

**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)

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, or, if it is less than 10 pages, by facsimile. **(Revised 18/02/04)**

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, unless it is sent by facsimile, shall file seven copies of the document.

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 the proceeding only;
- (b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of the proceeding 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)**

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 the proceeding 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 any other proceeding. **(Revised 18/02/04)**

3.03 Permission to Resign

3.03(1) Where a member requests permission to resign, the member consents to the Discipline Committee disposing of the proceeding without hearing evidence. **(Revised 18/02/04)**

3.03(2) Where a member requests permission to resign, the Discipline Committee may dispose of the proceeding in accordance with subrule (1) after hearing any submissions from the parties.

3.03(3) This rule does not apply where subsection 51(5) of the *Health Professions Procedural Code* applies.

RULE 4 - SUBMISSIONS TO THE CHAIR

4.01 Procedure for Making Submissions to the Chair

4.01(1) Where the chair can direct or order anything, a party or, in the case of a motion, a motion participant, may make submissions in writing to the chair.

4.01(2) A party or motion participant may make submissions to the chair by addressing a letter to the chair and delivering a copy of the letter.

4.01(3) The other parties or motion participants may respond to the submissions described in subrule (2) by addressing a letter to the chair and delivering a copy of the letter.

4.01(4) The chair shall not give a direction or make an order where the submissions have been delivered under subrule (2) unless at least 3 days have passed since the first submission was delivered unless it is urgent that the chair do so.

4.01(5) Where the chair has given a direction or made an order before receiving submissions under this rule, the chair may reconsider the direction or order and may confirm, vary, suspend or cancel the direction or order.

RULE 5 - MOTIONS

5.01 Initiating Motions

5.01(1) A motion shall be made by a notice of motion in accordance with Form 5A unless the nature of the motion or the circumstances make a notice of motion impractical.

5.01(2) All procedural or interlocutory issues shall be raised in a motion as soon as possible and shall be heard on a day that is at least two weeks before the day upon which the hearing is scheduled to commence unless the nature of the motion requires that it be heard during the hearing itself.

5.01(3) A moving party shall deliver the notice of motion and materials in support of the motion at least fifteen days in advance of the date that the motion is to be heard. **(Revised 18/02/04; 08/03/05)**

5.01(4) The other motion participants shall deliver their materials at least nine days in advance of the date that the motion is to be heard. **(Revised 18/02/04; 08/03/05)**

5.01(4).1 Where a motion participant intends to rely on a factum, written submissions or book(s) of authorities, those documents must be delivered, in the case of a moving party, at least seven days in advance, and in the case of a responding party, at least three days in advance, of the date that the motion is to be heard. **(Added 08/03/05)**

5.01(5) Where it appears to the chair that the number and nature of the motions brought in a proceeding are not leading to the most just and expeditious disposition of the matter, the chair may direct that no further motions be brought before the commencement of the hearing unless the prior permission of the chair is obtained in accordance with the procedure in Rule 4.

5.01.1 Motions for Adjournment (Added 08/03/05)

5.01.1 (a) If the hearing has not commenced,

- (i) The party seeking the adjournment shall make the request by letter to the chair of the Discipline Committee filed with the Hearings Office and copied to the responding party, setting out the request, the reasons for the request, the nature of the allegations against the member, available dates for the hearing to be rescheduled as confirmed with the Hearings Office, and the position of the responding party; and
- (ii) The chair or committee member designated by the chair may dispose of a request in writing that is on consent or unopposed, or may hear and dispose of a request for adjournment that is opposed after hearing the parties by electronic means, or may direct a hearing of the request by motion before the hearing panel;

(b) If the hearing has commenced,

- (i) and the adjournment is on consent or unopposed, the party seeking the adjournment may make the request by letter to the chair of the panel (if the panel is not sitting), filed with the Hearings Office and copied to the responding party, setting out the request, the reasons for the request, the nature of the allegations against the member, available dates for the hearing to be rescheduled as confirmed with the Hearings Office, and the position of the responding party. The chair or a committee member designated by the chair may dispose of the request in writing or direct a hearing of it by electronic means or otherwise;
- (ii) and the adjournment is opposed, it shall proceed by way of notice of motion with supporting material pursuant to Rule 5.01 and shall be heard and determined by the hearing panel, unless otherwise agreed.

