding a drug as defined in the Drug and Pharmacies Regulation Act, or supervising the part of a pharmacy where such drugs are kept</p> <p>9. Prescribing or dispensing, for vision or eye problems, subnormal vision devices, contact lenses or eye glasses other than simple magnifiers</p> <p>10. Prescribing a hearing aid for a hearing impaired person</p> <p>11. Fitting or dispensing a dental prosthesis, orthodontic or periodontal appliance or a device used inside the mouth to protect teeth from abnormal functioning</p> <p>12. Managing a labour or conducting the delivery of a baby</p> <p>13. Allergy challenge testing of a kind in which a positive result of the test is a significant allergic response</p>		<p>9. Fitting or dispensing a dental prosthesis, or an orthodontic or periodontal appliance or a device used inside the mouth to protect teeth from abnormal functioning</p>
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4.6 Each of the statutorily regulated professions is regulated by a college. A college has a duty 'to work in consultation with the Minister to ensure, as a matter of public interest, that the people of Ontario have access to adequate numbers of qualified, skilled and competent regulated health professionals'; and, 'in carrying out its objects, the college has a duty to serve and protect the public interest'. Colleges have a common set of objectives, set out in Schedule 2 to the Act, the *Health Professions Procedural Code*:

- to regulate the practice of the profession
- to develop, establish and maintain standards of qualification for persons to be issued certificates of registration
- to develop, establish, and maintain programmes and standards of practice to assure the quality of the practice of the profession

- to develop, establish and maintain standards of knowledge and skill and programmes to promote continuing evaluation, competence and improvement among the members
- to develop, in collaboration and consultation with other colleges, standards of knowledge, skill and judgement relating to the performance of controlled acts common among health professions to enhance interprofessional collaboration, while respecting the unique character of individual health professions and their members
- to develop, establish and maintain standards of professional ethics for members
- to develop, establish and maintain programmes to assist individual to exercise their rights under this Code and the Regulated Health Professions Act, 1991
- to administer the health profession Act, this Code and the Regulated Health Professions Act, 1991 as it relates to the profession and to perform the other duties and exercise the other powers that are imposed or conferred on the College
- to promote and enhance relations between the college and its members, other health profession colleges, key stakeholders, and the public
- to promote inter-professional collaboration with other health profession colleges
- to develop, establish and maintain standards and programmes to promote the ability of members to respond to changes in practice environments, advances in technology and other emerging issues
- any other object relating to human health care that the Council considers desirable.

4.7 The powers, committee structures, committee responsibilities, and statutory procedures of a college are also set out in Schedule 2 to the Act, the *Health Professions Procedural Code*.

4.8 In summary, each of the colleges has a council, 'that shall be its board of directors and shall manage and administer its affairs'. The council has a majority of professional members, who are elected by other college registrants and a minority of public members who are appointed by the Lieutenant Governor in Council<sup>5</sup>.

4.9 In addition, colleges have the following statutory committees:

- executive committee: can exercise the powers of council between council meetings
- registration committee: considers registration applications referred to it by the registrar, where there are doubts as to whether registration requirements are met or where there may be a need to impose terms, conditions or limitations on registration

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<sup>5</sup> The constitution of the RCDSO's Council is set out at paragraph 8.7.

- inquiries, complaints and reports committee: meets in panels of three to investigate complaints that have been filed with the registrar about a registrant of the college<sup>6</sup>
- discipline committee: responsible for hearing and determining allegations of professional misconduct or incompetence referred to it by the ICRC.
- fitness to practise committee: considers cases referred to it by a panel of the ICRC, where there are grounds to believe that the member is physically or mentally incapacitated, ie on health grounds
- patient relations committee: considers measures for preventing or dealing with sexual abuse of patients.
- quality assurance committee: development, review and evaluation of the college's quality assurance programme (this programme is designed to ensure that the knowledge, skill and judgement of registrants remains current throughout their careers)

#### Other relevant legislation

4.10 The colleges must also comply with other acts, including in particular:

- the Ontario Business Corporations Act 1990 which sets out the legal requirements for corporate functions
- the Canada Agreement on Internal Trade 1995 ([http://www.ait-aci.ca/index\\_en.htm](http://www.ait-aci.ca/index_en.htm)) which provides for free movement of people, goods, services and investment within Canada
- the Ontario Freedom of Information and Protection of Privacy Act 1990 which governs use, storage and accessibility of patient information
- the Canada Competition Act, which governs business conduct in Canada. It contains both criminal and civil provisions aimed at preventing anti-competitive practices in the marketplace.
- the Fair Access to Regulated Professions and Compulsory Trades Act 2006, which is discussed below in the section on the Office of the Fairness Commissioner.
- the Human Rights Act of Ontario

#### The Health Professions Regulatory Advisory Council

4.11 The Health Professions Regulatory Advisory Council (HPRAC) is established under the Regulated Health Professions Act, and has a statutory duty to advise the Minister on health professions regulatory matters in Ontario. This includes providing advice to the Minister on:

- whether unregulated health professions should be regulated
- whether regulated health professions should no longer be regulated
- amendments to the Regulated Health Professions Act (RHPA)

<sup>6</sup> A detailed account of the RCDSO's specific arrangements for handling complaints is given in section 7 of this report.

- amendments to a health professions' act or a regulation under any of those acts
- matters concerning the quality assurance programmes and patient relations programmes undertaken by health colleges
- any matter the Minister refers to the HPRAC relating to the regulation of the health professions.

4.12 Members of the HPRAC Council are appointed by the Lieutenant Governor in Council. In preparing its advice and preparing its recommendations, HPRAC is independent of the Minister of Health and Long Term Care, the Ministry of Health and Long Term Care, the regulated health colleges, regulated health professional and provider associations, and stakeholders who have an interest in issues on which it provides advice. The Council's website is available here: [www.hprac.org](http://www.hprac.org)

4.13 In the course of our review visit to Toronto we met the Chair of HPRAC, and we are grateful for his insights and broad perspective on regulation.

#### **Health Professions Appeal and Review Board**

4.14 The Health Professions Review and Appeal Board is established by the Regulated Health Professions Act. The Board is responsible for conducting complaint and registration reviews and hearings concerning the registration committee and inquiry, complaints and reports committee decisions of the health colleges in Ontario. Members of the Board are appointed by the Lieutenant Governor in Council. Most of the Board's work consists of reviewing decisions of the colleges' inquiries, complaints and reports committees. The Board's jurisdiction enables it to determine the adequacy of the ICRCs' investigations, and the reasonableness of the ICRCs' decisions. The Board also conducts reviews and hearings of orders of the registration committees of the colleges<sup>7</sup>. The Board's website is here: [www.hparb.on.ca/scripts/english/](http://www.hparb.on.ca/scripts/english/)

4.15 In the course of our review visit to Toronto we hoped to meet the Chair of the Board. However, on legal advice she declined to meet us. Instead, we had a telephone conference with the Senior Counsel to the Board.

#### **Office of the Fairness Commissioner**

4.16 The Office of the Fairness Commissioner assesses the registration practices of regulated professions and trades to make sure they are transparent, objective, impartial and fair for anyone applying to practise his or her profession in Ontario.

4.17 The Office requires the bodies that regulate the professions and trades to review their own registration processes, submit reports about them and implement the commissioner's recommendations for improvement.

4.18 The prime responsibilities of the Office are to:

- advise the regulatory bodies about registration and other issues

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<sup>7</sup> The outcome of appeals against the RCDSO's decisions are discussed at paragraphs 6.10 and 7.52.

- set out guidelines for the content and form of the regulatory bodies' reports to the office
- assess registration practices
- advise provincial government ministries about issues relating to the professions and trades in their jurisdictions
- issue compliance orders to the non-health professions and to the trades, if necessary
- report to the Minister of Health and Long-Term Care about a health profession's non-compliance, if necessary<sup>8</sup>
- report to the public and to the Minister of Citizenship and Immigration about its work.

4.19 In addition, the Office:

- monitors labour mobility in Canada
- monitors the activities of certain agencies that assess qualifications
- does research.

4.20 The mandate of the office is set out in the Fair Access to Regulated Professions and Compulsory Trades Act, 2006.

4.21 In the course of our review visit to Toronto we met the Executive Director of the Office of the Fairness Commissioner. We are grateful to her for her lucid account of their role.<sup>9</sup>

4.22 As described above the legislation controlling professional regulation in Ontario is complex, consisting as it does of a series of interlocking and complementary acts, schedules and regulations. The legislation is highly specific in effect so that the RCDSO has very little discretion, if any, in the way it operates. This restrains its ability to be innovative to the extent that it would wish, although we have noted below examples where it has successfully been so.

4.23 We observe that a tension between forward looking regulatory practice and out-dated and over specific legislation is now a common experience for regulators across the globe. In many countries both governments and regulators are looking at regulatory reform so that regulation can be both more effective and less onerous. The ideas of 'smart regulation' or right-touch regulation are gaining ground. The need to give regulators greater flexibility in responding to change and in particular to the globalisation of the health workforce is increasingly recognised. The RCDSO is well placed to make a valuable contribution to this debate.

