

The time to disposition of a disciplinary matter before the College of Chiropractors of Ontario

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Study design: A retrospective case analysis was undertaken of the discipline committee files at the College of Chiropractors of Ontario (CCO) which is the regulatory agency whose statutory mandate is to protect the public interest.

Objective: This study sought to quantify the time element in each case, with respect to disposition of a matter that came before the discipline committee regardless of whether a guilty or innocent determination was made, or even if the referral to discipline was unwarranted. The time period examined was 1994 to 2001 inclusive.

Summary of background data: In exercising statutory authority, administrative tribunals must clearly understand due process and procedural fairness. Parties to a discipline proceeding each have their respective rights including the right to natural justice and these rights must be weighed fairly, and balanced with respect to societal rights. Delayed proceedings may challenge an individual's Charter rights and may also offend the administrative legal duties imposed by statute.

Results: Twenty-seven (27) files were identified that met the inclusion criteria for this study. The results indicate that the average time to complete a disciplinary process and for a case to be disposed was 19.5 months with a range of 6 months to 45 months. These results cover the eight year period since the RHPA was proclaimed into force. Disposition for the purposes of this study does not include any additional time related to subsequent submissions to penalty imposition.

Conclusions: The regulatory model currently in place in the jurisdiction of the Province of Ontario with respect to the College of Chiropractors as well as the

Méthodologie : Analyse rétrospective de cas effectuée sur les dossiers du comité de discipline du College of Chiropractors of Ontario (CCO), l'organisme de réglementation dont le mandat conféré par la loi est de protéger l'intérêt public.

Objectif : Cette étude cherchait à chiffrer le facteur temps de chaque cas, en ce qui concerne le règlement du cas présenté au comité de discipline, sans tenir compte de la décision de culpabilité ou d'innocence, ou même si le renvoi au comité de discipline était infondé. L'étude portait sur la période de 1994 à 2001 inclusivement.

Résumé des données de base : En exerçant leur pouvoir légal, les tribunaux administratifs doivent comprendre clairement l'application régulière de la loi et l'équité de la procédure. Les parties concernées par une procédure disciplinaire détiennent leurs droits respectifs, y compris le droit à la justice naturelle, et ces droits doivent être équitablement pesés et équilibrés à l'égard des droits sociaux. Une procédure retardée peut constituer une contestation des droits d'une personne fondés sur la Charte et peut également constituer une infraction contre l'administration de la justice.

Résultats : Vingt-sept (27) dossiers ont satisfait les critères d'inclusion de l'étude. Les résultats indiquent que la durée moyenne pour compléter une procédure disciplinaire et pour résoudre un cas était de 19,5 mois, soit entre 6 mois et 45 mois. Ces résultats couvrent la période de huit ans depuis l'entrée en vigueur de la loi de 1991 sur les professions de la santé réglementées. La disposition aux fins de cette étude ne comprend pas la durée supplémentaire liée aux submissions ultérieures pour imposition d'une pénalité.

Conclusions : Le modèle de réglementation

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other regulated professions is undergoing a period of review. The original intent of the RHPA was to allow the public equal rights and remedies with respect to dealing with each of the regulated professions. The results of this study draw attention to the length of a statutorily defined process which was designed to protect the public interest. It remains open to the participants in the process to determine the ultimate benefits.

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KEY WORDS: regulatory, discipline, chiropractic.

Introduction

In the Province of Ontario, as of December 2001, chiropractors are one of 23 professions delegated the entitlement to self regulation under the provisions of the Regulated Health Professions Act, 1991(RHPA).¹ This legislation was proclaimed into law on December 31, 1993. The Minister of Health and Long-Term Care is charged with administering this Act and delegates the privilege of self governance to those professions set out in the RHPA. With the privilege of self governance comes a host of duties, obligations and responsibilities all focused and directed at serving and protecting the public interest. All regulatory colleges should have an interest in monitoring the effectiveness of their College's complaints and discipline committee procedures with respect to professional misconduct and incompetence issues. The utilization of various outcome measures such as cost, time in process, participant satisfaction and number of cases, are all issues not well settled as indicators of effectiveness of the disciplinary process. In addition, such outcome measures themselves may not be congruent with protecting the public interest. This paper examines one indicator – the time in process.

