

Alternative Dispute Resolution within
the Complaints Process:
Perspectives from the Pilot Project of
the Ontario College of Pharmacists

Preliminary Questions Posed during
the Environmental Scan

Intake

- Aside from allegations of sexual assault, what else do you consider to be inappropriate for ADR?
- What is your notification process for beginning ADR?
- Do you have established criteria which you apply at the Intake stage to screen for suitability for ADR?
- Do you begin based only on the letter of complaint or do you get the response as well?
- Do you send a modified NOC?
- How much information or evidence needs to be gathered before you can refer a matter to the ADR process?
- How to deal with the running clock? Can the parties be asked to contract out of this provision?
- Can children be parties to ADR? If they have a guardian/parent/representative?
- Can people who were not directly wronged by the Member's act be a party? (e.g. a health care professional complaining on behalf of a patient, a husband complaining on behalf of a wife)
- Do you use ADR when the Complainant is also a member of your College? When the Complainant is another regulated professional?
- Is there an ADR cutoff for "repeat offenders"? If a Member receives multiple complaints about something (e.g. communication skills) can the College eventually say that this Member can no longer benefit from ADR and has to go through something more significant?
- What about cases that might well go to Discipline? Can they be exempted from an ADR process? How would these cases be identified?

ADR Procedure

- Is arbitration or med-arb ever used?
- Do the parties sign an agreement?
- Different types of ADR for different situations? (e.g. negotiation vs. mediation? Both parties in the same room or in different rooms?)
- If different types of ADR can be used, who decided which is best for each Complainant/Member?
- Does the College set the rules? Or the mediator? Same rules for all ADR processes, or are they set specific to each set of individuals?
- Should the College establish the rules of procedure, or should they be left to the individuals involved each time? Or should there be a hybrid?
- Are there rules of evidence?
- Who facilitates? In house? External? Peer training?
- Should the facilitator have expertise/experience in pharmacy?
- Cultural competency?
- Is the College a party to the ADR process, to protect the public interest?
- Can you have ADR by paper/electronic correspondence?
- Can ADR be done by telephone/video conference?
- Who pays if translation is needed?
- Is there some form of disclosure? Can the facilitator request documents if needed? What if the Member refuses to comply with requests?
- Can the mediator ever terminate the process? (e.g. if she feels that there is a lack of good faith, or a failure to take the process seriously)
- What happens if information is revealed during the ADR that renders the complaint inappropriate for a complete resolution within the ADR process?
- What happens when one or both parties have a lawyer? Can the lawyer be present? Participate?
- What resolution options are available to the mediator?

The ADR Resolution

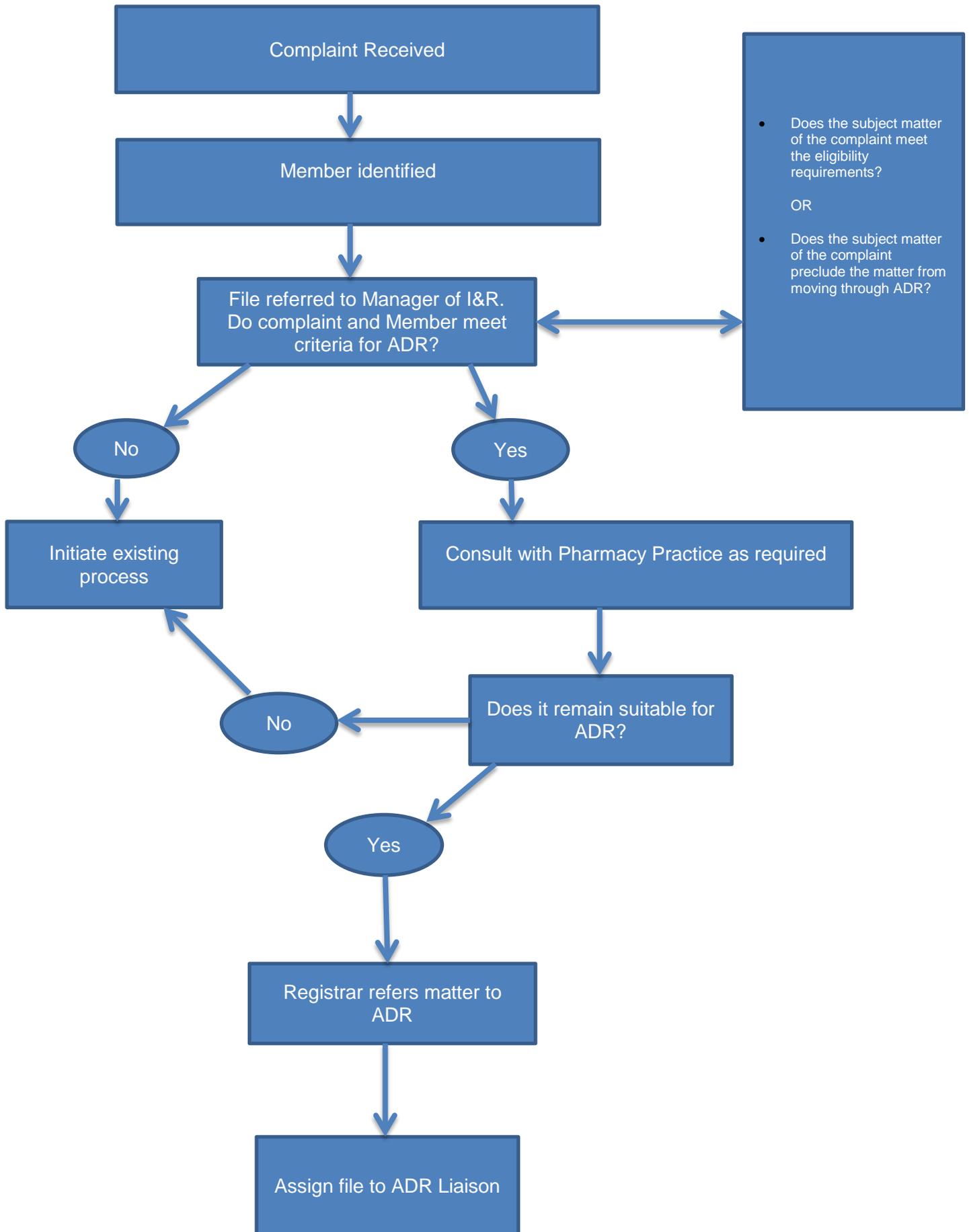
- Can compensation ever be part of an ADR agreement?
- Does the ICRC endorsement have to mention the details of the agreement in some manner, or should it simply state that it accepts the outcome but not discuss anything further?
- Do parties have seek/explicitly refuse ILA before signing any agreement?
- Is a breach within this process something that can go to ICRC? Do you use an UT in some manner to deal with such problems?
- Is there ever some sort of appeal?
- Would an ADR agreement count as a “previous decision” under the legislation? Or just the ICRC endorsement?