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<sup>8</sup> In the event of serious concerns about non-compliance the Lieutenant Governor in Council has the power under section 5 of the RHPA to appoint a supervisor to a college, on the advice of the Minister of Health

<sup>9</sup> The findings of the OFC's most recent Registration Practices Assessment Report on the RCDSO are summarised at paragraphs 6.13-6.14

## 5. Guidance and standards

**Standards of competence and conduct reflect up-to-date practice and legislation. They prioritise patient and service user safety and patient and service user centred care. Additional guidance helps registrants to apply the regulator's standards of competence and conduct to specialist or specific issues including addressing diverse needs arising from patient and service user centred care.**

- 5.1 The College has published a wide range of standards and guidance documents covering different areas of practice and in different formats. These include, but are not limited to:
- *Standards of Practice for Amalgam Waste Disposal*
  - *Standards of Practice for Dental CT Scanners*
  - *Standards of Practice for the Use of Sedation and General Anaesthesia in Dental Practice*
  - *Guidelines for Conflict of Interest*
  - *Guidelines for Dental Recordkeeping*
  - *Guidelines for the Diagnosis and Management of Temporomandibular Disorders and Related Musculoskeletal Disorders*
  - *Guidelines for Electronic Records Management*
  - *Guidelines for Educational Requirements and Professional Responsibilities for Implant Dentistry*
  - *Guidelines for Infection Prevention and Control in the Dental Office*
  - *Medical History Recordkeeping Guide*
  - *Guidelines for Blood Borne Pathogens and Infectious Diseases.*
  - *Informed consent: a guide to understanding the consent process in the dental office (DVD)*
  - Webinars, including on the use of narcotics
- 5.2 When a new or revised standard of practice or guideline document has been approved by the Council, it is placed on the College's website and a hard copy is mailed to all registrants, either separately or with the next edition of the college newsletter *Dispatch*.
- 5.3 The College provided us with an example of how it works to ensure that guidance is reviewed and reissued as necessary, with changes in law and practice. This example was the *Standards of Practice for the use of Sedation and General Anaesthesia in Dental Practice*, which it points out since the RHPA came into force in 1994 it has updated in 1995, 2001, 2005, 2009 and 2012.
- 5.4 Additionally, we note that the College publishes additional or supplementary guidance through a number of communication channels which include the website, articles in the College newsletter *Dispatch*, 'PEAK' articles (Practice

Enhancement and Knowledge), webinars, quality assurance initiatives including continuing education courses and peer assessment via the Practice Enhancement Tool. PEAK articles appear in the College newsletter *Dispatch* and discuss a clinical or non-clinical topic selected from dental literature around the world and judged to be relevant to dentists in Ontario.

- 5.5 Because of concerns about the safety of CT scanners when used in dentistry the government of Ontario commissioned the RCDSO to develop standards, guidance and regulations. The College provided us with an example of how, after one specific piece of guidance was published, these channels were used to reinforce its content. The piece of guidance in question was the *Standard of Practice for Dental CT Scanners* which received Council approval in April 2011; the associated by-law codifying the inspection of standards was approved in March 2012. In addition to the publication of the guidance, the College also took the following actions:
- additional guidance through the newsletter *Dispatch* in May/June 2011, August/September 2011, May/June 2012
  - publication of a PEAK article (August/September 2011)
  - a webinar (October 2011)
  - presentations at the Ontario Dental Association 2012 Annual Spring Meeting and the 2012 Winter Clinic
  - the establishment of a Practice Enhancement Tool competency area.

We have seen correspondence from the Ministry of Health and Long Term Care which thanks the College for its 'thorough and comprehensive guideline' which 'demonstrates a strong commitment to protect the public'.

- 5.6 In preparing the standard and guidance and subsequent regulations the College was firmly directed by its commitment to patient safety and to ensuring the benefits of the clinical innovation of CT scanning in dentistry could be realised without harm to patients.
- 5.7 The College has a LifeLong Learning Programme that consists of DVD and CD-based interactive learning packages on topics like informed consent, medical and dental emergencies in the dental office, jurisprudence and ethics that are distributed free of charge to all registrants of the College when released. The programme also includes webinars and other educational materials that are made available to registrants at no charge. The College has four dentists on the staff in the Quality Assurance Programme to assist dentists in understanding standards in relation to patients' needs.
- 5.8 Additionally, the College offers a practice advisory service, which anyone may contact be they registrants or members of the public. The service has dedicated staffing and offers advice on clinical, regulatory and ethical issues. It is important to note that this service is much used by dental patients and the public. We note (in paragraph 5.17 below) how the College might get greater value from these contacts.

- 5.9 The College has expanded the remit of its statutory Patient Relations Committee, to include, amongst other issues, people with disability, advertising and pain management.
- 5.10 Taking all of this evidence into account, we are convinced that the College is active in ensuring that the range of guidance and standards that are available to dentists is comprehensive and up to date, that it is active in ensuring that registrants are aware of new guidance as it is produced, and that the College has an active and busy programme of review and monitoring of the relevance of its guidance and standards. We have reviewed a range of the guidance and standards documents and articles, and we are convinced that they prioritise the interests of patients and emphasise patient and service user safety and care. We consider the College's work in this area to be good practice.

**In development and revision of guidance and standards, the regulator takes account of stakeholders' views and experiences, external events and developments, international regulation and best practice, and learning from other areas of its work.**

- 5.11 The development and revision of guidance is taken forward by the Quality Assurance Committee, one of the College's statutory committees. The decision to either initiate a new piece of guidance or to review an existing one can be triggered by internal review and monitoring, information from stakeholders including members of the public, complaints or claims. The College's policy is that when such a decision has been taken, the Quality Assurance Committee establishes an expert working group relevant to the subject matter of the guidance, including external expertise. The College provided us with examples of the external organisations from which expert members to such working groups have been appointed (Table 2).
- 5.12 In recruiting members to working groups, the College seeks to draw on a wide range of expertise and experience including from the academic community. The College has provided us with some examples of members of working groups for specific pieces of guidance set out in Table 2 below.

Table 2 External Organisations on Working Groups

<b>Working Group subject</b>	<b>External organisation on Group</b>
Dental CT scanners	College of Physicians and Surgeons of Ontario College of Medical Radiation Technologists of Ontario Professor in radiology Experts in medical radiation technology
Pain management	College of Physicians and Surgeons of Ontario Ontario College of Pharmacists Head of hospital pain clinic Specialist in oral medicine Representatives from pharmacy, medicine and nursing

Anaesthesia and sedation	College of Physicians and Surgeons of Ontario Specialist in sedation and anaesthesia Representatives from medicine, pharmacy and nursing
Infectious diseases	College of Nurses of Ontario College of Physicians and Surgeons of Ontario A dentist and pathologist A professor expert in design of guidelines for medicine A hepatology professor

- 5.13 The College's practice is that the working group will produce a draft document for consideration by the Quality Assurance Committee. In turn, the Quality Assurance Committee will present the report for consideration by the Council, in the form of a motion. The College's policy is then that the draft document is circulated for comment to all registrants, is sent to the members of an external stakeholder list, and is placed on the website. 60 days are allowed for the return of comments.
- 5.14 Following the receipt of comments the working group reconvenes to consider how the document will be amended in the light of these. A redraft is prepared for the Quality Assurance Committee, who again may then submit a draft to the Council in the form of a recommendation. Alternatively, if substantial changes have been made, the redraft is circulated to stakeholders and members again. The Quality Assurance Committee will consider any further changes, and must then submit the draft to Council.
- 5.15 The College has explained to us that where Regulations are required, these require government approval by Order in Council passed by cabinet and moved by a sponsoring Minister, which become law following royal assent. The College gave us a number of examples including the Amalgam Waste Regulation, which involved an externally commissioned expert study, taking eight months, followed by the College process described above which took seven months, and Government approval which took a further two months.
- 5.16 The College also provided us with an example of the process being followed for a review of an existing piece of guidance, the *College Guidelines for Educational Requirements and Professional Responsibilities for Implant Dentistry*. We have set this out in Table 3 below.

Table 3

Review of College Guidelines for Educational Requirements and Professional Responsibilities for Implant Dentistry	
Stage	Key Dates
Council approval of establishment of a working group	November 2009

Working group convened; working group evaluates current information including guidelines and best practices from Quebec, the United States, the United Kingdom, Europe, Australia and Hong Kong, produces draft document. Draft document submitted to Quality Assurance Committee	
Draft document approved by the Quality Assurance Committee	May 2012
Draft document provisionally approved by Council	June 2012
Draft document posted on College website, sent to registrants and sent to stakeholder list	
Working group reconvened to consider comments (30 submissions made)	
Revised draft document submitted to Quality Assurance Committee	
Revised draft approved by the Quality Assurance Committee	February 2013
Recommendation for final approval to be put to Council by the Quality Assurance Committee	May 2013

- 5.17 In addition to this example, which the College provided to us in advance, in the course of the visit we discussed the development of the Standards of Practice for Dental CT Scanners with the Manager of Quality Assurance; and we reviewed the files for two such exercises relating to the Standard of Practice for the Use of Sedation and General Anaesthesia in Dental Practice, and the Guidelines for Electronic Records Management. In all cases, we found evidence that the process as described above had been followed, with evidence of consultation having taken place and comments that were made having prompted discussion and redrafting.
- 5.18 However, there is one area where we believe there is room for improvement, which is the engagement of the public and groups representing patients and the public, in the development and review of standards and guidance. We acknowledge that standards and guidance documents that are subject to consultation are placed on the website and that the working group will consider comments from wherever they originate. We also acknowledge that in the context of specific projects, there has been engagement with relevant people and groups, such as the work on dental healthcare to remote Inuit communities; work on sexual abuse involving two communities and a rape crisis centre; and work with advocacy groups on long term care. However we notice that there is an absence of public, patient and service user groups or members of the public on the College's stakeholder list, and are concerned that potential patient or public commenters would not be aware as a matter of routine of draft documents that had been placed on the website. We understand from discussion with staff that in the past attempts have been

made to engage with such groups but these have been unsuccessful. We recommend that the College reconsiders how it might take more active steps to engage with the public in the development of guidance and standards. We recommend further that the approach taken encompasses both individual members of the public who might be interested to participate in consultation exercises, and patient and public representative groups. To take this forward, the College might wish to consider establishing networks or databases of interested individuals and groups to whom to send consultations on draft guidance and standards documents as they arise. We suggest that to recruit individuals, amongst other means the College might wish to look to its own Professional Practice Advisory Service. We were told that roughly half of calls to the Service are from members of the public. The staff of this service could ask all callers as a matter of course, perhaps at the end of calls, whether in future they would be interested to comment on guidance and standards drafts from time to time. We were also told that interested members of the public regularly observe Council meetings. These people too are potential recruits for consultations. A list of interested individuals could therefore gradually be compiled who could routinely be sent drafts at the same time as other stakeholders on the stakeholder list. We also recommend a renewed approach to public and patient representative groups in Ontario to establish whether they would be interested to comment on future draft guidance so that a more diverse stakeholder list can be compiled. The College has the opportunity to take a lead on this area.