Each of the 21 Colleges (some professions are clustered) has eight statutory objects to discharge, which in terms of regulating the profession include but are not limited to, developing, establishing and maintaining, standards of qualification, practice, knowledge, skill and professional ethics. For those chiropractors whose conduct

présentement en place dans la province de l'Ontario, en ce qui a trait au College of Chiropractors, ainsi qu'à d'autres professions réglementées, est en cours de révision. L'objectif initial de la loi de 1991 sur les professions de la santé réglementées était de fournir au public des droits et des recours en matière de services liés aux professions réglementées. Les résultats de cette étude attirent l'attention sur la longueur de la procédure définie par la loi et conçue pour protéger l'intérêt public. L'étude demeure accessible aux participants du processus afin de déterminer les avantages finaux.

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MOTS CLÉS : réglementation, discipline, chiropratique.

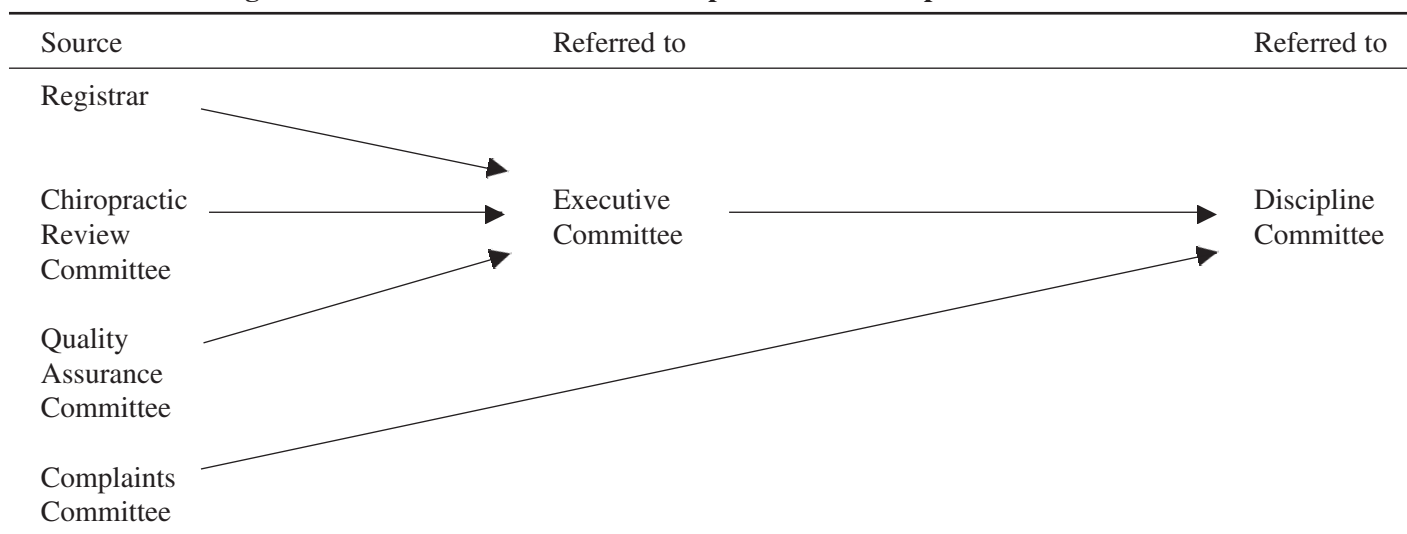
or capacity are at variance with the objects of the College of Chiropractors of Ontario (CCO), several mechanisms may be initiated which serve and protect the public interest.

When allegations of professional misconduct or incompetence are serious enough to warrant a referral to the Discipline Committee, the bringing of proceedings can have a significant impact on either party (the College and the defendant chiropractor). Matters of professional misconduct or incompetence may proceed to the Discipline Committee by way of several mechanisms. The sources of referral to the Discipline Committee appear in Figure 1, which outlines the pathways **currently** enforced by operation of law pursuant to the RHPA, the Chiropractic Act and the regulations thereunder.

Registrar

The Registrar of the College may appoint an investigator if he/she believes on reasonable and probable grounds that a chiropractor has committed an act of professional misconduct or is incompetent *and* the Executive Committee approves the appointment. The two step test of reasonable *and* probable has a further procedural safeguard of having to meet the approval of the Executive Committee.

In addition, where urgent circumstances exist (i.e. the conduct of the chiropractor exposes or is likely to expose his/her patients to harm or injury), the Registrar may receive an interim order from the Executive Committee, directing the Registrar to suspend or impose terms, condi-

Figure 1 Referral sources to the Discipline Committee pursuant to the RHPA

tions or limitations on the chiropractor's certificate of registration subject to the following conditions:

- A specified allegation of professional misconduct or incompetence has been referred to the Discipline Committee which requires that the investigation be completed, and
- the Executive Committee is of the opinion that the conduct of the chiropractor exposes or is likely to expose his or her patients to harm.