Cost

- What information can you share regarding the costs of your ADR program?
- Is there a cost benefit to your college resulting from the use of this program?

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ADR Process Flow Chart



Complainant contacted by telephone (by ADR liaison) and ADR option is introduced



Detailed correspondence about options



Follow up phone call made to complainant



Is complainant willing to participate in ADR?

No



Initiate existing process

Yes



Second round of correspondence sent to complainant including consent forms



Signed consent forms received



No

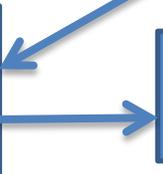


Yes

Complainant declines to enter process



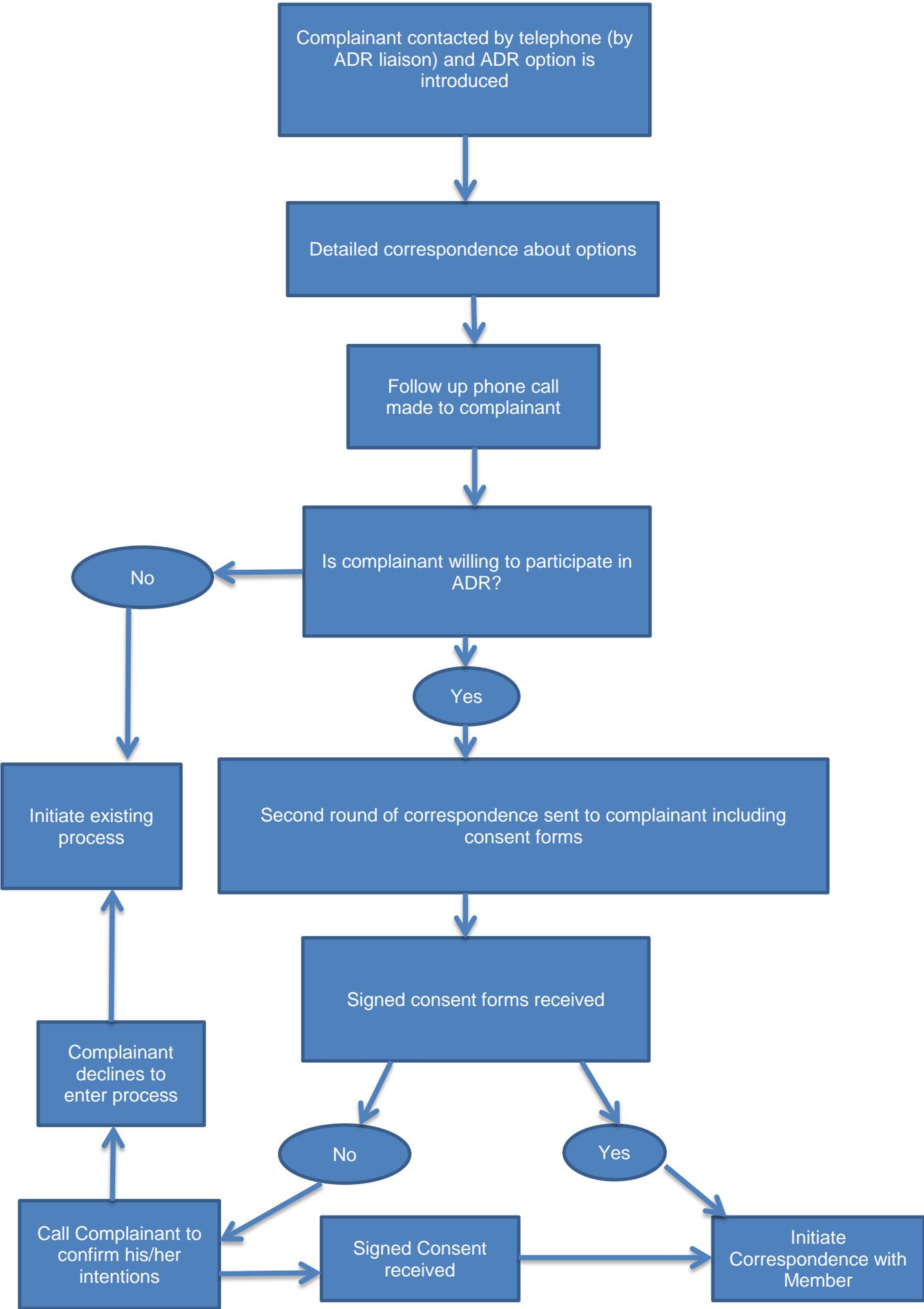
Call Complainant to confirm his/her intentions

