

College of Veterinarians of British Columbia

BYLAWS

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PART 5 – COMPLAINTS, RESOLUTION AND DISCIPLINE

Definitions

267. In addition to the definitions set out in section 1 of the Act and section 1 of the bylaws, throughout the bylaws, including any schedules, and unless the context otherwise indicates:

“complainant” means a person who has made a complaint against a registrant pursuant to section 50(1) of the Act, and includes a complainant’s legal guardian if the complainant is a minor;

“complaint” means a concern about an act or omission of a registrant made pursuant to section 50(1) of the Act, and includes a matter listed in section 52(2) of the Act;

“complaint inspector” means a person appointed as an inspector pursuant to sections 49(1) or (2) of the Act who has been directed by the investigation committee to investigate a complaint pursuant to section 52(4) of the Act;

“discipline committee” means the discipline committee mandated to hear a citation pursuant to Division 3 of Part 4 of the Act;

“investigation committee” means the investigation committee mandated to investigate and resolve complaints pursuant to Division 2 of Part 4 of the Act;

“respondent registrant” means the registrant who is named in a citation;

“subject registrant” means the registrant who is identified or named in a complaint;

Proof of appointment of inspector

268(1) The registrar must issue a document to a person appointed as an inspector under section 49 of the Act, in such form as the registrar may approve, setting out such person’s appointment as an inspector.

(2) A person appointed as inspector under sections 49(1) or (2) of the Act must present proof of their appointment to any person on request.

Division 5.1 – Complaint Investigations

Form of a complaint

269(1) A complaint must be dated and identify the complainant.

(2) A complaint that is received by the registrar in electronic form need not bear the signature of a complainant if it is clear that

(a) the person making the complaint intended to file or consented to filing the complaint, and

(b) an identifiable complainant created or adopted the complaint, and the complaint is in, attached to or associated with the electronic form of the record.

(3) If the registrar is made aware that a registrant may be suffering from a physical or mental ailment, an emotional disturbance or an addiction to alcohol or drugs that

impairs the registrant's ability to practice veterinary medicine, the registrar must immediately file a written complaint to the investigation committee with a request that the investigation committee consider the matter as soon as possible.

Disabled complainant

270. Despite section 269, if a complainant is unable to provide a written complaint because of a disability, the registrar may

- (a) transcribe the complainant's complaint,
- (b) confirm with the complainant that the transcribed complaint is an accurate reflection of the complaint, and
- (c) document how the complainant confirmed the transcribed complaint.

Essential information

271(1) A complaint must include or disclose the following information:

- (a) the complainant's name and contact information;
- (b) the name of the registrant against whom the complaint is made or the name of the facility the registrant practices at, and sufficient information to identify the subject registrant;
- (c) sufficient information concerning an alleged act or omission so as to allow the investigation committee to make a decision under sections 51(1) or 52(1) of the Act.

(2) If after receiving a complaint under section 50(1) of the Act, the registrar determines that the complaint does not contain the information listed in subsection (1), the registrar must

- (a) advise the complainant in writing that the complaint will not be forwarded to the investigation committee under section 50(2) of the Act because it is not yet complete,
- (b) report to the investigation committee the decision not to forward the complaint, and
- (c) where reasonable, attempt to obtain the missing information listed in subsection (1).

Notifying the subject registrant

272(1) If the investigation committee determines that a complaint raises a *bona fide* concern about a subject registrant's practice or conduct, the investigation committee must

- (a) inform the subject registrant as soon as is practicable that a complaint has been made against him or her, except if the investigation committee believes it is in the public interest not to do so,
- (b) provide the subject registrant with a copy of the written complaint, or a summary of the complaint, and any other information the investigation committee determines is necessary to disclose to the subject registrant, and
- (c) ask the subject registrant to respond to specific issues of concern as may be identified by the investigation committee.

(2) When acting under subsection (1), the investigation committee may decline to identify within the copy or summary of the complaint the identity of a complainant or the source of the complaint, if the investigation committee is of the view that such disclosure may place the complainant at risk of harm.

Observing a subject registrant providing services

273. If a complaint investigator intends to observe a subject registrant providing a service to a patient, the inspector need not obtain the consent of the owner of the patient being treated.

Complying with section 52(3) of the Act

274. A registrant who, as required under section 52(3) of the Act, provides the investigation committee with information or records that are confidential, does not by doing so breach any duty or obligation of confidentiality or nondisclosure.

Failure to cooperate

275(1) In this section, “**citation**” means a citation that has been or may be issued against a registrant pursuant to section 58 of the Act.

(2) If a registrant refuses to cooperate with an investigation in contravention of section 52(3) of the Act, the investigation committee may do one of the following:

- (a) direct the registrar to add the registrant’s failure to cooperate as a new allegation in a citation already issued under the Act, or
- (b) direct the registrar to issue a separate citation against the registrant for failing to cooperate.

