

Legislative
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STANDING COMMITTEE ON GOVERNMENT AGENCIES

REPORT ON AGENCIES, BOARDS AND COMMISSIONS

HEALTH PROFESSIONS APPEAL AND REVIEW BOARD

1st Session, 39th Parliament
57 Elizabeth II

Library and Archives Canada Cataloguing in Publication Data

Ontario. Legislative Assembly. Standing Committee on Government Agencies
Report on agencies, boards and commissions : Health Professions Appeal and Review Board

Text in English and French on inverted pages.

Title on added t.p.: Rapport sur les organismes, conseils et commissions : Commission d'appel et de révision des professions de la santé.

ISBN 978-1-4249-4574-0

1. Ontario. Health Professions Appeal and Review Board—Auditing. 2. Medical personnel—Ontario—Discipline. I. Title. II. Title: Rapport sur les organismes, conseils et commissions : Commission d'appel et de révision des professions de la santé.

KEO730 M43 O56 2007

353.6'2809713

C2007-964011-7E

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The Honourable Steve Peters, MPP
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Government Agencies has the honour to present its Report
and commends it to the House.

Julia Munro, MPP
Chair

Queen's Park
June 2008

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INTRODUCTION

Under Standing Order 106(e) the Standing Committee on Government Agencies is given the mandate to review the operation of all agencies, boards and commissions (ABCs) to which the Lieutenant Governor in Council makes some or all of the appointments, and all corporations to which the Crown in right of Ontario is a majority shareholder. The Committee is empowered to make recommendations on such matters as the redundancy of ABCs, their accountability, whether they should be sunsetted and whether their mandate and roles should be revised.

In accordance with its terms of reference, the Committee reviewed the Health Professions Appeal and Review Board (HPARB) on February 28, 2007.

Appearing before the Committee from HPARB were Ms. Linda Lamoureux, Chair; Ms. Abby Katz Starr, Deputy Registrar and CEO of the Health Boards Secretariat; and David Jacobs, Board Counsel.

The Committee received five stakeholder presentations. The Yee Hong Centre for Geriatric Care and the CARE Centre for Internationally Educated Nurses were represented by Ms. Amy Go. The College of Physicians and Surgeons was represented by Dr. Rocco Gerace, Registrar, and Dr. Patrick McNamara, Medical Director of investigations and resolution. Mr. Irwin Fefergrad, Registrar, appeared on behalf of the Royal College of Dental Surgeons of Ontario. Ms. Carol Kushner, author, spoke on her own behalf. The Ontario College of Pharmacists was represented by Ms. Delia Croteau, Deputy Registrar and Director of professional development; Ms. Chris Schillemore, Manager of registration programs; and Ms. Claudia Skolnik, Manager of investigations and resolutions.

The Committee wishes to express its appreciation to all the witnesses who appeared before it during its public hearings on this agency. For the full presentations that witnesses made, readers should consult the *Hansard* transcripts and the written submissions.

This report presents the Committee's findings on HPARB. The Committee urges the Chair of HPARB to give serious and thoughtful consideration to the Committee's recommendations.

THE HEALTH PROFESSIONS APPEAL AND REVIEW BOARD

The Health Professions Appeal and Review Board (HPARB, or the Board), is a quasi-judicial adjudicative and regulatory tribunal created in 1998 under the *Ministry of Health Appeal and Review Boards Act, 1998* with the amalgamation of the Health Professions Board and the Hospital Appeal Board. Section 2 of the Act states:

The Board's duties are to conduct the hearings and reviews and to perform the duties that are assigned to it under the *Regulated Health Professions Act, 1991*, a health profession act as defined in that Act, the *Drug and Pharmacies Regulation Act*, the *Public Hospitals Act* or under any other Act.

Background

The Health Disciplines Board was established in 1974 to regulate five health professions; dentistry, medicine, nursing, optometry, and pharmacy. A separate board, the Denture Therapists Appeal Board, was created for that profession in 1991. In 1993, under the *Regulated Health Professions Act, 1991 (RHPA)*, these two boards were continued as the Health Professions Board, which operated until 1999, when it was amalgamated with the Hospital Appeal Board, and continued as the Health Professions Appeal and Review Board.

The Board's current responsibilities are as follows:

1. to conduct reviews of decisions of Complaints Committees of the 22 health professions' regulatory colleges;
2. to conduct reviews or hold hearings in relation to registration decisions of the 22 health professions' regulatory colleges;
3. to hear appeals from hospitals' decisions regarding physician admitting and practice privilege decisions and registration under the *Public Hospitals Act*; and
4. to hear accreditation and complaint reviews under the *Veterinarians Act*.

