

KEEPING CURRENT

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HPARB Complaint Reviews: 5 Tips for Regulated Health Professionals

By Lad Kucis

Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes several of Canada's largest banks, public companies including mining, high tech and software companies, real estate enterprises, lenders and investors.

Lad Kucis
Partner
416.864.3114
lkucis@grllp.com

As a lawyer who regularly represents regulated health professionals (i.e. pharmacists, chiropractors, massage therapists, etc.) in Complaint Reviews before the Health Professions Appeal and Review Board ("HPARB"), I wanted to provide some key considerations to keep in mind:

1. Be Aware of the Format & Scope of a Complaint Review

Any health professional considering a Complaint Review or who is already involved in such a proceeding needs to be aware of its format and scope. Firstly, a Complaint Review is not a hearing, but rather involves the presentation of submissions, absent witnesses. The HPARB panel will consider the submissions and the record of documentation and determine (a) whether the decision under review was reasonable; and (b) whether was the underlying investigation was adequate. This is the extent of the inquiries to be conducted by HPARB.

2. Be Cautious About Commencing a Complaint Review of an "Advice and Recommendations" Disposition

I generally do not like the idea of initiating a Complaint Review of a decision where the disposition was limited to the issuance of "advice and recommendations", as this type of disposition does not result in a notation on the public register. It is also important to keep in mind that HPARB decisions are published and include the full name of the health professional. As such, by commencing a Complaint Review, the health professional has essentially brought public attention to a matter that would have otherwise been left confidential. Further, health professionals need to be aware that HPARB possesses the power to send a matter back to the health professions college for further investigations or can independently impose an alternative disposition (which may be more serious than the original disposition).

3. Do Not Request a Complaint Review if There is No Reasonable Prospect of Success

I fully understand why a health professional would want to commence a Complaint Review to set aside a disposition of an “oral caution” or a specified continuing education or remediation plan (SCERP), as such dispositions are posted on the public register. Notwithstanding, it is important that health professionals obtain an objective legal opinion to ascertain the merits of commencing a Complaint Review, including the reasonable prospects of success. I have seen many cases where there was clear evidence of significant misconduct, and the health professional would have been best advised not to commence the Complaint Review. In such cases, the decision to commence the Complaint Review will only bring further publicity to the matter and as described above, could result in further investigations or the imposition of a more serious disposition.

4. Attend at the Complaint Review

I believe that it is highly advisable for a health professional to attend at the Complaint Review, as it demonstrates that they are taking the matter seriously and respect the regulatory process. In cases where a health professional is the party who has commenced the Complaint Review, I would take it up a notch and say that attendance is imperative. Personally, I think it is difficult to convince an HPARB panel that a decision is so flawed that it should be set aside if the health professional cannot make the time to attend. Frankly, as Complaint Reviews are now held on a virtual basis, rather than in-person, I believe that there is no excuse for non-attendance and is a poor look for a health professional.

5. Engage Experienced Health Law Counsel

A Complaint Review is legal proceeding which can result in significant legal consequences. As such, a health professional would be well advised to retain experienced health law counsel for assistance in all such cases to ensure that their interests are being protected. If a health professional is seeking to commence a Complaint Review, the need for legal counsel becomes imperative, as there is a much higher level of advocacy required in such cases. This includes the development and presentation of a comprehensive legal argument, including referencing case law, in support of a request to set aside a decision. Further, as can be seen above, in many cases there is significant value in obtaining legal advice to not proceed with a Complaint Review.

Conclusion

I am hopeful that the above information will be of assistance to health professionals who are considering a Complaint Review and to those already involved in such a proceeding. As with any legal proceeding, it is important to ensure that you are well informed and well represented.

About the Author

Lad Kucis is certified by the Law Society of Ontario as a specialist in health law and provides advice and representation to regulated health professionals in respect of all types of regulatory matters, including complaint and disciplinary matters before their regulatory colleges and complaint reviews before the Health Professions Appeal and Review Board.

Lad can be reached by telephone at 416.864.3114 or by email at lkucis@grllp.com.

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