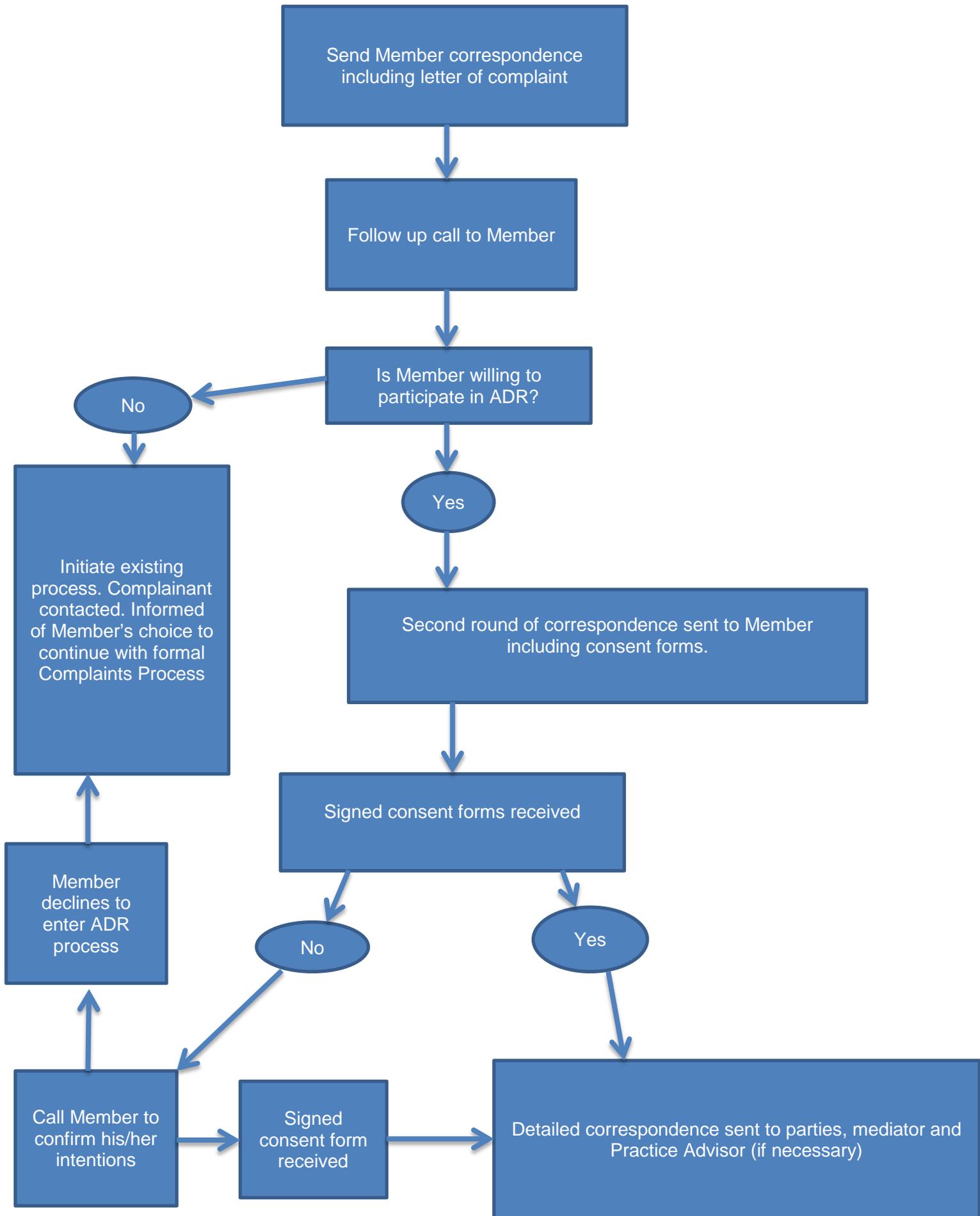


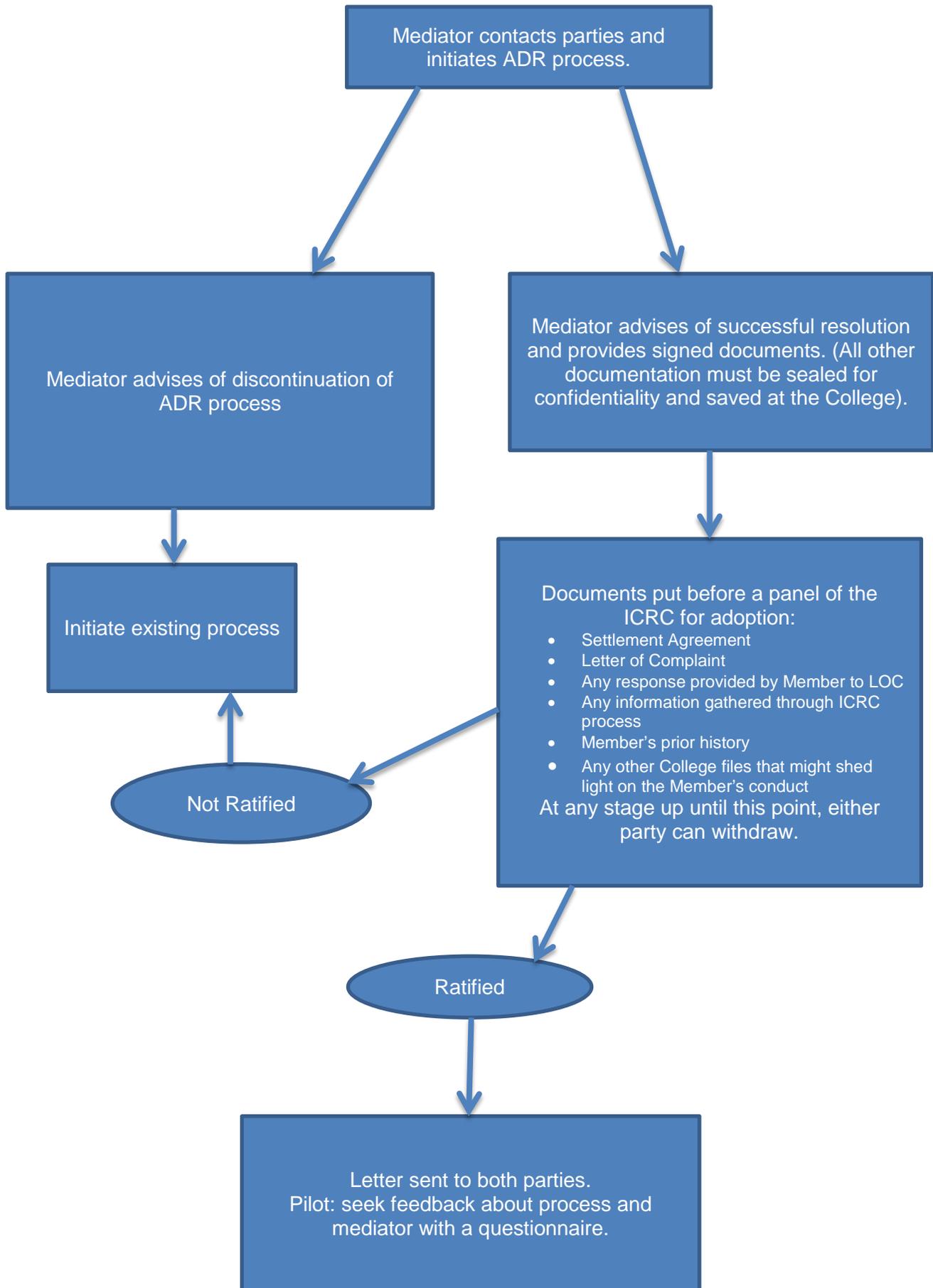
Signed Consent received



Initiate Correspondence with Member







Mediator contacts parties and initiates ADR process.

Mediator advises of discontinuation of ADR process

Initiate existing process

Not Ratified

Mediator advises of successful resolution and provides signed documents. (All other documentation must be sealed for confidentiality and saved at the College).

Documents put before a panel of the ICRC for adoption:

- Settlement Agreement
- Letter of Complaint
- Any response provided by Member to LOC
- Any information gathered through ICRC process
- Member's prior history
- Any other College files that might shed light on the Member's conduct

At any stage up until this point, either party can withdraw.

Ratified

Letter sent to both parties.
Pilot: seek feedback about process and mediator with a questionnaire.