The Board carries out these responsibilities on behalf of the following objectives:

- to ensure that specified activities of the health professions are regulated in the public interest;
- to ensure that appropriate standards of practice are maintained; and
- to ensure that individuals are treated with sensitivity and respect in their dealings with health professionals and the Colleges.

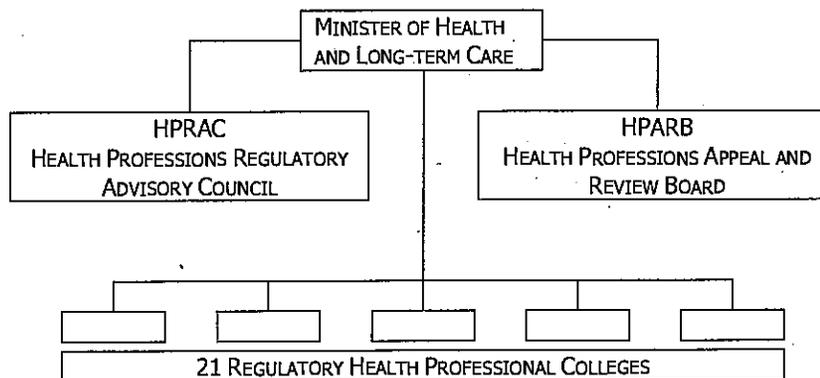
Required to have a Memorandum of Understanding (MOU) with the Ministry, HPARB indicated in material prepared for the Committee that “the current Chair is in the process of developing an MOU following the Agency Directives and Guidelines in consultation with the Ministry.”

Regulatory Regime under the *RHPA*

In carrying out its responsibilities under (1) and (2) above, HPARB is also subject to the profession-specific Acts for all of the health professions regulated under the *RHPA*.

As Figure 1 illustrates, 21 professional Colleges regulate the 22 *RHPA* health professions. The product of consultation with professional groups, health care providers, consumer organizations and other interest groups, the *RHPA* provides a framework common to all of the professions, including a Health Professions Procedural Code (HPPC). Among its provisions, the HPPC requires each College to have several prescribed committees, including an Executive Committee, Registration Committee, Complaints Committee, Discipline Committee, and a Fitness to Practise Committee.

Figure 1: Ontario’s Health Professions under the *RHPA*



Source: adapted from HPRAC web site

Twenty-one profession-specific Acts provide the authority for the Colleges. The function of each College is to set standards for its health profession(s) and make sure they comply with the *RHPA* and related laws. Each College is governed by a Council. Individual statutes outline the “scope of practice” for each profession, the medical procedures or “controlled acts” it can perform (if any), and the composition of its governing Council.

Table 1: SELF-GOVERNING HEALTH PROFESSIONS

Health Profession Acts (all 1991)	Health Profession(s)
<i>Audiology and Speech-Language Pathology Act</i>	Audiology and Speech-Language Pathology
<i>Chiropody Act</i>	Chiropody
<i>Chiropractic Act</i>	Chiropractic
<i>Dental Hygiene Act</i>	Dental Hygiene
<i>Dental Technology Act</i>	Dental Technology
<i>Dentistry Act</i>	Dentistry
<i>Denturism Act</i>	Denturism
<i>Dietetics Act</i>	Dietetics
<i>Massage Therapy Act</i>	Massage Therapy
<i>Medical Laboratory Technology Act</i>	Medical Laboratory Technology
<i>Medical Radiation Technology Act</i>	Medical Radiation Technology
<i>Medicine Act</i>	Medicine
<i>Midwifery Act</i>	Midwifery
<i>Nursing Act</i>	Nursing
<i>Occupational Therapy Act</i>	Occupational Therapy
<i>Opticianry Act</i>	Opticianry
<i>Optometry Act</i>	Optometry
<i>Pharmacy Act</i>	Pharmacy
<i>Physiotherapy Act</i>	Physiotherapy
<i>Psychology Act</i>	Psychology
<i>Respiratory Therapy Act</i>	Respiratory Therapy

Source: (SCHEDULE 1 to the *RHPA*)

The following are features of the regulatory regime under the *RHPA* (including the HPPC) particularly relevant to the work of HPARB.