5.19 We are satisfied on the basis of this evidence that the College meets this standard.

**The standards and guidance are published in accessible formats. Registrants, potential registrants, patients, service users and members of the public are able to find the standards and guidance published by the regulator and can find out about the action that can be taken if the standards and guidance are not followed.**

5.20 The College has set out to us that when a standard of practice or guideline has been approved by the Council the document is sent in hard copy to all registrants, either separately or with the next issue of the College newsletter *Dispatch*. The document is also placed on the College website. The RCDSO Library in the Knowledge Centre on the website includes all current guidance and standards documents, practice advisories and by-laws. We have reviewed the accessibility of documents on the website, and we are extremely impressed by the layout, design and ease of navigation to find documents and other information on it. Members of the public are guided as to how to make a complaint against a dentist, with a series of clearly worded advice and frequently asked questions (we comment further on this in the section of the report on the handling of complaints).

5.21 Therefore we are satisfied that the College meets this standard.

5.22 The production of standards and guidance is a particular strength of the College. We note good practice in not only the quality assurance of standards but also in the selection of new topic and revision of existing ones, and the way in which expertise is assembled.

## 6. Registration

### **Only those who meet the relevant requirements will be registered**

- 6.1 The RHPA establishes the duty of the College to provide information to individuals who are applicants for registration with respect to the requirements for registration, the procedures for applying and the amount of time that the registration process usually takes. It also establishes the duty of the College to make information publicly available on what documentation of qualifications must accompany an application, and what alternatives might be acceptable to the College if an applicant cannot obtain the required documentation for reasons beyond his or her control. It sets out a general duty that assessment of an application is transparent, objective, impartial and fair.
- 6.2 The National Dental Examining Board of Canada (NDEB) has an important role. The NDEB has 12 members; each dental regulatory authority in Canada appoints a member and two members are appointed by the Commission on the Dental Accreditation of Canada, the organisation that accredits dental programmes in Canada. The NDEB sets the national standards of competency for registration, establishes and maintains an examination facility to test that the national standards are met, and issues certificates to dentists who successfully meet this national standard. All applicants for registration must first have passed the NDEB examinations. Canada, and, through reciprocal agreements, the United States, Australia, New Zealand and Ireland, operate according to a system of mutual recognition of accreditation of dental training.
- 6.3 For applicants who are graduates of dental programmes outside Canada and the countries to which mutual recognition applies, the NDEB sets out clearly on its website its equivalency process, which comprises a series of assessments and if necessary a qualifying/degree completion programme, which then entitles applicants to take the NDEB examination, the necessary precursor to registration. We note that the qualifying/degree completion programme is reported to be both expensive and time consuming.
- 6.4 The College has informed us that in the context of the Canada Agreement on Internal Trade, and the Fair Access to Regulated Professions and Compulsory Trades Act, it has been instrumental in establishing reciprocal agreements and accreditation for dental programmes within and outside Canada, to ensure that well-qualified dentists are able to practise in Ontario. We understand that this was achieved in large part through its position on the Canadian Dental Regulatory Authorities Federation (CDRAF), of which the President of the RCDSO is currently President, and the Registrar of the RCDSO is Executive Director.
- 6.5 Within a context of the overriding need to ensure patient safety, there are obvious benefits to workforce mobility from mutual recognition of professional qualifications and internationally recognised standards of competence. Therefore, while we recognise the clarity and quality of the information that is available to international graduates, we recommend that the RCDSO

continues through its leadership of the CDRAF to influence and identify opportunities to expand the range of countries to which mutual recognition applies. This is of course a matter of interest to professional regulators across the world.

6.6 Additional advice for international applicants is contained in the *Career Map for Internationally Trained Dentists*, produced jointly by the College with the Ontario Ministry of Citizenship and Immigration.

6.7 The requirements for applicants for registration are clearly set out on the College's website. This part of the website is very easily accessed from the homepage, and includes the application form, guidance materials including advice on the form in which supporting documentation must be submitted, and frequently asked questions. The website sets out very clearly the different categories of registration and the recognised dental specialties in Ontario.

6.8 Taking all of this evidence into account, we are satisfied that the College meets this standard.

**The registration process, including the management of appeals, is fair, based on the regulator's standards, efficient, transparent, secure, and continuously improving**

6.9 The RHPA establishes the general duty of the Ontario health colleges to 'provide registration practices that are transparent, objective, impartial and fair'.

6.10 The College has set out for us the process which it follows on receipt of a completed application. The application is a statutory declaration including a photograph that must be signed or sworn by a notary public or lawyer. An applicant must provide notarised or original documentation. A member of staff first checks the application against a checklist of legislated requirements. A Supervisor or Manager does a final approval and sign-off. Any outstanding questions are reviewed by the Registrar and ultimately can be reviewed by the Registration Committee. If registration is declined, the applicant can appeal to the Health Professions Appeal and Review Board. The College's internally held statistics show that 100 per cent of appeals against its registration decisions are declined by HPARB.

6.11 The process is supported by manual filing and electronic case tracking. The College has told us that completed applications are processed in between three and five weeks, depending on the time of year.

6.12 In ensuring that this process is fair, the Fairness Commissioner has an important role. The functions of the Fairness Commissioner in this regard are to:

- assess the registration practices of a college based on its obligations under this Code and the regulations
- specify audit standards, the scope of audits, times when fair registration practices reports and auditors' reports shall be filed, the form of all required reports and certificates and the information that they must contain

- consult with the colleges on the cost, scope and timing of audits
  - advise a college or third parties relied on by a college to assess qualifications with respect to matters related to registration practices under this Code and regulations
  - provide advice and recommendations to the Minister, including advice and recommendations that a college do or refrain from doing any action respecting a contravention by a college if the Fairness Commissioner determines that the college has failed to comply with any requirement imposed on it.
- 6.13 The College submits an annual Fair Registration Practices Report to the Office of the Fairness Commissioner. In the most recent Registration Practices Assessment Report available from the OFC (December 2011), a series of commendable practices are identified, which include:
- the quality of information readily available on the website for both domestic and international applicants
  - the quality of information describing classes of registration
  - the ease of navigation through the RCDSO and NDEB websites to resources for potential applicants
  - the quality of training given to panels
  - transparency in decision making
  - fairness in the setting of fees.
- 6.14 The Fairness Commissioner also identified some recommendations, all of which were quickly implemented:
- to provide information in French
  - to provide more specific information about timelines for processing applications, and about documentation that applicants must submit
  - to identify the steps that can be completed outside Ontario.
- 6.15 The *Career Map for Internationally Educated Dentists* (paragraph 6.6 above) amply addresses the third of the Commissioner's recommendations, advising potential applicants in the section Before You Arrive in Canada on the resources available on the NDEB website including for self-assessment, the need to obtain a completed Certificate of Good Standing, the ability to apply from anywhere in the world for registration, and the advisability of ensuring adequate French or English language skills.
- 6.16 With regard to the link between registration and standards, this is established by the RCDSO's input through the NDEB into the Competencies for a Beginning Dental Practitioner in Canada.
- 6.17 The College's registration practices were audited by Deloitte for the period July 16 2007 to July 15 2008. This audit concluded that the College had 'policies and procedures in place which adequately address the specific requirements of the RHPA', and that 'the registration policies and procedures appear to be fair, transparent and reasonable'.

- 6.18 Taking all of this evidence into account, we are satisfied that this standard is being met, and in many respects demonstrates good practice.
- 6.19 We would however like to make a recommendation for future work in this area. We appreciate that much of the focus in recent years has been around ensuring that regulatory practice supports the mobility of dentists around Canada and internationally, and that great progress and improvements have been made in this regard. The College has told us it is committed to enabling people with disabilities to practise safely. An example is its guideline on blood borne pathogens. We also learned of examples of accommodations which the College had made for a dentist who became disabled during their professional career.
- 6.20 We recommend that a future area of work for the College could be to look at the fairness of its registration practices in relation to people with a disability who wish to practise as dentists. From such a strong starting point the College would be in a good position to demonstrate leadership in ensuring fair treatment of these applicants.

**Through the regulator's register, everyone can easily access information about registrants, except in relation to their health, including whether there are restrictions on their practice. Patients, service users and members of the public can find and check a health professional's registration, and are aware of the importance of doing so.**

- 6.21 Schedule 23(1) of the *Health Professions Procedural Code* sets out that the Colleges must maintain a register that includes:
- each member's name, business address, and business telephone number, and, if applicable, the name of every health profession corporation of which the member is a shareholder
  - the name, business address and business telephone number of every health profession corporation
  - the names of the shareholders of each health professions corporation who are members of the college
  - each member's class of registration and specialist status
  - the terms, conditions and limitations that are in effect on each certificate of registration
  - a notation of every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 and has not been finally resolved, until the matter has been resolved
  - the result, including a synopsis of the decision, of every disciplinary and incapacity proceeding, unless a panel of the relevant committee makes no finding with regard to the proceeding

- a notation of every finding of professional negligence or malpractice, which may or may not relate to the member's suitability to practise, made against the member, unless the finding is reversed on appeal
- a notation of every revocation or suspension of a certificate of registration
- a notation of every revocation or suspension of a certificate of authorisation
- information that a panel of the Registration, Discipline or Fitness to Practise Committee specifies shall be included
- where findings of the Discipline Committee are appealed, a notation that they are under appeal, until the appeal is finally disposed of
- where, during or as a result of a proceeding under section 25, a member has resigned and agreed never to practise again in Ontario, a notation of the resignation and agreement
- information that is required to be kept in the register in accordance with the by-laws.

- 6.22 As noted elsewhere, the College website was renewed in 2012. From the home page, it is extremely easy for anyone to access the register and to check if a dentist is registered or not. We checked the register for annotations including the outcomes from decisions of complaints and disciplinary panels, and found that these were accurately recorded without exception.
- 6.23 We note that the College does not operate a non-practising register. We support this position, and consider that non-practising registers do little to protect the public, and cause confusion about the purpose of regulation and registration.
- 6.24 The College is vigorous in ensuring that members renew their registration, including sending out warning letters giving a date of suspension on the grounds of non-payment, a further notice, and contacting members by telephone. This results in only a tiny number of members being suspended for non-renewal each year.
- 6.25 We note that the RCDSO reimburses universities for the registration fees of retired dentists who continue to teach. We find this an unusual practice on the part of a regulator. If retired dentists are unable to afford the registration fee it is surely for their employers to pay it in their behalf. The reimbursement means that registration for this group is being funded by the other members of the College.
- 6.26 Taking all of this evidence into account, we are satisfied that the College meets this standard. The design, extent of information and its easy availability on the website represents good practice.