Complaints Committee

The current model of self regulation involves a complaint based mechanism for the most part. A complaint regarding the conduct or actions of a chiropractor is filed with the Registrar of the College and investigated by a panel of the Complaints Committee. The Registrar gives the chiropractor notice of the complaint, and the chiropractor who is the subject of the complaint has thirty days to make a written submission to the panel. A panel in discharging its statutory duty has 120 days after the filing of the complaint to dispose of it. After a panel investigates a complaint and considers the submissions of the chiropractor and the relevant documents and records and determines that specified allegations should be referred to the Discipline Committee, the chiropractor and the College become parties to a proceeding of discipline. The complainant may be a witness but does not usually have party status.

Executive Committee

In certain circumstances, specified allegations of a chiropractor's professional misconduct or incompetence may be referred to the Discipline Committee by the Executive Committee of the College, if the Executive Committee was of the opinion that the chiropractor's conduct exposes his or her patients to harm or injury. The Registrar may be directed to suspend, or impose terms, conditions or limitations on a chiropractor's certificate of registration as an *interim order*. Various procedural safeguards are in place to protect a chiropractor's rights and to prevent prejudice to the chiropractor.

Chiropractic Review Committee (CRC)

Under the Health Insurance Act,² the Minister of Health and Long-Term Care appoints the members of the CRC to perform duties that are assigned to it under the Act. For the purposes of this Act, certain services are defined as insured services. In billing the insurance plan for insured services, the chiropractor must comply with the various provisions as set out in the Act respective of eligibility and prescribed requirements. The General Manager of the plan may refuse to pay or may pay a reduced amount for a service provided by the chiropractor if he/she was of the opinion:

- that all or part of the insured service was not in fact rendered,

- 2 that the nature of the service was misrepresented, whether deliberately or inadvertently,
- 3 after consulting with a practitioner who is qualified to provide the same service, that all or part of the service was not therapeutically necessary,
- 4 that all or part of the service was not provided in accordance with accepted professional standards and practice.

The decisions made by the General Manager or the CRC may become the basis for initiating proceedings of discipline against the chiropractor since the particular grounds may offend the professional misconduct regulation of the College.

Quality Assurance Committee

If the Quality Assurance Committee is of the opinion, based on an assessment, that a chiropractor may have committed an act of professional misconduct or may be incompetent, the Committee may disclose the name of the chiropractor and allegations against the chiropractor (but no other information) to the Executive Committee.

Discipline Committee

The disciplinary proceeding is commenced when the specified allegations of professional misconduct or incompetence are formulated and referred and the Registrar signs a Notice of Hearing. At a hearing of allegations, a panel will make findings based exclusively on the evidence admitted before it. There are a number of safeguards in place to ensure procedural fairness to both parties to the proceeding.

A panel may find that a chiropractor has committed an act of professional misconduct if the chiropractor has been found guilty of an offence relevant to the his/her suitability to practice, there has been a finding of professional misconduct in another jurisdiction, the chiropractor has sexually abused a patient or he/she has committed an act of professional misconduct as defined in the misconduct regulation. A panel may find a chiropractor to be incompetent if his/her professional care of a patient displayed a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature or to an extent that demonstrates that he/she is unfit to continue to practice or that his/her practice should be restricted.

The provisions of the RHPA set out the time frame for

disposition of a complaint by the Complaints Committee. *No such provision is set out for the Discipline Committee*, although if an interim order has been authorized by the Executive Committee, “the College shall prosecute the matter expeditiously” and “the Discipline Committee shall give precedence to the matter.”

Appeals

Various appeal and review mechanisms are in place as procedural safeguards to the system implemented by administrative tribunals. However, appeals and reviews may substantially lengthen the time required to reach a final determination.

A decision of the Complaints or Executive Committee to refer a matter to the Discipline Committee can not be appealed. However, a decision of the Complaints Committee not to refer to the Discipline Committee may be reviewed by the Health Professions Appeal and Review Board (HPARB). Decisions of the General Manager can be reviewed at the discretion of the chiropractor while decisions of the Chiropractic Review Committee (CRC) may be appealed to the Health Services Appeal and Review Board, and beyond that to Divisional Court. Decisions of the Discipline Committee may be appealed to Divisional Court by any party to the hearing (chiropractor, or College, or intervenor). A decision of the Quality Assurance Committee to refer a matter to the Executive Committee can not be appealed.

Study Design

This study undertook a retrospective case file analysis during the course of an eight year period (1994 to 2001 inclusive) and identified cases disposed of by the Discipline Committee. The period of time related to the disposition of the penalty phase of a proceeding was excluded as well as any time related to an appeals process at any level.