Registration/Entry to Practice

To practice as a regulated health professional, an individual must first become a member of the College governing that profession. Under section 15 of the HPPC, if a person applies for registration, the College Registrar must register the applicant or refer the application to the Registration Committee. Such a referral takes place if the Registrar has reasonable doubts about the applicant’s qualifications; wishes to impose limits,

conditions or terms on the certificate of registration; or proposes to refuse the application. The referred application is considered by a panel of at least three members of the Registration Committee, chosen by the chair, one of whom has been appointed to the Committee by the Lieutenant Governor in Council. The panel is empowered to issue an order directing the Registrar to issue a certificate of registration, to refuse to issue a certificate of registration, or to issue a certificate following the successful completion of exams, the completion of additional training, or subject to specified terms, conditions, and limitations.

A similar process allows a member of the College to apply to the Registration Committee for an order directing the Registrar to remove or modify a condition, limitation or term imposed upon the member's certificate of registration. The panel may issue an order refusing the application, directing the Registrar to remove any term, condition or limitation on the certificate of registration, or directing the Registrar to impose terms, conditions or limitations.

Complaints Committee

The HPPC prescribes a complaints process for each College. Any complaint filed with the Registrar about the conduct or actions of a Member is referred to the College's Complaints Committee for investigation. A panel of at least three members, at least one of whom has been appointed by the Lieutenant Governor in Council, is chosen by the Chair of the Complaints Committee to investigate and consider submissions. It may then refer an allegation of misconduct or incompetence to the Discipline Committee, refer the member to the Executive Committee for incapacity proceedings, require the member to appear before the Committee to be cautioned, and/or take other action it considers appropriate.

Public Representation

Representation from the general public on the governing Councils of the health professions was increased by the *RHPA* from one-quarter or less of Council membership to just under half. As well, lay representation on the Councils' Discipline Committee hearing panels was increased, from one layperson to a minimum of two. Both changes were made to ensure greater public participation in the management of the health professions.

The Work of HPARB

The role of the Health Professions Appeal and Review Board (HPARB) is to review certain decisions made by a College's Complaints Committee and

review or hold hearings into certain decisions by a College's Registration Committee.

Complaints Committee Decisions

A Complaints Committee panel is required to dispose of a complaint within 120 days of its filing. If it has not been disposed of within that time, the complainant or the member who is the subject of the complaint may apply to the Board to require the Complaints Committee to ensure the complaint is disposed of. If, after 60 days, it has still not been disposed of, the Board is required to investigate and make an order within 60 days.

When a Complaints Committee panel issues a decision, it is required to give the complainant and the member who is the subject of the complaint a copy of its decision, the reasons for the decision, and a notice advising each of any right they may have to request a review. Within 30 days of receiving such a notice, either party may request the Board to review the decision, unless the decision referred the allegation to the Discipline Committee, or referred the member to the Executive Committee for incapacity hearings.

After reviewing a decision, the Board may confirm all or part of the decision, make recommendations it considers appropriate to the Complaints Committee, or require the Complaints Committee "to do anything the Committee or a panel may do under the health profession Act and this Code except to request the Registrar to conduct an investigation." (s. 35)

Under the *Veterinarians Act*, the Board plays a similar role with respect to the Complaints Committee of the College of Veterinary Medicine.

Registration Committee Decisions

The decisions of the Registration Committee which may be appealed to the Board are those made in response to an application by a member under section 19 of the HPPC; namely, to have the conditions, terms or limitations placed on a certificate of registration removed or changed. Within 30 days of receiving a decision by the Registration Committee in response to the application under section 19, a member may apply to the Board for a review of the application and the documentary evidence in support of it, or for a hearing of the application. After the review or hearing, the Board may: confirm the order made by the panel; require the Registration Committee to direct the Registrar to issue a certificate if the applicant successfully completes an examination or training the Registration Committee may specify; require the Registration Committee to

direct the Registrar to issue a certificate to the applicant and impose any terms or conditions the Board considers appropriate; and/or refer the matter back to the Registration Committee with any recommendations the Board considers appropriate.

Under the *Veterinarians Act*, the Board plays a similar role with respect to the Registration and Accreditation Committees of the College of Veterinary Medicine.

Other Matters

The Board may also hear appeals from applicants for appointment or reappointment to the medical staff of a hospital who consider themselves aggrieved by decisions made by the hospital board, and from any member of a hospital's medical staff appealing a decision revoking, suspending or substantially altering their appointment.¹

Workload

The following two tables, taken from HPARB's *Business Plan: 2006 – 2008*, provide some indications of the Board's workload. Table 2 shows the Board's activity in fiscal 2005-06, while Table 3 presents the longer-term trends of HPARB's handling of Complaint Reviews.