**Risk of harm to the public and of damage to public confidence in the profession related to non-registrants using a protected title or undertaking a protected act is managed in a proportionate and risk based manner**

- 6.27 The Dentistry Act 1991 provides that only members of the RCDSO may perform the controlled acts as set out in paragraph 4.5, and use the designation dentist, dental surgeon, or specialist in an area of dentistry.
- 6.28 The RCDSO acts swiftly to protect the public when a report is made to it that someone is holding themselves out as a dentist when they are not registered. The College employs the services of a retired police officer to undertake an investigation. The investigator will seek treatment from the dentist and sit in the chair, but reveal their identity before any treatment takes place. The investigator will take photographs, and prepares a sworn affidavit. The College will then pursue injunctive relief under the Provincial Offences Act. The College has told us that in recent years it has obtained court orders/ injunctions against 13 individuals, whose names are listed on the College's website (<http://www.rcdso.org/PublicProtection/IllegalPractitioners>).
- 6.29 We are satisfied that the College meets this standard, and we commend its vigour and transparency.
- 6.30 Overall, the college's registration practices are well-managed, transparent, accessible and fair, and demonstrate their commitment to their own values.

## 7. Handling complaints

### Introduction

- 7.1 The Complaints process is set out in Schedule 2 of the Regulated Health Professions Act, the *Health Professions Procedural Code*. As part of this review we have read the legislation, reviewed a selection of case files, spoken to senior staff in the Professional Conduct and Regulatory Affairs team and attended a panel meeting of the Inquiries, Complaints, and Reports Committee (ICRC).
- 7.2 The ICRC plays a pivotal role in the consideration of complaints in this and in other Colleges in Ontario. It meets in panels to effect its business. There are in total six such panels, referred to as ICRC (Complaints) of which there are five panels of three members, and the ICRC (Reports) panel of which there is one panel of five members. ICRC(C) panels have two dentist members and one public member. The ICRC (R) panel has three dentist members and two public members.
- 7.3 The ICRC(C) panels receive the outcome of investigations into complaints, and consider proposed resolution of cases that have been dealt with through ADR (see below). They can decide that no further action is required, ratify or not the proposed resolution of a complaint that has been dealt with through ADR, order the member to attend the panel for an oral caution to be delivered, or order the member to take a specified continuing education or remediation programme (SCERP). They can decide that no further action is required where a remedial course has been completed successfully. They can also refer cases to other committees such as the Discipline Committee (for serious professional misconduct) and the Fitness to Practise Committee (for health matters).
- 7.4 The ICRC(R) panel was formed in 2009. We understand that the RCDSO is the only College to have set up this panel of an ICRC. It has been established specifically to:
- approve the Registrar's appointment of an investigator, if the Registrar has reasonable and probable grounds to believe that the member has committed an act or acts of professional misconduct or is incompetent
  - receive and consider the outcome of investigations that have been commissioned by the Registrar in these circumstances<sup>10</sup>
  - take appropriate action on the outcome of investigations (within the same range of options as set out for ICRC(C) above).
- 7.5 These arrangements are discussed in more detail under each of the standards in this area in the rest of this section of the report. Additionally, we have attempted to map out the main routes that a complaint or report can take through this system which is set out at section 12. We are indebted to the staff of the College who took time to explain the processes to us.

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<sup>10</sup> There is full disclosure of the interviews, all of the facts and the member is also given a copy of the investigation report for comment; all of these are given to the panel.

### **Anybody can make a complaint about a registrant**

- 7.6 THE RCDSO will receive a complaint about one of its registrants from anybody, provided that it is in the format set out in the procedural code of the RHPA; that it is 'in writing, or is recorded on a tape, film, disk, or other medium'. In practice, we understand from discussing the process with staff, that if a complainant has difficulty in submitting a complaint in such a form, staff will go beyond the requirements of the Procedural Code and assist by transcribing the complaint and will then send it to the complainant, to ensure they are content with it before proceeding.
- 7.7 The College investigates every complaint that is made to it in the required form, and will not, for example, request a complainant to discuss the issue with the dentist before proceeding with a complaint. The public are encouraged to discuss problems with their dentist both on the website and in printed guidance on how to raise a complaint, but once any complaint has been received in the required format, the College will investigate it as its obligation under the RHPA.
- 7.8 If a complaint concerns a member of another college, the complainant will usually be directed to the relevant college in writing from the Registrar, copied to the registrar of that college. We commend this practice as an example of collaboration between regulators for the benefit of the public. We understand that the legislation does not allow a direct referral from one registrar or college to another. We think that this would be desirable in the interests of public protection.
- 7.9 Once a complaint has been received in an appropriate form, it is assessed for any risks to the public that need to be acted on expeditiously and as to whether it could be referred to the Alternative Dispute Resolution process which is provided for in the legislation. We comment on this further at paragraphs 7.18 and 7.19 below.
- 7.10 We are satisfied that the College meets this standard.

### **Where necessary, the registrar can initiate an investigation without relying on the receipt of a complaint**

- 7.11 The legislation provides for the Registrar, if he has reasonable and probable grounds, to initiate an investigation without a formal complaint having been filed, and produce a Registrar's report which is considered by the ICRC(R). These powers are set out at Section 75 of the RHPA. The College informs us that on average 40-50 Registrar's investigations are undertaken in a year. There are three possible sources which will initiate such an investigation and report:
- any concerns that come to the attention of the Registrar but not in the form of a formal complaint, such as insurance companies, the public where they do not wish to make a complaint, other dentists, public health units, and the media
  - information from the Quality Assurance Committee, in extreme circumstances where the Committee becomes aware of risks to the public arising from a registrant not participating in the Quality Assurance

process, or where a Quality Assurance assessment has revealed significant concerns (we understand that this is rare)

- thirdly, in emergency circumstances where the Registrar believes that the conduct of a member exposes or is likely to expose his or her patients to harm or injury and that immediate investigation is required, and there is insufficient time to seek approval from the ICRC Committee<sup>11</sup>.

7.12 We are satisfied that the Registrar has suitable powers to meet this standard and that they are used when necessary. Therefore we consider that the College meets this standard.

**The regulator will investigate a complaint, determine if there is a case to answer and take appropriate action including the imposition of sanctions**

7.13 Following initial assessment, the case is assigned to an investigator, who will within seven days make a telephone call to the complainant. The investigator as part of this call confirms that it is the wish of the complainant to proceed, and at this point the case is considered 'filed'. This is significant not least because this is the point from which the 150 day target is counted, which is set out in the legislation for the resolution of a complaint.

7.14 Within 14 days of the complaint being filed, the College provides the member with an aide memoire of all previous decisions of statutory committees against them.

7.15 The Registrar can order an emergency investigation where this is warranted by risk to the public being raised in a complaint. If necessary for public protection, the Registrar does not need to wait for the matter to be considered by the ICRC(R) panel. The Registrar will continue a complaint should the complainant disengage from the process, but where there are allegations that require investigation. The Registrar's powers in regard are set out in Paragraph 75(1)(2) of the procedural code.

7.16 As discussed in the introduction to this chapter of the report, the ICRC meets in panels of three or a panel of five. There are currently six panels in total, which meet to a timetable set a year in advance. An ICRC panel meeting is not a hearing – for example, sworn evidence is not taken. Panels have a number of options:

- make a referral of specified allegations of professional misconduct to the discipline committee<sup>12</sup>
- specify a continuing education and remedial programme (SCERP)
- give advice to a member
- deliver an oral caution
- take no further action

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<sup>11</sup> We understand that the College has passed in principle a by-law which will give the Registrar authority to post on the public register any deficiency arising out of a facility inspection of a practice where sedation is permitted, or where a dental CT scanner is permitted.

<sup>12</sup> Professional misconduct is defined in regulation 853/93 made under the Dentistry Act 1991

- refer to health inquiry panel (fitness to practise)
  - request further investigation.
- 7.17 After a case is referred to the Discipline Committee, as is the legal obligation of the College there will be further investigation and continuing full disclosure. The next stage is to arrange a pre-hearing conference, in advance of a discipline hearing. The pre-hearing conference is either chaired by a dentist, or co-chaired by a dentist and a retired judge where there are issues of law. The dentist in this role is selected by the Chair of the Discipline Committee and must have had experience as a discipline panel member, must receive training, must not have any connection with the parties, must not have any pre-existing knowledge of the case, must not have sat on any committee dealing with the member's conduct, and cannot sit on the discipline panel dealing with the current referral. The conference is held in private and there is full disclosure. Agreement is reached on many cases at this stage. Where this occurs, an agreed statement of facts is drawn up and there may also be an agreement on penalty. This is then read to a panel of the Discipline Committee, which will make a finding and impose a penalty. Where there is agreement on facts and penalty from the pre-hearing conference it is unusual for the panel to disagree, but it may do so.
- 7.18 If agreement is not reached at this stage, then the case will proceed to a formal hearing in public before a panel of the Discipline Committee. The panel has five members, of whom three are dentists (both members of Council and non-members) and two are members of the public (both of whom are Council members). Having heard a case, it has a range of options:
- any of the outcomes available to the ICRC (above)
  - a reprimand
  - suspension for a fixed period
  - revocation of registration (erasure)
  - award costs.
- 7.19 In the event of a finding of professional misconduct against a dentist, under the legislation the College will seek costs. While the legislation permits colleges to seek full solicitor and client costs, the courts will only permit this in extreme cases. Instead costs are awarded on a 'partial indemnity' basis. The prosecutor presents a bill of costs containing what would be full indemnity, and asks for partial indemnity, usually about one third less. The College has told us that it usually manages to secure an agreement on costs.
- 7.20 The RHPA procedural code (at paragraph 25.1) provides for a process of alternative dispute resolution (ADR), instead of a process of investigation followed by consideration by a panel of the ICRC. We understand that the RCDSO was the first College to implement an ADR programme. ADR cannot proceed if an ICRC panel has already referred the case to the Discipline Committee, or if the case involves an allegation of sexual abuse. Also, ADR can only proceed with the agreement of both the registrant and the complainant. If a case is suitable for ADR a facilitator is appointed who

will seek to agree a resolution between the complainant and the registrant, which is then put to a panel of the ICRC for ratification.

