

Summer 2009

# The Transition Times

HELPING YOU NAVIGATE CHANGE



## Keeping the trust

### The why and how of ACP's complaints resolution process

"What distinguishes a professional is the public's requirement and willingness to place trust in that person from their first meeting," explained Jack Silversin, Amicus, Inc. president at the 2009 tri-profession conference. "They count on the professional to put the patient's interests first."

How do pharmacists—skilled healthcare professionals—earn and maintain such trust?

As a member of a self-regulating profession, every regulated pharmacy professional (pharmacists, pharmacy interns and students, and soon, pharmacy technicians) is responsible for upholding the integrity of the profession. Alberta pharmacists agree to abide by the Code of Ethics that states:

*Pharmacists and pharmacy technicians use their knowledge, skills and resources to*

- serve patients,
- contribute to society, and
- act as stewards of their professions.

The vast majority of Alberta's over 4000 pharmacists are ethical and professional and deliver a high standard of care.

But what if they don't?

The Alberta College of Pharmacists (ACP) exists to protect the public. We do this by setting standards for pharmacy practice, supporting pharmacists in meeting the standards and taking action when the

standards are not met. The ACP complaints resolution process is part of taking action, along with ACP's ongoing registration and competence programs.

For ACP Complaints Director James Krempien, ensuring that pharmacists and pharmacies meet the high standards of practice set by ACP and maintain

the integrity of the profession is a primary responsibility.

"ACP works to resolve complaints in a way that protects the public and educates the pharmacist, the licensee and the proprietor," explains James. However, when a registrant's conduct is found to be unprofessional, then the goal is to protect the public by ensuring that a registrant does not put the public at risk in the future.

The *Health Professions Act* defines both the people and processes used for complaints resolution by a regulated health profession.

What distinguishes a professional is the public's requirement and willingness to place trust in that person from their first meeting.

alberta college of  
**pharmacists**





## What does the college say to complainants?

The college encourages patients who are not satisfied with the care they received from a pharmacist to discuss the problem directly with the pharmacist.

If the patient is not comfortable talking about his or her concerns with the pharmacist, we then encourage them to speak to the licensee.

If the patient is still concerned, they may speak to a member of ACP's complaints department. Complainants are advised that, whenever possible, the college attempts to take an educational approach to resolving complaints, with the aim of improving pharmacist practice or the operation of a pharmacy.

We recently put these thoughts in poster form, which all pharmacies must display. If you need a poster, you may print it from the ACP website (under *Pharmacist Resources/Info sheets & posters/Patient Concerns Poster*) or request a hard copy from the college office.