Table 2: HPARB ACTIVITY: 2005-06

	Complaint Reviews	Registration Matters
New Requests	356	31
Matters Heard	206	17
Decisions Issued	219	19
PRCs* Conducted	45	6

* Pre-Review Conferences

¹ HPARB, *Annual Report 2004*, p. 5.

Table 3: HPARB CASE LOAD TRENDS: COMPLAINT REVIEWS 1998 – 2006

Annual Caseload			
Year	On-Hand	Received	Total
1998	780	541	1321
1999	983	412	1395
2000	660	360	1020
2001	251	424	675
2002	222	445	667
2003	241	438	679
2004		391	
2005*		352	
2006*		356	

* Projected

Structure of HPARB

Under the Act, the Board is composed of at least 12 members appointed by the Lieutenant Governor in Council (the cabinet) for terms not to exceed three years. The Lieutenant Governor in Council designates the chair and two or more vice-chairs from among the members. The Board sits in panels containing uneven numbers of members, selected at the discretion of the chair. The Act also requires that one member of each panel will be the chair or a vice-chair. Currently there are 25 members, consisting of a full-time chair, two part-time vice chairs and 22 part-time members. The Chair is remunerated at the SMG 3 level, which, according to the Public Appointments Secretariat, is in the range of \$132,600 to \$151,500.

A member cannot be employed in the public service or a crown agency, or have been a member of a Council or College of a regulated health profession.

The Board notes that it meets regularly for scheduled reviews and hearings: “on average, 3 member panels hear or review 24 cases per month and single facilitators conduct approximately 15-20 pre-review conferences,” as well as for monthly business meetings. In 2006, there were 6 chair and vice chair meetings, and 67 “project meetings” held by various committees of the board (e.g., the community liaison committee, the member resource development committee, the rules of practice revision committee, etc.).

Table 4: HPARB Board Membership (March 2007)

Board Member	Position	Term of Appointment	Location
Lamoureux, Linda	Chair (Full-Time)	23-Aug-2005 - 22-Aug-2008	Markham
Vauthier, Janice Helen	Vice-Chair (Part-Time)	15-Dec-2005 - 14-Dec-2008	Thunder Bay
Lobu, Taivi	Vice-Chair (Part-Time)	11-Apr-2006 - 10-Apr-2009	Toronto
Madonik, Barbara	Member (Part-Time)	07-Oct-2004 - 06-Oct-2007	Toronto
Foster, Courtney H.	Member (Part-Time)	03-Nov-2004 - 02-Nov-2007	Creemore
Fealing, Malcolm	Member (Part-Time)	21-Dec-2001 - 01-Feb-2008	Hamilton
Green, Paul J.	Member (Part-Time)	18-Feb-2004 - 17-Feb-2008	Toronto
Go, Avvy Yao-Yao	Member (Part-Time)	02-Mar-2005 - 01-Mar-2008	Toronto
Kennedy, Judith Constance	Member (Part-Time)	03-Mar-1999 - 02-Mar-2008	Toronto
Davie, Shelley	Member (Part-Time)	27-Feb-2002 - 05-Apr-2008	Richmond Hill
Maharaj, Rajiv	Member (Part-Time)	01-Sep-2005 - 31-Aug-2008	Mississauga
Wright, Nancy A.	Member (Part-Time)	18-Oct-2006 - 17-Oct-2008	London
Sossin, Lorne	Member (Part-Time)	25-Oct-2006 - 24-Oct-2008	Toronto
Mora, Felix	Member (Part-Time)	10-Nov-2005 - 09-Nov-2008	Richmond Hill
Ledger, Shelley	Member (Part-Time)	29-Nov-2006 - 28-Nov-2008	Toronto
Kelly, Thomas	Member (Part-Time)	15-Dec-2005 - 14-Dec-2008	London
Cohen, Sheldon	Member (Part-Time)	22-Dec-2005 - 21-Dec-2008	Toronto
Denov, Celia	Member (Part-Time)	05-Jan-2006 - 04-Jan-2009	Toronto
Taylor, Phillip	Member (Part-Time)	05-Jan-2006 - 04-Jan-2009	Toronto
Getson, Gary	Member (Part-Time)	03-Feb-2006 - 02-Feb-2009	Unionville
King, Christopher	Member (Part-Time)	03-Feb-2006 - 02-Feb-2009	Markham
Stasila, David	Member (Part-Time)	21-Feb-2007 - 20-Feb-2009	Aurora
Bossin, Michael	Member (Part-Time)	Mar-2007 - Mar-2009	Ottawa
Ryan Elliot, Kathleen	Member (Part-Time)	Mar-2007 - Mar-2009	Cobourg
Ouellet, Sonia	Member (Part-Time)	Mar-2007 - Mar-2009	Ottawa
Lo, Patrick	Member (Part-Time)	23-Mar-2006 - 22-Mar-2009	Toronto
Kelly, Kathleen J.	Member (Part-Time)	15-Apr-2003 - 16-May-2009	Toronto
Jovanovic, Stephen	Member (Part-Time)	30-May-2006 - 29-May-2009	Windsor
Shamess, Carol	Member (Part-Time)	30-May-2006 - 29-May-2009	Sault Ste Marie
Petryna, Brenda	Member (Part-Time)	10-Aug-2006 - 09-Aug-2009	Sudbury

