

**RULES OF PROCEDURE OF THE FITNESS TO PRACTISE COMMITTEE OF THE  
COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO**

**INDEX**

	<b>No.</b>
<b>RULE 1 - INTERPRETATION AND APPLICATION</b> .....	<b>3</b>
<b>1.01 Definitions</b> .....	<b>3</b>
<b>1.02 Interpretation of Rules</b> .....	<b>4</b>
<b>1.03 Application of Rules</b> .....	<b>5</b>
<b>1.04 Computation, Extension or Abridgment of Time</b> .....	<b>5</b>
<b>RULE 2 - DOCUMENTS</b> .....	<b>5</b>
<b>2.01 Form of Documents</b> .....	<b>5</b>
<b>2.02 Notice to be in Writing</b> .....	<b>5</b>
<b>2.03 Filing of Documents</b> .....	<b>6</b>
<b>RULE 3 - WAIVER OF A RULE</b> .....	<b>6</b>
<b>3.01 Methods of Waiving a Rule</b> .....	<b>6</b>
<b>RULE 4 - SUBMISSIONS TO THE CHAIR</b> .....	<b>7</b>
<b>4.01 Procedure for Making Submissions to the Chair</b> .....	<b>7</b>
<b>RULE 5 - MOTIONS</b> .....	<b>7</b>
<b>5.01 Initiating Motions</b> .....	<b>7</b>
<b>5.01.1 Motions for Adjournment</b> .....	<b>8</b>
<b>5.02 Scheduling a Motion</b> .....	<b>8</b>
<b>5.03 Evidence on Motions</b> .....	<b>9</b>
<b>5.04 Materials on Motions</b> .....	<b>9</b>
<b>5.05 Assigning a Motion Panel</b> .....	<b>10</b>
<b>5.06 Hearing Motions Electronically</b> .....	<b>10</b>
<b>5.07 Written Order</b> .....	<b>10</b>
<b>5.08 Renewing or Rearguing a Motion</b> .....	<b>10</b>
<b>5.09 Time Limits on Oral Submissions</b> .....	<b>11</b>
<b>RULE 6 - PRE-HEARING CONFERENCES</b> .....	<b>11</b>
<b>6.01 Initiating Pre-hearing Conferences</b> .....	<b>11</b>
<b>6.02 Pre-hearing Conference Memorandum</b> .....	<b>11</b>
<b>6.03 Procedure at Pre-hearing Conference</b> .....	<b>12</b>
<b>RULE 7 - DISCLOSURE AND PRODUCTION</b> .....	<b>13</b>
<b>7.01 Disclosure</b> .....	<b>13</b>
<b>7.02 Motions for Disclosure</b> .....	<b>13</b>
<b>7.03 Production of Documents</b> .....	<b>13</b>

RULE 8 - WRITTEN HEARINGS AND PROCEEDINGS .....	14
<b>8.01 Written Hearings .....</b>	<b>14</b>
RULE 9 - ELECTRONIC HEARINGS AND PROCEEDINGS .....	14
<b>9.01 Initiating an Electronic Hearing.....</b>	<b>14</b>
<b>9.02 Procedure on Electronic Proceedings .....</b>	<b>14</b>
RULE 10 - TAKING EVIDENCE BEFORE THE HEARING .....	15
<b>10.01 Initiating the Taking of Evidence Before the Hearing .....</b>	<b>15</b>
<b>10.02 Procedure at the Examination .....</b>	<b>15</b>
<b>10.03 Use of Examination at the Hearing .....</b>	<b>16</b>
RULE 11 - EARLY HEARING .....	16
RULE 12 - NON-PARTY PARTICIPATION .....	17
<b>12.01 Notice of Constitutional Questions .....</b>	<b>17</b>
RULE 13 - PROCEDURE DURING THE HEARING.....	17
<b>13.01 Vulnerable Witnesses.....</b>	<b>17</b>
<b>13.02 Oral and Written Argument .....</b>	<b>18</b>
<b>13.03 Filing of Draft Order .....</b>	<b>18</b>
<b>13.04 Expert Witnesses.....</b>	<b>18</b>
RULE 14 - GIVING NOTICE OF FINAL DECISION .....	18
RULE 15 - REINSTATEMENT APPLICATIONS .....	19
<b>15.01 Initiating Reinstatement Applications .....</b>	<b>19</b>
RULE 16 - MOTION TO VARY ORDER	
<b>16.01 Motion to Vary Order .....</b>	<b>19</b>
FORM 5A .....	19
<b>NOTICE OF MOTION .....</b>	<b>20</b>
FORM 5B.....	21
<b>ORDER .....</b>	<b>21</b>
FORM 6A .....	22
<b>PRE-HEARING CONFERENCE MEMORANDUM.....</b>	<b>22</b>
FORM 13A .....	25
<b>ACKNOWLEDGEMENT OF EXPERT'S DUTY .....</b>	<b>25</b>