5.02 Scheduling a Motion

5.02(1) A person bringing a motion to be heard other than at a scheduled pre-hearing conference or at a hearing shall obtain available dates and times for the hearing of the motion from the Hearings Office and shall attempt to obtain agreement from the other motion participants as to a date and time for the hearing of the motion. **(Revised 18/02/04)**

5.02(2) deleted – see 5.09 **(Deleted 18/02/04)**

5.02(3) If the person bringing the motion cannot, after reasonable efforts, obtain agreement for a date and time under subrule (1), the person shall seek directions from the chair in accordance with Rule 4 or, where there is insufficient time to do so, shall choose an available date and time under subrule (1).

5.03 Evidence on Motions

5.03(1) Evidence on a motion shall be given by affidavit unless the Discipline Committee directs that it be given in some other form or unless otherwise provided by law.

5.03(2) All affidavits used on a motion shall,

- (a) be confined to the statement of facts within the personal knowledge of the deponent, except that the affidavit may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit; and
- (b) be signed by the deponent and sworn or affirmed before a person authorized to administer oaths or affirmations, which person shall also mark all exhibits as such to the affidavit.

5.03(3) A motion participant may not cross-examine the deponent of an affidavit filed by another motion participant unless the Discipline Committee directs otherwise.

5.03(4) The Discipline Committee shall not direct that the deponent of an affidavit be cross-examined unless the interests of the case require otherwise.

5.03(5) Subrules (3) and (4) do not prevent a deponent from being cross-examined on an affidavit during the hearing itself.

5.04 Materials on Motions

5.04(1) The person bringing a motion shall deliver the notice of motion and other materials in support of the motion in the form of a motion record.

5.04(2) The motion record shall contain the notice of motion, all affidavits to be relied upon and any other material to be relied upon.

5.04(3) If another motion participant intends to rely upon materials, the motion participant shall deliver those materials in the form of a responding motion record.

5.04(4) A motion record and responding motion record shall have consecutively numbered pages and a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter.

5.04(5) Despite subrules (2) and (3), a motion participant may deliver separately from the motion record or responding motion record a book of authorities and a factum consisting of a concise statement, without argument, of the facts and law relied on by the motion participant.

5.05 Assigning a Motion Panel

5.05(1) The chair shall, in accordance with section 4.2 of the *Statutory Powers Procedure Act*, assign a panel of one or more members of the Discipline Committee to hear each motion. **(Revised 08/03/05)**

5.05(2) The chair may direct that a larger or differently constituted panel hear a motion if the chair receives submissions in accordance with Rule 4.

5.05(3) A motion participant who believes that the motion ought to be heard by members of the Discipline Committee who will not sit on the hearing panel shall request a direction from the motion panel on the matter in the notice of motion or a notice of cross-motion.

5.06 Hearing Motions Electronically

5.06 Motions other than motions brought at a scheduled pre-hearing conference or at a hearing shall be heard electronically in accordance with these rules unless the chair or the Discipline Committee directs otherwise.

5.07 Written Order

5.07(1) Immediately after a motion has been determined, the motion participant initiating the motion shall, and any other motion participant affected by an order may, prepare a draft of the formal order, seek approval by other affected parties as to its form and content and deliver it to the Hearings Office. **(Revised 18/02/04)**

5.07(2) The order shall be in accordance with Form 5B.

5.07(3) An order delivered in accordance with subrule (1) shall be treated as a submission under Rule 4 and may be reviewed, amended if necessary and signed by the chair.

5.07(4) This rule does not apply to orders made on the record during the hearing.

5.08 Renewing or Rearguing a Motion

5.08(1) A motion participant shall not renew or reargue a matter that has previously been determined on a motion unless permission has been obtained from the chair in accordance with Rule 4.

5.08(2) Despite subrule (1), where circumstances make it impractical for a motion participant to have obtained permission from the chair, permission to renew or reargue a matter

that has previously been determined on a motion may be obtained from the Discipline Committee during the hearing by means of written submissions.

5.08(3) Despite subrule (1), a motion participant may renew or reargue a motion if that is provided for in the order of the panel hearing the motion.

5.08(4) Despite subrule (1), a motion participant may renew a motion at the hearing solely for the purpose of putting on the record, for the purpose of any appeal, that the motion participant does not agree with the previous ruling.

5.09 Time Limits on Oral Submissions

5.09 No motion participant shall take more than one hour, including a reply, to make oral submissions on a motion without the prior permission of the Discipline Committee.

RULE 6 - PRE-HEARING CONFERENCES

6.01 Initiating Pre-hearing Conferences

6.01(1) A pre-hearing conference is mandatory unless exempted by the chair of the Discipline Committee. **(Revised 18/02/04)**

6.01(2) The chair shall designate a person to act as the presiding officer.

