

A Complaint has been Made Against Me ... What Happens Now?

All licensed physiotherapists in Saskatchewan are expected to understand and follow legislation and standards set out by the Saskatchewan College of Physical Therapists (SCPT) with regards to their practice. However, complaints can happen to even the most diligent and experienced therapists. When a formal complaint has been filed with the SCPT against a practitioner, it is an understandably difficult time of turmoil. Many practitioners do not know what to expect from the complaints process or what steps they need to take to protect themselves. The purpose of this article is to provide a general overview to assist practitioners should they find themselves in a complaint situation.

A complaint can be filed by anyone who is concerned or dissatisfied with a practitioner's care or conduct, including patients, colleagues, employers and insurers. Once a formal written complaint has been received by the SCPT, it is forwarded to the Professional Conduct Committee (PCC) and the member can expect to receive a phone call from the Executive Director/Registrar (EDR) of the SCPT informing them that the complaint has been received. The written complaint is forwarded to the Professional Conduct Committee (PCC) and a formal investigation begins. The EDR will advise the member to contact their liability insurance provider (e.g. through the Canadian Physiotherapy Association (CPA) or other insurance provider) for further advice regarding steps they will need to take in response to the complaint. If the practitioner has liability insurance through the CPA, the Saskatchewan Physiotherapy Association (SPA) office can assist in directing them to the appropriate contact. Often, a complaint must be reported to the insurance provider within a certain timeframe from the time of the complaint (usually within 30 days), coverage may be affected if this time limit is not adhered to. The insurance adjuster will often direct the member to a legal counsel, the cost and service of which is covered by the insurance policy.

The EDR will then send out a formal letter to the member with a copy of the written complaint and requesting a written response within 30 days of receipt of the letter. The member should seek advice from both their insurer and legal counsel in preparing a response to a complaint; they will also need to include a copy of the chart with their response. The member's response to the College should reflect what happened, interactions with the patient and the rationale behind the care or conduct. Under no circumstances should a member ever alter a patient's record after learning of a complaint or legal action, as any change to the records will affect credibility and may lead to repercussions from the College. The member should also discontinue any ongoing treatment with a patient who has filed a complaint against them. It is appropriate to transfer the care to another physiotherapist or discharge the patient.

Once the SCPT receives a response from the member, the PCC conducts a formal investigation into the matter. During the PCC investigation, the member can expect to be contacted by a member of the PCC committee for an interview and may be requested to submit further documentation if necessary. If the case is complex or there is a significant conflict of interest for the majority of PCC members, the PCC may hire an external investigator. The PCC has legal authority to access the chart, as permission is given as part of filing the complaint and it also exists as part of regulatory legislation.

The member can expect to be contacted by the EDR of the College every 30 days during the investigation period to provide them updates with regards to the status of the complaint. The investigation period usually takes several months (i.e. 3-6) and may take longer if there are complicating factors associated with collecting the facts of the case.

Once the investigation is complete, the PCC committee will meet to discuss the case, then make a recommendation to the Discipline Committee (DC) regarding the outcome of the investigation as per the guidelines outlined below. The PCC must decide whether or not the facts of the case meet the definitions of Professional Incompetence or Professional Misconduct, as defined in The Physical Therapists Act 1998 (The Act):

Professional Incompetence

22 Professional incompetence is a question of fact, but the display by a member of a lack of knowledge, skill or judgment or a disregard for the welfare of a member of the public served by the profession of a nature or to an extent that demonstrates that the member is unfit to:

(a) continue in the practice of the profession; or

(b) provide one or more services ordinarily provided as a part of the practice of the profession;

is professional incompetence within the meaning of this Act.

Professional Misconduct

23 Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, is professional misconduct within the meaning of this Act if:

(a) it is harmful to the best interests of the public or the members;

(b) it tends to harm the standing of the profession;

(c) it is a breach of this Act or the bylaws; or

(d) it is a failure to comply with an order of the professional conduct committee, the discipline committee or the council.

The PCC can make one of two recommendations to the DC regarding a complaint case:

- 1) No Further Action Warranted on the facts of the case – this would indicate that there is no evidence to support Professional Incompetence or Misconduct as defined by The Act and the case is dismissed. The Member and the Complainant both receive a copy of this recommendation (including reasoning behind the decision) in the mail. , then all case

information would be confidentially destroyed and there would be no record in the member's College file regarding the complaint.

- 2) Conduct could constitute a disciplinable offence based on the facts collected by the PCC:
 - a. The PCC may recommend that the complaint be resolved with a Resolution by Mutual Consent (RMC). Both the member and the complainant must agree to proceed with an RMC. The content of the RMC would be determined by the PCC and the member would have to agree to it, the complainant has no input in the content of an RMC. If the member agrees to the RMC, a summary of the case would be posted on the SCPT website and the member and complainant would receive a copy of the PCC report and RMC. Copies of the PCC report and RMC would also be included in the member's college file. If the member does not agree to the content of an RMC, the case would be referred to the DC for a hearing to determine the outcome of the case.
 - b. The PCC may recommend that the complaint be referred to the Discipline Committee (DC) for a hearing, without the option of an RMC. In this case, the EDR would notify the member by phone or mail that a hearing has been recommended and the case is being reviewed by the discipline committee. Once the DC is ready to hear the case, the EDR will set a hearing date that is mutually agreeable to the DC and the member and notifies both legal counsel (the SCPT's and the member's). The member and complainant will both receive a formal notice of hearing at least 14 days prior to the hearing by mail. The complainant is entitled to hear but not participate in the hearing. Hearings are open to the public, thus a Notice of Hearing will also be posted on the SCPT website which includes the name of the member and the date, time and location of the hearing. This Notice of Hearing will be removed from the website immediately following the completion of the hearing. After a hearing, the DC will take some time to deliberate the facts of the case prior to making a recommendation. The EDR will provide updates to the member and the complainant every 30 days during the deliberation period. The DC must provide a report and a recommendation to the EDR within 90 days of the hearing. Once this decision has been received by the EDR, the member and complainant are sent a copy of the decision and DC report by mail. The DC then prepares a summary of the case to post on the website.
 - i. If the outcome of the hearing is a 'not-guilty' verdict, the summary is posted and a copy of the decision and the summary are included in the member's College file.
 - ii. If the outcome of the hearing is a 'guilty' verdict, the member and complainant will be notified by the EDR. A member may appeal the decision or any order of the discipline committee to the council by serving the executive director with a notice of appeal within 30 days. If no appeal is received within 30 days, the EDR will notify the member and the complainant that the decision has been finalized, and both will receive a copy of the DC decision/report. The case summary will be posted to the website and a copy of the decision and summary will be included in the member's College file.

Impact to your license

A member's status as a registrant will not be affected as a result of a complaint being submitted unless there is a finding of professional misconduct or incompetence. A disciplinary finding may impact your ability to practice. Depending on the severity of the offence, the DC can make recommendations to place conditions on your practice, suspend your license or revoke your license completely. Often, the complaint is due to a gap in competence, so the Discipline Committee (or PCC in the case of a RMC) may recommend further education be sought to rectify gaps in practice competence. The Discipline Committee may also impose a fine on a member that would need to be paid to the College. All requirements set out in the disciplinary decision will need to be met before the conditions on practice are removed or license restored if suspended.