The inclusion criteria for this study was the following:

- 1 cases referred by the Complaints or Executive Committees and disposed of by the Discipline Committee from 1994 to 2001 inclusive.

The objectives were to quantify the amount of time expended from:

- 1 the receipt of a letter of complaint by the College

- consistent with the complaints committee routing mechanism, or
- 2 the initiation of an investigation by the Registrar on reasonable and probable grounds consistent with the executive committee routing mechanism, or
- 3 the receipt of a report from the Quality Assurance Committee consistent with the executive committee routing mechanism, or
- 4 the receipt of a decision and reasons by the General Manager of OHIP, either mandatory or discretionary, or
- 5 the receipt of a report from the Chiropractic Review Committee,

to the final disposition of the matter by the Discipline Committee.

All issues related to confidentiality were addressed. The starting point for 1 was defined as the date of authorization of the complaint. The starting point for 2, 3, 4, and 5 was defined as the date of approval of the investigation. The end point (final disposition) was defined as the day when the defendant chiropractor became aware of the decision of the Discipline Committee.

The nature of the allegation(s) for the specific files reviewed was not characterized. Allegations of professional misconduct and incompetence may reflect sexual abuse, communication problems, clinical deficiencies, fraud or billing irregularities.

The following were determined: the number of cases per year, the source of the referral to discipline, whether the defendant was found guilty or plead guilty and also if a voluntary undertaking was given by the chiropractor, and finally the number of months that the Discipline Committee required to make its determination. (Table 1).

Results

Twenty-seven (27) cases were identified which fell within the inclusion criteria (Table 1).

The number of cases ranged from 0 to 8 per year. Fourteen (14) cases were referred to discipline by the Complaints Committee while 13 were referred by the Executive Committee. Voluntary undertakings were given in 8 cases. In 8 cases the chiropractor was found guilty while in 14 cases resolved by joint submissions, the chiropractor plead guilty. In 5 cases, the Discipline Com-

mittee determined the chiropractor was not guilty of the allegations.

The results indicate that the average time over the eight year period since the RHPA was proclaimed into force, for a case to complete a disciplinary process and be disposed was 19.5 months with a range of 6 months to 45 months.

The percentage of the profession involved in the disciplinary process ranged from 0.00 to 0.4% while the percentage of the profession being subject to a finding at discipline ranged from 0.0 to 0.21%. (Table 2).

Discussion

This study sought to quantify the time it took for a discipline matter to be disposed.

In exercising statutory authority, administrative tribunals must clearly understand due process and procedural fairness. Parties to a discipline proceeding each have their respective rights including the right to natural justice and these rights must be weighed fairly, and balanced with respect to societal rights. Delayed proceedings may challenge an individual's Charter rights and may also offend the administrative legal duties imposed by statute.

Factors which may lengthen the process, include but are not limited to the following:

- 1 There is a lengthy investigation from the point where the Registrar receives approval from the Executive Committee to appoint an investigator, the investigation is completed and reported by the Registrar and the Executive Committee decides to make a referral to the Discipline Committee. Some examples would be the complexity of the allegation, or obstruction by individuals or agencies such as the police, or simultaneous criminal or civil proceedings.
- 2 Similarly, there is a lengthy investigation by the Complaints Committee before it refers a specified allegation of the chiropractor's professional misconduct or incompetence to the Discipline Committee. Examples might be a complainant who is not providing information in a timely manner, or simultaneous criminal or civil proceedings, or the availability or lack thereof, of the chiropractor's legal counsel.
- 3 Lack of timely disclosure, for example, a chiropractor or complainant may be prejudiced in concurrent civil or criminal proceedings (i.e. the police will not dis-

Table 1

Year Disposed	Case number	Source (Complaints-C Executive-E)	Voluntary Undertaking (VU)	Discipline determination (plead guilty P, found guilty F, found innocent I)	Number of months to disposition
1994	1	C		F	10
	2	C		F	11
	3	C		F	17
	4	C		F	22
1995	5	E	VU	P	8
	6	E	VU	P	8
	7	E	VU	P	6
	8	C		F	10
	9	E		I	11
	10	C		I	16
	11	C		I	15
	12	E		I	10
1996	13	E		F	41
	14	E		F	8
	15	E		P	6
	16	C		I	27
1997	—				
1998	17	E	VU	P	28
	18	C	VU	P	45
1999	19	C		P	20
	20	C		P	21
	21	E	VU	P	19
2000	22	E	VU	P	11
	23	E		P	39
2001	24	C	VU	P	28
	25	C		P	20
	26	E		F	31
	27	C		P	38

Table 2

Year	Number cases	Number registrants	% of profession in the Disciplinary Process	% of profession disciplined (guilty)
1994	4	1846	0.21	0.21
1995	8	1999	0.40	0.20
1996	4	2117	0.18	0.13
1997	0	2171	0	0
1998	2	2293	0.08	0.08
1999	3	2424	0.12	0.12
2000	2	2550	0.07	0.07
2001	4	2701	0.14	0.14

close information relevant to an investigation).