6.01(3) The presiding officer shall, after consultation with the Hearings Office, defence counsel and the prosecutor, schedule a date for the pre-hearing conference to be held and shall notify the parties of the date. **(Revised 18/02/04)**

6.01(4) The senior prosecutor and the member or, where the member is represented by counsel, the senior defence counsel shall attend at the pre-hearing conference.

6.01(5) The presiding officer may direct a pre-hearing conference to be held electronically.

6.02 Pre-hearing Conference Memorandum

6.02(1) Where a pre-hearing conference is directed, the parties shall complete a pre-hearing conference memorandum in accordance with Form 6A to the satisfaction of the presiding officer.

6.02(2) The prosecutor shall deliver its pre-hearing conference memorandum twenty days before the date of the conference and defence counsel shall deliver its pre-hearing conference memorandum ten days before the date of the conference.

6.02(3) Where the presiding officer concludes that a pre-hearing conference memorandum is inadequate for the most effective use of the pre-hearing conference, he or she

may, subject to subrule (4), require the party to deliver a more adequate memorandum by a specified date and may adjourn the date of the conference.

6.02(4) Despite anything in these rules, a member is not required to disclose evidence that would prejudice the member's defence of the allegations and which also is not otherwise disclosable by law.

6.03 Procedure at Pre-hearing Conference

6.03(1) At the pre-hearing conference, the presiding officer shall first discuss the following with the parties:

- (a) whether any or all of the issues can be settled;
- (b) whether the issues can be simplified;
- (c) whether there are any agreed facts; and
- (d) the advisability of attempting other forms of resolution of the matter.

6.03(2) After the discussion referred to in subrule (1), the presiding officer shall discuss with the parties and then may give directions or, if the presiding officer is a member of the Discipline Committee, make orders about the following:

- (a) the scheduling of any motions that can be heard before the hearing;
- (b) the content and timing of any additional disclosure;
- (c) the delivery and form of any documents to be used at the hearing and whether the documents can appropriately be reviewed by the Discipline Committee before the commencement of the hearing;
- (d) the delivery of written arguments and books of authorities and whether these can appropriately be reviewed by the Discipline Committee before the commencement of the hearing;
- (e) the scheduling of the hearing;
- (f) the scheduling of any motions that cannot be heard before the commencement of the hearing;
- (g) when the witnesses to be called at the hearing must be available to testify;
- (h) the use and scheduling of panels of expert witnesses; and
- (i) any other matter that may assist in the just and most expeditious disposition of the proceeding.

6.03(3) The presiding officer shall prepare a report after the pre-hearing conference in accordance with Form 6B listing every agreement reached under subrule (1), every direction given or order made under subrule (2) and every undertaking given by the parties and shall send a copy of the report to the parties.

6.03(4) If a party disagrees with a direction given at a pre-hearing conference, the party shall, within three days after the conference, deliver written notice of the proposed change to the direction and the chair may direct a further pre-hearing conference be held before the same or another presiding officer.

6.03(5) If a party becomes aware of additional circumstances that would materially affect the conduct of the hearing before the commencement of the hearing, the party shall immediately, subject to subrule 6.02(4), deliver a written notice of the circumstances and the presiding officer may schedule a supplementary pre-hearing conference.

6.03(6) The provisions of Rule 6 apply to further or supplementary pre-hearing conferences with necessary modifications.

6.04 Motions at the Pre-hearing Conference

6.04 Where the presiding officer is a member of the Discipline Committee, a party may bring a motion to be heard at the pre-hearing conference in accordance with Rule 5.

RULE 7 - DISCLOSURE AND PRODUCTION

7.01 Disclosure

7.01(1) The parties shall make such disclosure as is required by law and may make such additional disclosure as will assist to make the pre-hearing conference and the hearing effective and fair.

7.02 Motions for Disclosure

7.02(1) All motions for disclosure shall be brought in accordance with subrule 5.01(2) unless special circumstances require that the motion be brought later.

7.02(2) On a motion for disclosure, the Discipline Committee may order that a party or a person who will lead evidence at a hearing shall make disclosure in accordance with the requirements of law.

7.02(3) When the Discipline Committee orders disclosure it may, to protect the privacy of any person, impose terms or conditions upon the extent and method of disclosure or the use of the information disclosed.

7.03 Production of Documents

7.03(1) A summons for the production of documents that are not in the possession of a party shall not require the production of any documents before the commencement of the hearing.