7.21 We commend the use of an ADR process as it can facilitate speedy resolution in less serious matters. The College has told us that the mean average timeline for ADR resolution is five months. However, we were struck by the fact that one ADR case we reviewed took 11 months to resolve and that the outcome was that the complainant was refunded a small sum, the cost of treatment, without admission of liability. We believe that the purpose of an ADR process should be to achieve a swift and cost-effective resolution. The purpose of the RCDSO's process is to bring the two parties together to communicate directly and reach an agreed resolution. The College has told us that speed is not a main objective. College staff observed to us that once agreement has been reached with both the complainant and the registrant to embark upon ADR, there could be problems of securing their proper engagement with the process. We recognise that the length of time taken to resolve the case we reviewed may have been extreme, and we are aware of the resources that the College has invested in ADR and that it is seeking the ability to fast track less serious complaints (paragraph 7.38). Nevertheless, we recommend that the College reviews how successfully it is managing ADR, looking at whether the right cases are being dealt with through this process and if there are methods that could be employed to ensure that resolution is reached more quickly. Examples might include to set criteria for when a case will be returned to the non-ADR route if there is a failure on the part of either the complainant or the registrant to engage with the process once it has been explained to them and they have agreed to it; to adhere more strictly to timelines; and to explore approaches such as the use of teleconferences rather than face to face meetings

7.22 Overall, we are satisfied that the College meets this standard.

#### **Information about complaints is shared with other organisations within the relevant legal frameworks**

7.23 In 2012, the College entered a Memorandum of Understanding with the other health colleges in Ontario in relation to joint investigations and the sharing of information. The 21 colleges agree to collaborate and share information of complaints and reports investigations as permitted by the RHPA. More widely, we note that inter-professional collaboration was added as an objective in the RHPA in 2009. The College works with other dental regulators in Canada through the Canadian Dental Regulatory Authorities Federation (CDRAF), with other health colleges in Ontario through the Federation of Health Colleges of Ontario (FHRCO), and with the wider regulatory community internationally through the Council on Licensure Enforcement and Regulation (CLEAR).

7.24 The College provided us with evidence in case files of information being shared between colleges, and we are satisfied that it meets this standard.

**All complaints are reviewed on receipt and serious cases are prioritised and where appropriate considered for an interim suspension**

- 7.25 The legislation provides for interim suspension (paragraph 37 (1) and (2) of the procedural code). However, this can only occur once a case has been fully investigated; has been discussed by a panel of the ICRC; the panel has decided to refer the matter to the Discipline Committee; and the panel is of the opinion that the ‘conduct of the member exposes or is likely to expose his or her patients to harm or injury’. The panel must give notice of its intention to order an interim suspension and must give the detailed reasons with a full opportunity for the member and the complainant to reply. Once a suspension has been rendered, the member has a right of review and appeal to the Court. The College informs us that the courts are reluctant to confirm an interim suspension because it is made without a hearing, without evidence taken under oath.
- 7.26 Therefore, the College has advised us that it has had greater success in protecting the public by securing voluntary undertakings from registrants for example not to practise a particular modality of dentistry. These terms and conditions are placed on the website.
- 7.27 Interim suspension orders are an important tool in an effective system of professional regulation. Clearly, the legislation and its operation needs to be fair to registrants, however in this case we feel that the legislative provisions are too protective of registrants’ interests and therefore neglectful of patient safety. While we recognise the College’s efforts and success in finding a way of protecting patients, and are satisfied that this standard is met, we recommend that in collaboration with other Colleges continues to pursue legislative reform in this area. The point of interim suspension orders is precisely to enable a regulator to take action quickly when public protection is a priority.

**The complaints process is transparent, fair, proportionate and focused on public protection**

- 7.28 The College goes beyond the provisions of the RHPA in that it operates with full transparency between the parties to a complaint, with documents that are submitted by one party being shared with the other and comments are invited. The reports of investigations, as well as records, notes, expert input etc are also shared between the parties. The College also notes that:
- members of ICRC panels are canvassed for bias or conflicts of interest in advance of receiving materials on a case
  - a panel in considering its decision in a case will choose a remedial approach rather than a punitive one.
- 7.29 In the course of our discussions both staff and Council members have said to us that the remedial approach is a ‘philosophy’ that has developed over time. It aims to build a relationship with a dentist over time and to encourage improvement. A remedial course of action will include successful completion of a course, mentoring, monitoring with a direct tie to a statutory committee,

and in many cases restrictions on a dentist's ability to practise certain modalities of dentistry, which is recorded on the register.

- 7.30 Looking internationally, it could be argued that regulatory styles or philosophies can be placed on a continuum from remedial to directive approaches. While there are strong arguments for a remedial approach where it can be shown that it can address the substance of complaints, it runs the risk of being too protective of the interests of those regulated. We touch on this in discussion of interim suspensions orders, above. We recommend to the College that it is more explicit about evidence and arguments for this being its prevailing approach to handling complaints and in the interests of public protection.
- 7.31 In our attendance at an ICRC panel meeting we were impressed by the panel's focus on the public interest, and the way in which it sought to be fair. We comment elsewhere on the proportionality of the complaints process (paragraph 7.37), and whether the College's legislation should enable greater latitude and flexibility in the way that it handles some cases. Nevertheless, we consider that the College meets this standard.

**Complaints are dealt with as quickly as possible taking into account the complexity and type of case and the conduct of both sides. Delays do not result in harm to patients and service users. Where necessary the regulator protects the public by means of interim suspension.**

- 7.32 The Health Professions Procedural Code, Schedule 2 of the RHPA, states that "a panel shall dispose of a complaint within 150 days after the filing of the complaint" (paragraph 28(1)). It goes on to state that 'if a panel has not disposed of a complaint within 150 days after the complaint was filed, the Registrar shall provide the complainant with written notice of that fact and an expected date of disposition which shall be no more than 60 days from the date of the written notice'<sup>13</sup>(paragraph 28(3)). In the event of further delay, it states that the Registrar shall:

'(a) provide the member and complainant with written notice and reasons for the delay and the new expected date of disposition which shall be no more than 30 days from the date of the revised notice or from the expected date of disposition described in subsection (3), whichever is sooner; and

(b) provide the Board with written notice of and reasons for the delay as were provided to the member and complainant" (Paragraph 28 (a) and (b))'.

- 7.33 On receipt of the application, the Board (the Health Professions Appeal and Review Board) has three options. It may:
- direct the Inquiries, Complaints and Reports Committee to continue the investigation
  - make recommendations the Board considers appropriate to the Inquiries, Complaints and Reports Committee

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<sup>13</sup> We understand that this was extended from 120 days in 2009.

- investigate the complaint and make an order under subsection (9) within 120 days of the decision to investigate the complaint

7.34 Subsection (9) in turn provides that ‘after an investigation, the Board may do any one or more of the following:

- refer the matter to the Inquiries, Complaints and Reports Committee
- make recommendations the Board considers appropriate to the Inquiries, Complaints and Reports Committee
- require the Inquiries, Complaints and Reports Committee or a panel to do anything the Committee or a panel may do under the health profession Act [ie, the RHPA] and this Code except to request the Registrar to conduct an investigation.

7.35 Staff informed us that the College does not wait for, for example, the outcome of police proceedings against a registrant, but will initiate a parallel process.

7.36 We applaud the College’s transparency in sharing with us performance statistics from 2011 with regard to the length of time taken in practice to dispose of a complaint. These show the following times from filing of initial complaint to decision by a panel of the ICRC:

<b>Median time taken to conclude</b>	45 weeks	315 days
<b>Slowest case to conclude</b>	103 weeks	721 days
<b>Quickest case to conclude</b>	8 weeks	56 days

7.37 The College also shared with us statistics on cases which are referred to the Discipline Committee:

<b>Median time taken to conclude</b>	81.5 weeks	570.5 days
<b>Slowest case to conclude</b>	124 weeks	868 days
<b>Quickest case to conclude</b>	41 weeks	287 days

7.38 The College is of course aware that the time being taken to conclude cases is considerably in excess of the 150 day target set out in the legislation, and, jointly with other Colleges, has made a submission to Government to seek legislative change to allow for greater discretion in the way that complaints are investigated. Under the existing legislation, all complaints that are filed (except for those which are referred to ADR) are subject to the same standards of thorough investigation. We commend this initiative and recommend that the College continues to pursue this change, possibly with a view to gaining powers to operate triage of complaints in some form at the initial stage. The 150 day legislative target is in practice unworkable and the legislation in this regard is not fit for purpose.

