



HEALTH SCIENCES ASSOCIATION
The union delivering modern health care

Submission to the Steering Committee on
Modernization of Health Professional Regulation

November 2019 Consultation

January 2020



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Delivered By E-Mail Correspondence:

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To: Steering Committee on Modernization of Health Professional Regulation

Re: Feedback – Regulating health professionals; HSABC Submission to the Steering Committee on Modernization of Health Professional Regulation

HSABC is a union that represents approximately 17,000 health science professionals throughout the province. Our members practice in a wide variety of professions, primarily in acute care and are employed by the health authorities throughout BC, by Providence Health Care, and by a number of private community-based health organizations. Many of HSA's members are registrants of colleges operating pursuant to the *Health Professions Act*, RSBC 1996, c. 183 ("*HPA*"). HSA also represents social workers who are registrants in the British Columbia College of Social Workers pursuant to the *Social Workers Act*, SBC 2008 c. 31. HSA legal counsel often represent HSA's members in complaints processes at their colleges. As a result, HSA has a significant interest in the operation of and potential changes to those Acts.

We thank the Steering Committee for the opportunity to respond to the questions raised in the November 19 consultation paper.

HSABC would appreciate being further consulted as details of this proposal for modernization emerge.

MODERNIZATION PROPOSALS:

It is proposed that regulatory college boards have equal numbers of registrant and public members.

It is proposed that all board members (registrant and public) be recommended for appointment through a competency-based process, which considers diversity, is independently overseen, and is based on clearly specified criteria and competencies. The Minister of Health would appoint all board members based on the recommendations of the competency-based process.

Q1a. *Do you support an equal number (50/50) of public and professional board members?*

Yes.

Q1b. *Are there any possible challenges to the proposed approach, and if so, how can they be addressed?*

We believe elected positions should be maintained. We believe having elected registrant positions is not irreconcilable with maintaining an unwavering focus on the public interest. We should not need to sacrifice the intrinsic motivations of professionals (commitment to patient safety, quality improvement, etc.) seeking to run for elected positions.

Moreover, board members should be supported through a well-resourced office within the Ministry or the proposed regulator oversight body that supports education and training in regulatory, quality improvement, and governance issues. This is a significant challenge facing all public members appointed to health care boards; they are insufficiently supported to perform their roles and not provided relevant training in governance matters. If we hope to have more diverse representation from traditionally underrepresented groups, public board members and registrants must be properly supported.

To improve functioning and effectiveness, it is proposed that regulatory college boards move to a more consistent and smaller size.

Q1c. *Do you support reducing the size of boards?*

We do not take a position without clarity on whether there will be a requirement that there will be representation from the diversity of professions regulated by the proposed College of Health and Care Professions. We believe there should be bylaw requirements or regulation to ensure that there is diversity in board composition and a cycling of different professional backgrounds onto the proposed College of Health and Care Professions board to ensure that representation from all regulated professions can be achieved (if not within one board term, over two board terms). As well, we believe a registrant of another college (from a profession regulated by

another college) cannot serve as a board member of the proposed College of Health and Care Professions (i.e., a nurse cannot be a registrant board member for the proposed College of Health and Care Professions).

We believe that it is both possible and desirable to ensure representation from the diversity of professions regulated by the proposed College of Health and Care Professions, and that this is not in conflict with meeting a minimum set of competencies as proposed.

Q1d. *Are there any possible challenges to reducing board size, and if so, how can they be addressed?*

See above. If representation from all professions regulated by a multi-profession college cannot be accommodated to maintain a board of 8-12 members then there should be specific language in regulation or in college bylaws to ensure that all professions are cycled onto the board over two terms. This can be reconciled with a competency-based approach to serving on the board, as proposed in the Cayton report and discussion paper.

It is proposed that board and committee members be fairly and consistently compensated (within and between colleges) and move away from volunteerism.

Q1e. *Do you support fair and consistent compensation for board and committee members?*

Q1f. *What are the benefits of this approach?*

Q1g. *What are challenges and how can they be addressed?*

HSA takes no position on the issue of compensation for board and committee members.

To increase public protection, and improve efficiency and effectiveness of regulation, a reduction in the number of regulatory colleges from 20 to five is proposed.