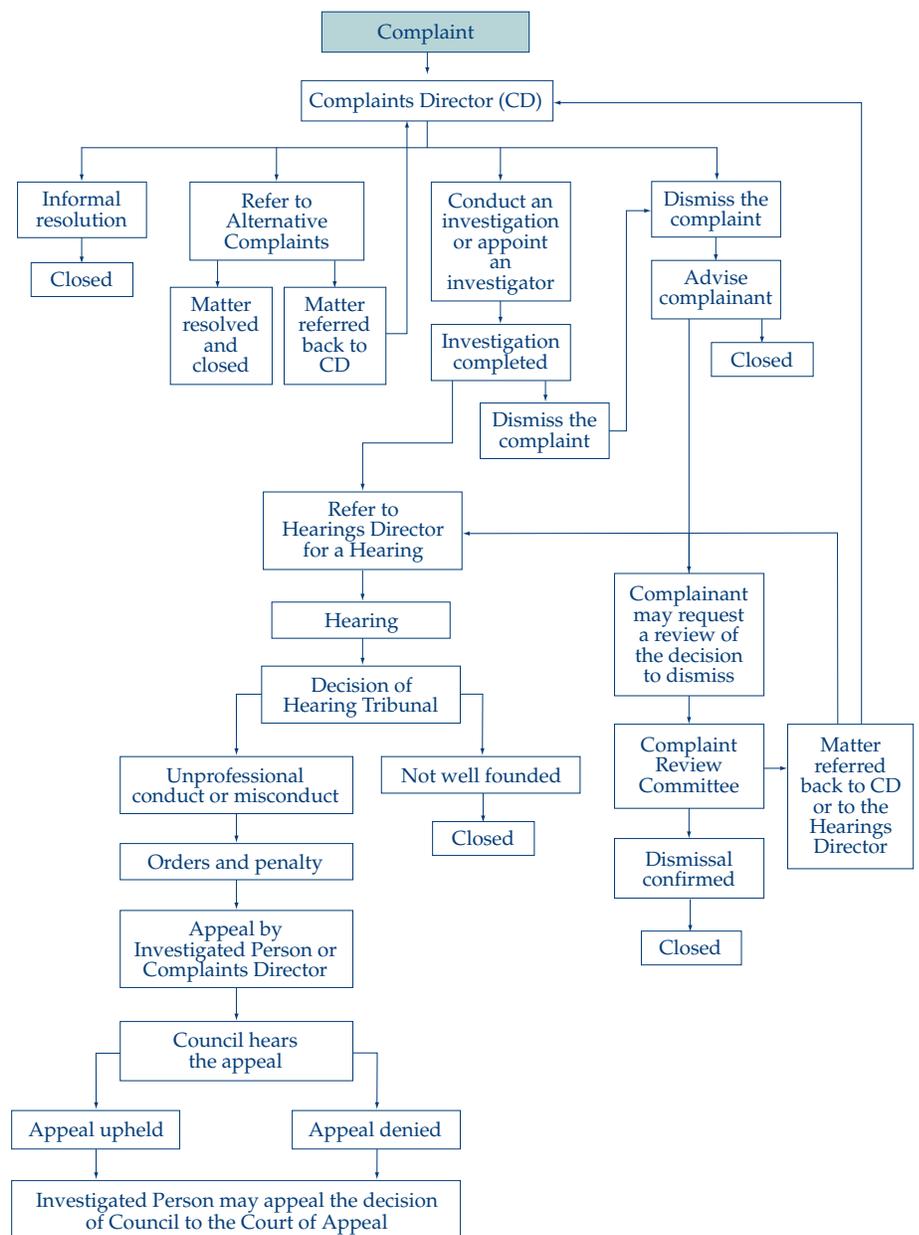
A complaint about a regulated member of the Alberta College of Pharmacists may come from an employer, a co-worker, another health professional or a member of the public. The complaints director may also treat a matter as a complaint if he becomes aware of conduct that appears to be unprofessional or unskilled, or receives a referral from the Competence Committee or the registrar.

# How does ACP's complaints resolution process work?

Here's what normally happens when an individual wishes to file a complaint against a pharmacist or pharmacy in Alberta.

1. Often after unsuccessfully attempting to address their concerns with the pharmacist or pharmacy licensee, the complainant contacts the ACP complaints department.
2. The complainant speaks with a member of the complaints department team who reviews the complaint and provides information about the complaints process and the role of the complaints department.
3. If, after discussions with the complaints department, a complainant believes that their concerns require further action, a

### Complaints resolution process under the Health Professions Act – Effective April 1, 2007



complaint reporting form and additional information about the process is provided.

4. The complainant sends a written, signed complaint to the ACP complaints director.
5. The complaints director acknowledges receipt of the complaint and seeks more information from the complainant if necessary.
6. The complaints director appoints an investigator to gather evidence to establish the facts. The complaints director can act as the investigator.
7. A copy of the complaint is sent to the investigated party (the respondent). The respondent is asked to submit a written, signed response to the complaint.
8. The complaints director may then determine whether to take further action or dismiss the complaint.