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Preliminary Letter to the Complainant
First Version

[date]

Confidential

[Complainant's name and address]

Dear [name]:

Re: Intake #XXXX

On behalf of the Ontario College of Pharmacists (the "College"), I acknowledge receipt of your letter received at the College on [insert date] about a member of the College at [insert pharmacy]. I wish to take this opportunity to inform you of the College's process for the investigation of complaints.

Alternative Dispute Resolution

As explained during a telephone conversation on [date], a voluntary and confidential process is available as an option for the resolution of some complaint matters. This process is an alternative to the formal investigation process and is called Alternative Dispute Resolution (ADR). Under section 25.1(1) of the *Health Professions Procedural Code*, being Schedule 2 of the *Regulated Health Professions Act, 1991*, the Registrar may refer the parties to a complaint (you and the Member) to an ADR process. This matter has been identified as one which may be addressed through the ADR process.

ADR is a less formal process than an investigation by the Inquiries, Complaints and Reports Committee (the "ICRC"). It allows the parties to discuss their concerns in an open and confidential manner without prejudice to either party. It can be a more timely process and is often less adversarial in nature. It can also afford both you and the Member an opportunity for greater participation and input into the final outcome, and can result in a final settlement that may better suit your respective interests. Please note that agreements reached through the ADR process cannot include any financial settlement or remuneration.

The ADR process involves the use of a mediator, who is not an employee of the College or a member of a College Committee. The process may also involve the participation of a Pharmacy Practice Advisor, if impartial information about pharmacy practice is necessary. The mediator is appointed and will meet with you and the Member to facilitate effective communication and negotiation regarding the issues at hand. The mediator is not empowered to impose a settlement. He or she will work with you and the Member to help you to reach a mutually agreeable settlement.

The College employs mediators who are experienced and the cost of this process is carried by the College. Mediation can take place in person or can be arranged via telephone or other electronic medium, if appropriate. Any costs outside of the mediation (e.g. meals, travel, accommodation) are carried by the parties.

Please note that the ADR process is completely voluntary. In order for the process to move forward, both you and the Member must agree to enter the process.

If you agree to enter into the ADR process, then the ADR Liaison will forward a copy of your complaint and information about the ADR process to the responsible member. If the Member also agrees to enter into the ADR process, then your signed agreements and a copy of your letter of complaint will be forwarded to the mediator, who will commence the process.

If both you and the Member agree to participate in the ADR process, and if a settlement is reached as a result of this process, then the settlement will be forwarded to the ICRC for adoption, pursuant to section 25.1(4) of the *Health Professions Procedural Code*, being Schedule 2 of the *Regulated Health Professions Act, 1991*. The terms of any settlement agreement will only become binding once the agreement is adopted by the ICRC. All aspects of any settlement agreement are enforceable by the College.

If the ADR process is unsuccessful and no settlement is reached or if the ICRC does not adopt the settlement agreement, then the ADR process will come to an end, and the documents created during the ADR process will be sealed and not used in any further processes. Your complaint will then proceed through the formal investigation process and the results of this investigation will be provided to the ICRC, which will issue a decision on the matter. (This investigation process is discussed in more detail below.) Should your complaint follow this process after a terminated ADR process, anything raised during the ADR process will remain confidential and will not be provided to the ICRC.

Investigation

Should you decide that you do not wish to resolve this complaint through ADR, or if you enter into the ADR process but no settlement agreement can be achieved, or if any settlement agreement is not adopted by the ICRC, you will be contacted by College staff assigned to your file. College staff is responsible for gathering necessary information connected to your complaint. Please note that any College staff involved in any mediation efforts will not be involved with any subsequent investigation, should the ADR process fail.

For example, you may be requested to complete and return an Information Release Form which would authorize the College to obtain relevant information. Your prescription history and other documents may be obtained from the pharmacy. The College may seek assistance from the Designated Manager of the pharmacy to identify and/or confirm the responsible member(s) based on the information in your correspondence.

The College may also ask you to clarify your concerns relating to the practice of the Member(s). A summary of your concerns may be prepared and sent to you. In this instance, you will be asked to confirm by signature that your concerns have been accurately reflected in the summary.

Once the College has completed any of the necessary preliminary steps as detailed above, the Member(s) will be given notice of the complaint and a copy of the signed summary and/or your original correspondence in order to respond to your concerns. The College will provide you with a copy of that response and an opportunity to submit a reply.

Your complaint will be placed before a panel of the ICRC. The role of the ICRC is to investigate complaints and render a decision on them. The ICRC investigation process is neutral and objective. Following its investigation, a panel of the ICRC will make a decision, which can include one or more of the following:

1. Take no action
2. Take other appropriate actions such as requiring the Member to undergo continuing education or remediation.
3. Require the Member to appear before a panel of the ICRC to be cautioned.
4. Investigate the Member's capacity.
5. Refer specified allegations of professional misconduct to the Discipline Committee for a hearing.

Please be advised that the College has no jurisdiction to direct a member to pay compensation for any financial losses or for pain and suffering. That is a matter for the courts.