Given the current commitment to a reduction in the number of regulatory colleges, it is proposed that any new health professions be regulated by an existing regulatory college or the new College of Health and Care Professions.

Q2a. *Are you supportive of the proposed approach to reduce the number of regulatory colleges from 20 to five?*

We do not take a position. We have questions and concerns, however.

Q2b. *Please share your concerns with this approach, as well as your suggestions to address challenges.*

We require clarity on the following:

- a) board/governance structures and board composition including efforts to ensure that the diversity of professions regulated by the proposed College of Health and Care Professions are represented (and the mechanisms by which that representation will be maintained, e.g. requirement that all regulated professions must be cycled onto the board over two board terms);
- b) fee structure for multi-profession colleges; c) opportunity for public comment on these critical governance structures, and timeline and phasing of implementation (specifically regarding proposed College of Health and Care Professions).

Q2c. *Are you supportive of a moratorium on the creation of new regulatory colleges?*

We do not take a position due to the lack of clarity with the proposed College of Health and Care Professions and its governance (e.g., Will other professions have the opportunity of becoming regulated by this college in the future?).

The creation of broader legislated merger provisions to minimize disruption resulting from future amalgamations is proposed.

Q2d: *Do you have suggestions for ways to minimise the disruption caused by a merger of regulatory colleges that can be addressed through broader legislative provisions?*

HSA believes it is important to first conduct comprehensive and detailed work on what the new structures will be. How do new structures relate to each other in legislation, regulation, and in each college’s bylaws?

We raise the following questions and concerns that need to be resolved:

- a) What are the model bylaws?
- b) How is professional composition on any/all of these boards determined (in legislation/regulation/bylaws) especially for the proposed College of Health and Care Professions?
- c) How do the proposed profession-specific “subcommittees” come into play?
- d) Some information was provided on the separate roles of the profession-specific subcommittees and the board, but clarity is required on whether we can expect boards to have representation from all the professions they regulate (and whether professions regulated by other colleges can be registrant board members on other college boards, which we do not support).

It is proposed that sub-committees will be created within multi-profession regulatory colleges to address matters requiring profession-specific clinical expertise.

Q2e: *The importance of and continued reliance on profession-specific clinical expertise is acknowledged as an important element of effective regulation; for example, in the development of professional standards. Where is profession-specific experience required to ensure effective regulation?*

We believe it is important to have profession-specific clinical expertise for matters related to scope of practice, practice standards, guidelines, and whether registrants are meeting their practice standards. The design and role of the subcommittees will be critical in ensuring that there be profession-specific expertise in all questions that require understanding whether a registrant is meeting their practice standards.

Creation of an oversight body with the following responsibilities is proposed:

1. Routine audits on common performance standards.
2. Public reporting on common performance standards.
3. Conducting systematic reviews and investigations.
4. Review of registration and complaint investigation decisions.
5. Publishing guidance on regulatory policy and practice.
6. Identify core elements of shared standards of ethics and conduct across professions.
7. Establishing a range of standards of professional practice.
8. Development of model bylaws and oversight of the process for bylaw amendments.
9. Overseeing a board member appointment process.
10. Recommending health occupations that should be regulated under the Health Professions Act.
11. Holding a list (single register) of all regulated health professionals.
12. Oversight of systematic progress on timelines of the complaint process.

Q3a. *Do you support the creation of an oversight body?*

Yes.

Q3b. *Do you agree with the functions listed above?*

Yes, with exception of #9. We believe registrant board members should continue to be elected; in this case, #9 should be revised to read “overseeing the registrant board member election process.”

We believe there is a need to clarify what role the colleges would have in recommending health occupations that should be regulated. It should be clarified as to whether the oversight body is compelled in any way to consider recommendations from the college boards.

Q3c. *Do you have any concerns and if so, what are they?*

The governance issues and relationship between the oversight body and colleges needs to be carefully considered, developed, and the public provided an opportunity for comment.

It is proposed that annual reports of regulatory colleges and the oversight body be provided to the Legislative Assembly by the Minister of Health.

Q3d. *Do you support increased accountability by requiring regulatory colleges' annual reports to be filed with the Legislative Assembly?*

Yes.

Q3e. *Should annual reports of the oversight body also be filed with the Legislative Assembly?*

Yes.

A new disciplinary process is proposed in which independent discipline panels would make decisions regarding regulated health professionals.

