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Professional Conduct Expectations

It is the expectation of the public, employers, other professionals and government that self-regulated professionals, including speech-language pathologists (SLPs) and audiologists, provide competent, safe, and ethical professional services. They are expected to maintain high standards of practice, in compliance with the *Health Professions Act (HPA)*, *Speech-Language Pathologists and Audiologists Professional Regulation (Regulation)*, other relevant legislation, *Standards of Practice* and *Code of Ethics*. Professionals who maintain high standards in their practice are conscious of their professional conduct and build trust and confidence in their profession.

To gain a better understanding of what professional conduct means, it is beneficial to review the definition of “unprofessional conduct” as used in the section 1(1) of the HPA.

(pp) “unprofessional conduct” means one or more of the following, whether or not it is disgraceful or dishonourable:

- (i) displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;
- (ii) contravention of this Act, a code of ethics or standards of practice;
- (iii) contravention of another enactment that applies to the profession. For example, this might include failure to practice in compliance with privacy legislation;
- (iv) representing or holding out that a person was a regulated member and in good standing while the person’s registration or practice permit was suspended or cancelled. In addition, it is important for individuals who change their registration status to “Inactive” to remember that they cannot represent themselves as a registered member of ACSLPA and they cannot use the protected titles of their profession until such time that they change their status back to “Registered”.

(v) representing or holding out that person's registration or practice permit is not subject to conditions when it is or misrepresenting the conditions;

(vi) failure or refusal

- (A) to comply with the requirements of the continuing competence program, or
- (B) to co-operate with a competence committee or a person appointed under section 11 undertaking a practice visit;

(vi.1) failure or refusal

- (A) to comply with a request of or co-operate with an inspector;
- (B) to comply with a direction of the registrar made under section 53.4(3);

Section 53.4(3) of the *Health Professions Act* allows a council to appoint inspectors for the purpose of determining whether a regulated member is complying with the Act, bylaws, standards of practice and code of ethics of their profession.

(vii) failure or refusal

- (A) to comply with an agreement that is part of a ratified settlement,
- (B) to comply with a request of or co-operate with an investigator,
- (C) to undergo an examination under section 118; under this section of the *Health Professions Act*, if a Complaints Director of a college has grounds to believe that a regulated member is incapacitated, they may direct that person to submit to a specified physical or mental examination within a specified time frame.
- (D) It is also unprofessional to fail or refuse to comply with a notice to attend or a notice to produce under Part 4; this part of the *Health Professions Act* deals with the complaint process, alternative complaint resolution, investigations, hearings, decisions and appeals.

(viii) contravening an order under Part 4, conditions imposed on a practice permit or a direction under section 118(4) may also be considered unprofessional conduct;

(xii) conduct that harms the integrity of the regulated profession; this could include any type of action that might harm the integrity or reputation of a profession.

Items not listed apply to partnership restriction with certain specific professions such as physicians, dentists, optometrists and chiropractors.

Causes of Unprofessional Conduct

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Overall, in the context of the HPA definition of “unprofessional conduct”, the term refers to behavior that is unskilled and/or unethical. Such behaviors would also be inconsistent with the professional practice expectations set out in the *Standards of Practice* and *Code of Ethics*.

James Casey, Q.C. of Field Law practices in the area of administrative law and professional regulation. Based on his experience, he has developed what he refers to as his “unscientific list” of the top ten causes of unprofessional conduct.

In no particular order, they are as follows:

1. Many complaints are filed in regards to professionals who fail to maintain currency of professional knowledge and competence. All professionals have an obligation to ensure that they are current and competent in their practice. The CCP of the College is one of the tools available to assist regulated members in this regard.
2. Unprofessional conduct may occur when a regulated member fails to seek assistance or make appropriate referrals when they encounter a difficult situation for which they do not have the necessary skills. It is important that each professional recognize their limitations and when necessary, to seek assistance from a colleague or to refer the client to someone with the necessary skills.
3. When a professional’s personal difficulties begin affecting their work life, it is important to seek appropriate help or counseling before they become at risk of unprofessional conduct.
4. Alcohol and drug addictions are the root cause of some of the most serious cases of unprofessional conduct. It is important that professionals keep themselves well and seek help in a timely manner.
5. Poor communication is the root many unprofessional conduct complaints. Clients are much less likely to file a complaint if they perceive that their service provider cared and communicated with them.
6. Complaints of unprofessional conduct are also commonly filed by clients who perceived that their concerns were not taken seriously or appropriately addressed. It is important to take all concerns and complaints seriously and communicate effectively. Individuals who feel that their concerns were taken seriously and effectively rarely file a complaint of unprofessional conduct with a regulatory colleges. For most people, filing such a complaint is a last resort, when they believe that nothing else has worked.
7. Environmental factors such as excessive work demands, lack of mentoring or supervision, or inappropriate workplace stress may all contribute to a professional engaging in unprofessional conduct. It is important to remember that regardless of the environment, a professional has an obligation to ensure that they are practicing in compliance with the

Standards of Practice and Code of Ethics. At times, it may be necessary to seek advice from a colleague, supervisor or the College.

