

RULES OF PROCEDURE OF THE DISCIPLINE COMMITTEE OF THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

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RULES OF PROCEDURE OF THE DISCIPLINE COMMITTEE OF THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

(History: October 1, 1996; revised October 9, 2001; revised February 18, 2004; revised March 8, 2005; revised November 2, 2006; revised March 30, 2009; revised October 21, 2010; revised April 17, 2012; revised April 4, 2013; revised May 30, 2013; revised June 1, 2015; revised January 1, 2016; revised August 1, 2016; revised January 1, 2017; revised February 23, 2018; revised March 1, 2019; revised October 22, 2019)

RULE 1 - INTERPRETATION AND APPLICATION

1.01 Definitions

1.01 In these rules, unless the context requires otherwise,

“chair” means the chair of the full Discipline Committee or his or her designate;

“Code” means the *Health Professions Procedural Code* which is Schedule 2 to the *Regulated Health Professions Act*;

“College” means the College of Physicians and Surgeons of Ontario;

“defence counsel” means the lawyer or lawyers retained by or on behalf of a member;

“deliver” means to serve on every other party or, in the case of a motion, motion participant and to file with the Hearings Office with proof of service, and “delivery” and “delivering” have corresponding meanings; **(Revised 18/02/04)**

“Discipline Committee” means the Discipline Committee of the College, and includes a panel of the Discipline Committee;

“Hearings Office” means the employee or employees of the College who are specifically assigned the duty of providing administrative assistance to the Discipline Committee; **(Revised 18/02/04)**

“electronic” with respect to a proceeding means a proceeding held by telephone conference call or some other form of electronic technology allowing persons to communicate with and hear one another;

“holiday” means,

- (a) any Saturday or Sunday,
- (b) New Year’s Day,
- (c) Good Friday,
- (d) Victoria Day,

- (e) Canada Day,
- (f) Civic Holiday,
- (g) Labour Day,
- (h) Thanksgiving Day,
- (i) Christmas Day,
- (j) Boxing Day,
- (k) any special holiday proclaimed by the Governor General or the Lieutenant Governor, and
- (l) any other day designated by the College as a holiday,

and where New Year's Day, Canada Day, Christmas Day or Boxing Day falls on a Saturday or Sunday, the day designated by the College is a holiday; (**Revised 18/02/04**)

“independent legal counsel” means the lawyer or lawyers appointed by the Discipline Committee to provide advice in accordance with section 44 of the *Code*;

“lawyer” means a member of the Law Society of Upper Canada;

“member” means a member of the College who is the subject of a hearing before the Discipline Committee and includes a former member;

“motion” is a request made to the Discipline Committee to make an order in a particular proceeding;

“motion participant” is a party and any other person who would be affected by the order sought;

“order” means any decision made by the Discipline Committee or the chair and includes a direction given by the Discipline Committee or the chair;

“party” means a party under section 41 of the *Code*;

“presiding officer”, in respect of a pre-hearing conference, means the person designated by the chair to preside over the pre-hearing conference;

“proceeding” means any step in the discipline hearing process and includes a motion, a pre-hearing conference and the hearing itself;

“prosecutor” means the lawyer or lawyers appointed by the College to prosecute allegations against one or more members before the Discipline Committee;

“vulnerable witness” means a witness who, in the opinion of the Discipline Committee, will have difficulty testifying or will have difficulty testifying in the presence of a party for appropriate reasons related to age, handicap, illness, trauma, emotional state or similar cause of vulnerability.

1.02 Interpretation of Rules

1.02(1) These rules shall be liberally construed to secure the just and, where justice for the member would not be compromised, the most expeditious determination of the allegations against the member.

1.02(2) Where matters are not provided for in these rules, the practice shall be determined by analogy to them.

1.02(3) Where a member is not represented by a lawyer, anything these rules require or permit a lawyer to do shall be done by the member.

1.03 Application of Rules

1.03 These rules apply to all proceedings before the Discipline Committee of the College including, with all necessary modifications, applications for reinstatement made under sections 72 and 73 of the *Code*.

