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To: Steering Committee on Modernization of Health Professional Regulation, November 2019

The BC Pharmacy Association (BCPhA) appreciates the opportunity to provide feedback on the consultation paper *Modernizing the provincial health profession regulatory framework: A paper for consultation* (the "Consultation Paper").

The BCPhA supports and advances the professional and economic interests of community pharmacists and pharmacies in British Columbia. The BCPhA's membership include more than 3,200 practicing pharmacists and more than 900 pharmacies in communities large and small across the province. Membership in the Association is voluntary.

We are in support of government's efforts that support the delivery of the highest standards of care by all B.C. health professionals through the most appropriate oversite and regulation of those individuals providing health care in the province.

We applaud the Minister of Health's recognition that a review of current regulatory standards was needed and agree with the objectives of ensuring consistency and accountability for all health-care regulators.

We have aimed to provide comments in areas where we have expertise and/or believe our input would be helpful and valuable. As such, we have not responded to all of the questions posed in the Consultation Paper. But for ease of reference, our comments are organized in the order that they are asked in the Consultation Paper.

Response to Questions

1. *Improved Governance*

Q1a: Do you support an equal number of public and professional board members?
Q1b: Are there any possible challenges to the proposed approach, and if so, how can they be addressed?

The BCPhA believes it is vital that health professions' College Boards have members selected from within the profession being regulated and that those members have current and in-depth clinical and practice expertise. Consistent with this view, the Association supports the proposal that at least 50% of College board members be health professionals being regulated. We agree that ensuring diversity and competency will be very important to ensure the right skill mix.

As we have previously submitted, the BCPhA believes that professionals should be directly engaged in their own regulation because their specialized knowledge and training enables them to understand the risks to the public posed by an individual professional's failure to meet the standards, and by the failure to set adequate practice standards in the first place. Pharmacists practice in hospitals, in the community, in institutions, in urban settings, small towns, rural, and remote communities. Patient populations differ widely, as does their connection to other levels of care. In many cases the pharmacist is the patient's main health-care provider and certainly the one with whom the patient may have the most frequent interaction.

Regional representation ensures that when establishing new standards or assessing compliance the regulator understands the unique needs of patients in rural and remote communities and the specific challenges to care that distance, weather and isolation present. The circumstances affecting patient safety, access to care, and the social determinants of health in Point Grey or Whalley are often very different from those in Haida Gwaii or Lumby, especially in winter.

The issue of how the professional Board members are selected leaves open the opportunity for considerable debate. The current process used by the College of Pharmacists in which Board members are elected by their peers in districts across the province has, in our understanding, worked well. We are not aware of any instances in which "vote stacking" or "block voting" has happened that led to the Board ever being over-represented by a group or a point-of-view.

On the contrary, elections have ensured that the College Board is highly independent and focused on the interests of patients. The Board has traditionally been comprised of individuals who are recognized by their peers as knowledgeable about not only the professional standards, but also about the unique needs of patients in all regions of the province. Elections have served the public interest well, bringing to the regulator a diversity of views and experiences.

We encourage the Committee to look carefully at the benefits of retaining a process in which public members are appointed by government and a fair and unbiased election of professional members is held.

We appreciate that the process of appointing 100% of all College Board positions need not necessarily be partisan. To avoid the potential for politicizing the governance of these public bodies, independent oversight of an independent and competency-based process will be very important. Such a process should be developed with input from current College Boards, as well as professional associations such as ours representing their members. It should be available for public and stakeholder input before being finalized. It is essential that the public have confidence in any changes to the College Board selection process will not reduce the Board's collective professional skill or diversity.

Q1c: Do you support reducing the size of boards?
Q1d: Are they any possible challenges to reducing board size, and if so, how can they be addressed?
Q1e. Do you support fair and consistent compensation for board and committee members?
Q1f: What are the benefits of this approach?
Q1g. What are the challenges and how can they be addressed?

