

# WHEN PATIENTS ESCALATE ACCUSATIONS

What happens when a complaint is lodged against you with your regulatory body?

PHYSIOTHERAPISTS are expected to comply with all professional obligations, including standards of practice and a code of ethics. However, complaints can happen even to the most prudent and diligent physiotherapists.

Anyone can file a complaint to your respective regulatory body (referred to here as a College) if they are dissatisfied with your care or conduct—including a patient, a family member or friend of a patient, a colleague, employer or insurer. While most complaints arise from a patient interaction, they can also involve non-therapeutic activities. These activities can be a concern if they reflect negatively on your professionalism or suitability for practice.

In Canada, each province has its own legislation, which regulates the practice of physiotherapy and the way that complaints are processed. The purpose of this article is to provide a general overview of the steps that are involved in a typical complaint to the College. However, this article should not be considered as a comprehensive overview of the process for your particular jurisdiction. If you do have any questions about your jurisdiction, we would strongly recommend that you review the website of your provincial regulator for more details on how a complaint is specifically processed in your province or territory.

## Notification of a complaint

The Colleges have a statutory obligation to process all complaints filed against their members. Upon receipt of a complaint, the College will notify you by letter or telephone. If notified, you should determine whether the College is asking you to respond. If a response is required, Colleges will typically give directions on how and when to respond, including deadlines.

As soon as you receive notification of a College complaint, you should contact your liability insurance provider. You may have coverage for legal counsel with training and experience who can assist you through the process.



## Preparing a response

Before responding, you must determine the identity of the complainant and the nature of the complaint. The College usually provides a copy of the complaint letter, but occasionally they will only enumerate the issues set out in the complaint.

When drafting your response, compose yourself, do not rush and ensure you have access to all relevant documentation. Your response to the College should reflect what happened, your interactions with the patient and your rationale behind your care or conduct. When appropriate (and if the College has provided you with the necessary consent), you should make reference to the patient's record and attach any other document available to support your position. It is important to maintain a respectful tone throughout your response and to show empathy, as the College expects you to remain professional no matter how frivolous or vexatious the allegations may be.

Your response should consider the key issues raised by the complainant and whether there is

any possibility to improve your practice to reduce the risk of recurrence. It can be of assistance to you with the College if you are able to demonstrate some insight as to what happened and what you plan to do in the future to address the issue.

Under no circumstances should you ever alter a patient's record after learning of a complaint or legal action. Any change to the records will affect your credibility and could lead to repercussions from the College.

You should also discontinue any ongoing treatment with a patient who has filed a complaint against you. It is more appropriate to transfer the care to another physiotherapist or discharge the patient in accordance with the College's policies and guidelines.

The College will send a copy of your response to the complainant. This might satisfy the complainant; however, some complainants will provide a reply, which the College will forward to your attention for any further comments. You should provide a second response if there are any clarifications required or new issues to be addressed. >>

## The authority to investigate a complaint

The College has broad powers to investigate complaints filed against members. During the course of an investigation, the College can attend your place of work (with or without notice) for an interview, to examine, remove and/or copy the patient's record and any other documentation that is relevant to the complaint, including billing information. The College may also seek information from witnesses, such as your colleagues and staff. The member is required to cooperate fully. Surveillance can also be conducted by the College in the course of an investigation.

If the issues are complex, the College might seek an expert peer opinion from an independent assessor. You should be provided with a copy of any report prepared by the assessor and an opportunity to respond (although the College is under no obligation to share such a report with you).

## Consideration of the complaint

All of the information collected during the course of the investigation will be provided to a panel assigned to deliberate the matter.

The composition of the panel varies between provinces but always involves the input of at least one physiotherapist. Once the panel has considered the matter, you will receive a written decision, along with reasons for the decision.

## Possible outcomes

In many cases, physiotherapists successfully demonstrate that their care and conduct was appropriate. In those cases, the College will dismiss the complaint and take no further action.

When issues are identified with regard to the practice or conduct of a physiotherapist, the College has broad discretion to dispose of the complaint. The College may decide to do one of the following:

- Counsel (advise) the member on how to improve their practice by making recommendations or providing guidance;
- Caution (warn) the member that more serious consequences may be considered if the issue reoccurs;
- Require that the physiotherapist participates in a specified continuing education and remediation program;

- Request that the physiotherapist enters into a contract with the College imposing some restrictions, limitations, directives or requirements on the member's certificate of registration.

In cases where the College is concerned that a physiotherapist is suffering from a health condition or disorder, including a substance abuse problem, the College may refer the matter to a committee responsible for assessing the member's fitness to practise.

Where there are serious concerns identified with regard to a member's conduct or practise, the matter is referred to a committee responsible for assessing professional misconduct and competency. Unless the member is willing to plead guilty to the charges, a hearing is required where the College will have the burden of proving its case against the member. The process is similar to a criminal trial. The decision from the panel presiding at the hearing may range from a dismissal of the charges to the revocation of the member's licence to practise.

Any decision rendered by a College can be appealed. Each province has its own legislation governing the appeal process.

## Impact of a complaint on your licence and registration

All information related to the complaint process is held confidential. However, in the event that your licence is revoked, suspended or restricted in any way, this information will be made available to the College's public register.

Your status as a registrant will not be affected as a result of a complaint being submitted unless there is a finding of professional misconduct, incompetence or incapacity is made. The fact that a complaint has been submitted does not appear on the College's public register; however, it does remain on file and will be considered by the College if a subsequent complaint is received against the same member.

*Please note that this commentary is not, nor should it be considered, legal advice and should not be relied upon as such. Should you have any questions regarding informed consent as it relates to your practice, please contact your provincial association, your provincial regulator and/or the Canadian Physiotherapy Association.*

*This article was prepared and written by the legal team at Gowling Lafleur Henderson LLP (Gowlings).*

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