Reporting to the investigation committee

276(1) Within 60 days of being assigned a complaint, a complaint inspector must report in writing to the investigation committee regarding the status or results of an investigation.

(2) The form and organization of a complaint inspector’s report shall be as prescribed by the investigation committee.

Amending a citation

277(1) Before or after the issuance of a citation under section 58 of the Act, the registrar may, on the direction of the investigation committee,

- (a) join one or more complaints or other matters which are to be the subject of a discipline hearing,
- (b) sever one or more complaints or other matters which are to be the subject of a discipline hearing,
- (c) amend the citation, or
- (d) cancel the citation.

Public notification of citation or hearing

278(1) Unless directed otherwise by the investigation committee, the registrar must notify the public by posting on the college website one month before the start of a discipline hearing of the following information in respect of a citation issued under section 58(1) of the Act:

- (a) the name of the registrant as the respondent;
- (b) a description of the nature of the allegations or other matters that will be the subject of the discipline hearing;
- (c) the date, time and place of the discipline hearing.

(2) Unless directed otherwise by the investigation committee, the registrar must notify the public before the start of a discipline hearing of any changes to the information set out in subsection (1).

(3) The investigation committee may direct the registrar not to post a public notice of citation or hearing on the college website if the investigation committee advises the registrar that the citation relates to issues described in sections 61(1)(b) (vi) of the Act.

(4) The accidental omission or failure to post a public notification of citation or hearing in accordance with this section does not invalidate the proceedings at that hearing.

Permitted disclosure

279(1) Despite section 278, the registrar may disclose to the public the existence of a complaint that has not resulted in a citation being issued, including the name of the subject registrant, and the status of the complaint, if

- (a) the identity of the subject registrant is already known to the public, and
- (b) the complaint has become generally known to the public.

(2) In disclosing information pursuant to subsection (1), the registrar must take into consideration

- (a) the *Freedom of Information and Protection of Privacy Act*, and
- (b) the college's privacy policies and procedures issued pursuant to the *Freedom of Information and Protection of Privacy Act*.

Review of previous complaints or discipline

280. Before agreeing to accept a subject registrant's written proposal under section 67 of the Act, the investigation committee may review all previous complaints and disciplinary matters involving the registrant to be satisfied that the proposed undertaking or consent is appropriate in the circumstances.

Monitoring compliance

281(1) The registrar must monitor a subject registrant's compliance with an undertaking or consent the registrant agreed to pursuant to section 66 or 67 of the Act.

(2) If the registrar believes that a subject registrant has not complied with an undertaking or consent, the registrar must so report the matter to the investigation committee.

Division 5.2 – Discipline Hearings

Definitions

282. In this Division:

“**discipline panel**” means the panel appointed by the discipline committee to hear and determine a complaint or other matter set for hearing by citation issued under section 58 of the Act, and includes the discipline committee if required by the context;

“**witness**” means any person, including the complainant or any person who may be found by the discipline committee or discipline panel to be an expert witness, who is called upon by the college or the respondent registrant to give evidence during a discipline hearing.

Pre-hearing conference

283(1) Unless the discipline panel directs otherwise, at least 15 days before a disciplinary hearing begins,

(a) the respondent registrant or legal counsel, and
(b) the chair of the investigation committee or legal counsel
may be invited to attend a pre-hearing conference with the discipline panel at a date and time, and in such a form as the discipline panel may approve, to discuss any of the matters described in subsection (2).

(2) At the pre-hearing conference, the discipline panel may make orders concerning the following matters:

- (a) production of documents and how they are to be delivered;
- (b) an agreed statement of facts or the admission or proof of certain facts;
- (c) any evidentiary issues, including admissibility of a document;
- (d) witnesses to be called, the general nature of their anticipated testimony, and how long they will testify;
- (e) expert witnesses to be called, disclosure of an expert’s reports, and how long the expert will testify;
- (f) direction on the conduct of the hearing;
- (g) an objection to a hearing procedure;
- (h) an estimate for the time each party will require during the hearing;
- (i) a request for a delay of the hearing;
- (j) the need for a language or sign-language interpreter;
- (k) any other matter that is necessary to ensure the hearing will proceed in a timely and fair fashion or to resolve the matter prior to the start of the hearing.

(3) The discipline panel may direct one of the parties to draft an order or decision letter confirming the orders made at the pre-hearing conference.

General rules of procedure and evidence

284(1) The discipline panel has the authority to

- (a) govern its proceedings,
- (b) order an adjournment of its proceeding,
- (c) allow the amendment of a citation, and

(d) subject to the Act and the bylaws, adopt such other policies and procedures as it considers necessary for the expeditious and fair conduct of a hearing.