7.03(2) A motion relating to the production of documents in the possession of a third party that may require the examination of the documents by the Discipline Committee, including motions to which the provisions of the *Mental Health Act* may apply, shall be heard by the panel hearing the allegations against the member. Such motions shall be scheduled at least 45 days in advance of hearing evidence, unless otherwise ordered by the Committee. **(Revised 08/03/05)**

7.03(3) A Notice of motion relating to the production of documents shall be served on the person possessing the documents and on any other person with a significant interest, including a privacy interest, in the documents. A summons requiring the person in possession of the documents to attend upon the motion with the documents shall be obtained from the Hearings Office and served a reasonable time in advance of the date for the hearing of the motion, and an affidavit of service thereof shall be filed on the return of the motion. **(Revised 02/11/06)**

RULE 8 - ELECTRONIC HEARINGS AND PROCEEDINGS

8.01 Initiating an Electronic Hearing

8.01(1) The Discipline Committee may order an electronic hearing or part of a hearing, provided that the hearing is open to the public. **(Revised 08/03/05; 30/03/09)**

8.01(2) Before ordering an electronic hearing, the Discipline Committee shall provide notice and an opportunity to the parties to make submissions on the issue, including whether the reception of such testimony would be contrary to the principles of fundamental justice. **(Revised 30/03/09)**

8.01(3) Where an electronic hearing or part of a hearing has been ordered, the Discipline Committee shall receive evidence given by a witness by means of technology that permits the witness to testify by virtual presence of the parties and the Committee. **(Revised 18/02/04; 30/03/09)**

8.01(4) A party who wishes to call a witness to give evidence under subsection (3) pursuant to an order made by the Committee, shall give notice to the Hearings Office and the other parties of its intention to do so not less than 10 days before the witness is scheduled to testify. **(Revised 30/03/09)**

8.02 Procedure on Electronic Proceedings

8.02(1) This rule applies to any proceeding held electronically including motions, pre-hearing conferences and hearings.

8.02(2) At least 48 hours before an electronic proceeding is scheduled to commence, every person participating in the proceeding shall give notice to the Hearings Office of the telephone number where he or she can be reached for the proceeding. **(Revised 18/02/04)**

8.02(3) Unless otherwise provided in the rules, every person participating in the proceeding shall deliver every document, in sequentially numbered pages, he or she intends to rely upon at least 3 days before the proceeding.

8.02(4) Every person participating in the proceeding shall ensure that he or she can be reached at the telephone number provided to the Hearings Office beginning at five minutes before the proceeding is scheduled to commence. **(Revised 18/02/04)**

RULE 9 - TAKING EVIDENCE BEFORE THE HEARING

9.01 Initiating the Taking of Evidence Before the Hearing

9.01(1) A party who intends to introduce the evidence of a person at the hearing and who has made all required disclosure in respect of the evidence of that witness may, with the consent of the parties or by order of the Discipline Committee, examine the witness on oath or affirmation before the hearing for the purpose of having the witness's testimony available to be tendered as evidence at the hearing.

9.01(2) The Discipline Committee may make an order under subrule (1) if it is satisfied that the order would not cause significant prejudice to a party and would not prevent the Discipline Committee from fully and fairly understanding the evidence.

9.01(3) The party who intends to introduce the evidence of the witness shall ensure that the examination is recorded, at the party's cost, by a certified court reporter or a person with similar qualifications acceptable to the Discipline Committee and shall deliver a copy of the transcript of the evidence at least three days before the hearing is scheduled to commence.

9.01(4) The party who intends to introduce the evidence of the witness shall also ensure that the examination is videotaped, at the party's cost, unless the parties consent or the Discipline Committee orders otherwise and shall file a copy of the videotape at least three days before the hearing is scheduled to commence.

9.01(5) The examination shall take place at the date, time and place consented to or ordered by the Discipline Committee.

9.01(6) The Discipline Committee may impose terms or conditions in the order for an examination including a term or condition that the party intending to call the witness pay for the reasonable travel expenses of the lawyers for the other parties and the member (where the member is not the party intending to call the witness).

9.02 Procedure at the Examination

9.02(1) A witness examined under subrule 9.01(1) may, after being sworn or affirmed by a person authorized to do so, be examined, cross-examined and re-examined in the same manner as a witness at a hearing.

9.02(2) Where a question is objected to, the objector shall state briefly the reason for the objection, and the question and the brief statement shall be recorded.