#### *Complaint director's options after receiving a complaint*

Within 30 days of receiving a complaint, the complaints director must notify the complainant of the action taken on the complaint. There are a number of options for handling complaints under the *Health Professions Act (HPA)*. The complaints director may:

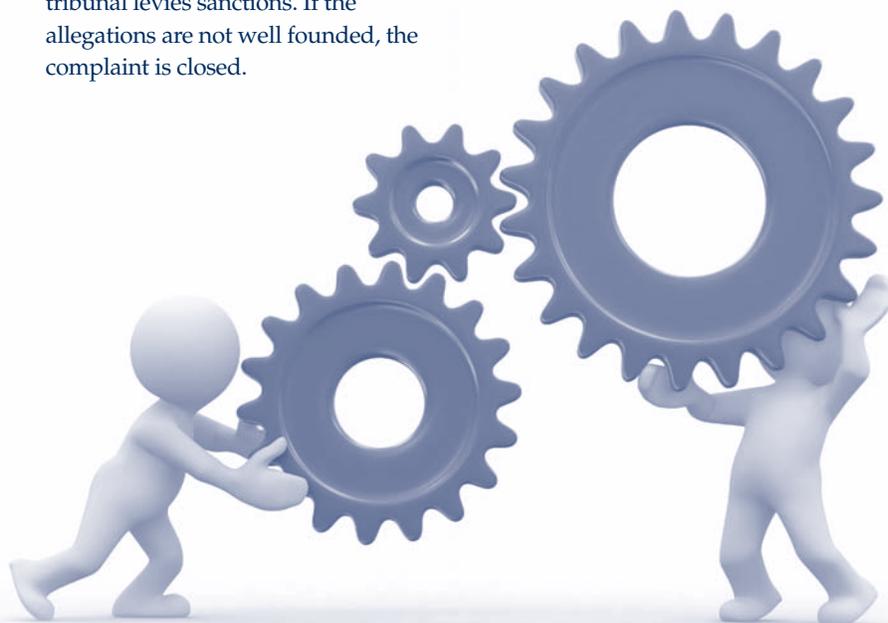
- Encourage the complainant and the respondent to communicate with each other and resolve the complaint
  - With the consent of the complainant and the respondent, attempt to resolve the complaint
  - Make a referral to an alternative complaint resolution process
  - Request an expert to assess and report on the subject matter of the complaint
  - Conduct, or appoint an investigator to conduct, an investigation
  - If satisfied that the complaint is trivial or vexatious, may dismiss the complaint
  - If satisfied that there is insufficient or no evidence of unprofessional conduct, may dismiss the complaint
9. If alternative complaint resolution is used, the complaint is either successfully resolved through

mediation or is referred back to the complaints director or hearings director for a resolution.

10. If further investigation is required, then the complaints director reviews the evidence gathered and decides whether a complaint should be dismissed or referred for a hearing.
11. If a hearing is required, a hearing tribunal is convened by the hearings director (an ACP employee). The tribunal will hold a hearing and then decide if the allegations are well founded.
12. If the allegations are well founded, the tribunal levies sanctions. If the allegations are not well founded, the complaint is closed.

If a complainant is dissatisfied with a dismissal by the complaints director, they may request a review of the decision to dismiss. A complaint review committee reviews the decision and either recommends that the matter be dismissed or referred back to the complaints director for additional investigation or the hearings director for a hearing.

A respondent who is dissatisfied with a hearing tribunal's decision may file an appeal. Appeals are heard by ACP council. A respondent may further appeal to the Court of Appeal.



## How do hearings work?

Hearings may be consent hearings, in which the investigated person acknowledges some or all of the allegations, thereby eliminating the need to call witnesses to prove the behaviour occurred. Other hearings may be contested hearings, in which witnesses, including the complainant, may be called to give evidence. Hearings are open to the public unless the hearing tribunal orders otherwise.