7.39 The statistics on complaints that were published in the most recent annual report that was available (2011) certainly suggest an inherent inefficiency in that the College is processing, a large number of low-level complaints for which it is not appropriate for it take any regulatory action:

<b>Number of decisions issued (by an ICRC panel) (Some decisions contain more than one action eg SCERP and caution. Accordingly, the total number of decisions will not</b>	362
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<b>always equal the total number of actions)</b>	
<b>No further action</b>	276 (76%)
<b>No further action (ratification of alternative dispute resolution)</b>	41 (11%)
<b>Oral caution</b>	41 (11%)
<b>Specified continuing education or remediation programme (SCERP)</b>	6 (2%)
<b>Referral to Discipline Committee</b>	3 (1%)
<b>Referral for incapacity proceedings</b>	0

- 7.40 The College also cites other factors which contribute to the length of time taken to resolve cases: including the complexity of investigations and the practice of full disclosure to the complainant and member with opportunities to comment including on expert opinions. The College also notes that it has put extra resources into the process and that it has not received any negative feedback from the Health Professions Appeal and Review Board on the timeliness of its complaints handling. The College also assures us believes that the length of time being taken to resolve complaints has not resulted in any risk to patients.
- 7.41 While acknowledging these points, we have a number of observations about the way that cases are handled which we recommend that the College considers. The first concerns the disclosure of documents between complainant and dentist. In a file that we reviewed, we saw that the process of exchanging statements made by the other party resulted in extremely protracted exchanges of correspondence which resulted, it seemed to us, in little progress in the resolution of the grounds of the complaint. This is an example of where the legal obligation for full disclosure limits the regulator's ability to work efficiently.
- 7.42 We attended a panel of the ICRC discussing a case. Panels are supported by a Reason Writer who records the decisions of the panel, and in the panel meeting, asks questions of the panel to ensure that they have a joint understanding of the facts of the case. However, we noted that a great deal of time was spent by the panel simply putting together the facts of the case under discussion, and establishing the sequence of events at a basic level. We were surprised that the staff team or the investigator did not put together for the panel a paper setting out the facts of the case and a chronology of events. We were told that the College is clear that in its understanding that this is the panel's task. Nevertheless, we felt that a considerable amount of panel time could have been better spent, if staff were empowered to do more preparation of the framework of the case in advance
- 7.43 The College has set out for us the cases which establish the role of the statutory committee as opposed to the staff of the college, including Khan v. the College of Physicians and Surgeons of Ontario (CPSO) (1992), quoting the court's view that 'if the reasons presented for the decision are not those of the decision maker, or do not appear to be so, it raises real concerns about the validity of the decision and the genuineness of the entire enquiry',

and that further 'where the decision maker is compelled to consult with others, or not charged with the responsibility of the siding of the case, the appearance of independence may be lost'. The College argues that in the light of this decision, and others, for staff to provide an overview or summary of the case could involve staff too closely in the decision making process. Also, we acknowledge that in his book *A Complete Guide to the Regulated Health Professions Act*, Richard Steinecke states that 'the Health Professions Appeal and Review Board has expressed concern where an ICRC relies too much upon a staff investigator's summary of the information rather than reviewing the information itself'<sup>14</sup>. In this regard the approach in Ontario differs significantly from some other legislative frameworks and limits the ability of the regulator to deal with cases efficiently. Therefore, while we recognise the legal limitations that are at play, we recommend that College works in conjunction with other Colleges in Ontario to explore whether there are ways that the staff could be more supportive to panels within the limits established by the law.

- 7.44 We also note that the panel cannot formally consider an interim suspension order until it reaches a final conclusion, after the registrant has had an opportunity to attend and state their case. This is a risk to public protection as, should an interim suspension order be necessary, its implementation is delayed for several weeks.
- 7.45 We are aware that these are observations from a relatively short and selective observation of the complaints process in action. However, certain aspects of the complaints process appear to us to be inherently inefficient, as we have discussed above. This is no reflection on the dedication, commitment and skills of staff who are managing the process within the legal parameters. Nevertheless, we think there would also be value in the College reviewing its administrative processes for handling complaints. Such a review could bring in external expertise in process or operations management, and could seek to identify whether there are ways that key points in the process could be expedited within the limits placed on the College by its legislation and thus contribute towards the achievement of swifter and more efficient resolution of complaints<sup>15</sup>.
- 7.46 Finally, against this standard, we recommend that the College reviews how it presents the 150 day target in its letters, to ensure that this does not create any artificial expectations about the realistic timescale for the case, but also is clear about the point at which the 150 days starts and ends. We also observed, in a letter to a member informing him that a complaint had been filed against him, that there was scope for confusion in reference to the 150 day target set out in the legislation – the letter did not make it clear from what point the 150 days was intended to start and the letter was dated some months after the filing of the complaint.
- 7.47 Despite these recommendations, according to RCDSO's current practice we are satisfied that it meets this standard.

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<sup>14</sup> Steinecke, R *A Complete Guide to the Regulated Health Professions Act* chapter 5, page 48.

<sup>15</sup> By 'process or operations management' we are not referring to legal process, but to expertise in the allocation of resources to identify the most efficient achievement of desired outcomes.

**All parties to a complaint are kept updated on the progress of their case and supported to participate effectively in the process**

- 7.48 We are satisfied that this standard is being met. The College has provided its template letters, of which there are more than 100, and points out that the steps it takes in the course of a complaint include:
- complainant provided with written notice of expected timelines and copy of the relevant portions of the legislation regarding timelines and the remedies for delay (see comments on timelines at 7.28-7.47)
  - all parties are regularly updated
  - all correspondence is exchanged between parties with opportunity to respond
  - parties are provided with mailing address, telephone number and email address of the investigator
  - expert reports are shared
  - accommodation for people with disabilities is provided
  - the College will translate documents
  - in the course of our review of case files we noted that these steps were being followed.

7.49 We are satisfied that the College meets this standard.

**All decisions, at every stage of the process, are well reasoned, consistent, protect the public and maintain confidence in the profession**

- 7.50 We acknowledge the lengths to which the College goes to ensure that this standard is being met. These including training for panel members; reminders of the need to avoid bias in decision making; and the requirement for all decisions to be written in a template format; and rigorous and on-going training for Discipline Committee members. Reason writers are employed to record panel's decisions, who work entirely at the direction of the panel and do not participate in the decision.
- 7.51 Decisions can be appealed, within statutory deadlines, to the Health Profession Appeal and Review Board, either by the complainant or the member. The HPARB's decisions are available on the website of the Canadian Legal Information Institute: [www.canlii.org/en](http://www.canlii.org/en).
- 7.52 The College has provided us with statistics that during the years 2009, 2010 and 2011, the HPARB issued 219 decisions with respect appeals against College ICRC panel decisions. Of the 219, in 201 the College's decision was upheld; four appeals against decisions to caution the member were upheld and the decision was overturned; HPARB requested supplementary investigation in 14 other decisions.
- 7.53 We reviewed the availability of information about appeals available on the HPARB's website and through to the Can Lii website. We found this information difficult to locate, and were disappointed that there was no easily

read, comparative data about appeals against the decisions of different colleges.

- 7.54 We spoke to Senior Counsel for the HPARB, who described the Board's processes to us, but said that he felt it would be 'inappropriate' to comment on the RCDSO.
- 7.55 We also reviewed decisions in a number of case files. In general we found that decisions were appropriate and well-reasoned. However, in one discipline case that we reviewed, the dentist was found to have made false claims for payment for work not carried out or carried out unnecessarily, this affecting 45 patients over four years. She had also failed to keep proper records. She had previously entered into voluntary undertakings and accepted monitoring of her practice. She received a six month suspension, a reprimand and conditions. While recognising the professional gravity of being unable to work for six months, nevertheless we were very surprised that given the agreed facts of the case her registration was not revoked. The reasons given did not explore why the sanction was the appropriate one, and other sanctions were not. The RCDSO has set out to us that in Ontario law, except in cases of sexual impropriety or drug abuse, a court will not support a revocation at a first disciplinary hearing. This significantly limits the discretion of the regulator and appears to us to place the interests of the registrant before that of their patients. The College has also provided evidence to us of the force of a joint submission by both parties, following discussion and testing of options at the pre-hearing conference. It has also observed to us that the member is being monitored and reports are being made to the ICRC (R) panel. Therefore, the College considers that this sanction was appropriate and that the monitoring in place is satisfactory.
- 7.56 We also think this case touches on the issues that we have discussed above about the risks of a remedial approach. While the public are supportive of more remedial approaches, research that we have conducted recently in the UK suggests that this is only where they are confident that they are being protected and that the process is transparent. We are concerned that a remedial approach risks failing to uphold the standards of the profession and the public's trust<sup>16</sup>, if someone who has caused harm through unnecessary work on patients and who has been serially dishonest is able to continue practising.
- 7.57 The College has set out to us that the process for advising panels on the range of sanctions that would be applicable in any given case is that the panel is provided with oral advice on the range of sanctions that are available and might be appropriate. However, as we have noted above, a joint submission by both parties following the pre-hearing conference has considerable force within the Ontario legal system, and relieves the panel of the responsibility of providing detailed reasons. In the case that we reviewed, we found the lack of reasons unsatisfactory. Therefore, in addition to the ways in which the College already seeks to ensure consistency in decision making, and the ways that the wider regulatory system contributes

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<sup>16</sup> The purposes of professional regulatory processes are generally held to be to protect the public, to uphold standards of practice and behaviour and to ensure public confidence in regulation.

to this, we recommend that the College reviews the way in which panels record and explain their decisions on the appropriate penalty or sanction in any given case, to ensure that these are achieving the greatest possible consistency and transparency in decision making. Panels should set out not only why they have chosen a specific penalty or sanction, taking into account the advice that is provided to them and the unique features of each case, but also why they have not chosen others. Thorough discussion of the different available sanctions also gives panels a means to ensure that all relevant issues have been addressed

7.58 These points notwithstanding, we are satisfied that the College meets this standard.

**All final decisions, apart from matters relating to the health of a professional, are published and communicated to relevant stakeholders**

7.59 The College goes to considerable lengths to ensure that final decisions are published and transparent. The information that is made available to the public and posted on the College's website is set out in section 23 of the procedural code of the RHPA and includes any terms, conditions and limitations in effect on a member's certificate; a notation of every matter that has been referred to the Discipline Committee which has not yet been finally resolved; the results, including a synopsis of the decision of every disciplinary and incapacity proceeding, unless there is no finding; a notation of every finding of professional negligence or malpractice, which may or may not relate to a member's suitability to practise, unless the finding is reversed on appeal; a notation of every revocation or suspension; any additional information that a panel of the Registration, Discipline or Fitness to Practise Committee specifies shall be included; a notation of the fact that a member has resigned during or as a result of a complaints or reports process and agrees never again to practise in Ontario.