9.02(3) The party objecting to a question may, after the objection, permit the question to be answered subject to a ruling being obtained from the Discipline Committee before the evidence is used at a hearing.

9.02(4) A ruling on the propriety of a question that is objected to and not answered may be obtained on motion to the Discipline Committee.

9.02(5) Where the question is not answered under subrule (3) and the objection is found not to be valid, the person who objected shall ensure that the witness is produced at the expense of the person who objected for another examination before the hearing or at the hearing to answer the question.

9.02(6) Any document used during the examination that is intended to be filed as an exhibit at the hearing shall be marked at the examination by the person introducing it so it can be identified later and the person introducing it shall deliver a copy of it.

9.03 Use of Examination at the Hearing

9.03(1) At the hearing, any party may use the transcript and videotape of an examination made under this rule as the evidence of the witness unless the Discipline Committee orders otherwise.

9.03(2) A witness who has been examined under this rule shall not be called to give evidence at the hearing except on the order of or at the request of the Discipline Committee.

9.03(3) Where a witness is ordered or requested to give evidence at the hearing under subrule (2), the party who tendered the evidence under subrule (1) shall arrange for the witness to attend at the party's expense.

9.03(4) The transcript and any videotape need not be read or played during the hearing with the parties present unless a party or the Discipline Committee requires the reading of a transcript or the playing of a videotape.

9.03(5) Where the reading of a transcript or the playing of a videotape is required under subrule (4), the party who initiated the examination under subrule 9.01(1) shall conduct the reading or playing during the presentation of that party's case unless the Discipline Committee orders otherwise.

RULE 10 - EARLY HEARING

10.01(1) A party may bring a motion for an order directing an expedited hearing.

10.01(2) The Discipline Committee may order that a hearing be expedited, where it believes appropriate, and may also direct that any pre-hearing conference be expedited accordingly.

RULE 11 - NON-PARTY PARTICIPATION

11.01 General Non-Party Participation

11.01(1) A person who is not a party who wishes to participate in the hearing shall bring a motion in accordance with these rules and, despite rule 5.05, the chair shall assign the panel that will be conducting the hearing to hear the motion.

11.01(2) The notice of motion shall set out the extent of participation the person proposes to have in the hearing and shall be accompanied by the evidence upon which the person intends to rely in support of the motion and written submissions in support of the motion.

11.01(3) If the Discipline Committee allows the person to participate in the hearing, the person shall comply with the rules as much as is practical unless to do so would be inconsistent with the Discipline Committee's determination of the extent of the person's participation in the hearing.

11.01(4) If the Discipline Committee allows the person to participate in the hearing, the other parties shall apply the rules to the person as much as is practical unless to do so would be inconsistent with the Discipline Committee's determination of the extent of the person's participation in the hearing.

11.02 Notice of Constitutional Questions

11.02(1) Where a party intends to raise a question about the constitutional validity or applicability of legislation, a regulation or by-law made under legislation, or a rule of common law, or where a party claims a remedy under subsection 24(1) of the *Canadian Charter of Rights and Freedoms*, notice of a constitutional question shall be delivered and shall also be served on the Attorneys General of Canada and Ontario as soon as the circumstances requiring notice become known and, in any event, at least 15 days before the question is to be argued.

11.02(2) Where the Attorneys General of Canada and Ontario are entitled to notice, he or she or both of them are entitled to adduce evidence and to make submissions to the Discipline Committee regarding the constitutional question.

RULE 12 - PROCEDURE DURING THE HEARING

12.01 Vulnerable Witnesses

12.01(1) The Discipline Committee may order that a support person be permitted to be present and to sit near a vulnerable witness while testifying and may issue directions regarding the conduct of the support person during the testimony of the witness.

12.01(2) The Discipline Committee may order that a vulnerable witness testify outside the hearing room or behind a screen or other device that would allow the vulnerable witness not to see the member if the Discipline Committee is of the opinion that the exclusion is necessary to obtain a full and candid account of the matter.

12.01(3) The Discipline Committee shall not make an order under subrule (2) unless arrangements are made for the member, the Discipline Committee and counsel for the parties to watch the testimony of the vulnerable witness by means of closed-circuit television or otherwise and the member is permitted to communicate with counsel while watching the testimony.

12.01 (4) The Discipline Committee may order that a member not personally conduct the cross-examination of a vulnerable witness if the Discipline Committee is of the opinion that the order is necessary to obtain a full and candid account of the vulnerable witness's testimony.

12.01(5) Where the Discipline Committee makes an order under subrule (4), it may appoint counsel for the purpose of conducting the cross-examination.