If the hearing tribunal finds the allegations to be well founded, they will impose sanctions. Sanctions may include:

- a letter of caution or reprimand,

- a course of study,
- a requirement to take counseling and/or medical treatment,
- conditions placed on practice (e.g., practice under supervision, require regular narcotic audits, restricted from being a licensee or proprietor),
- practice permit suspension,
- registration cancellation, resignation acceptance,
- partial or complete hearing costs recovered - recent cases have ranged from \$10,000 to \$50,000,

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**How do hearings work?**

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- fines - recent cases have ranged from \$500 to \$10,000,
- publication of name in *acpnews*, or
- any other sanction the tribunal considers appropriate.

Sanctions are usually remedial in nature, with the goal of improving the registrant's practice.

Restrictions on practice, suspension or any other conditions imposed by the hearing tribunal are noted on the registrant's practice permit.

The complainant and the respondent receive a copy of the decision. If the hearing tribunal believes that the member has committed a criminal offence, their decision must also be sent to the Minister of Justice and the Attorney General.

**Are hearings open to the public?**

Yes, unless it may:

- prejudice a civil action or a prosecution of an offence,
- compromise the safety of the person or of the public,
- compromise the ability of a witness to testify, or
- conflict with another Act that requires that the hearing or part of the hearing be held in private.

# Meet ACP's complaints resolution people



**James Krempien**

*Complaints director*

James reviews all complaints received by ACP and sets in motion any action needed to resolve them. He coordinates investigations, alternative complaint resolution, and dismissals. A practicing pharmacist for 18 years, James understands the complexities of the profession as well as the importance of maintaining its integrity.



**Joanne Donnelly**

*Complaints resolution customer service agent*

Joanne is most often ACP's first point of contact for complainants. Joanne offers callers an empathetic ear, thoughtful advice, and thorough guidance through the complaints process. Joanne also coordinates pharmacy field visits.



**Grace Magyar**

*Hearings director*

Grace selects hearing tribunal members, appoints hearing tribunal chairpeople, coordinates hearings and appeals, and certifies and distributes hearing records. Grace is also the executive assistant to the registrar.

**Hearing tribunal members**

A hearing tribunal is comprised of three regulated pharmacists and one public member appointed to hear a complaints case. The members are selected by ACP's hearings director from a list of volunteer pharmacists appointed by ACP Council and public members appointed by the Lieutenant Governor. The tribunal decides if allegations are well founded and, if so, assigns orders and penalties.

**Complaint review committee members**

A complaint review committee is normally comprised of a panel of three registered pharmacists and one public member. If a complainant is dissatisfied with a dismissal by the complaints director, this committee reviews the decision and either recommends that the matter be dismissed or referred back to the complaints director for additional investigation or to the hearings director for a hearing.

## By the numbers: Complaints in 2008

Total number of clinical pharmacists registered with ACP	3885	Formal complaints initiated in 2008	66	Resolved by complaints director	75
		Complaints brought forward from 2007	36	2008 complaints referred to hearing tribunal	5
		Total	102	Complaints brought forward into 2009	22



# FAQs

## What do I have to do if I am named in a complaint?

When a complainant contacts the college, the college will often contact the pharmacist to see whether the situation can be resolved without a formal complaint being filed. Take advantage of this opportunity to acknowledge the complainant's concerns and review your practice to see if the matter can be resolved directly with the complainant. Often if the pharmacist is able to establish a dialogue with the complainant at this point in the process, the filing of a formal complaint can be prevented.

Once a formal complaint has been filed, the pharmacist must provide all documentation that the college requests. You should:

- provide your response as promptly as possible,
- describe the circumstances involved as clearly as possible,
- confine your response to the complaint issues specifically,
- explain the reasons for the actions you took or things you said, and
- outline any extenuating factors.

Where relevant, your response should include:

- copies of original documents.
- copies of background material, which may include faxes, letters, etc.
- any technical or clinical information of which the complainant may not be aware.

If there will be a delay in responding, notify the complaints department as soon as possible.