Avoiding an appearance of bias

285(1) No person may sit on the discipline panel while he or she is a member of the investigation committee.

(2) No member of the discipline committee may sit on the discipline panel in a disciplinary hearing concerning a matter in which he or she

- (a) was involved as a member of the investigation committee,
- (b) has had prior involvement in, or
- (c) has a relationship with either the respondent registrant or the complainant that would compromise that member's objectivity.

Loss of a panel member during a hearing

286. If, before the discipline panel can render its decision under section 61 of the Act, a member of the discipline panel resigns from the discipline panel, then

- (a) the loss of that discipline panel member does not halt the proceedings, and the remaining members may continue and adjudicate the matters set out in the citation, and
- (b) the chair of the discipline committee may appoint a replacement discipline panel member, so long as the respondent registrant agrees to that appointment.

Communications

287. All communications to the discipline panel should be made to, and all communications from the discipline panel should be made through and under the signature of,

- (a) the chair of the discipline panel, or
- (b) the registrar, at the direction of the discipline panel.

Disclosure by college prior to disciplinary hearing

288(1) At the time a citation is issued pursuant to section 58 of the Act, or at least 30 days before a hearing is scheduled pursuant to section 59 of the Act, the college's legal counsel must disclose to the respondent registrant all relevant information in the possession of the investigation committee relating to the allegations set out in the citation.

(2) Subsection (1) does not apply to information that is protected by a recognized form of privilege.

Disclosure by respondent member prior to disciplinary hearing

289(1) At least 30 days before a hearing scheduled to begin, the respondent registrant must disclose to the college's legal counsel all information the registrant intends to present to the discipline panel during a hearing.

(2) The information to be disclosed pursuant to subsection (1) includes but is not limited to

- (a) any exhibits the respondent registrant may present,

- (b) a list of witnesses who may be called by the respondent registrant, including any expert witness,
- (c) copies of witness statements of those witnesses who may be called, including any expert reports,
- (d) any other information, document or evidence the respondent registrant may want to present.

Failure to disclose

290. If either the college's legal counsel or the respondent registrant fails to act in accordance with sections 288 or 289, respectively, the discipline panel may, on application of a party

- (e) refuse to accept the document or report,
- (f) refuse to hear the witness,
- (g) refuse to receive or consider the evidence,
- (h) grant an adjournment of the hearing to allow for consideration of the document, report, witness statement or other evidence, or
- (i) make any other direction it considers appropriate in the circumstances.

Public attendance

291(1) While the public may attend a disciplinary hearing pursuant to section 58 of the Act, no member of the public other than the parties in the proceeding may file a submission or make a presentation to, or discuss or debate an issue or otherwise participate in the discipline hearing.

Conduct during a discipline hearing

292(1) All persons attending a discipline hearing must act with respect and reasonable decorum, and accept the rulings of the discipline panel.

(2) No person may use a recording device, video camera or camera to record any part of a discipline hearing, unless the chair of the discipline panel approves such recording.

Exclusion from a discipline hearing

293(1) If the discipline panel excludes a person from attending all or a part of a discipline hearing, the reasons for doing so must be so noted in the minutes or decision.

(2) If an excluded person refuses to leave a discipline hearing as may be directed by the discipline panel, the chair of the discipline panel may adjourn and reschedule the hearing at a date, time and location that would not be disclosed to the excluded person.

Examination of witnesses

294. Pursuant to section 59(2) or (8) of the Act, during a disciplinary hearing

- (a) only the college or respondent registrant or their legal counsel may examine a witness, and

- (b) a complainant's legal counsel may examine the complainant as witness, but the respondent registrant (or legal counsel) and counsel for the college may also examine the complainant.

Protection of witnesses

295. For a witness, other than the respondent registrant, whose testimony is of a confidential, personal or sexual nature, the discipline panel may make an order that

- (a) no person may publish the identity of the witness or any information that could disclose the identity of the witness, or

(b) any such witness be identified only by pseudonym, provided that the true name, address and occupation of the witness is given to the parties present or represented at the hearing.

Oath by swearing or affirmation

296. Pursuant to section 59(7)(a) of the Act, the discipline panel may ask each witness if he or she would prefer to swear or affirm that the testimony they give will be true.

Penalty hearing

297. If the discipline panel determines that an allegation in a citation has been proven against the respondent registrant, it must hold a separate hearing on the question of the appropriate penalty to apply as set out in sections 61(2) to (5) of the Act.

Written decision

298. For the purposes of section 61(6) of the Act, the discipline panel's written decision must:

- (a) be written in a manner that protects the privacy of third parties and is suitable for public disclosure in full;
- (b) include the names of the panel members who rendered the decision;
- (c) identify the parties in the proceeding, and their legal counsel or representatives, including the respondent registrant;
- (d) not include the names of a complainant or any witnesses, except when they have appeared at an open hearing in an official capacity;
- (e) not include other possible personal identifiers or health care information of a complainant, an animal or a third party, except where necessary to adequately explain the reasons for the decision;
- (f) be written in plain language.