Source: Public Appointments Secretariat

Organizational Structure and Finances

The Board is funded by the Ministry of Health and Long-Term Care, and its work is supported by the Health Boards Secretariat (the Secretariat) within the Ministry. The Secretariat provides administrative, financial, human resources, and information technology support to HPARB and its sister boards: the Health Services Appeal and Review Board (HSARB) and the Ontario Hepatitis C Assistance Plan Review Committee (OHCAP).

Within the Secretariat, seven office staff are dedicated to the work of HPARB, while the services of six administrative staff members are shared with the sister boards. Similarly, in terms of professional support staff,

HPARB has a dedicated full-time Deputy Registrar, and shares with the other boards the services of the Registrar and the Senior IT Business Systems Administrator.

The Board has supplied the Committee with financial information that reflects the organizational structure just described. Table 5 shows salaries and benefits for the dedicated HPARB staff and for the shared administrative staff contribution to the Board. The amounts shown for other expenditure categories are specific to HPARB, but “do not reflect the full overhead costs, as they are absorbed in part in the shared administrative budget.”² Table 6 shows the ODOE (other direct operating expenditure) costs specific to board member expenditures – i.e., chair’s salary, per diems, and direct hearing costs such as translations, security, etc. – this is an internal allocation within the Secretariat for the Board’s specific budget.

Table 5: HPARB EXPENSES THROUGH THE HEALTH BOARDS SECRETARIAT

	2003-2004	2004-2005	2005-2006
Salaries and benefits			
DEDICATED	\$ 442,000	\$ 455,500	\$ 513,534
SHARED	109,725	112,545	117,990
Transportation and communications	91,580	74,403	52,731
Services	854,950	901,593	660,578
Supplies and equipment	30,035	157	1,239
TOTAL:	\$1,528,290	\$1,544,198	\$1,346,072

Table 6: BOARD MEMBER EXPENDITURES (internal ODOE allocation)

	2003-2004	2004-2005	2005-2006	2006-2007
HPARB ODOE expenditures	\$976,565	\$973,153	\$714,548	\$1,198,000*

(* Projected)

The Board noted that its original forecast for ODOE expenditures for 2006-07 was \$785,000. The increase to almost \$1.2 million reflects increases to per diem rates for members that became effective September 1, 2006.

² HPARB, Answer to Questionnaire, No. 16.

Information submitted by the board indicates the following break down of the \$1.2 million ODOE expenditure projection for 2006-07:

Honoraria: \$825,000
Other Costs: \$373,000

Other costs “include travel, education, administration (i.e., the cost of board meetings, security, court reporting), Evans Case Management system, and legal costs.”³

In the Business Plan submitted to the Committee, HPARB notes that a new expense claim tracking data base has been put into place to capture accurately the breakdown of all honoraria costs in regard to decision writing, preparation time, attendance, disclosure, etc.⁴ The Board expects expenditures for the coming year to provide the benchmark for future fiscal allocations.

DISCUSSION AND RECOMMENDATIONS

HPARB Opening Remarks

Chair Linda Lamoureux used her opening remarks to update the Committee on HPARB and the vital role it plays in Ontario’s system of regulated health care professionals. With jurisdiction over 22 human health professions and veterinarians, HPARB’s purpose is to ensure that “the activities of the health professionals are regulated and coordinated in the public interest.”⁵ This is accomplished by fulfilling four roles:

- upon request by members of the public or members of a regulated health profession, HPARB reviews decisions made by the health profession colleges’ complaints committees;
- upon request by applicants for registration by a health profession college, HPARB reviews or holds hearings on decisions made by the colleges’ registration committees;
- upon request, HPARB reviews or hears applications regarding decisions by the accreditation committees of the pharmacists and veterinarians; and

³ *Business Plan 2006 – 2008*, p. 11.

