

## Removal from the Care Aide Registry

Where an employee is suspended pending the results of the employer's disciplinary investigation, the employee will be suspended from the BC Care Aide & Community Health Worker Registry until the completion of the investigation or, if the employee is not registered, will not be registered until the investigation is completed.

An employer may suspend an employee pending the result of an investigation of alleged patient, client or resident abuse, with or without pay but where an investigation is not completed within twenty one (21) calendar days, the continued suspension by the employer must be with pay until the completion of the employer's investigation.

For the purposes of this process, "with pay" after twenty (21) calendar days means the employee's average weekly earnings for the sixty (60) calendar days prior to the suspension excluding leaves without pay.

An employee terminated by an employer for alleged abuse will remain suspended from the Registry until the employee is reinstated through the grievance procedure (in the case of an employee represented by a union) or until resolution of any dispute over the decision to terminate from the Registry through as outlined in this process.

Where the employee is represented by a union, the employer must advise the Registry forthwith in writing if a suspended or terminated employee is reinstated through the grievance procedure and where an employee is reinstated to employment through the grievance procedure the employee will be reinstated to the Registry.

The following procedure applies to an employee represented by a union who is terminated by an employer for alleged abuse and not reinstated through the grievance process under the collective agreement:

- Where the employee is not reinstated up to and including Step 3 of the grievance procedure, the employee will remain suspended from the Registry at least until such time as the employee is reinstated to the Registry through this process.
- If the employee is not reinstated through the grievance procedure up to and including Step 3 of, the union representing the employee may withdraw the grievance in which case the employee will remain suspended from the Registry or the union may request appointment of an investigator under the Registry.
- A union requesting an investigator must submit the dispute to the Registry in writing identifying the name of the employer, the name of the employee, the date of termination and the name of the union person responsible for the grievance.

- Within ten (10) calendar days of receipt of the request from the union, the Registry will appoint the first available investigator from the list below to mediate the dispute over termination of the employee and resulting suspension from the Registry.

- The investigator will inquire into the differences between the employer and the union over the termination and will endeavour to assist the parties in resolving their differences.

In undertaking an investigation, the investigator:

- must determine his or her own procedure, but must give an opportunity to an interested party to present evidence and make representations;

- may receive and accept the evidence and information on oath, affidavit or otherwise that, in his or her discretion, he or she considers advisable, whether or not admissible as evidence in a court of law; and will,

- confer with the parties and may conduct hearings.

The investigator must, after completion of the investigation, recommend in writing with reasons whether:

- the termination of the employee should be sustained or not sustained;

- if the termination is sustained, an alternate remedy should be utilized; and

- if the investigator determines that the employee should remain suspended from the Registry, the investigator may determine the length of any suspension and may attach conditions necessary for the employee's re-instatement to the Registry.

If the parties are unable to agree on the facts in the dispute, the investigator must set out the report the facts agreed by the parties and the issues of the facts on which the parties do not agree.

If, during the course of the investigation, the parties reach agreement on the outstanding issues, the investigator must reflect that agreement in his or her report.

The employer and the union will share all costs of the investigator.

Investigators must be drawn from the following list of which four (4) will be finalized by the parties:

*Note: the list of investigators will be determined by the parties at a later date.*

If either of the parties reject the recommendations of the investigator, the parties may proceed to arbitration under the collective agreement and the report of the investigator is not admissible in that arbitration and the investigator is not compellable as a witness.

In addition to the powers conferred upon him or her by the collective agreement and the Labour Relations Code, an arbitrator appointed by the parties to adjudicate their differences over the termination of an employee, must also decide if the employee should remain suspended from the registry and the duration of that suspension including any conditions required for reinstatement to the Registry.

The following procedure applies to an employee not represented by a union or where a union representing an employee decided not to proceed to the investigation phase or to arbitration and who was terminated by an employer for alleged abuse:

- an employee who is terminated by an employer who is not represented by a union will remain suspended from the Registry until such time as she or he is reinstated through this process;
- the employer must set out for the Registry the basis on which it terminated the employee and a copy of this report will be provided to the employee within seven (7) calendar days of the employer's notification to the employee of the suspension or termination;
- such an employee may apply in writing within thirty (30) days from the date of the termination, to the Registry for appointment of an investigator from the list below and within ten (10) calendar days of receipt of the request from the employee, the Registry will appoint the first available investigator from the list below to mediate the dispute over termination of the employee and resulting suspension from the Registry;
- an employee has a right to representation during an investigation;
- the Registry will be responsible for the costs of the investigator;
- when an investigator is appointed, the investigator:
  - must determine his or her own procedure, but must give an opportunity to an interested party to present evidence and make representations;
  - may receive and accept the evidence and information on oath, affidavit or otherwise that, in his or her discretion, he or she considers advisable, whether or not admissible as evidence in a court of law;

- will confer with the parties and may conduct hearings;
- after concluding the investigation, must report to the employee, the employer and the Registry in writing advising whether the employee should be reinstated to the Registry or continue to be suspended from the Registry;
- determine whether or not that employee should remain suspended from the Registry, the investigator may determine the length of any suspension and may attach conditions necessary for the employee's reinstatement to the Registry;

With the agreement of HEABC and the unions, the Registry may replace one or more of the investigators.