1.04 Computation, Extension or Abridgment of Time

1.04(1) In the computation of time under these rules or under an order, except where the contrary intention appears,

- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even where the words “at least” are used;
- (b) where a period of less than seven days is required, holidays shall not be counted;
- (c) where the time for doing an act under these rules expires on a holiday, the act may be done on the next day that is not a holiday; and
- (d) service of a document made after 4:00 p.m. or at any time on a holiday shall be deemed to have been made on the next day that is not a holiday.

1.04(2) Where a time of day is mentioned in these rules, in an order or in any document in a proceeding, the time referred to shall be taken as the time observed locally.

1.04(3) The Discipline Committee may extend or abridge any time required by these rules or an order on such terms or conditions as the Discipline Committee considers just either before or after the expiration of the time.

RULE 2 - DOCUMENTS

2.01 Form of Documents

2.01(1) Every document prepared for the Discipline Committee shall, to the extent practical, comply with the standards and requirements for documents filed under the Rules of Civil Procedure.

2.01(2) The first and last page of documents shall be coloured as follows:

- (a) buff if prepared by the prosecutor;
- (b) blue if prepared by defence counsel; and
- (c) green if prepared by any other person.

2.02 Notice to be in Writing

2.02 Where these rules require notice to be given, it shall be given in writing.

2.03 Filing of Documents

2.03(1) All documents to be filed in a proceeding shall be filed in the Hearings Office, except where they are filed in the course of a proceeding. **(Revised 18/02/04)**

2.03(2) Any document may be filed in the Hearings Office by leaving it with a person at the Hearings Office or by mailing it or by sending it by courier to 80 College Street, Toronto, Ontario, M5G 2E2 and by providing an electronic copy to the Hearings Office. **(Revised 22/10/19)**

2.03(3) A document filed in the Hearings Office shall be filed in an envelope or, where filed by facsimile, with a cover sheet clearly marked "Attention: Hearings Office". **(Revised 18/02/04)**

2.03(4) A document shall not be considered filed until it is actually received by the Hearings Office. **(Revised 18/02/04)**

2.03(5) A party can confirm whether a document has been filed by telephoning the Hearings Office. **(Revised 18/02/04)**

2.03(6) The person filing a document shall file seven copies of the document. **(Revised 22/10/19)**

RULE 3 - WAIVER OF A RULE

3.01 Methods of Waiving a Rule

3.01(1) Any provision of these rules may be waived on the consent of the parties and, where relevant, motion participants or upon an order of the Discipline Committee.

3.01(2) A party or motion participant requesting that a provision of these rules be waived who does not have the consent of the parties and, where relevant, motion participants shall bring a motion to the Discipline Committee permitting the waiver.

3.01(3) A motion under this rule may be made after a failure to comply with these rules has occurred.

3.01 (4) The Discipline Committee may refuse to grant a motion for a waiver from a provision of these rules where a party or motion participant does not act on a timely basis.

3.01(5) The Discipline Committee may waive a provision of these rules on its own initiative if it first gives notice to the parties or motion participants and provides an opportunity for submissions to be made in writing.

3.02 Plea of No Contest

3.02(1) Where a member enters a plea of no contest to an allegation, the member consents to the following:

- (a) that the Discipline Committee can accept as correct the facts alleged against the member on that allegation for the purposes of College proceedings only;
- (b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of College proceedings only; and
- (c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence. **(Revised 18/02/04; 01/06/15)**

3.02(2) Where the member enters a plea of no contest, the prosecutor shall state the facts alleged and the findings requested by the College and the member or his or her representative shall state that the member does not contest those facts and findings for the purposes of College proceedings only.

3.02(3) A member shall not introduce any evidence on the issue of what finding ought to be made when the member pleads no contest.

3.02(4) A plea of no contest does not prevent the member from introducing evidence on the issue of what order the Discipline Committee ought to make so long as the evidence is consistent with the facts found and findings made by the Discipline Committee after the plea of no contest.

3.02(5) A plea of no contest does not constitute an admission by the member as to the facts or findings for the purpose of non-College proceedings. **(Revised 18/02/04; 01/06/15)**