Boards should be large enough to avoid overburdening board members with too much committee work. It would be reasonable to reduce the size of boards if the discipline process is not within the College mandate, or if Inquiry Committee members (or at least some of them) are not also Board members.

Given the demands on Board members in relation to time, expertise, skill and judgment, it is appropriate to compensate them. While compensation should be generally consistent within and between colleges, it may not be appropriate to pay all board and committee members at all colleges the same fixed annual rate.

It would be appropriate to develop a compensation model that ensures board and committee members would be compensated for their time and for their level of responsibility. For example, board and committee chairs may have more responsibilities than other members and should be compensated accordingly.

Factors such as the size of the College, the complexities of governance and the associated demands and responsibilities of each particular role should also be taken into account as those factors will necessarily impact the workload, skill needed and the extent of the board or committee member's accountability.

The clear challenge is to ensure that compensation is sufficient to recognize the time and effort required to serve, but not so attractive that positions are sought after as a means to securing alternate employment income. Other public service Boards may well have compensation models worth reviewing.

While the question has not been directly posed, the issue of setting term limits for all College Board members should be reviewed as part of the finalization of governance and compensation. This helps offset any unintended consequences of individuals who may be driven to seek appointment to Boards primarily for compensation reasons.

2. Strengthening the oversight of regulatory colleges

Q2a: Are you supportive of the proposed approach to reduce the number of regulatory colleges from 20 to five?

Q2b. Please share your concerns with this approach, as well as your suggestions to address challenges.

Q2c. Are you supportive of a moratorium on the creation of new regulatory colleges?

Q2d. Do you have suggestions for the ways to minimize the disruption caused by a merger of regulatory colleges that can be addressed through broader legislative provisions?

The BCPhA is not well equipped to respond to this specific proposal. Regulatory governance is not within our scope or mandate. However, we do support the objective of ensuring that all health professionals practicing in the province are held to the same standards of oversight and public accountability.

We accept that currently, some Colleges, due to their small number of registrants, do not have sufficient capacity and resources needed to set practice standards and conduct appropriate reviews of complaints and provide discipline as needed. In general, some consolidation of administrative functions appears to make sense to achieve economies of scale. It is essential that input from the health profession being regulated is maintained in the development of clinical and practice standards.

The mergers and regulatory changes proposed will be far-reaching, fundamental and likely permanent. The BCPhA supports a methodical, phased approach. We expect that there will be a lot to be learned from the recent merger of the nurses' colleges and the changes resulting from the Professional Reliance Review.

Q2e. The importance of continued reliance on profession-specific clinical expertise is acknowledged as an important element of effective regulation; for example, in the development of professional standards. Where is profession-specific expertise required to ensure effective regulation?

Profession-specific expertise is required in the development of professional standards, the assessment of what constitutes safe and effective care. In the case of the College of Pharmacists, profession-specific expertise is also needed to understand what constitutes appropriate pharmacy management and to carry out the College's responsibilities for drug scheduling.

Profession-specific expertise will also be essential in the inquiry process, to ensure that an inquiry is conducted by individuals who understand what constitutes reasonable and professional acts or omissions in the circumstances, and who understand the risks of a given act (or omission).

3. Improved efficiency and effectiveness through a reduction in the number of regulatory colleges

Q3a. Do you support the creation of an oversight body?
Q3b. Do you agree with the functions listed above?
Q3c. Do you have any concerns and if so, what are they?

It is difficult for the BCPhA to comment on this proposal at this stage of development of the overall regulatory structure. The Association supports in principle a robust oversight and regulation of all health professionals practicing in B.C. We support easy and unobstructed access for patients needing to initiate an inquiry/complaint related to care they have received from any health professional. Whether the highest standards of care are best assured by the creation of a new oversight organization is difficult for us to determine or provide comment on at this time or before further details are developed.

Q3d. Do you support increased accountability by requiring regulatory college annual reports to be filed with the Legislative Assembly?
Q3e. Should annual report of the oversight body also be filed with the Legislative Assembly?