12.02 Oral and Written Argument

12.02(1) The Discipline Committee may place reasonable limits on the length of oral submissions.

12.02(2) The Discipline Committee may, after hearing submissions, order the parties to submit written arguments on some or all of the issues at the hearing and may give directions as to the form and timing of such written arguments.

12.03 Access to Hearing Record by the Public

12.03 If a member of the public wishes to have access to all or part of the record of the Discipline Committee other than the notice of hearing or the transcript of the evidence, he or she shall bring a motion before the Discipline Committee upon notice to the parties, and such motion shall be made, considered and decided in writing by the Chair of the Discipline Committee or by a panel of the Discipline Committee appointed by the Chair, without an oral hearing. **(Revised 09/10/01)**

12.04 Filing of Draft Order (Added 02/11/06)

12.04 Where a party seeks an order from the Discipline Committee before or at a hearing, that party shall file, at the time of its submissions orally or in writing, a draft order with terms as are appropriate, in the form that the party is requesting the Discipline Committee to adopt and sign. Where the order sought is on consent, the approval of the other party to a draft order shall be expressed in writing at the time of filing of the draft order.

12.05 Expert Witnesses (Added 30/03/09)

12.05(1) The Party calling an expert to give evidence at a hearing shall tender as an exhibit a report prepared and signed by the expert, containing his or her findings and the facts upon which they are based.

12.05(2) Each party shall inform any prospective expert witness that it is the duty of an expert to assist the Discipline Committee on matters within his or her expertise and that this duty overrides any obligation to the person from whom he or she has received instructions or payment. The expert shall be required, in an expert report, to certify that he or she is aware of and understands this duty.

12.05(3) Where the Committee hears testimony of an expert witness, it may admit as an exhibit at the hearing the report of the expert witness.

RULE 13 - GIVING NOTICE OF FINAL DECISION

13.01(1) In addition to the methods described in section 18 of the *Statutory Powers Procedure Act*, the Discipline Committee may send each party a copy of its final decision or order, including the reasons if any have been given,

- (a) by courier, or
- (b) by personal service,
- (c) by facsimile, or
- (d) by electronic mail (**Revised 18/02/04**)

13.01(2) If a copy is sent by courier, it shall be sent to the most recent address known to the College and shall be deemed to be received by the party on the day the copy is signed for by a person at that address. If a copy is sent by facsimile or by electronic mail, it shall be sent to the most recent facsimile number or e-mail address known to the College and shall be deemed to be received by the party at the end of the day the facsimile or e-mail was sent. (**Revised 18/02/04**)

RULE 14 - COSTS

14.01 Costs for Non-compliance with Rules

14.01 Where the Discipline Committee is entitled to order the payment of costs or expenses by a party, the Discipline Committee may consider the failure of a party to comply with these rules.

14.01.1 Costs for a Late Request for Adjournment (Added 30/03/09)

14.01.1(1) In this rule, a late request for adjournment means an adjournment that is requested within 10 business days of the date scheduled for the commencement of the hearing.

14.01.1(2) A late request for an adjournment may result in costs or costs and expenses being awarded, as a term of granting the adjournment, against the party who is responsible for the late request for the adjournment, if the conduct of the party has been unreasonable, frivolous or vexatious or if the party has acted in bad faith.

14.01.1(3) In determining the amount of costs or costs and expenses to award against the party responsible for a late request for an adjournment, the Discipline Committee shall take into account the following factors, among other relevant considerations:

- (a) whether the lateness of the adjournment request could have been avoided;
- (b) the number of days on which the hearing has been scheduled to proceed;
- (c) the amount of the costs or costs and expenses, as the case may be, borne by the party seeking costs or costs and expenses as a result of the late request for adjournment;
and
- (d) the conduct or course of conduct by the party and whether this has been unreasonable, frivolous or vexatious or the party has acted in bad faith.

14.02 Costs Against the College

14.02 Where the member seeks costs against the College pursuant to section 53 of the *Code*, the Discipline Committee may direct that the issue be dealt with by a motion conducted separately from the hearing under Rule 5 with any necessary modifications.

14.03 Costs Against the Member

14.03 Where the College seeks costs against the member pursuant to section 53.1 of the *Code*, the Discipline Committee may direct that the issue be dealt with by a motion conducted separately from the hearing under Rule 5 with any necessary modifications.

14.04 Procedure for Requesting Costs

14.04(1) A party requesting an order for costs or expenses shall, where practicable, deliver a detailed written explanation of the basis upon which the costs or expenses requested are calculated.