## Does the complainant get to see my written submission?

Yes. Your written response, in whole or in part, may be provided to the complainant for further comment.

## Can I contact the patient after a formal complaint has been filed?

Yes. Pharmacists often believe that once an investigation is started, they must not speak with other pharmacists or the complainant so as not to be seen as influencing the investigation. However, open and direct communication between the respondent-pharmacist and the complainant is often appropriate and encouraged. Moreover, often the true basis of the complaint is that the patient feels that he/she has not been heard by the respondent-pharmacist, and thus a continued lack of communication on the respondent-pharmacist's part (once a complaint has been made) sometimes only makes the situation worse.

## Is it public information that a complaint has been filed against a pharmacist?

All information related to the investigation and resolution of a complaint is held in the strictest confidence. Only hearing tribunal decisions when allegations are well founded are a matter of public record.

## How long does the complaint process take?

It depends on the complexity of the complaint, but the process generally takes about three to four months to complete.

## How will I know the investigation is complete?

Once the preliminary investigator has gathered all the evidence and submitted

the final report for review, the complaints director will notify you of the outcome. The complaints director may dismiss the complaint or refer the matter for alternative complaint resolution or a hearing.

## What if I am not satisfied with the outcome of the complaints director's decision?

Under the *Health Professions Act*, the complainant can file an appeal, in writing with reasons, to the hearings director to request a review of the decision by the complaint review committee. The appeal must be filed within 30 days.

However, a respondent (e.g., the pharmacist) may not appeal the complaints director's decision. If the complaints director refers a complaint matter to the hearings director for a hearing, the respondent will have an opportunity to explain his/her actions directly to the hearing tribunal.

## Why does ACP publish disciplinary reports?

ACP publishes disciplinary reports for three reasons:

1. ACP is committed to maintaining a transparent complaints resolution process for our registrants and the public.
2. We believe pharmacists can learn important lessons from each case. We hope that through these summaries, others will gain a clearer understanding of what constitutes acceptable professional pharmacist practice and this will prevent other pharmacists from undertaking the same type of unprofessional conduct.
3. Publication is used as a specific deterrent to help ensure the respondent will not repeat the actions that resulted in the complaint process being initiated.

## Who decides when pharmacists' names are published?

The hearing tribunal makes the decision whether or not to publish a pharmacist's name. Their decision is included as part of their orders, following the investigation and hearing.



## Tips especially for licensees and employers

### ✓ Check for that practice permit

Licensees and proprietors have a responsibility to ensure that the pharmacists they employ have and maintain a current practice permit. Also know that any restrictions on practice, suspension or any other conditions imposed by a hearing tribunal are noted on the registrant's practice permit.

You can confirm a pharmacist's practice status by viewing the pharmacist's practice permit or by contacting ACP for verification.

### ✓ Report termination for unprofessional conduct – it's the law

Did you know that if a pharmacist is terminated or suspended or resigns because of conduct that, in the opinion of the employer, is unprofessional conduct, the employer must notify ACP's complaints director? Section 57 of the *Health Professions Act* requires it.

The Act goes on to say that, having received notification, the complaints director must treat the employer as a complainant and notify the employer and the regulated member as he would for any other complaint.

This duty to report applies for registrants engaged to provide professional services on a full-time or part-time basis as a paid or unpaid employee, consultant, contractor, or volunteer.

An employer who contravenes this directive of the HPA can be fined up to \$4000 for a first offence.

### ✓ Understand how and why conditions are imposed on a pharmacy licence

To protect the public and support quality pharmacy practice, ACP sets and implements criteria for pharmacy licensees to comply with. Sometimes, this involves imposing conditions on a pharmacy licence. Recently, ACP developed a new

policy for imposing conditions on a pharmacy licence.