In the event an oversight body is created, it may be redundant to require each College to file a report with the Legislative Assembly. It seems more appropriate to require the Colleges to file a report with the oversight body, and for the oversight body to file a single report with the Legislative Assembly.

4. Complaints and adjudication

Q4a. Do you support the creation of a new disciplinary process which would be independent from regulatory colleges?
Q4b. What are the benefits of such an approach?
Q4c. What are possible challenges and ways to address these?

The BCPhA has no comment on these issues.

Q4d. Do you support regulatory colleges continuing to investigate complaints regarding health professionals?
Q 4e. Do you support improvements to the composition of inquiry committees?

It is entirely appropriate, cost effective and practical, for regulatory Colleges to be responsible for investigating complaints. Colleges are most suited to carry out this function as they have the specialized expertise necessary to make the preliminary decisions required to determine whether professional standards have been met, whether caution or advice letters or additional training are warranted, or whether it is more appropriate to refer the issue to discipline. The BCPhA supports the proposal to give inquiry committees wider discretion to dispose of matters under s. 33 of the HPA because it would enable more matters to be dealt with proportionately.

Q4f. Do you support publishing actions taken to resolve accepted complaints about health professionals?
Q4g. Do you support all actions resulting from agreements between registrants and regulatory colleges being public?

For clarity, we understand that the term "accepted complaint" means a complaint that the Registrar has decided to refer to an investigation or an interim order hearing (as explained in the Cayton Report p. 79-80). We note, that Mr. Cayton's diagram on page 79 suggests that everything that occurs within the investigation stage should be private.

The BCPhA does not support making it mandatory to publicize actions taken to resolve accepted complaints prior to the issuance of a citation or referral to a hearing. We do not believe it is in the public interest to publicize outcomes of matters that have not been referred to the public discipline process.

Not every complaint is of equal merit or seriousness. As a practical matter, there would be little incentive for a professional to agree to a resolution at the inquiry stage if the matter is publicized anyway. In many circumstances it may inadvertently encourage the professional to proceed to a discipline hearing, where they would seek to put their defence on the record. Public resources should not be expended disproportionately to the nature of the risk to the public.

Moreover, a process that does not offer reasonable early resolution options can lead to access to justice problems and could delay time and resources needed for serious matters that deserve to be the subject of discipline proceedings.

Our understanding of the objectives of Cayton's proposals is to simplify the processes, improve access to administrative justice for the public and enhance patient safety. Eliminating incentives to early resolution and agreements to undertake additional training may do little to improve patient safety but will potentially clog the system and enrich lawyers.

Finally, it may not be in the interest of the complainant or the patient to publicly disclose actions taken at the investigation stage. Many of these cases involve highly sensitive personal information of patients and others (e.g., family members of patients or registrants) who have no standing in the proceeding. Public disclosures of facts that could reveal sensitive third-party information should not be made unless necessary for purposes of public protection. At minimum, all administrative processes should ensure that the privacy of patients and third parties is protected consistent with B.C. and Federal privacy policies and regulations.

Q4h. Do you support allowing regulatory Colleges to make limited public comments about a complaint under investigation if the complaint becomes known to the public? (*i.e. to disclose the existence of a complaint, subject matter, status and any interim undertakings note that – LSBC rules also permit disclosure of "any additional information necessary to correct inaccurate information"*)

Q4i. What are the benefits of such an approach?

Q4j. What are the challenges and how can these be addressed?

This is an issue that should be pursued with some caution.

The *Health Professions Act* (HPA) public notification provisions (s. 39.3) currently provide clear and comprehensive direction about the circumstances under which a College is required to reveal details about the investigation.

The Association clearly has and will continue to support the release of a registrant's identification when public safety may be at risk.

