

College Complaints: They Happen. A brief overview of the regulatory complaints process.

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

Anyone can file a complaint to your respective regulatory body (“College”) if they are dissatisfied with your care or conduct, including a patient, a family member /friend of a patient, a colleague, employer or insurer. Complaints can arise as a result of patient interactions, disputes between colleagues or involve non-therapeutic activities. These activities can be a concern if they reflect negatively on your professionalism or suitability for practice.

In Canada, many provinces have legislation which regulates the practice of optometry and the way complaints are processed. The purpose of this article is to provide a general overview of the steps 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.



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. As a participant in CAO’s professional liability insurance program, you 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 risks 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 optometrist 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 OF THE COLLEGE TO INVESTIGATE A COMPLAINT

Provincial legislation typically provides each College with broad powers to investigate complaints filed against their members. During the course of an investigation, the College can attend at 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 optometrist. Once the panel has considered the matter, you will receive a written decision, along with reasons for the decision.

POSSIBLE OUTCOMES

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

When issues are identified with regard to the practice or conduct of an optometrist, each College has a broad discretion to dispose of the complaint. While the potential outcomes vary from province to province, some of the more common outcomes are:

- Referral of the matter to alternative dispute resolution;
- 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 issues reoccurs;
- Require that the optometrist participates in a specified continuing education and remediation program;
- Request that the optometrist 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 an optometrist 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 practice.

Where there are serious concerns identified with regard to a member's conduct or practice, 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 license to practice.

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

IMPACT OF A COLLEGE COMPLAINT ON YOUR LICENSE AND REGISTRATION

All information related to the complaint process is held confidential. However, in the event that your license 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 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.

This article was prepared and written by the legal team at Gowling WLG (Canada) LLP (Gowlings).

CAO members who participate in the Professional Liability Insurance Program are eligible for 30-minute pro bono and inclusive legal claims defence services from Gowlings, one of the largest and most highly-recognized legal firms in medical defence and professional liability in Canada.