⁴ *Ibid.*

⁵ Standing Committee on Government Agencies, *Committee Hansard*, 28 February 2007, A-519.

- upon request, HPARB holds hearings concerning decisions about physicians' hospital privileges in about 135 public hospitals under the *Public Hospitals Act*.

In the first three roles, the Board may confirm the committee's decision, make recommendations to the committee, or refer the matter back to the committee for further action. In cases of registration or accreditation, the Board may require the committee to issue a certificate of registration or a license with certain terms or conditions. Where physicians' hospital privileges have been denied, the Board has the authority to reinstate them.

To date, the Board has not had a Memorandum of Understanding (MOU) with the Ministry (which it is required to have). In response to questioning, the Chair stated that the Board and Ministry are currently working on a second draft, and told the Committee that she anticipated the MOU would be signed within the next six weeks.

Ms. Lamoureux told the Committee that since she joined the Board in late 2005, her focus has been on three themes: fairness, openness and accountability. She has also set four strategic objectives for her tenure as Chair:

- adding value to stakeholders;⁶
- improving the quality and objectivity of decisions;
- reflecting the diversity of Ontario in appointments to HPARB; and
- focusing board members and staff on "continuous improvement of our services."⁷

In the remainder of her opening remarks, and in response to questions from Committee members, the Chair told the Committee of some of the initiatives being taken to achieve these objectives.

Adding Value

- an annual meeting with representatives of the colleges
- introducing pre-review conferences to improve access
- reviewing rules of practice, including re-writing in plain language

⁶ HPARB identifies its stakeholders as "the recipients of health services, health professionals, the colleges, other institutions involved in health services, and the public." Ibid., A-520.

⁷ Ibid., A-520.

- ensuring procedures are consistent with the themes of fairness, openness and accountability
- developing a small, dedicated team for dealing with registration matters
- engaging in outreach activities to increase public awareness of the appeals process, especially for newer Canadians seeking registration into health professions
- developing an Access to Justice program in conjunction with the U of T law school and Pro Bono Students Canada with two outcomes:
 - developing appropriate materials (focusing on accessibility) for Board members and the public
 - developing materials that will allow law students to assist unrepresented parties before the Board

Improving Decisions

- providing ongoing professional development and training to members
- holding monthly board meetings that include a speaker from a stakeholder community
- arranging educational sessions provided by members of the legal and health communities
- holding quarterly workshops on decision-writing

Reflecting Diversity

- an ongoing effort is being made to recruit members from all parts of the province (see Note on Board Membership, below)
- a program is being developed with the Maytree Foundation [an organization which includes among its programs abcGTA, which “attempts to increase the representation of visible minorities and aboriginals on agencies, boards and commissions (abc) in the Greater Toronto Area (GTA)”⁸] in order to identify candidates to recommend for appointment to the Board.

⁸ The Maytree Foundation, “Leadership and Learning,” Internet site at <http://www.maytree.com/index.asp?section=2>, accessed 14 March 2007.

Service Improvement

- a complete review of recruitment, administrative processes and procedures has taken place
- teleconferencing is offered for those complainants and or health professionals unable to come to Toronto
- the Board's first hearing in London is to take place soon, and may lead the way to further hearings outside Toronto
- set weeks for hearings have been established, to allow planning by all participants
- a new case management system has been set up within the Health Boards Secretariat
- planning is underway to make decisions available on-line
- a performance target of three months for delivering a decision has been set [currently, a decision can take up to six months and longer]

Stakeholders

CARE Centre for Internationally Educated Nurses/Yee Hong Centre for Geriatric Care

The Committee heard from Amy Go, Executive Director of the Yee Hong Centre for Geriatric Care, one of the largest non-profit geriatric care centres in Ontario. The majority of Yee Hong's workforce is composed of internationally educated nurses. Ms. Go also chairs the board of directors of the CARE Centre for Internationally Educated Nurses, which was created in 2000 by Yee Hong, St. Michael's Hospital, Kababayan Community Centre and the Woodgreen Community Centre. The purpose of the CARE Centre is to assist internationally educated nurses in the licensing process and to secure employment for them.