The *Pharmacy and Drug Act* (PDA) and its Regulation outline the types of information that ACP may collect, the collection process, and the types of conditions that ACP's registrar can impose. The registrar may request a pharmacy's operating and/or quality assurance procedure documents or may impose conditions on the licence at any time. He will make this request to be satisfied that the pharmacy will operate in accordance with all applicable legislation.

The request may be based on information gathered during a pharmacy field visit, a review of the files of all pharmacies in which recommendations were issued following a practice visit or complaint investigation in the previous 12 months, or other reliable means.

Section 7(2) of the PDA allows the registrar to impose the following types of conditions on the pharmacy licence:

- a. the hours of operation of a pharmacy,
- b. the drugs, health care products, aids and devices that
  - i. must be available for dispensing, provided for sale or sold in a pharmacy, or
  - ii. must not be available for dispensing, provided for sale or sold in a pharmacy,
- c. security systems that must be installed and security measures that must be taken by a pharmacy,
- d. records, reports and information that must be submitted to the registrar,
- e. the infrastructure, pharmaceutical equipment and library in a pharmacy,
- f. the development and implementation of the operating procedures of a pharmacy,
- g. the application of human resources in the pharmacy,
- h. the range of services that a pharmacy may offer, and
- i. time limits for fulfilment of any condition.

Legislative references: *Pharmacy and Drug Act*, Sections 5.01(6)(a), 5.01(6)(b), 7(2); *Pharmacy and Drug Regulation*, Sections 3(1)(f), 3(1)(m), 4(2)

# Supporting your fellow pharmacists:

## Your responsibilities and ethical considerations

Most of us will have a grievance with a work colleague at some time or other but these are usually ironed out pretty quickly. And if your grievance can't be resolved between the two of you, there are usually procedures in place for you to take the matter further.

However, what if you discover a colleague practising unethically or even illegally?

This is quite a delicate subject. Knowing what to do when you are concerned about a fellow pharmacist's practice can be difficult. However, as a self-regulated professional, you have an ethical obligation to act.

The expectations placed on a pharmacist who has knowledge that a colleague is behaving unethically are formalized in the profession's Code of Ethics. ACP's code assists you in upholding the high ethical standards that underlie the public's trust.

Principles 10, 11, and 12 of the new Code of Ethics outline your ethical obligations

when dealing with colleagues. Specifically, the Code instructs you to:

- Not condone unethical or unprofessional conduct by colleagues, co-workers or other health care professionals and report any unethical or unprofessional behaviour to the appropriate authorities.
- Take appropriate steps to prevent and act upon the misuse or abuse of substances by patients, co-workers, colleagues or other health professionals.
- Challenge the judgment of colleagues and other health or social care professionals if you have reason to believe that their decisions could compromise the safety or care of others.
- Raise concerns if policies, systems, working conditions or the actions, professional performance or health of others may compromise patient care or public safety.

- Take appropriate action if something goes wrong or if others report concerns to you.
- Recognize that self-regulation of the profession is a privilege and that each pharmacist and pharmacy technician has a continuing responsibility to merit this privilege and to support their professional institutions.

If you have concerns about the conduct of one of your fellow pharmacists, don't keep it to yourself. Your first responsibility is to ensure that the public is protected.



### Transforming a beef to a bouquet

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perceives the pharmacist as responding without having heard the whole story.

5. Avoid unnecessary or inappropriate humour. While it may be tempting to try and lighten the situation, it can backfire.
6. Do not use blanket statements like "It's the law" or "I did (or didn't) do that because ACP (or the HIA, or other legislation) requires me to do that." If there is a reason you are required to do something that a patient has a concern with, it's always best to explain the reason(s) as it impacts/benefits them.

For example, ACP often receives complaints from customers after a pharmacist has asked for their demographic information prior to selling a Schedule 2 drug. Some patients are concerned about releasing this information. Instead of responding to

their concern with, "Because it's the law", explain the reasons behind the law. Explaining that, "I collect this information to make sure that the sale of your medication is placed on the correct patient record. That ensures that this information can be securely shared through Netcare and will allow all health care providers to care for you" is a far more helpful, and respectful, response. It may take a little more time, but nowhere near as much as responding to a complaint or trying to regain the trust of an angry patient.