Form and approval of decision

299(1) The decision of a discipline panel

- (a) is the decision of the majority, and does not have to be unanimous,
- (b) must be in writing and signed by each concurring member of the discipline panel.

(2) A discipline panel member who does not concur with the majority in a decision may make a separate minority written decision, which must be issued at the same time as the majority decision.

Panel remains active

300(1) Until the discipline panel releases its final written discipline decision, the discipline panel remains active, is seized of the matter and may re-open the hearing as may be required.

(2) If the term of a discipline panel member's appointment to a discipline panel expires, that member remains as an active member of the panel until the panel's final decision has been released.

Fines

301. The maximum fine that can be imposed by the discipline panel under section 61(2)(e) of the Act is \$50,000.

Tariff of costs

302(1) The costs that the discipline panel can award pursuant to section 63 of the Act are as follows:

(a) if the panel dismisses a matter against a registrant pursuant to section 61(1)(a) of the Act, up to 50% of the costs of the registrant's legal representation during the investigation and subsequent discipline hearing as the discipline panel may determine is appropriate, but no other costs, and the panel may do so on a prorated basis;

(b) if the panel makes a determination against a registrant pursuant to section 61(1)(b) of the Act, up to 50% of the cost of the investigation and subsequent discipline hearing as the discipline panel may determine is appropriate, which include the following costs:

(i) the college's costs of legal representation,

(ii) the costs of other reasonable and necessary disbursement incurred for the purposes of the investigation or hearing, including disbursements incurred by legal counsel, and

(iii) the costs of other reasonable and necessary professional services contracted for the purposes of the investigation or hearing, including per diems paid to the members of the investigation committee or discipline committee.

(2) In making an order for an award of costs under section 63 of the Act, the discipline panel may receive written or oral submissions as to what costs should be applied.

Division 5.3 – Post-hearing Matters

Monitoring compliance with disciplinary decisions

303(1) The registrar must monitor a registrant's compliance with an order the discipline panel has issued pursuant to section 61 of the Act.

(2) If the registrar believes that a registrant has not complied with a discipline panel order, the registrar must so report the matter to the discipline committee..

Extension of time

304(1) Where a registrant cannot pay a fine or costs imposed on that registrant within 30 days of the date set out in the order, the undertaking or the consent for reasons of financial hardship, the registrant may submit a request to the registrar for an extension of time.

(2) The registrar must forward the request to the discipline committee

(3) The discipline committee may grant a request for an extension of time under subsection (1) if the committee determines that the request is reasonable in the circumstances, or refuse such a request.

(4) The council may approve policies and procedures to govern requests for and the discipline committee's decisions concerning an extension of time under this section.

(5) if the registrant does not pay a fine or costs as originally imposed on by any extended date, the discipline committee must report that to the registrar who must inform the investigation committee which can then act under Section 305.

Consequences of failing to pay a fine or costs

305(1) If the investigation committee concludes that a respondent registrant has not complied with a discipline panel order with respect to a fine or an award of costs issued pursuant to section 61 or 63 of the Act by the deadline as set out in the order of the discipline panel the investigation committee may by order direct one or more of the following:

- (a) that the registrar initiate a claim against the respondent registrant pursuant to section 63(5) of the Act;
- (b) that a penalty of 25% of the unpaid fine or costs be assessed against the respondent registrant;
- (c) that the registrar issue a citation against the respondent registrant pursuant to section 58 of the Act.

Removal of disciplinary decisions and consent resolutions from website

306(1) In this section a “**record of a disciplinary action**” includes a disciplinary decision rendered pursuant to section 61 of the Act and an agreement reached pursuant to sections 66 or 67 of the Act.

(2) The following applies for the purposes of section 41(4) of the Act:

- (a) the calculation of the five year period that the record of a disciplinary action must remain on the online registry starts on the date that the record was posted on the college's website and not the date of the record itself;
- (b) a record of a disciplinary action must have the date it was posted set out in the online registry;
- (c) the individual to whom the information in the record of a disciplinary action relates may apply to the council to have the information removed from the online registry by submitting a request in writing to the registrar;
- (d) a request to have a record of a disciplinary action removed must include an explanation regarding why it would be in the public interest to remove the posted information;
- (e) in deciding if it is in the public interest to direct the registrar to remove the information from the online registry, the council must consider the

following factors:

- (i) whether the registrant met every term or condition set out in the original disciplinary decision; and
- if the registrant failed to meet every term or condition set in the original disciplinary decision, the reason for the failure.