8. Personality conflicts may escalate to unprofessional conduct. While there will always be some people that are difficult to get along with, all health professionals have an obligation to maintain a professional demeanor in their interactions with others. Any disputes should be resolved before they escalate to a major confrontation.
9. Complacency about professional standards is another common cause of professional conduct. All professionals should continuously ensure that they understand and practice in compliance with their professional standards.
10. Failure to adequately document or chart is a common element in professional conduct complaints. Good documentation practices are the best defense in terms of providing an objective account of what happened.

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It is important to recognize that all professionals make mistakes. However, it is important to learn these mistakes and to be aware of how to conduct oneself in a professional manner.

Complaint Process

On occasion, a person may have a concern regarding the professional conduct of an SLP or audiologist. This could include any of the following:

- A patient/client or a member of their family
- A regulated or former member of ACSLPA
- Another health care professional
- An employer
- A member of the public

When ACSLPA is notified of a concern, the person is generally encouraged to first discuss their concern directly with the regulated member. If the two parties are unable to find a mutually satisfactory solution and resolve their difficulties, then the person who has the concern may wish to pursue the matter with the supervisor of the SLP or audiologist. If the issue is still not resolved in a satisfactory manner, a formal complaint may be filed with ACSLPA.

A complaint may be filed anytime, including up to two years after an SLP or audiologist ceases to be registered with ACSLPA. It should also be noted that employers have a legal obligation to inform a college if the employment of a regulated member is terminated, suspended, or if the regulated member has resigned for reasons related to unprofessional conduct; such information is treated as a formal complaint.

All complaints are taken very seriously. The legislated obligations of ACSLPA in dealing with complaints are stated in section 4 of the HPA.

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Complaints may not be anonymous. They must be submitted to the Complaints Director in writing and must include the following:

- The name of the regulated (or former regulated) member involved;
- A detailed description of the key facts and events that occurred, including dates, times, and location;
- Any other information/documents that support the allegations being made; and
- The name, signature and contact information of the person filing the complaint.

Once a written complaint has been received by ACSLPA, the Complaints Director will begin a review. The review is designed to ensure fairness to both the complainant and regulated member, and involves:

- The regulated member will receive a copy of the written letter of complaint and asked to provide a response.
- Additional information may be gathered through one or more of the following:
 - Interviews with the complainant, regulated member and other relevant parties;
 - Contacting individuals or organizations who may have relevant information; and
 - A review of client files/records.

It should be noted that even if a written complaint is not received and the Complaints Director has reasonable grounds to believe that the conduct of a regulated or former member constitutes unprofessional conduct, the Complaints Director may treat the matter as a complaint and act on it.

Within 30 days of receiving a complaint, the Complaints Director must give written notice to the complainant of the action that will be taken. This does not mean that the entire matter must be resolved within 30 days. Depending on the type of action taken and circumstances around the complaint, once the complainant is notified, the process could take weeks or months before it is resolved.

Under the HPA, the Complaints Director may take any of the following actions:

- Encourage the complainant and investigated person to communicate with each other and resolve the complaint;
- Attempt to resolve the complaint, with the consent of the complainant and investigated person;
- Refer the complaint to an alternative complaint resolution process;
- Request an expert to assess and provide a written report on the subject matter of the complaint;

- Conduct or appoint an investigator to conduct an investigation;
- Dismiss the complaint; and/or
- Direct the investigated person to submit to specified physical or mental examinations if the Complaints Director has grounds to believe the investigated person is incapacitated.

These actions are explored further below.

Certain types of concerns and problems are dealt with more effectively through discussion and resolution between the concerned parties, rather than through a more formal process where the member of the profession is charged with unprofessional conduct and a hearing is held.

When appropriate, the Complaints Director will encourage the concerned parties to communicate with each other and resolve the issues surrounding the complaint. With the consent of both parties, the Complaints Director may also work with the parties in an attempt to resolve the complaint.

The Complaints Director may also suggest to the parties that they pursue an alternative complaint resolution process to resolve the matter. This process includes involvement of a neutral third party who acts as a mediator to assist the parties to achieve a resolution and come to some form of agreement between themselves.

If these efforts to resolve a complaint are not successful, the Complaints Director will determine which the next action to be taken.

In some situations, the Complaints Director may determine that an assessment is required for the purpose of obtaining further information regarding the matter. Specifically, the Complaints Director may request an expert to review and assess the issues surrounding a complaint and provide a written report on the matter. This process could involve a review of select client files for whom the investigated person provided services, providing an opinion as to whether or not the services provided constituted acceptable practice, and an opinion as to what would be considered acceptable practice relation to the services provided to a given client.