Q4a. *Do you support the creation of a new disciplinary process which would be independent from regulatory colleges?*

Q4b. *What are the benefits of such an approach?*

Q4c. *What are possible challenges and ways to address those?*

HSABC takes no position on the creation of a new disciplinary process independent from the regulatory colleges. In our view, whether each college has its own disciplinary process or a new and independent disciplinary process is developed, the process(es) must be procedurally fair to all parties.

HSABC has concerns about some particular aspects of the proposed process, which we will detail below. Overall HSABC's view is that any disciplinary process should not be any more intrusive to registrants than is necessary for protection of the public. We also believe that any changes made to the current investigation, disciplinary and publication processes should be made based on evidence demonstrating that changes are necessary and would be beneficial.

Regulatory colleges and their inquiry committees would continue to be responsible for the investigation of complaints. This will assure professional expertise in the investigation of complaints.

Q4d. *Do you support regulatory colleges continuing to investigate complaints regarding health professionals?*

Yes, HSABC supports regulatory colleges continuing to investigate complaints.

The Consultation Paper says (at page 18) that inquiry committees “...would have wider discretion to dispose of complaints, in line with the Cayton report’s recommendation.” HSABC would like to know, and have the opportunity to comment on, what additional discretion the Steering Committee suggests granting to inquiry committees. HSABC’s view is that inquiry committees should not have the power to impose consequences on registrants as part of the final disposition of complaints.

Although paragraph 9.41 of the Cayton Report says that the proposed alternative process should have three clear stages (triage, investigation and adjudication), it appears that Cayton recommends that an inquiry committee have the power to impose consequences (ie. remediation) (see paragraph 9.50 of the Cayton Report). In our view, this recommendation does not further the purpose of clearly separating the investigation and adjudication/disciplinary processes, but conflates them. HSABC does not support any changes that would allow inquiry committees to dispose of complaints by imposing consequences on registrants without the benefit of an adjudicative hearing.

Q4e. *Do you support improvements to the composition of inquiry committees?*

HSABC takes no position on whether improvements to the composition of inquiry committees are necessary.

It is proposed that actions taken to resolve accepted complaints about health professionals be made public.

Q4f. *Do you support publishing actions taken to resolve accepted complaints about health professionals?*

Q4g. *Do you support all actions resulting from agreements between registrants and regulatory colleges being public?*

HSABC strongly opposes publishing actions taken to resolve accepted complaints/all actions resulting from agreements between registrants and colleges.

Other than a note that public notification would be limited “...in some circumstances related to the practitioner’s ill health,” this proposed approach has no regard for registrants privacy. In HSABC’s view, publication should be limited to instances in which it is necessary for protection of the public. Section 39.3 of the *Health Professions Act* already provides that publication is mandatory for any determination of a disciplinary committee, any consent disciplinary order, any agreement for suspension or limits/conditions on practice based on a

report that continued practice may constitute danger to the public, or any consent or undertaking in relation to a serious matter.

In HSABC's view, these existing provisions of the Act demand publication wherever it is necessary for public safety. Publishing outcomes of complaints when it is not necessary to do so for public safety serves no purpose other than to punish the registrant.

The Cayton Report and the Consultation Paper do not include any indication that the negative impacts of expanded publication on registrants were considered. We stated in our response to the Cayton Report that publication of the results of a complaint, which in most cases is not likely to create a complete picture, may cause distress and embarrassment to registrants, and may impact employment and income prospects. This proposal appears to HSABC to be an unnecessary form of public shaming with no justification.

It is proposed that regulatory colleges be able to make limited public comments if a complaint under investigation becomes known to the public.

Q4h. *Do you support allowing regulatory colleges to make limited public comments about a complaint under investigation if the complaint becomes known to the public?*

Q4i. *What are the benefits of such an approach?*

Q4j. *What are the challenges, and how can these be addressed?*

HSABC takes no position on whether regulatory colleges should be permitted to make such limited public comments, except to say that if colleges are allowed to do so, it must be clear that colleges may only make comments after a complaint becomes known to the public, and must not offer any comment on possible outcomes of a complaint during an investigation or disciplinary process. It is essential that any public comments be objective and neutral, and not impact or appear to impact an investigation or disciplinary process. We agree that the Law Society of British Columbia's public notification rules are a useful example to work from.