7.60 The College has also agreed a provision in By-Law 7, which make the following items available on the College's website: any information that the member and the college agree should be included in the register (such as information about a voluntary undertaking or agreement); information about interim orders in effect, such as the fact of the order, the nature of the order and the effective date; where an allegation of professional misconduct or incompetence has been referred to the discipline committee and not yet disposed of, a brief summary of each specified allegation and the anticipated hearing date, if set; a notation of the fact of a referral of the question of a member's capacity to the Fitness to Practise Committee, if not yet disposed of; a notation of an agreement to resign during or in order to avoid a proceedings before the Discipline or Fitness to Practise Committee; a summary of any existing restriction on a members right to practise that has resulted from an undertaking, an agreement, or has been imposed by a court or lawful authority. A proposed by-law is under consideration to place on the register deficiencies in relation to facility inspections for CT scans and for anaesthesia. Consideration is also being given to including SCERPs and cautions.

- 7.61 In addition:
- decisions of the Discipline Committee where there has been a finding of professional misconduct are available to the public
  - summaries of decisions, including the registrant's name and address, are published in the College Dispatch newsletter, and are referenced in the College's annual report, which is sent to Government
  - if there is a discipline hearing without a finding of professional misconduct, the decision will still be published, but without the name and address of the registrant
  - the full text of discipline decisions and reasons are available to anyone on request (with patient names removed to protect privacy)
  - discipline hearings are open to the public. If a reprimand is ordered as part of the penalty in a discipline hearing, the reprimand is administered on the record and as part of the open hearing.
- 7.62 In June 2012, the College Council approved a policy whereby in cases where there is a finding of professional misconduct and the panel has a concern about the health of patients based on evidence presented at a hearing (patients who may not be aware that proceedings are taking place), the panel may give a direction to the Registrar to communicate the Discipline Committee decision to those patients.
- 7.63 We have reviewed the College website to ensure that information is available as stated. We found the website easy to navigate, and the register easy to search. We found information available about members as described. Therefore we are convinced that the College meets this standard, and is demonstrating good practice.

**Information about complaints is securely retained.**

- 7.64 The College has told us that it takes the following measures to ensure that information about complaints is securely retained:
- complaints files are kept on a secure floor, accessible only by security card. The College also employs a full time security guard to monitor guest traffic throughout the building
  - college meeting rooms are located on a separate floor, where no files are stored
  - the College's electronic case management system is maintained on a secure network with appropriate firewalls and is monitored by the IT department regularly
  - in the event of an appeal, an encrypted electronic copy of the complaint file is sent to the Health Professions Appeal and Review Board using a password
  - patient records are always sent to parties by courier and not by mail.
  - where a record of investigation contains private health information regarding a patient, and where the patient does not consent to the

disclosure of such information, that information is redacted and not provided to the other party

- in the event of a 'minor' breach of patient information the College contacts the recipient of the information immediately and asks for the return of such information and confirmation that no copies have been made. Breaches of this nature are extremely rare and the College acts immediately and transparently to remedy the error
- the college works in concert with the Office of the Privacy Commissioner to ensure that private health information is dealt with in an appropriate way
- the college also works in concert with the Office of the Privacy Commissioner to secure patient records when they are abandoned by a member of former member of the College.

7.65 The College reports that in the past 15 years only once have they been unable to locate a complaint file. They have also provided an example to us of handling patient records confidentially when on two occasions they became custodians of hundreds of abandoned patient records from closed dental practices and bore the expense of transferring the records by courier either directly to the patient or to their new dentist. There has never been a referral to the Privacy Commissioner.

7.66 On the basis of this evidence, we are satisfied that the College meets this standard.

## 8. Other standards

### **The regulator communicates effectively with members, associations, Government and other stakeholders**

- 8.1 We have commented elsewhere in the report on the College website as a key means of communicating with the public, members, and other stakeholders. The website was renewed in 2012, and is an excellent resource, clear, comprehensive and easily navigable. We strongly commend the design of the website to regulators and others.
- 8.2 We also commend the regulator's success in corporate branding. The College's identity and brand run clearly throughout all of its documents and other publications.
- 8.3 We have commented elsewhere on the importance of the College newsletter *Dispatch* as a vehicle for guidance and standards for registrants. We have also noted the College's practice of including all members in the consultation on guidance and standards; its routine consultation with stakeholders as part of this process; and its involvement of external experts in the working group convened to develop or review standards and guidance. These stakeholders include all health regulatory colleges in Ontario, all dental regulators in Canada, dental faculties in Canada, provincial and national dental associations and Government agencies.
- 8.4 We note that the College is an active member of the Federation of Regulatory Colleges of Ontario. We have commented on the joint working that the College is pursuing, with other Colleges, to seek amendments of certain aspects of the RHPA. We also note that the College is an active member of the Canadian Dental Regulatory Authorities Federation and that the President of the RCDSO is also the President of the CDRAF, and that the Registrar of RCDSO is also the Executive Director of the CDRAF.
- 8.5 The College has also informed us of the following activity:
- the Registrar meets regularly with the Director of Policy of the Government and with the assistant Deputy Minister
  - the Registrar provides regular updates to the Assistant Deputy Minister on the activities of the College
  - the Registrar meets regularly with the Office of the Fairness Commissioner
  - the Registrar and President speak to as many of the 40 local dental societies as possible per year and address the Ontario Dental Association (ODA) three times per year
  - the Registrar and President meet regularly with the ODA President and Executive Director
  - the Registrar meets regularly with the Registrars of the College of Physicians and Surgeons of Ontario, the College of Nurses of Ontario and the Ontario College of Pharmacists, and other health Colleges, and regulators of professions outside health

- the Registrar meets with other stakeholders including advocacy groups, insurance groups and the federal government
- the Registrar is an Associate Professor at the two dental schools in Ontario and, in addition, meets regularly with the Deans
- the Registrar meets regularly with the Commission on Dental Accreditation of Canada (CDAC), the National Dental Examining Board of Canada (NDEB) and the Royal College of Dentists of Canada (RCDC).
- the Registrar collaborates regularly with non-regulatory Colleges and other relevant stakeholders.

8.6 Taking all of this evidence into account, we are satisfied that the College meets this standard.

**Public appointees and other public stakeholders are appropriately involved in the work of the regulator**

8.7 There are between nine and eleven public members on the Council, appointed by the Lieutenant-Governor in Council. There are 14 dentists; 12 are elected to the Council by registrants, and two are academic representatives, one each from the two universities in Ontario.

8.8 There are public members on all of the College's committees and panels, and the College has informed us that five of the Committees have public members as the Chair: Elections Committee, Fitness to Practise Committee, Finance, Property and Administration Committee, Legal and Legislation Committee and the Professional Liability Program Committee.

8.9 Despite being in the minority, it is clear from our discussion with members of the Executive Committee, and from our observation of an ICRC panel, that public members are vigorous in ensuring that the public interest is at the heart of decision making.

8.10 The public members themselves made clear to us that they felt fully integrated into the work of the College, that their contributions were valued and that they were supported in fulfilling their role.

8.11 All Council meetings are open to the public, and the College informs us that several members of the public regularly attend.

8.12 We have commented elsewhere in the report that we feel that the College needs to make renewed efforts to engage with members of the public and public organisations in particular in the development of its standards and guidance. However, we acknowledge that submissions from all parties to a consultation are considered.

8.13 We are satisfied that this standard is being met.

**The roles and decision making powers of staff and statutory committees are clearly defined and support public protection**

8.14 The College has provided us with substantial documentary evidence of induction material and guidance manuals and other materials for committee and Council members that guide them clearly on their role. We are

particularly impressed by the focus of this material on public protection, and the emphasis on avoiding bias and conflicts of interest.

8.15 It was evident through our discussion with members of staff and with Council and Executive Committee members that roles and boundaries are both clearly drawn and clearly understood.

8.16 Therefore, we are satisfied that this standard is being met.

### **The regulator ensures that all registrants remain up to date and fit to practise**

8.17 The College has set out to us that the RHPA mandates a quality assurance programme, which is designed to ensure that the knowledge, skill and judgement of Ontario's dentists remains current throughout their careers; and that they continue to provide safe, effective, appropriate and ethical dental care to their patients.

8.18 The College's Quality Assurance Committee, one of its statutory committees, has responsibility for the development, review and evaluation of the College's QA programme. The objectives set out in the legislation include:

- to develop, establish and maintain programmes and standards of practice to assure the quality of the practice of the profession
- to develop, establish and maintain standards of knowledge and skill and programmes to promote continuing evaluation, competence and improvement among the members
- to develop, in collaboration and consultation with other Colleges, standards of knowledge, skill and judgement relating to the performance of controlled acts common among health professions to enhance interprofessional collaboration, while respecting the unique character of individual health professions and their members
- to promote interprofessional collaboration with other health professional colleges
- to develop, establish and maintain standards and programmes to promote the ability of members to respond to changes in practice environments, advances in technology and other emerging issues.

8.19 A Quality Assurance programme must contain:

- continuing education or professional improvement
- self, peer and practice assessments
- a mechanism for the College to monitor members' participation and compliance with the QA programme.

8.20 A new QA programme was launched by the College in December 2011. Every member holding a general or specialty certificate is required to participate in the QA programme. The College has set out to us that the QA programme has four main elements:

- all members are required to pursue continuing education activities as part of their commitment to the profession and lifelong learning. This includes

obtaining at least 90 points in the each three year cycle. There are three categories in which members may acquire points. This is supported by an e-portfolio which allows members to keep track of their points

- a Practice Enhancement Tool, which is an online self-assessment programme that allows members to evaluate and assess their basic competency including practice, knowledge, skill and judgement based on peer-derived standards, to be taken every five years. We understand that this is the first such tool developed in North America, and has been studied by the University of Toronto. The University's Faculty of Education has been engaged by the College to follow the programme and assess its goals and outcomes. The five year cycle reflects the pace of change in dental practice and is designed to ensure that dentists remain up to date
- a Practice Enhancement Consultant is available to be contacted by members to discuss their results, and to provide guidance in appropriate continuing education activities
- each year members are required to declare, as part of their annual renewal, whether they are in compliance with programme requirements.