If additional authorities are found to be needed, we provide the following general considerations:

In the event that a matter has not reached the stage that would trigger s. 39.3, there needs to be a way to ensure the public is protected, and incorrect or incomplete facts can be corrected by the College. This right should also be extended to the health-care professionals themselves for the following reasons:

- Publicizing even the simple fact that an investigation exists can do substantial damage to an individual's reputation, ability to earn a living and support their family. Where accusations of wrongdoing are made public, careers and lives can be destroyed long before these accusations can be proven false.
- Health professionals are bound by duties of confidence to patients that are ongoing unless waived by the patient. This duty may restrict the professional from publicly denying the allegations or correcting any inaccuracies. Worse, however, is that it can disable the professional from publicly stating that they even provided health-care services to the patient.
- The patient may be unwilling to release the professional from their duty of confidence because of stigma related to their health condition (e.g., mental health, addictions, HIV, abortion or other stigmatized conditions) or may be unable to do so (e.g., where the patient is not competent, incapacitated or deceased). In such circumstances the health professional is effectively silenced.
- Twitter and Facebook have unprecedented reach. A disgruntled former employee or family member who knows the professional is ethically bound by their duty of confidence can do untold harm with one tweet or post. It is fundamentally unfair that professionals cannot respond to public accusations of misconduct, especially where facts alleged are incorrect or where the college declines to respond.
- There should be a statutory exemption to the professional's duty of confidence to the patient to the extent of permitting disclosure of information necessary to correct inaccuracies or to indicate that allegations are denied by the professional.

Q4k. Do you support requiring that regulatory colleges and disciplinary panels consider a registrant's past history of complaints and discipline when making decisions on a current complaint?

Q4l. What are the benefits to such an approach?

Q4m. What are the challenges and how can they be addressed?

Depending on the circumstances, past history may be relevant, but only to sanction. Past history should never be considered relevant to the merits of the current accusation. This is because considering past history can lead a decision-maker to believe that it is more likely that the professional is guilty of the current complaint. Or that the past history could be used to support a case that is insufficient on its own merits to result in discipline. Either circumstance would result in procedural unfairness.

Unfair processes reduce the public's trust in the system. It also creates grounds for judicial review or appeal which can result in further delay, additional harm and potential costs to the complainant or patient which undermine access to justice.

Q4n. What measures should be considered in relation to establishing consistency across regulatory colleges regarding how they address sexual abuse and sexual misconduct?

The BCPhA supports establishing a consistent, sensitive, fair and trauma-informed process that can be applied and followed by all colleges in all sexual misconduct and abuse cases. It is essential that the public have confidence that these types of complaints will be treated with the seriousness that they deserve.

These processes should be developed with input from stakeholders and from experts in sexual assault investigations, discrimination and trauma. The BCPhA submits that there are lessons to be learned from the civil and criminal justice system, and from the work that has been done by Commissions of Inquiry over the past ten years, about how to investigate such allegations and support complainants while still ensuring a fair process for accused.

Q5a What are the benefits of enabling regulatory colleges to more easily share information?

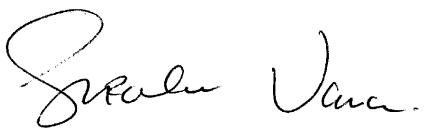
Q5b. What are the challenges of this approach and how can they be addressed?

Q5c. What organizations should regulatory colleges be able to share information in order to protect the public from future harm, or address past harms?

The BCPhA submits that information sharing should be permitted at the investigation stage for the purposes of the investigation only. If there have not been findings of fact or actions taken (e.g. agreements, orders, etc.) then we believe it would rarely be appropriate to share the substance of the allegations. The substance of allegations should not be shared with third parties except in rare circumstances where sharing is necessary to protect an individual or the public generally from a foreseeable risk of harm, or where a crime is alleged to have been committed.

Again, we thank the Committee for giving the BCPhA the opportunity to provide comments on the consultation paper. We remain ready to contribute to the review and the Committee as it continues its important work.

Sincerely,



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