In order to better protect patients from harm, it is proposed that complaint and discipline decisions must take into consideration the professional's past history.

Q4k. *Do you support requiring that regulatory colleges and disciplinary panels consider a registrant's past history of complaints and discipline when making decisions on a current complaint?*

Q4l. *What are the benefits of such an approach?*

Q4m. *What are the challenges and how can they be addressed?*

In our view the discretion that regulatory colleges have under section 39.2 of the *Health Professions Act* over whether past conduct will be considered when complaints are reviewed is

an appropriate discretion. We do not see a need or benefit from a blanket requirement that past history be considered in each case.

The quote from the Cayton Report at page 19 of the Consultation Paper, “a history of upheld complaints is clearly relevant to sanction...” evidences the problem with the approach of requiring consideration of past history in each case. In our view, in some cases a complaints history will be clearly relevant to sanction, but in some cases it will not. To maintain the fairness of the inquiry committee and disciplinary processes, there should be discretion to consider past upheld complaints when relevant and to decline to consider them when not relevant, rather than a broad requirement that past history must be considered in all cases.

There are other potential ways to address the concerns that Cayton raises in paragraph 9.47 of his report. He says he supports the HPRB’s recommendation that the colleges should develop a shared policy on past regulatory history. That makes sense, but the colleges do not have to agree that past history will always be relevant to a current complaint. Cayton also notes the HPRB’s submission that college complaint dispositions rarely, if ever, explain the basis on which decision-makers exercise their discretion to consider past history or how it was considered. This could be addressed by explicitly requiring written reasons to include an explanation of whether past history was considered, and how. (eg. a written report of a registrar under section 32, an inquiry committee order for interim extraordinary action to protect the public under section 35, and an order of the discipline committee under section 39 could all require written reasons explaining whether and how past history was considered.)

In any case, past history should not be considered during an inquiry committee investigation or when a discipline committee or panel is determining whether misconduct occurred or competence issues exist. Inquiry committee investigations, and the fact-finding aspect of the discipline process, must be able to take place without being tainted by consideration of any past complaints.

The steering committee is seeking feedback to help establish consistency across regulatory colleges in relation to how they address sexual abuse and sexual misconduct.

Q4n. *What measures should be considered in relation to establishing consistency across regulatory colleges regarding how they address sexual abuse and misconduct?*

In HSABC’s view, a procedurally fair fact-finding process is essential to any approach to addressing sexual abuse and misconduct.

It is proposed that health profession regulatory colleges be enabled to share information (between each other and with other agencies) where necessary for public safety and protection.

Q5a. *What are the benefits of enabling regulatory colleges to more easily share information?*
Q5b. *What are the challenges of this approach and how can they be addressed?*
Q5c. *What organizations should regulatory colleges be able to share information with in order to protect the public from future harm, or address past harms?*

HSABC has concerns about this proposal to enable the colleges to share information. As we note above under questions 4f and 4g, the Cayton Report and the Consultation Paper do not indicate that registrants' privacy concerns were a consideration in forming these recommendations.

We would be interested to see examples of past issues and potential threats to public safety and protection resulting from the legislative provisions that impact the colleges' ability to share information. In our view, changes to make sharing personal information easier should not be made without a demonstrated need.

A challenge of this approach is ensuring that any changes that are made are not overbroad, to ensure that information is only shared when necessary for public safety and protection. In our view, the first step must be identifying any gaps that exist. The *Health Professions Act* already allows for publication of complaint outcomes in certain cases (described above). Inquiry committees have the power to suspend registration or impose limits and conditions on practice if doing so is necessary for public protection pending the outcome of a complaint, and it is mandatory for the inquiry committee to publish such an order.

In our view, the existing requirements for publication are sufficient for public protection, and we do not know what gap further information sharing would be meant to fill.

We do not wish to comment on which organizations colleges should be able to share information with, since we do not agree that broader information sharing is necessary in the first place, except to say that any expansion of the colleges' ability to share information should specify that decisions to do so must be made on a case-by-case basis, and based on necessity for public protection.

HSABC would appreciate being further consulted as details of this proposal emerge. It is frustrating to attempt to answer questions on this issue without knowing the harm or gaps that the proposal is trying to address, or exactly what further information sharing is being considered.