

Student Claim Based on Being Misled Decision

Complainant: [REDACTED]

Institution: 283 – Dominion Herbal College

1. Introduction

The Complainant was enrolled in Year 4 of the four-year Clinical Herbal Therapy Program [Program] and filed a complaint against the Institution [Complaint] on August 8, 2024, after having been dismissed from the Program on February 23, 2024.

At the time of the dismissal, the Institution refunded fees paid in respect of Year 4. The Complainant is seeking a refund for tuition paid in respect of Year 1, 2 and 3 of the Program.

The Complainant exhausted the dispute resolution process [DRP] prior to filing the Complaint.

The matter at issue relates to the Complainant's dismissal from the Program.

For the reasons outlined below I find the Institution misled the Complainant regarding a significant aspect of the Program and, accordingly, approve the claim.

2. Statutory Scheme

Section 23(1) of the *Private Training Act* [PTA] provides that, a student may file a claim against the Student Tuition Protection Fund [Fund] on the ground that a certified institution misled the student regarding any significant aspect of an approved program of instruction in which that student was enrolled. Claims are filed with the Trustee, being the minister or the person to whom the minister has delegated the relevant powers or duties.

Claims must be filed no later than one year after the student completed or was dismissed or withdrew from the program and only after the student has exhausted the institution's dispute resolution process.

Following receipt of the complaint, the process is as follows:

Claim the student was misled		
Who	What	When
Trustee	Gives a copy of the claim to the institution	As soon as practicable
Institution	May respond to the claim [Response]	Within 15 days of receiving a copy of the claim from the Trustee
Trustee	Gives the Response from the institution, if any, to the student	Within 15 days of receiving the Response from the institution
Student	May reply to the Response from the institution [Reply]	Within 15 days of receiving the Response from the Trustee
Trustee	Must give the Reply from the student, if any, to the institution	Within 15 days of receiving the Reply from the student

Trustee	Adjudicates the claim to determine whether any refund should be issued, and provides written reasons to the student, the institution, and the registrar.
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If a claim is approved, the Trustee may authorize payment from the Fund of all or a portion of the tuition paid to the institution by or on behalf of the student. Section 25(4) of the *Fees and Student Tuition Protection Fund Regulation* requires that payments from the Fund be directed first to the government if all or a portion of the tuition was paid using funds from a provincial or federal student assistance program, and then to the claimant.

3. Program Information

Program:	Clinical Herbal Therapy
Student Enrollment Contract – Year 1	
Start date:	September 1, 2019
End date:	August 31, 2020
Student Enrollment Contact – Year 1 Re-registration	
Start date:	September 1, 2020
End date:	August 31, 2021
Student Enrollment Contract – Year 2	
Start date:	September 1, 2021
End date:	August 31, 2022
Student Enrollment Contract – Year 3	
Start date:	September 1, 2022
End date:	August 31, 2023
Student Enrollment Contract – Year 4	
Start date:	February 1, 2024
End date:	January 31, 2025
Dismissal date:	February 23, 2024
Total charged:	\$30,912
Tuition:	\$30,662
Year 1 Program Fee:	\$ 4,925
Year 1 Re-registration Fee:	\$ 2,120
Year 2 Program Fee:	\$ 6,545
Year 3 Program Fee:	\$ 6,920
Year 4 Program Fee:	\$ 10,152
Registration Fee (non-refundable):	\$ 250
Amount paid to date by Complainant:	\$ 30,912
Tuition refunded by Institution:	\$ 10,152
Tuition paid to date by Complainant:	\$ 20,510

4. Issues

The following issue arises for consideration: Was the Complainant misled in respect of her dismissal from the Program?

5. Chronology

August 31, 2023	Institution notifies students Program is suspended
September 1, 2023	Scheduled start date of Year 4
December 2023	Complainant attends clinic provided by an instructor/clinical supervisor previously employed by the Institution
December 23, 2023	Institution confirms Year 4 will resume February 1, 2024
December 23, 2023, January 2, 4, 6, 2024	Complainant asks Institution to provide a list of clinical supervisors and follows up.
December 29, 2023	Complainant signs enrolment contract for Year 4
January 29, 2024	Complainant withdraws from Program, cites Institution's lack of communication and professionalism. Institution leaves two telephone messages encouraging Complainant to remain enrolled in Program.
January 30, 2024	Telephone conversation between parties
January 31, 2024	Complainant rescinds withdrawal and asks Institution to recognize clinical hours completed in December 2023
February 1, 2024	Year 4 start date
February 2, 2024	Institution responds that it may consider the request to recognize the clinical hours completed in December 2023 and asks for additional information
February 10, 2024	Institution asks whether Complainant is available in March 2024 to attend clinical hours
February 12, 2024	Complainant responds she is not available in March - s [REDACTED] [REDACTED]
February 23, 2024	Complainant dismissed
March 12, 2024	Complainant initiates DRP
April 11, 2024	Institution issues decision
August 8, 2024	Complainant files Complaint

6. Analysis

The Program is largely delivered by distance education and one of the requirements to complete Year 4 is the completion of 180 hours of clinical hours.