7. Apologize when appropriate. Even when it is not clear how the problem started, apologizing for the event is okay. For example, "I am truly sorry you had to go through this experience and we will do all we can to prevent it in the future."

Saying "I'm sorry" is not an admission of guilt. Bill 30, the *Alberta Evidence Amendment Act*, was approved in the

Alberta Legislature in Oct. 2008. This amendment guarantees that you can apologize without it being construed as an admission of liability in the courts.

8. Review and keep handy the documents that are your roadmaps to the right direction. They are the
  - ACP Code of Ethics
  - Standards for Pharmacist Practice
  - Standards for Operating a Licensed Pharmacy
  - ACP Practice Guidelines
  - Various pieces of provincial and federal legislation governing pharmacy

All of these resources are available on the ACP website under the Pharmacist Resources tab.

# Transforming a beef to a bouquet

In 40 of the 66 formal complaints ACP received in 2008, although it was most often a drug distribution error by the pharmacist that initially caused patient concern, it was the pharmacist's perceived lack of acknowledgement and response to the patient that led to the lodging of a complaint.

"When a complaint is brought to the attention of a pharmacist," notes James Krempien, ACP Complaints Director, "I believe that by establishing more open communication with the patient and recognizing the patient's perspective that many or most complaints can be resolved at the pharmacy level to everyone's satisfaction."

Here are some tips to prevent misunderstandings from escalating:

Set the stage for success before problems begin.

- Educate patients about the services (i.e., the "behind the scenes" work) you provide. Then, provide them with a realistic expectation of the time required so they know how long it will take and why it takes that long. Understanding leads to acceptance.
- Develop policies and procedures for how customer complaints are to be handled and ensure all staff are familiar with them. A consistent process ensures a better outcome.

If a patient does come to you with a complaint:

1. LISTEN. Listen carefully to what the person is saying when they are presenting a problem and don't



interrupt until they are finished. Listen not only for the words, but for their emotions, their assumptions, and what they are not saying so that you can actually single out the real issues and fix the root of the problem.

Consider using the RELATE/RESPOND model (as shown on left), developed by Capital Health and the Health Quality Council of Alberta.

2. Express concern with the issue and use appropriate words to convey this. Paraphrase what the person is saying to ensure you understand what he or she meant.
3. Indicate a willingness to help them resolve the issue.
4. Deal with the problem immediately. Immediate action shows patients you are serious about the matter. It can also prevent a minor situation from snowballing.

**CAUTION:** Do not respond so quickly or offhandedly that the patient feels "brushed off." Let the complainant completely express their entire concerns, acknowledge the concerns, determine the complainant's true/primary concerns, gather additional information and then promptly respond to the complainant. Often a concern turns into a formal complaint because the complainant

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**ReLATE** Everyday tips for interacting with patients and families.

- R.** Respect the dignity and privacy of the patient/family
- E.** Explain who you are and what you are going to do
- L.** Listen to what the patient/family is *really* saying
- A.** Ask questions to clarify what you have heard
- T.** Try to be flexible and offer alternatives
- E.** Empathize with the stress that accompanies illness

Developed in partnership between Capital Health and the Health Quality Council of Alberta



**ReSPOND** When you are the first to receive a complaint.

- R.** Recognize the complainant's perspective
- E.** Establish rapport with the complainant
- S.** Single out complainant's "real" issues
- P.** Provide information to the complainant about what action you will take towards resolving his/her issues
- O.** Operationalize the indicated plan of action by completing steps yourself or forwarding as appropriate to your next level of management
- N.** Notify the complainant about the action you have taken towards resolving the concern
- D.** Discuss the circumstances of the concern with your next level of management if indicated. Document as appropriate.



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