The ICRC makes decisions geared towards improving the Member's conduct and enhancing public safety. A copy of the ICRC's decision will be sent to both you and the Member(s). Unless the ICRC decides to refer specified allegations of professional misconduct by the Member to the Discipline Committee, or to conduct an incapacity investigation, the ICRC must provide written reasons for its decision within 150 days after the filing of the complaint. In the event of a delay in providing you with the written reasons for the ICRC's decision, you will be notified in writing and given a revised date by which you can expect to receive the written reasons. Once you have received the ICRC's written reasons for its decision, and if you are not satisfied with the adequacy of the investigation and/or the reasonableness of the decision, you may request a review. The review would be conducted by the Health Professions Appeal and Review Board, which is independent of the College. For more information about the complaints process, timelines and reviews, please see the attached copy of sections 25.1, and 28 to 29 of the *Health Professions Procedural Code*, being Schedule 2 of the *Regulated Health Professions Act, 1991*.

Consideration of ADR Option

I would ask that you take some time to consider whether you would like to follow the ADR process. [insert name], the College's ADR Liaison, will be in contact with you shortly to further discuss this option and answer any additional questions you may have. Alternatively, you may contact [insert Liaison's name] directly at [insert contact information].

Yours truly,

[insert name]
Registrar
Ontario College of Pharmacists

Encl.: Sections 25.1, and 28 to 29 of the *Health Professions Procedural Code*

Alternative Dispute Resolution within
the Complaints Process:
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Preliminary Letter to the Complainant
Updated Version

[date]

PRIVATE & CONFIDENTIAL

[Complainant's name and address]

Dear [name]:

Re: Intake #XXXX

On behalf of the Ontario College of Pharmacists (the "College"), I acknowledge receipt of your letter received at the College on [insert date] about a member of the College at [insert pharmacy]. I wish to take this opportunity to inform you of the College's processes for the investigation and resolution of complaints.

As explained during a telephone conversation on [date], the College offers an Alternative Dispute Resolution ("ADR") program involving mediation, and your complaint has been identified as one which could be addressed through ADR. Enclosed you will find information about how the ADR program works so that you can consider whether you would like to participate in this program as a means of resolving your complaint.

If you decide that you do not want to participate in the ADR program, or if you do but the mediation is not successful for some reason, then your complaint can be addressed through an investigation process. Information about how investigations are carried out, as well as what to expect during an investigation, is also enclosed for your consideration.

At this point, I would ask that you take some time to consider whether you would like to participate in the ADR process with respect to this matter. [insert name], the College's ADR Liaison, will be in contact with you shortly to further discuss this option and answer any additional questions you may have. Alternatively, you may contact [insert Liaison's name] directly at (416) 962-4861 x22XX or toll free at 1-800-220-1921 x22XX or email to XXXXXXX@ocpinfo.com.

Thank you for bringing your concerns to the attention of the College. It is with the public's participation that we may continue to uphold our mandate to protect the public interest, and take steps to ensure that pharmacists provide quality pharmaceutical service and care.

Yours truly,

[name]
Registrar
Ontario College of Pharmacists

Enclosures:

- ADR Information Sheet
- Investigation Information Sheet
- Sections 25.1, 26, and 28 to 29 of the *Health Professions Procedural Code*

Ontario College of Pharmacists Alternative Dispute Resolution (“ADR”) Information Sheet

What is ADR?

ADR through the College involves the use of a mediator to help the parties resolve their differences and come to a resolution. Under section 25.1(1) of the *Health Professions Procedural Code*, being Schedule 2 of the *Regulated Health Professions Act, 1991* (the “Code”), the Registrar of the College may refer the parties to a complaint to an ADR process. ADR is a voluntary and confidential process.

ADR is a less formal process than an investigation by the Inquiries, Complaints and Reports Committee (“ICRC”). It allows the parties to discuss their concerns in an open and confidential manner without prejudice to either party. It can be a more timely process and is often less adversarial in nature. It can also afford both you and the member an opportunity for greater participation and input into the final outcome, and can result in a final settlement that may better suit your respective interests.

How does ADR work?

The ADR process involves the use of a mediator, who is not an employee of the College or a member of a College Committee. The process may also involve the participation of a Pharmacy Practice Advisor, if impartial information about pharmacy practice is necessary. The mediator is retained and will meet with you and the member to facilitate effective communication and negotiation regarding the issues at hand. The mediator is not empowered to impose a settlement. He or she will work with you and the member to help you to reach a mutually agreeable settlement.

Is there a cost to me?

The College employs mediators who are experienced and the cost of this process is carried by the College. Mediation can take place in person or can be arranged via telephone or other electronic medium, if appropriate. Any costs outside of the mediation (e.g. meals, travel, or accommodation, if applicable) are carried by the parties.

Why do I need to consent to participate in ADR?

The ADR process is completely voluntary. In order for the process to move forward, both you and the member must agree to enter into the process.

If you agree to participate in the ADR process, then the ADR Liaison will forward a copy of your complaint and information about the ADR process to the responsible member. If the member also agrees to enter into the ADR process, then your signed agreements and a copy of your letter of complaint will be forwarded to the mediator.