8.21 We are satisfied that the College meets this standard.

## 9. Recommendations

- 9.1 We recommend that the College reconsiders how it might take more active steps to engage with the public in the development of guidance and standards. We recommend further that the approach taken encompasses both individual members of the public who might be interested to participate in consultation exercises, and patient and public representative groups (5.17).
- 9.2 We recommend that the RCDSO continues through its leadership of the CDRAF to influence and identify opportunities to expand the range of countries to which mutual recognition applies (6.5).
- 9.3 We recommend that the a future area of work for the College could be to look at the fairness of its registration practices in relation to people with a disability who wish to practise as dentists. From a strong starting point the College would be in a good position to demonstrate leadership in ensuring fair treatment of these applicants (6.20).
- 9.4 We recommend that the College reviews how successfully it is managing ADR, looking at whether the right cases are being dealt with through this process and if there are methods that could be employed to ensure that resolution is reached more quickly. An example might be to set criteria for when a case will be returned to the non-ADR route if there is a failure on the part of either the complainant or the registrant to engage with the process once it has been explained to them and they have agreed to enter into it; to adhere more strictly to timelines; and to explore approaches such as the use of teleconferences rather than face to face meetings (7.21).
- 9.5 We recommend that the RCDSO in collaboration with other colleges continues to pursue legislative reform with regard to the speed with which it is able to secure an interim suspension. The point of interim suspension orders is precisely to enable a regulator to take action quickly when public protection is a priority (7.27).
- 9.6 We recommend to the College that it is more explicit about the arguments and evidence for its remedial approach to handling complaints (7.30).
- 9.7 We recommend that the College continues to work with other colleges to pursue the legislative change required to secure more flexibility in complaints handling, possibly with a view to gaining powers to operate triage of complaints in some form at the initial stage (7.37).
- 9.8 We recommend that the College works in conjunction with other colleges in Ontario to explores whether there are ways that the staff could be more supportive to panels within the limits established by the law. (7.43).
- 9.9 We recommend that the College reviews its administrative processes for handling complaints. Such a review could bring in external expertise in process or operations management, and could seek to identify whether there are ways that key points in the process could be expedited within the limits placed on the College by its legislation and thus contribute towards the achievement of swifter and more efficient resolution of complaints (7.45).

- 9.10 We recommend that the College reviews how it presents the 150 day target in its letters, to ensure that this does not create any artificial expectations about the realistic timescale for the case, but also is clear about the point at which the 150 days starts and ends (7.46).
- 9.11 We recommend that the College reviews the way in which panels record and explain their decisions on the appropriate penalty or sanction in any given case, to ensure that these are achieving the greatest possible consistency and transparency in decision making (7.57).

## 10. People we spoke to in the course of the review

- Kelly Bolduc-O'Hare, public member of Council , RCDSO
- Eric Bruce, Reason Writer, Professional Conduct and Regulatory Affairs, RCDSO
- Ted Callaghan, public member of Council and Executive Committee member, RCDSO
- Thomas Corcoran, Chair, Health Professions Regulatory Advisory Council
- Irwin Fefergrad, Registrar RCDSO
- Dr Ramya Carmini Fernando, dentist
- Dr Michael Gardner, Manager, Quality Assurance RCDSO
- David Jacobs, Senior Counsel, Health Professions Appeal and Review Board
- Nuzhat Jafri, Executive Director, Office of the Fairness Commissioner
- His Worship K S Joseph, public member of Council, RCDSO
- Dr John Kalbfleisch, Executive Committee, RCDSO
- Catherine Kerr, public member of Council and Executive Committee member, RCDSO
- Robert Lees, Manager, Registrations
- Lori Long, Manager, Professional Conduct and Regulatory Affairs, RCDSO
- Peggi Mace, Communications Director, RCDSO
- Marianne Park, public member of Council, RCDSO
- Dayna Simon, Counsel, Regulatory Affairs, RCDSO
- Dr Peter Trainor, President, RCDSO
- Dr Ron Yracavitch, Executive Committee member, RCDSO
- Deanna Williams, Supervisor, College of Denturists of Ontario

# 11. The Standards of Good Regulation<sup>17</sup>

## Guidance and standards

- Standards of competence and conduct reflect up to date practice and legislation. They prioritise patient and service user safety and patient and service user centred care
- Additional guidance helps registrants to apply the regulators' standards of competence and conduct to specialist or specific issues including addressing diverse needs arising from patient and service user care.
- In development and revision of guidance and standards, the regulator takes account of stakeholders' views and experiences, external events and developments, international regulation and best practice, and learning from other areas of its work
- The standards and guidance are published in accessible formats. Registrants, potential registrants, patients, service users and members of the public are able to find the standards and guidance published by the regulator and can find out about the action that can be taken if the standards and guidance are not followed

## Registration

- Only those who meet the relevant requirements are registered
- The registration process, including the management of appeals, is fair, based on the regulator's standards, efficient, transparent, secure, and continuously improving
- Through the regulator's register, everyone can easily access information about registrants, except in relation to their health, including whether there are restrictions on their practice
- Patients, service users and members of the public can find and check a health professional's registration, and are aware of the importance of doing so
- Risk of harm to the public and of damage to public confidence in the profession related to non-registrants using a protected title or undertaking a protected act is managed in a proportionate and risk based manner

## Handling complaints

- Anybody can make a complaint about a registrant
- Where necessary the registrar can initiate an investigation without relying on the receipt of a complaint
- Information about complaints is shared with other organisations within the relevant legal frameworks

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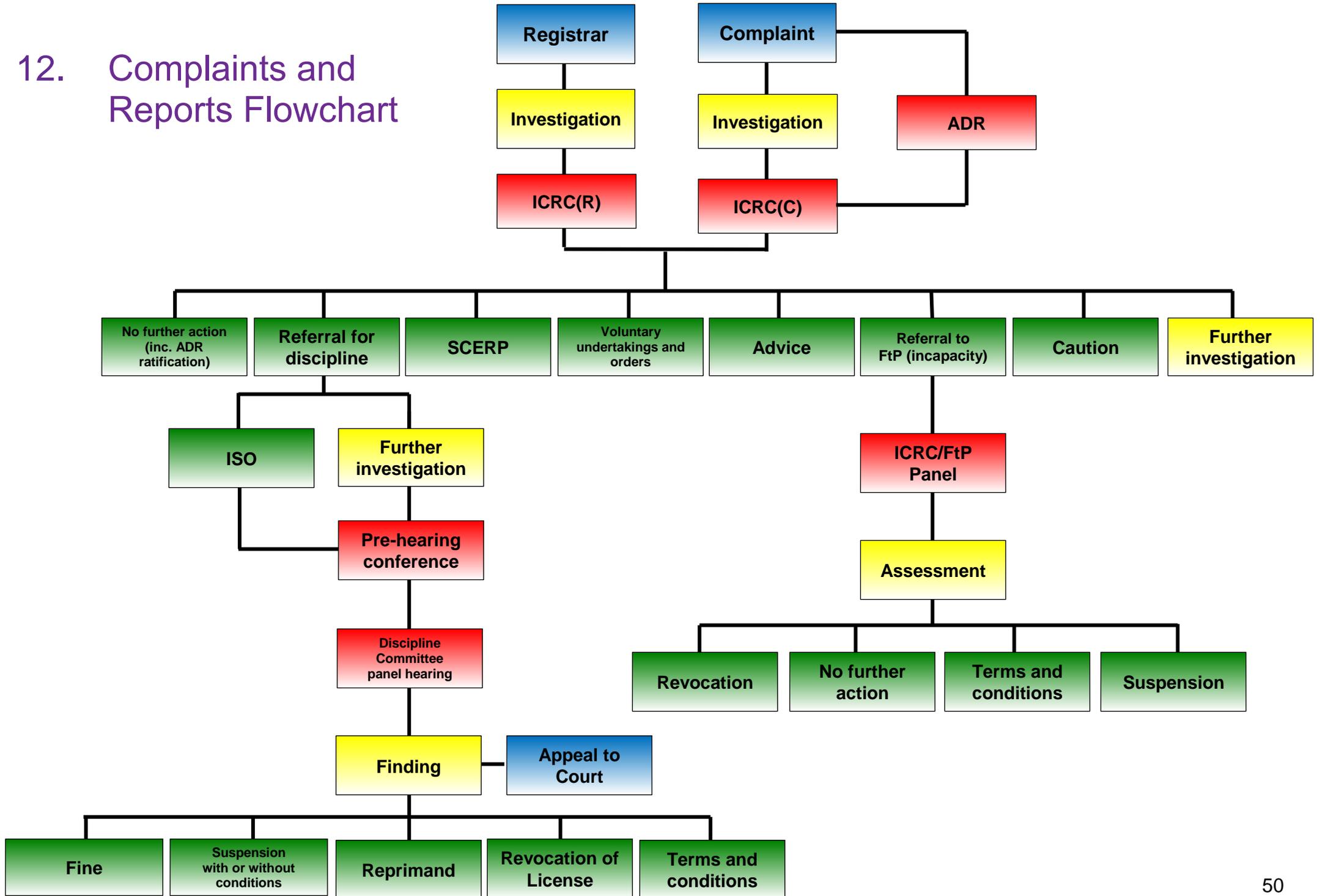
<sup>17</sup> See also footnote 2. As adapted for the legislative framework of professional regulation in Ontario, Canada

- The regulator will investigate a complaint, determine if there is a case to answer and take appropriate action including the imposition of sanctions
- All complaints are reviewed on receipt and serious cases are prioritised and where appropriate considered for an interim suspension
- The complaints process is transparent, fair, proportionate and focused on public protection
- Complaints are dealt with as quickly as possible taking into account the complexity and type of case and the conduct of both sides. Delays do not result in harm or potential harm to patients and service users. Where necessary the regulator protects the public by means of interim suspension
- All parties to a complaint are kept updated on the progress of their case and supported to participate effectively in the process
- All decisions, at every stage of the process, are well reasoned, consistent, protect the public and maintain confidence in the profession
- All final decisions, apart from matters relating to the health of a professional, are published and communicated to relevant stakeholders
- Information about complaints is securely retained

#### **Other standards**

- The regulator communicates effectively with members, associations, Government and other stakeholders
- Public appointees and other public stakeholders are appropriately involved in the work of the regulator
- The roles and decision making powers of staff and statutory committees are clearly defined and support public protection
- The regulator ensures that all registrants remain up to date and fit to practise.

## 12. Complaints and Reports Flowchart



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