The Complaints Director may also determine that an investigation is required for the purpose of obtaining further information regarding the matter. The Complaints Director may conduct or appoint an investigator to conduct an investigation. An investigator may be a qualified, unbiased speech-language pathologist or audiologist, and/or in some cases, an independent professional investigator hired by ACSLPA to conduct the investigation.

The HPA states the process for an investigation, specifying the following:

- The investigated person and the complainant are notified that the matter that has been referred to an investigation and provided with the name of the investigator.

- The investigator meets with the complainant and others who have direct knowledge of the matter for the purpose of gathering information and documents that relate to the complaint.
- The investigator meets with the investigated person for the purpose of gathering information and documents that relate to the complaint. The investigated person may be accompanied by a representative while meeting with the investigator.

Section 63 of the HPA states the powers of the investigator. During the course of the investigation, the investigator may:

- Require any person to answer any relevant questions. The investigator may direct questions to be answered under oath, if deemed necessary.
- The investigator may require any person to provide any documents or items relevant to the investigation. The person must also allow the investigator to take copies of any documents.
- The investigator may at any reasonable time enter and inspect any premises, except a private home, where the investigated person provides services.
- The investigator also has the authority to investigate other matters unrelated to the original complaint that are related to the conduct of the investigated person.
- Investigators may electronically record interviews with complainants, SLPs and audiologists, and other witnesses, to ensure the integrity of the investigation by providing an actual recording of the interview.
- Depending upon the circumstances around the complaint, during the investigation process, the Complaints Director may make a recommendation to the Registrar that the investigated person be subject to conditions on their practice permit or suspension of their practice permit, pending the outcome of a professional conduct hearing.
- Upon completion of the investigation, a report must be prepared and submitted to the Complaints Director. Based on the information provided in the report, the Complaints Director will then determine the next course of action. This could include requesting further investigation or assessments, dismissal of the complaint, or referral of the matter to a hearing.

The Complaints Director may dismiss a complaint if they are of the opinion that there is insufficient or no evidence to support the claim, or if the complaint is deemed trivial or vexatious. Upon being advised of a decision to dismiss a complaint, the complainant has the right to review a request of the decision.

Under the HPA, “incapacitated” means suffering from a physical, mental or emotional condition or disorder or an addiction to alcohol or drugs as defined in the *Pharmacy and Drug Act* or other chemicals that impairs the ability to provide professional services in a safe and competent manner.

If the Complaints Director of the College has ground to believe that a regulated member is incapacitated, they may direct the individual to seek treatment and to cease practice until such time that the Complaints Director is satisfied that the member is no longer incapacitated.

Professional Conduct Hearings

In the event that the Complaints Director determines that there is sufficient evidence to support the complaint, the matter will be referred to a professional conduct hearing. A hearing is a formal legal proceeding, conducted by a Hearing Tribunal, involving an internal professional investigation into the conduct of an SLP or audiologist by his or her peers, as well public members who are appointed by the Alberta Government. Procedures for professional conduct hearings are stated in the HPA and the Regulation.

Those typically present during a hearing include:

- the investigated person;
- legal counsel for the investigated person if applicable;
- the Complaints Director of the College;
- legal counsel for the College;
- members of the Hearing Tribunal;
- legal counsel for the hearing tribunal;
- a court reporter; and
- any witness who are called to testify.

During the course of the hearing, the Hearing Tribunal will consider the documented evidence as well as the testimony presented by the College, the investigated person, as well as any relevant witnesses. The Hearing Tribunal is responsible for conducting a full and fair hearing of allegations of unprofessional conduct of an SLP or audiologist, and to determine on the basis of the evidence introduced, whether the conduct of the SLP or audiologist constitutes unprofessional conduct.

If the Hearing Tribunal makes the decision that the conduct of the investigated person does constitute unprofessional conduct, as defined by the HPA, they will determine any penalties that will apply. These may include, but are not limited to the following: a caution, a reprimand, conditions being placed on a practice permit (such as practicing under supervision), suspension of the practice permit, requirement for counselling or treatment, requirement for course of study or supervised practical experience, cancellation of registration and the practice permit, and payment of a fine and/or costs related to the hearing.

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

Responding to Complaints

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When ACSLPA receives a complaint, the Complaints Director is required by law to review the complaint to determine its validity. Accordingly, the regulated member will be contacted and given direction on how to proceed. Regulated members are advised to provide full cooperation.

Specifically, regulated members are advised to take the following actions if a complaint is filed against them:

- Gather as much information as possible regarding the complaint.
- Respond to the College promptly, providing a full and detailed response.
- Submit all documents required by the College.
- Do not alter any documents.

It is important to remember that the intent of the complaint process is to determine if a complaint is valid and if so, what corrective actions might be taken to assist the regulated member in returning to delivery of competent, safe and ethical professional services.