What happens after everyone agrees to participate in ADR?

Once the mediator has received all of the information and consent forms, he or she will contact you and the member to begin the ADR process.

If a settlement is reached as a result of the ADR process, then the settlement agreement will be forwarded to the ICRC for adoption. A review of the settlement agreement by the ICRC is required by section 25.1(4) of the Code.

The ICRC will review your settlement agreement and it can either adopt the agreement and cease its investigation of your complaint, or reject the settlement agreement and continue with an investigation of your complaint.

The terms of any settlement agreement will only become binding once the agreement is adopted by the ICRC. All aspects of a settlement agreement are enforceable by the College.

What happens if ADR is not successful?

ADR could be unsuccessful for a variety of reasons: any party (you or the member) can terminate the process at any time, or the mediator can terminate the process, or it may not be possible to reach a resolution.

If the ADR process is unsuccessful and no settlement is reached or if the ICRC does not adopt the settlement agreement, then the ADR process will come to an end and the documents created during the ADR process will be sealed and not used in any further processes. Your complaint will then proceed through the investigation process and the results of this investigation will be provided to the ICRC, which will issue a decision on the matter. (See the enclosed Investigation Information Sheet for more details about this.) Information obtained during the ADR process will remain confidential and will not be provided to the ICRC.

How long does the whole process take?

Section 28(1) of the Code indicates that the ICRC is required to dispose of your complaint within 150 days of it being filed with the Registrar. Participating in ADR does not alter this obligation; however, the ADR process can often reach a resolution sooner than the investigation process. In the event of a delay in disposing of your complaint within 150 days, the College will provide you with written notification and reasons for the delay.

Will this form part of the member's prior history at the College?

When a complaint is made against a member of the College and it is addressed through an investigation, the ICRC must consider all of its available prior decisions involving the member when disposing of the matter.

An agreement achieved through ADR that is adopted by the ICRC does not form part of the member's prior history with the College. This means that, if there were ever another complaint against the same member, the resolution achieved through ADR would not be reviewed by the ICRC when dealing with that complaint.

Ontario College of Pharmacists Investigation Process Information Sheet

An investigation of your complaint will take place if:

- You or the member decide not to resolve this complaint through ADR, or
- You enter into the ADR process but no settlement agreement can be achieved, or
- Any settlement agreement is not adopted by the Inquiries, Complaints and Reports Committee (the “ICRC”).

What are the first steps of an investigation?

If your complaint proceeds through an investigation, you will be contacted by College staff assigned to your file. Please note that any College staff involved in any mediation efforts will not be involved with any subsequent investigation, should the ADR process be unsuccessful.

At the beginning of the investigation, you may be asked to clarify and/or confirm any information or concerns relating to the practice of the responsible member(s). You will be asked to sign consent forms which will assist the College in obtaining relevant information and prescription history from the pharmacy and other relevant health institutions, as necessary.

How does the investigation proceed from there?

Once the College has identified the member(s) responsible, they will be provided with a copy of your letter of complaint and be asked to submit a response. The College will provide you with a copy of the member(s) response in due course and you will have an opportunity to make further comments.

How is a decision made?

Your complaint, along with the member’s response and any additional information obtained by College staff during the course of the investigation, will be placed before a panel of the ICRC of the College. The role of the ICRC is to investigate complaints and render a decision on them. The ICRC investigation process is neutral and objective. Following its investigation, a panel of the ICRC will make a decision, which can include one or more of the following:

1. Take no action
2. Take other appropriate actions such as requiring the member to undergo continuing education or remediation.
3. Require the member to appear before a panel of the ICRC to be cautioned.
4. Investigate the member’s capacity.
5. Refer specified allegations of professional misconduct to the Discipline Committee for a hearing.

Please be advised that the College has no jurisdiction to direct a member to pay compensation for any financial losses or for pain and suffering.

The ICRC makes decisions geared towards improving the member’s conduct and enhancing public safety.

How will I know the outcome?

A copy of the ICRC's decision will be sent to you in writing. Unless the ICRC decides to refer specified allegations of professional misconduct to the Discipline Committee or to conduct an incapacity investigation, the ICRC must also provide written reasons for its decision.

Can a decision of the ICRC be reviewed?

Once the ICRC makes its decision (unless it is a decision to refer allegations to discipline or to conduct an incapacity investigation), any party to the complaint, including you, will have the right to seek a review by the Health Professions Appeal and Review Board, which is independent of the College. For more information about the complaints process, timelines, and reviews, please see the attached copy of sections 28 to 29 of the Code.

How long does the entire process take?

The College is committed to adhering to principles of procedural fairness and ensuring a thorough investigation is conducted regarding your complaint. In accordance with section 28(1) of the Code, the ICRC is required to dispose of your complaint within 150 days of it being filed with the Registrar of the College; however, that is not always possible, particularly if the investigation is complicated. In the event of a delay, the College will provide you with written notification and reasons for the delay.

Will this form part of the member's prior history at the College?