Ms. Go expressed concern about the barriers that internationally educated nurses face, personally and at a systemic level, in becoming registered and finding employment. This knowledge has led to an appreciation of the importance of an independent appeals process, and of HPARB's role in ensuring that the process is accessible, fair, and equitable.⁹

⁹ Standing Committee on Government Agencies, Committee *Hansard*, 28 February 2007, A-532.

One area in which Ms. Go suggested the system needs improvement is access to legal counsel for individuals such as the internationally educated nurses that the CARE Centre serves. In addition to having little awareness of the appeals process, finding it difficult to understand the difference between a review and a hearing, and facing language barriers, most of these individuals cannot afford to hire a lawyer.

Ms. Go also stated that under the current process it is not enough for an appeal board to find that an appellant [in a registration decision appeal] meets all the requirements [to be registered], it must also find impropriety on the part of the regulatory committee before it can overturn the committee's decision; she urged "lowering the bar" in order to ensure the Board has the power to make it easier for appellants to be licensed.

Finally, Ms. Go applauded the creation, through Bill 124 (the *Fair Access to Regulated Professions Act, 2006*) of the Fairness Commission. She suggested there should be close cooperation between HPARB and the Fairness Commissioner, particularly with respect to information sharing, so that the Commissioner can "recommend that systemic changes be made in the licensing process."¹⁰ She also called for dialogue between HPARB, the Fairness Commission, and community groups, in order to provide the latter with input on the systemic changes needed to ensure accessibility and fairness for applicants.

College of Physicians and Surgeons of Ontario (CPSO)

The College of Physicians and Surgeons of Ontario is the regulatory body for Ontario doctors and has had an extensive relationship with HPARB; in 2004, the Board dealt with more matters originating with CPSO than matters from all other colleges combined. Mr. Rocco Gerace brought to the Committee four points of discussion regarding the Board.

(1) HPARB is a valued component of the regulatory system in Ontario, helping CPSO demonstrate its accountability to the public. The CPSO believes this arm's-length and independent appeal process should be extended to all regulated professions.

(2) While there were problems with the Board in the past, including case delays, and an unresponsiveness to input, "changes that have occurred in the recent months, in the last year, have been very positive."¹¹

¹⁰ Ibid., A-533.

¹¹ Ibid., A-535.

(3) CPSO supports allowing HPARB to consider prior complaints history when addressing the disposition of an individual complaint, but does not support HPARB making that information public.

(4) CPSO expressed concerns about isolated incidents in which the judgement of a lay member was substituted for an expert opinion concerning scientific evidence. Questioned further about this point, the CPSO's medical director of investigations and resolution, Dr. Patrick McNamara explained as follows:

I think there's ample opportunity for both parties, when the complaints committee is reviewing the matter, to provide expert opinions, if they so wish. Sometimes they surface at an HPARB hearing, when there was ample opportunity to provide it to the complaints committee. The expert opinion may have little or no value, depending on the substance of it. But that's our concern: that there really is almost essentially a re-fighting of the complaint all over again, rather than looking at the reasonableness of the decision or the adequacy of the investigation.¹²

Asked about the degree to which HPARB agrees with the CPSO's decisions, Mr. McNamara indicated that "about 25%" of CPSO decisions are appealed to HPARB, but that only "5% of that subset" [0.75% of all CPSO decisions] is returned to the complaints committee for reconsideration or a new decision.¹³

Royal College of Dental Surgeons of Ontario (RCDSO)

Mr. Irwin Fefergrad, registrar of the Royal College of Dental Surgeons of Ontario (RCDSO) told the Committee that HPARB is a "wonderful institution that our college supports in its entirety."¹⁴ The RCDSO takes careful notice of HPARB's reasoning in its decisions, and finds them to be educational to the college's panels, to its professionals, and to the parties to the proceeding. The registrar echoed the comments of Dr. Gerace in praising HPARB's chair, Ms. Lamoureux, for her vision for the Board and her openness to dialogue. He also offered two suggestions for improvement:

¹² Ibid., A-537.

¹³ Ibid.

¹⁴ Ibid., A-538.

- (1) That HPARB's decisions, in each instance, be supported by legal advice "just to make sure that the issues ... are approached in a way that addresses the legal concerns that are in the statute." Asked for clarification about this point, Mr. Fefergrad indicated that he was simply suggesting that HPARB have independent legal counsel available to it at every hearing.
- (2) That HPARB provide a central database of its decisions so that anyone can access its decision-making.