14.04(2) Where the request for costs or expenses includes disbursements or out-of-pocket expenses, these may be proved by an affidavit attaching a copy of any invoice or receipt.

14.04(3) Where the request for costs or expenses includes the cost or expense to the College of conducting a day of hearing, no evidence of the cost or expense of a day of hearing is needed if the request is equal to or less than the amount set out in Tariff A.

14.04(4) The Discipline Committee may direct that the amount of costs and expenses be calculated at a motion conducted separately from the hearing under Rule 5 with any necessary modifications.

RULE 15 - REINSTATEMENT APPLICATIONS

15.01 Initiating Reinstatement Applications

15.01(1) This rule applies to applications for reinstatement made under sections 72 and 73 of the Code.

15.01(2) A member making an application for reinstatement shall deliver a notice of the application specifying the order sought, the grounds of the application, the documentary and oral evidence that the member will introduce and the anticipated length of the hearing.

15.01(2).1 A member making an application for reinstatement shall comply with the policies and practices of the College including those related to credentialing requirements and re-entering practice. **(Added 30/03/09)**

15.01(3) Unless the Discipline Committee directs otherwise, the member making an application for reinstatement shall deliver copies of the record of the original hearing and the record of any previous applications for reinstatement, copies of the transcript of the original hearing and any previous applications for reinstatement (whether or not the transcript has previously been ordered), and copies of any document the member will introduce.

15.01(4) The Hearings Office shall not schedule a reinstatement application for a hearing until the member complies with subrules (2) and (3). **(Revised 18/02/04)**

15.01(5) When a reinstatement application has been scheduled, the Discipline Committee shall serve a notice of hearing on the parties.

RULE 16 – MOTION TO VARY ORDERS

16.01 Motion to Vary Orders made by the Discipline Committee (Added 30/03/09)

16.01 A party may make a motion to the Discipline Committee to have an order varied, suspended, or cancelled, on the grounds of facts arising or discovered after the order was made. Such motion does not act as a stay of the original order.

FORM 5A
NOTICE OF MOTION

[General Heading]

NOTICE OF MOTION

THE [IDENTIFY MOVING PARTY] WILL make a motion to the Discipline Committee of the College of Physicians and Surgeons of Ontario on [day], [date], at [time], or as soon after that time as the motion can be heard, at 80 College Street, Toronto, Ontario.

THE MOTION IS FOR [state here the precise relief sought].

THE GROUNDS FOR THE MOTION ARE [specify the grounds to be argued, including a reference to any statutory provision or rule to be relied on].

THE FOLLOWING DOCUMENTARY EVIDENCE WILL be used at the hearing of the motion: [list the affidavits or other documentary evidence to be relied on].

[Date]

[Name, address, telephone and facsimile number of moving motion participant's lawyer or moving motion participant]

TO: [Name, address, telephone and facsimile number of responding motion participant's lawyer or responding motion participant]

FORM 6A

PRE-HEARING CONFERENCE MEMORANDUM

[General Heading]

**PRE-HEARING CONFERENCE MEMORANDUM
OF THE COLLEGE
[OR OF THE MEMBER, AS THE CASE MAY BE]**

Date of Pre-Hearing Conference:

Prosecutor:

Defence Counsel:

BACKGROUND INFORMATION

1. Please attach a copy of the notice of hearing to this memorandum.
2. Set out a brief statement of the theory of the College's case, as you understand it, including factual contentions.
3. Set out a brief statement of the theory of the Member's case, as you understand it, including factual contentions.
4. Provide a description of the legal issues to be determined at the hearing.
5. For every witness you may call at the hearing, set out or attach a statement of the substance of the evidence of the witness.
6. Attach a copy of any document that would assist the pre-hearing conference to be more effective.

SETTLEMENT AND AGREEMENTS

7. What are the prospects for settlement?
8. Have counsel discussed the matter and sought instructions?

9. Would this be a suitable case to attempt informal resolution?
10. Set out the facts in numbered paragraphs that you believe should be agreed to.
11. Set out a numbered list of documents that you believe should be admitted on agreement.