**RULES OF PROCEDURE OF THE FITNESS TO PRACTISE COMMITTEE OF THE  
COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO  
(History: May 24, 2007; revised June 30, 2009; revised May 11, 2010)**

**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 Fitness to Practise 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;

“College counsel” means the lawyer or lawyers appointed to represent the College at Fitness to Practise hearings;

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

“Fitness to Practise Committee” means the Fitness to Practise Committee of the College, and includes a panel of the Fitness to Practise Committee;

“Hearings Office” means the employee or employees of the College who are specifically assigned the duty of providing administrative assistance to the Fitness to Practise Committee;

“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;

“independent legal counsel” means the lawyer or lawyers appointed by the Fitness to Practise Committee to provide advice in accordance with section 67 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 Fitness to Practise Committee and includes a former member;

“motion” is a request made to the Fitness to Practise 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 Fitness to Practise Committee or the chair and includes a direction given by the Fitness to Practise Committee or the chair;

“party” means a party under section 65 of the Code;

“pre-hearing conference chair” 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 fitness to practise hearing process and includes a motion, a pre-hearing conference and the hearing itself;

“vulnerable witness” means a witness who, in the opinion of the Fitness to Practise 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 Fitness to Practise 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 Fitness to Practise Committee may extend or abridge any time required by these rules or an order on such terms or conditions as the Fitness to Practise 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 Fitness to Practise 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 College counsel;
- (b) blue if prepared by counsel for the member; 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.
- 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.
- 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".
- 2.03(4) A document shall not be considered filed until it is actually received by the Hearings Office.
- 2.03(5) A party can confirm whether a document has been filed by telephoning the Hearings Office.
- 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 Fitness to Practise 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 Fitness to Practise 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 Fitness to Practise 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 Fitness to Practise 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.

## **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 three 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.

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.

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.

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**

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 Fitness to Practise 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 alleged incapacity, 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.

5.02(2) 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 Fitness to Practise 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 Fitness to Practise Committee directs otherwise.

5.03(4) The Fitness to Practise 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 Fitness to Practise Committee to hear each motion.

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 Fitness to Practise 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 hearing shall be heard electronically in accordance with these rules unless the chair or the Fitness to Practise Committee directs otherwise. **(Revised 11/05/10)**

### **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.

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 Fitness to Practise 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 Fitness to Practise 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 Fitness to Practise Committee.

6.01(2) The chair of the Fitness to Practise Committee shall designate a person to act as the pre-hearing conference chair.

6.01(3) The pre-hearing conference chair shall, after consultation with the Hearings Office, counsel for the member and College counsel, schedule a date for the pre-hearing conference to be held and shall notify the parties of the date.

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

6.01(5) The pre-hearing conference chair 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 held, the parties shall complete a pre-hearing conference memorandum in accordance with Form 6A to the satisfaction of the pre-hearing conference chair.

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

6.02(3) Where the pre-hearing conference chair 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 allegation of incapacity 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 pre-hearing conference chair shall 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 pre-hearing conference chair shall discuss with the parties and then may give directions or, if pre-hearing conference chair is a member of the Fitness to Practise 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 Fitness to Practice 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 Fitness to Practice 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 pre-hearing conference chair or independent legal counsel on his or her instructions shall confirm in writing to the parties, after the pre-hearing conference, every agreement reached, direction given, order made and undertaking given by the parties.