In response to questioning, Mr. Fefergrad indicated that he believes the Board's composition is as it should be, and that neither he nor his college has concerns about the length of time HPARB takes in making its decisions. He concluded his prepared remarks by stating that "we have not only a unique appeal and review board but one that works and is a model that should be maintained and not tampered with."¹⁵

Mr. Fefergrad also shared with the Committee his thoughts about colleges sharing with HPARB the prior complaints history of a member, indicating that his concern is the sharing of "relevant history." He suggested that if HPARB is to be given the complete complaints history, it should develop "some process to review the history and make a determination of what it thinks is relevant. ... I do not support, though, giving the full history and having that automatically exposed without somebody taking a look at it to see that it's relevant to what's at hand."¹⁶

Carol Kushner

Ms. Kushner introduced herself as a health policy consultant and media commentator on health issues. She has also authored two books and numerous articles on "improving the quality of care and ensuring that Canadians maintain access to care based on need rather than ability to pay." Noting her interest in how the public interest is protected, she told the Committee she believes that HPARB's "role in providing an avenue for appeal and review of decisions made by regulatory bodies representing the health professionals is a very important aspect of public protection."¹⁷

Ms. Kushner is particularly concerned about the practice of physicians charging their patients block fees, and accessed the HPARB *Annual Report* to determine whether the Board had received complaints related to this issue. She was surprised at the lack of detail in the information that is

¹⁵ Ibid., A-539.

¹⁶ Ibid., A-541.

¹⁷ Ibid., A-542.

available in the annual reports and stated: "I was unable to get any information, which suggests that HPARB is not as transparent as I would like it to be."¹⁸

The witness offered no recommendations to the Committee.

Ontario College of Pharmacists (OCP)

Deputy Registrar and Director of professional development Ms. Delia Croteau told the Committee that the Ontario College of Pharmacists (OCP) regulates almost 11,000 pharmacists, more than 800 interns and students, and just over 3,000 pharmacies. Its registration committee reviews more than 300 applications annually, and its complaints committee around 160 complaints. Noting that very few OCP cases are appealed to HPARB, Ms. Croteau stated that

the right to request an appeal and the right to request a review by an independent body of the Ministry of Health is a very important part of our registration process and our complaints process. ... When a member of the public, a pharmacist, a student or an intern does appeal a decision to HPARB, it serves as part of a quality assurance process for each committee.¹⁹

The only problem OCP has had with HPARB has been the few instances when "the appeal board appeared to be evaluating and making decisions with regard to the standards of practice rather than with regard to the decision itself."²⁰ Ms. Croteau indicated that a "thorough orientation" of board members explaining the "extent of their mandate" would likely solve this problem. In response to a question, she noted that this situation (i.e., the Board making decisions on standards of practice) has not occurred for some time.

Elaborating on the OCP's interaction with HPARB, Ms. Croteau explained that of the roughly 160 complaints investigated by the college's complaints committee annually, about eight cases a year are appealed to the Board. She also noted that of the registration cases appealed to HPARB, only about two or three, on average, are actually heard. In many cases, the applicant has filed an appeal so as not to miss the deadline, but then has

¹⁸ Ibid., A-544.

¹⁹ Ibid.

²⁰ Ibid., A-545.

taken action to meet the registration requirement(s) before the appeal comes to be heard.²¹

Ms. Claudia Skolnik, OCP's manager of investigations and resolutions, told the Committee that the "triaging and screening" of cases by HPARB to eliminate those that are "frivolous and vexatious" has been a positive step, as has also been the decision to engage in pre-hearing conferences.²²

COMMITTEE RECOMMENDATIONS

The Committee acknowledges that many witnesses expressed their approval of the current management and direction of HPARB, and commends the Board for its performance and efforts. Witnesses also brought suggestions for improvement and the Committee advises HPARB to consider the following recommendations as it continues to improve its relationship and programs with system partners.

The Committee recommends that:

1. HPARB look at possible options for individuals bringing an appeal before a tribunal such as HPARB to have access to legal counsel.
2. HPARB work with community groups and other bodies working with new Canadian professionals to recommend potential changes to various colleges that will enhance access and fairness.
3. HPARB continue to develop and create a central database of its decisions and make the database accessible having regard to any privacy issues.
4. HPARB continue to improve the training of HPARB members through a thorough orientation that clarifies the extent of their mandate.

²¹ Ibid., A-545-6.

²² Ibid., A-546.