On August 31, 2023, the Institution notified all students that, due to financial difficulties, the Program would not be offered. The Institution did not provide any information as to when the Program may resume.

In December 2023, the Complainant completed clinical hours provided by an instructor who had been previously employed as a clinical supervisor by the Institution. The Complainant submits she had hoped the hours could be credited toward the required 180 hours if the Program resumed.

On December 23, 2023, the Institution confirmed the Program would resume with a start date of February 1, 2024 with increased fees.

The Complainant enrolled in Year 4 of the Program. I understand the Complainant was the only student enrolled in Year 4.

On December 23, 2023, the Complainant asked the Institution to provide a list of the Institution's approved clinical supervisors and followed up on at least three occasions. The Complainant advised that she wanted to plan her clinical hours in advance and, in her last communication related to this matter, stated her assumption that clinical supervisors formerly approved by the Institution remained acceptable. The Institution did not respond.

The Complainant withdrew from the Program on January 29, 2024, before the start date, citing the Institution's lack of communications "and getting no response from the school when I have sent multiple emails this past month...". The Complainant rescinded her withdrawal two days later.

On February 12, 2024, the Institution asked whether the Complainant was available to attend a clinic in March 2024. The Complainant declined the offer citing [REDACTED]

The Complainant was dismissed on February 23, 2024. I have copied relevant excerpts from the dismissal letter:

The facilitation of your studies requires many individuals' participation and DHC does not believe that your tentative availability for only a few months in the fall [REDACTED] [REDACTED] are sufficient to complete all course work and in-person supervised clinical training at DHC approved clinics by the deadline of January 31, 2025.

Your email and actions lead DHC to believe that you do not intend to perform your contractual obligations as written in the Year 4 Agreement within the contract term. DHC has reasonably tried to accommodate your requests, but DHC is not obligated to deliver a program tailored to your personal schedule [REDACTED]. DHC is, accordingly, treating the Year 4 Agreement signed with you as terminated based on evidence of anticipatory breach and your repudiation of the contract. Your failure to attend scheduled in-person clinics is also grounds for dismissal under the Agreement Dismissal Policy.

The Institution refunded the fees paid in respect of Year 4 and offered to issue an Herbal Consultant diploma.

The Complainant submits the Institution, at no time, communicated that failure to attend the March clinic would lead to dismissal: "Never in the history of the college has every clinic date offered been mandatory to attend". She cites the enrolment contract which provides that the clinical hours must be completed by the end date of Year 4.

In its Response, the Institution submits that my role as trustee is not to arbitrate disputes related to contracts "or human rights concerns". The Institution adds that to mislead, one must intentionally or knowingly state something not true.

The Institution submits the Complainant declined to attend clinical hours until July 2024 and, because the Institution's clinical supervisors are not available during the summer, the Complainant would have to complete clinical hours by January 31, 2025 "in addition to course work, seminar, final exams and a final

practical clinical exam". The Institution adds that "it is not obligated to change their entire system to accommodate [the Complainant]'s personal schedule".

In response to the Complainant's submission that the Institution did not inform the Complainant that refusal to attend clinical hours in the March 2024 would result in dismissal, the Institution refers to the Attendance Policy and the Work Experience Policy which include a general statement providing that attendance is mandatory.

The Institution submits the Complainant is not entitled to a refund on the basis that the Institution delivered instruction contracted for in respect of Year 1, 2 and 3 and refunded the Complainant in respect of Year 4.

7. Decision

As a preliminary matter, I confirm there is no requirement for me to establish an institution's intent to mislead to find an institution misled a student in respect of a significant aspect of the program. Further, this is not a private contractual matter between the parties; the Complaint falls squarely within my jurisdiction.

Turning to the merits of the claim, I find the Institution misled the Complainant in respect of her dismissal from the Program and, accordingly, approve the claim.

The Institution is regulated under the PTA. The PTA is consumer protection legislation that recognizes the power imbalance between a student and an institution and establishes compliance standards institutions must comply with. This includes standards related to the dismissal of a student (*Private Training Regulation, 47*).

Dismissal is a severe measure that has serious implications. PTR 47 provides that an institution must have a student dismissal policy that is fair and reasonable, sets out what constitutes reasonable grounds to dismiss a student, and includes the process by which a student may be dismissed.

Following the Complainant's refusal to attend the proposed March 2024 clinic, the Institution summarily dismissed the Complainant. The Institution did not follow any process before the dismissal, and the prospect of dismissal was never brought to the Complainant.

While the Institution refunded fees paid in respect of Year 4 of the Program, I find the refund does not adequately compensate the Complainant for her loss of time and I order a payment of \$5,000.

I authorize payment of \$5,000 from the Fund. The payment will be directed in the following order: first, to the government, if all or a portion of the tuition was paid using funds from a provincial or federal student assistance program, and second, to the Complainant (PTA 25).

The Institution is required to repay the total amount of \$5,000 to the Fund (PTA 27).

This decision is final. The Trustee does not have authority to re-open or reconsider the decision and there is no appeal under the PTA. Parties may wish to seek legal advice regarding a judicial review by the BC Supreme Court.

Date: January 6, 2025



Joanna White
Trustee, Student Tuition Protection Fund