6.03(4) 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 pre-hearing conference chair may schedule a supplementary pre-hearing conference.

6.03(5) The provisions of Rule 6 apply to further or supplementary pre-hearing conferences with necessary modifications.

## **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 Fitness to Practise 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 Fitness to Practise 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 Fitness to Practise Committee, including motions to which the provisions of the *Mental Health Act* may apply, shall be heard by the panel hearing the allegation of incapacity against the member. Such motions shall be scheduled at least 45 days in advance of hearing evidence, unless otherwise ordered by the Committee.

7.03(3) A notice of motion relating to the production of documents shall be served on the opposing party and 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 11/05/10)**

## **RULE 8 - WRITTEN HEARINGS AND PROCEEDINGS**

### **8.01 Written Hearings**

8.01(1) The Fitness to Practise Committee may order a written hearing or part of a hearing, where the parties consent.

8.01(2) Before ordering a written hearing, the Fitness to Practise Committee shall provide notice and an opportunity to the parties to make submissions on the issue.

8.01(3) Where the Fitness to Practise Committee orders a written hearing and a notice of a written hearing has not previously been given, the Hearings Office shall give notice of the written hearing in accordance with section 6 of the *Statutory Powers Procedure Act* unless the parties waive this requirement.

## **RULE 9 - ELECTRONIC HEARINGS AND PROCEEDINGS**

### **9.01 Initiating an Electronic Hearing (Revised 11/05/10)**

9.01(1) The Fitness to Practise Committee may order an electronic hearing or part of a hearing.

9.01(2) Before ordering an electronic hearing, the Fitness to Practise Committee shall provide notice and an opportunity to the parties to make submissions on the issue. The Committee shall not order that all or part of a hearing be electronic unless the parties consent or unless it is satisfied that such an order would not be prejudicial to either party.

9.01(3) Where an electronic hearing or part of a hearing has been ordered, the Fitness to Practise 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.

9.01(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.

### **9.02 Procedure on Electronic Proceedings**

9.02(1) This rule applies to any proceeding held electronically including motions, pre-hearing conferences and hearings.

9.02(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.

9.02(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 three days before the proceeding.

9.02(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.

## **RULE 10 - TAKING EVIDENCE BEFORE THE HEARING**

### **10.01 Initiating the Taking of Evidence Before the Hearing**

10.01(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 Fitness to Practise 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.

10.01(2) The Fitness to Practise 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 Fitness to Practise Committee from fully and fairly understanding the evidence.

10.01(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 Fitness to Practise Committee and shall deliver a copy of the transcript of the evidence at least three days before the hearing is scheduled to commence.

10.01(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 Fitness to Practise Committee orders otherwise and shall file a copy of the videotape at least three days before the hearing is scheduled to commence.

10.01(5) The examination shall take place at the date, time and place consented to or ordered by the Fitness to Practise Committee.

10.01(6) The Fitness to Practise 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).

### **10.02 Procedure at the Examination**

10.02(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.

10.02(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.

10.02(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 Fitness to Practise Committee before the evidence is used at a hearing.

10.02(4) A ruling on the propriety of a question that is objected to and not answered may be obtained on motion to the Fitness to Practise Committee.

10.02(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.

10.02(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.

### **10.03 Use of Examination at the Hearing**

10.03(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 Fitness to Practise Committee orders otherwise.

10.03(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 Fitness to Practise Committee.

10.03(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.

10.03(4) The transcript and any videotape need not be read or played during the hearing with the parties present unless a party or the Fitness to Practise Committee requires the reading of a transcript or the playing of a videotape.

10.03(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 Fitness to Practise Committee orders otherwise.

## **RULE 11 - EARLY HEARING**

11.01(1) A party may bring a motion for an order directing an expedited hearing.

11.01(2) The Fitness to Practise 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 12 - NON-PARTY PARTICIPATION**

### **12.01 Notice of Constitutional Questions**

12.01(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.

12.01(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 Fitness to Practise Committee regarding the constitutional question.