- 4 Either the complainant or the chiropractor may be unsatisfied with the Complaints Committee decision and may request a review by HPARB and the matter may subsequently be referred back to the Complaints Committee (i.e. the investigation conducted may have been inadequate or the decision rendered may have been unreasonable) or may be referred to discipline. HPARB itself may lengthen the discipline process due to its own deliberations in exercising its mandate.
- 5 Either the complainant or the chiropractor may be unsatisfied with the HPARB review and may appeal, or commence an application for judicial review to Divisional Court.
- 6 The proceeding is delayed to permit the parties to have settlement discussions and attempt to resolve some or all issues at a prehearing conference.
- 7 The chiropractor pleads not guilty to the allegations and the matter proceeds to a lengthy hearing.
- 8 Non-party (intervenor status) participation in a hearing provides the right to lead evidence, cross examine witnesses and also appeal.
- 9 Various legal and procedural issues during the course of the hearing (i.e. disclosure, admissibility, scheduling the hearing and adjournments, motions).
- 10 The Discipline Panel reserves its decision.

Factors which may shorten the process, include but are not limited to the following:

- 1 The Executive Committee makes an interim order with respect to a chiropractor's certificate of registration and refers an allegation to the Discipline Committee once the investigation is complete. In this scenario, the College must prosecute expeditiously and the Discipline Committee must give the matter precedence.
- 2 A Resolution Agreement is reached between the College and the chiropractor during the period immediately after the referral by the Complaints or Executive Committee and the commencement of the discipline hearing (ie. a pre-hearing conference may expedite a resolution) and a joint submission is made to the Discipline Committee.
- 3 The governing body in a jurisdiction other than Ontario has found the chiropractor committed an act of professional misconduct.
- 4 The chiropractor has been found guilty of an offense that is relevant to the member's suitability to practice the profession (i.e. murder, fraud, sexual abuse).
- 5 Cost recovery provisions may serve as an incentive.
- 6 The chiropractor pleads guilty to the allegations.

Factors which may reduce the number of referrals to discipline, include but are not limited to the following:

- 1 The evidence does not warrant a referral.
- 2 The likelihood of a finding is weak (evidence obtained during an investigation may not be admissible at a hearing, or does not meet the onus of proof).
- 3 The witnesses are reluctant to testify for a variety of reasons (ie wanting to maintain the privacy of their medical history since hearings are open to the public or not wanting to be subjected to cross-examination).
- 4 Alternative dispute resolution (ADR) or pre-hearing conferences may successfully address certain complaints to the satisfaction of the complainant, the chiropractor, and the College.

Once the Committee makes a finding, it then entertains the penalty phase of the discipline proceeding. Depending on the nature of the misconduct or incompetence, several outcomes are possible.

With respect to the small number of discipline cases, while the percentage of the profession interacting with the discipline process is exceedingly small, it does not in any way negate the substantial impact that any one particular case may have on the process. For example, in one such case, a chiropractor sexually abused 14 female patients. In addition, many matters are resolved short of a referral to discipline such as by a caution or an Acknowledgement and Undertaking.

Conclusion

The utilization of various outcome measures such as cost, time in process, participant satisfaction and number of cases referred, are issues not well settled as indicators of effectiveness of the disciplinary process or even in pro-

tecting the public interest. As measuring tools, they remain unproven indicators of self regulation.

It would be interesting to compare the data from the 21 regulatory colleges in Ontario.

The regulatory model currently in place in the jurisdiction of the Province of Ontario with respect to the College of Chiropractors as well as the other regulated professions is undergoing a period of review. The original intent of the RHPA was to allow the public equal rights and remedies with respect to dealing with each of the regulated professions. The results of this study draw attention to the length of a statutorily defined process which was initially designed to protect the public interest. It remains open to the participants in the process to determine the ultimate benefits and whether the process is consistent with the intent of the RHPA.

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- 1 Regulated Health Professions Act, 1991. S.O. 1991, c.18.
- 2 Health Insurance Act, R.S.O. 1990, c.H-6.

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