ADDITIONAL STEPS BEFORE THE HEARING

12. On the subject of motions:
 - Will you be bringing any motions before or during the hearing?
 - If so, what order will you seek and on what grounds?
 - When do you intend to bring each motion?
13. On the subject of disclosure:
 - Are there any issues with respect to disclosure?
 - Has the College made full disclosure to the member?
 - Have you produced all of the expert reports upon which you intend to rely?
 - If you have not yet made all required disclosure, why not and by what date will it be done?
14. On the subject of a documents brief:
 - Who will prepare and deliver a brief containing the notice of hearing, the documents admitted by agreement, and the presiding officer's report?
 - By what date will the brief be delivered?
 - Should the Discipline Committee be able to review the brief before the hearing?
15. On the subject of written arguments:
 - Are there any issues that should be the subject of written argument? If so, identify them.
 - When should the written arguments be delivered by?
 - Should the Discipline Committee be able to review the written arguments before the hearing?
16. On the subject of a book of authorities:
 - Will you be referring to any authorities other than the Regulated Health Professions Act, the Health Professions Procedural Code and the regulations defining professional misconduct? If so, list them.
 - Should those authorities be copied for the Discipline Committee or for independent legal counsel?
 - If so, who should prepare the authorities brief and when should it be delivered?
 - Should the Discipline Committee or independent legal counsel be able to review the authorities brief before the hearing?

PLANNING THE HEARING

17. On the subject of scheduling the hearing:

- Are you ready for the hearing?
- Are there any special considerations affecting the setting of a date arising from the availability of witnesses or otherwise?
- How long will the hearing last?
- Other than the motions listed above, the witnesses listed above and the normal submissions, is there anything else that will have to be dealt with during the hearing itself?
- Estimate the length of time it will take to dispose of any motions you will bring during the hearing including adequate time for deliberation by the Discipline Committee:
- In numbered paragraphs, list your witnesses in the order that you will call them and estimated length of time it will take to hear their entire evidence, including cross-examination and questions from the Discipline Committee:

<u>Number</u>	<u>Witness's Name</u>	<u>Estimated Time</u>
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1.

- How long will it take you to make your opening and closing submissions on the issue of finding?

18. List the witnesses you intend to have available to testify for each day of your case:

<u>Day</u>	<u>Witnesses Available Beginning That Day</u>
------------	---

1.

19. Do you believe the Discipline Committee would be assisted by hearing expert evidence by a panel of experts on any particular issue?

[Date]

[Signature of most responsible counsel who will be attending at the hearing]

FORM 6B

REPORT OF PRESIDING OFFICER

[General Heading]

REPORT OF PRESIDING OFFICER

A pre-hearing conference was held in this matter on [date]. In attendance were [list people and their capacity].

Agreements

The parties agree that the following facts can be assumed to be correct for the purpose of the hearing:

[list: facts]

The parties agree that the following documents can be admitted in the hearing on consent:

[list documents]

Directions and Orders

The outstanding pre-hearing motions and the dates that they will be heard are as follows:

<u>Number</u>	<u>Nature of Motion</u>	<u>Date to be Heard</u>
1.		

The following motions will be argued at the hearing itself:

<u>Number</u>	<u>Nature of Motion</u>	<u>Estimate Length of Argument</u>
1.		

Other than for information that is discovered after the conference, disclosure is now complete [or will be "completed by (date)].

The following document brief(s) will be delivered before the hearing:

<u>Number</u>	<u>Description</u>	<u>Party Preparing</u>	<u>Date to be Delivered</u>
1.			

The Discipline Committee may/should not [choose one] review them before the hearing.

The following written arguments and book of authorities will be delivered before the hearing:

<u>Number</u>	<u>Description</u>	<u>Party Preparing</u>	<u>Date to be Delivered</u>
1.			

The Discipline Committee may/should not [choose one] review them before the hearing.

The hearing is schedule to begin on [date] for [number] day(s).

The proposed schedule for the hearing is as follows:

<u>Date</u>	<u>Motions / Arguments / Witnesses</u>	<u>Estimated Length of Time</u>
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The witnesses will be immediately available when their evidence is reached on the day scheduled for their testimony and will be available on any following days. There are no other matters anticipated to occur during the hearing itself.

Other Matters

[Insert any other matters the parties should be aware of]

The parties are reminded of the provisions of subrule 6.03(4) regarding notification of proposal not to comply with a direction given at a pre-hearing conference and subrule 6.03(5) regarding notifying the presiding officer of any circumstances that would materially affect the conduct of the hearing.

[Date]

[Signature of Presiding Officer]

To: [list parties' counsel]

TARIFF A

COSTS AND EXPENSES FOR THE COLLEGE TO CONDUCT A DAY OF HEARING

Fee of prosecuting counsel, fee of independent legal counsel and
fee of court reporter\$3,650.00