## **RULE 13 - PROCEDURE DURING THE HEARING**

### **13.01 Vulnerable Witnesses**

13.01(1) The Fitness to Practise 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.

13.01(2) The Fitness to Practise 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 Fitness to Practise Committee is of the opinion that the exclusion is necessary to obtain a full and candid account of the matter.

13.01(3) The Fitness to Practise Committee shall not make an order under subrule (2) unless arrangements are made for the member, the Fitness to Practise 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.

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

13.01(5) Where the Fitness to Practise Committee makes an order under subrule (4), it may appoint counsel for the purpose of conducting the cross-examination.

### **13.02 Oral and Written Argument**

13.02(1) The Fitness to Practise Committee may place reasonable limits on the length of oral submissions.

13.02(2) The Fitness to Practise 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.

### **13.03 Filing of Draft Order**

13.03 Where a party seeks an order from the Fitness to Practise 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 Fitness to Practise 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.

### **13.04 Expert Witnesses**

13.04(1) Each party shall inform any prospective expert witness that it is the duty of an expert to assist the Fitness to Practice 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 to certify that he or she is aware of and understands this duty by signing the Acknowledgement of Expert's Duty in Form 13A, which shall be attached to any Expert Report that is tendered for filing as an Exhibit with the Committee. **(Added 11/05/10)**

## **RULE 14 - GIVING NOTICE OF FINAL DECISION**

### **14.01 Notice of Final Decision**

14.01(1) In addition to the methods described in section 18 of the *Statutory Powers Procedure Act*, the Fitness to Practise Committee may send each party a copy of its final decision or order, including the reasons if any have been given,

- (a) by courier,
- (b) by personal service,
- (c) by facsimile, or
- (d) by electronic mail.

14.01(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.

## **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 11/05/10)**

15.01(3) Unless the Fitness to Practise 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).

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

## **RULE 16 – MOTION TO VARY ORDER**

### **Rule 16.01 Motion to Vary Order (Added 11/05/10)**

16.01 An application under section 69(3) of the *Code* to the Fitness to Practise Committee for an Order directing the Registrar to remove or modify any term, condition and limitation imposed on the member's certificate of registration as a result of paragraph 69(1)3. of the *Code*, shall be made by motion under Rule 5. Such motion does not act as a stay of the original order.

16.01(2) A party making a motion to vary shall deliver a motion record containing copies of previous decisions and reasons and orders and reasons, if any, of the Fitness to Practise Committee and any supporting material to be relied upon.

16.01(3) The Hearings Office shall not schedule a motion to vary for a hearing until the party bringing the motion complies with subrule (2).

**FORM 5A**  
**NOTICE OF MOTION**

---

[General Heading]

**NOTICE OF MOTION**

**THE [IDENTIFY MOVING PARTY] WILL** make a motion to the Fitness to Practise 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:*

*College Counsel:*

*Counsel for the Member:*

---

**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 informal resolution?
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, and the documents admitted by agreement?
  - By what date will the brief be delivered?
  - Should the Fitness to Practise 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 Fitness to Practise 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? If so, list them.
  - Should those authorities be copied for the Fitness to Practise Committee and independent legal counsel?
  - If so, who should prepare the authorities brief and when should it be delivered?
  - Should the Fitness to Practise Committee 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 Fitness to Practise 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 Fitness to Practise Committee:

<u>Number</u>	<u>Witness's Name</u>	<u>Estimated Time</u>
1.		
  - How long will it take you to make your opening and closing submissions?
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 Fitness to Practise 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 13A**

**ACKNOWLEDGMENT OF EXPERT'S DUTY**

**IN THE MATTER OF:**

**- and -**

**ACKNOWLEDGMENT OF EXPERT'S DUTY**

1. My name is ..... (name). I live at ..... (city), in the ..... (province/state) of..... (name of province/state).
2. I have been engaged by or on behalf of ..... (name of party/parties) to provide evidence in the above noted hearing.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
  - (a) to provide opinion evidence that is fair, objective and non-partisan;
  - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
  - (c) to provide such additional assistance as the Fitness to Practise Committee may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date .....

\_\_\_\_\_

*Signature*