When a complaint is made against a member of the College and it is addressed through an investigation, the ICRC must consider all of its available prior decisions involving the member when disposing of the matter.

A decision of the ICRC with respect to a complaint forms part of a member's prior history with the College, unless the decision is to take no action pursuant to section 26(5) of the Code.

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Consent to Enter the ADR Process

**CONSENT TO ENTER ALTERNATIVE DISPUTE RESOLUTION (“ADR”) PROCESS
ADR File No.:**

To Resolve a Complaint made by

(the “Complainant”)

about

(the “Member”)

The Referral

This complaint has been referred to an ADR process by the Registrar of the Ontario College of Pharmacists (the “College”), pursuant to section 25.1(1) of the *Health Professions Procedural Code*, being Schedule 2 of the *Regulated Health Professions Act, 1991*.

The Participants

The participants to this process are the Complainant and the Member.

The Role of the Mediator

The Mediator is employed on behalf of the College to conduct the mediation but is not a College staff member or a member of a College Committee. The Mediator is employed to act in a neutral capacity. He or she does not impose any settlement agreement but assists the Complainant and Member to reach a settlement agreement together.

Pharmacy Practice Advisor

A Pharmacy Practice Advisor is available to provide information about pharmacy practice, should such assistance be required during the ADR process. The Pharmacy Practice Advisor is a neutral individual who is not a participant to the ADR process. He or she is a College staff member or an individual approved by the College to act in this capacity.

Objectives of ADR

The objective of the ADR process is to allow the Complainant and the Member, with the assistance of the Mediator, to reach a settlement that meets their respective interests and goals.

Procedures and Ground Rules

At the beginning of the ADR process, the Mediator will establish the procedures and ground rules to be followed by the participants during the ADR process. The Mediator will facilitate the ADR process according to these procedures and ground rules. The participants must agree to be bound by these procedures and ground rules in order for the ADR process to proceed.

Voluntary Nature of the ADR Process and Withdrawal from the Process

Participation in this ADR process is voluntary. The Complainant and Member may withdraw from the ADR process at any time, thus terminating the ADR process. The Mediator also has

the authority to terminate the process if he or she feels that it is not proceeding in good faith or in accordance with the established procedures and ground rules, or forms the belief that the process should be discontinued for any other reason.

Settlement Agreement

A settlement agreement can only be reached if both the Complainant and the Member agree to the terms and, as noted below, it is adopted by a panel of the Inquiries, Complaints and Reports Committee ("ICRC"). If a settlement agreement is achieved, the terms of the agreement will be documented by the Mediator and the agreement will be signed by the participants. Any remediation or other activities undertaken by the Member must also be documented in the terms of the settlement agreement.

A settlement agreement is entered into to resolve the complaint at hand, but is not considered an admission of guilt, fault, or liability.

Once the Mediator has completed the settlement agreement and the Complainant and the Member have signed to indicate their acceptance of the agreement, the agreement will be provided to the College by the Mediator.

Review by the Inquiries, Complaints and Reports Committee

The settlement agreement and other relevant documents, including the initial letter of complaint, will be forwarded to a panel of the ICRC for review. The ICRC may adopt the terms of the settlement agreement and cease investigation of the complaint, or may reject the terms of the settlement agreement and continue with its investigation of the complaint.

Adoption

The settlement agreement is not binding until it has been adopted by the ICRC. If the settlement agreement is not adopted, both parties are released from their obligations under the agreement.

Remediation and Enforcement

The Member may agree to complete certain remediation or other activities as part of the resolution of the complaint. Any such obligations shall take effect on the date that the settlement agreement is adopted by the ICRC. All aspects of the settlement agreement shall be enforceable by the College.

Any breach of the terms of a settlement agreement on the part of the Member will be brought to the attention of the Registrar and may be considered grounds for professional misconduct.

Confidentiality

The participants agree, subject to the provisions of the *Regulated Health Professions Act, 1991*, to keep confidential the information discussed during the ADR process with respect to the resolution of this complaint. In addition, any information disclosed during the ADR process cannot be used against a party in another proceeding (unless the party using the information obtained it independently elsewhere). Should ADR be unsuccessful, any College representative, such as the Pharmacy Practice Advisor, shall not participate in any ICRC investigation of the

complaint. The participants agree that the Mediator and Pharmacy Practice Advisor will not be called as witnesses in any proceeding.

Waiver of Liability

No action or proceeding for damages or any other relief for any neglect or default in the performance or exercise in good faith of his or her duty of power shall be brought against the Mediator, the Pharmacy Practice Advisor, the Ontario College of Pharmacists, or any member of a committee or other staff person, officer, employee, or appointee of the Ontario College of Pharmacists.

Agreement with All of the Above

I have read the terms itemized above and I agree to be bound by them.

I have been advised of my right to obtain independent legal advice and have either obtained this advice or have intentionally waived this right.

DATED in _____, Ontario this _____ day of _____, 2014
(city) (day) (month)

Signature

Witness Signature

Name (please print)

Name of Witness (please print)