

COLLEGE OF MASSAGE THERAPISTS OF BRITISH COLUMBIA

Board Policy on Bias and Reasonable Apprehension of Bias

[Passed by the Board on April 11, 2013, Updated June 8, 2015]

PURPOSE

1. It is the duty of the College to serve and protect the public, and to exercise its powers and discharge its responsibilities under all enactments in the public interest.

Health Professions Act (the “HPA”), s. 16(1)

2. Public confidence in the College’s ability to carry out this mandate requires College Board and committee members to be impartial, fair, and free from bias or a reasonable apprehension of bias when discharging their duties and responsibilities under the HPA and the College’s Bylaws.
3. This policy has been created to assist in preserving the integrity of College decisions made by the College’s Board and committees, and to ensure these decisions are always based in the public interest and not the personal beliefs of any Board or committee member.
4. In serving the public interest, it is the Board’s responsibility to adopt a bias policy governing its own members and the members of the College’s committee such as this policy, and the Board must review such a policy periodically to ensure that its objectives continue to be met.

APPLICATION

5. This policy applies to all decisions made by the Board and College committee members.
6. The policy applies in addition to, and should be read in combination with, the Conflict of Interest Policy and other Board policies.

WHAT IS BIAS OR A REASONABLE APPREHENSION OF BIAS?

7. For the purposes of this policy:
 - a. “bias” means an predisposition of mind where a Board or committee member, while performing College functions, and due to:
 - i. prejudgement,
 - ii. prejudice, or

iii. other irrelevant factors

could be unable to exercise his or her judgement in a fair and impartial manner.

b. A “reasonable apprehension of bias” arises when a reasonable and well informed person, viewing the circumstances practically, would conclude that there is a reasonable likelihood of partiality.

8. A Board or committee member should avoid conduct that:

a. an informed person, viewing the matter practically and realistically, would conclude that the Board or committee member, whether consciously or unconsciously, would not decide fairly¹; and

b. whether actual bias exists or can be demonstrated is unnecessary.

HOW TO RECOGNIZE A REASONABLE APPREHENSION OF BIAS

9. A reasonable apprehension of bias arises in any situation where the words or the behaviours of a Board or committee member put his or her impartiality into question. For further guidance, the following examples of reasonable apprehension of bias are provided:

a. If, in a disciplinary hearing, a member of the Discipline Committee continually interrupts one party, makes sarcastic or aggressive comments to that party, or refuses to hear that party’s evidence, that Committee member’s conduct may give rise to a reasonable apprehension of bias.

b. If, when determining whether a graduate from a non-Accredited Educational Program holds a degree or diploma that is substantially equivalent to one issued by an Accredited Educational Program, the Registration Committee imposed unreasonable and unattainable proficiency requirements on graduates from particular geographic regions, these actions could give rise to a reasonable apprehension of bias at an institutional level.

c. If, in making a decision to hire a Registrar, a Board member appears to have already formed a negative opinion about a candidate, and is not open to persuasion, that Board member’s behaviours may give rise to a reasonable apprehension of bias.

d. If a Board or a committee member has made past statements, or expressed views that directly relate to the issue before them that indicates prejudgement of the issue, or the member’s past conduct or actions

¹ See *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369 at 394 (per Grandpré J. dissenting); this test was adopted in *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484, at para. 11

suggest prejudgement, that member's behaviours may give rise to a reasonable apprehension of bias.

WHAT TO DO WHEN THERE IS A POTENTIAL FOR BIAS

A. Potential bias must be disclosed

10. In the course of carrying out his or her duties to the College, if a Board or committee member believes, or becomes aware of, circumstances that give rise to a reasonable apprehension of bias, they must:
 - a. immediately disclose the potential for bias or a reasonable apprehension of bias:
 - i. in the case of a Board member, the Registrar, the Chair, and/or the Board as a whole, or
 - ii. in the case of a committee member, the Registrar, the chair of the committee, and/or the committee as a whole,
 - b. refrain from discussing, voting on or taking any action with respect to any matter in which they may have a potential bias or reasonable apprehension of bias,
 - c. remove themselves from the meeting if and when deemed appropriate by them or the Board or committee of which they are a member, and
 - d. refrain from attempting to exert any personal influence with respect to the matter being addressed.

11. If a Board or committee member believes, or becomes aware of, circumstances involving another Board or committee member which could give rise to a reasonable apprehension of bias, they must:
 - a. immediately disclose their reason for believing there is a potential for a reasonable apprehension that a Board or committee member is biased:
 - i. in the case of a Board member, the Registrar, the Chair, and/or the Board as a whole, or
 - ii. in the case of a committee member, the Registrar, the chair of the committee, and/or the committee as a whole.

B. When potential bias is disclosed

12. If a Board or committee member discloses to the Registrar, Chair or committee chair, as applicable, their belief that they, or another Board or committee member may not make an impartial and fair decision, and the Registrar, Chair or

committee chair is satisfied that bias, or a reasonable apprehension of bias may exist, the matter must be put to the Board or the committee as a whole.

13. When a potential bias is disclosed to the Board or the committee, the Board or committee as a whole, except for the member who may be biased, must review:
 - a. all of the material facts disclosed,
 - b. the requirements of this policy,
 - c. the duties and objects of the College under the HPA, and
 - d. the role and duties of the Board or the committee under the HPA, the College's Bylaws, and any other relevant enactment or policy, and

determine if the circumstances give rise to a reasonable apprehension of bias and if the member should be disqualified from participating in any discussion, voting, or other activity related to the circumstances giving rise to the apprehension of bias.

14. The Board or committee will make the above determination by majority resolution. Quorum for the purpose of such a determination will not include the individual Board or committee member who may be biased, and for further certainty, that individual Board or committee member may not participate in any vote with respect to whether or not the circumstances give rise to a finding of bias, or an apprehension of bias .
15. If the Board or committee decides the circumstances give rise to a reasonable apprehension of bias and that a Board or committee member should be disqualified from participating in any discussion, voting, or other activity related to the circumstances giving rise to the apprehension of bias, the Board or committee member who is therefore disqualified must comply with this decision.

[END OF POLICY]