

**RULES OF PROCEDURE**  
**OF THE DISCIPLINE COMMITTEE**  
**OF THE COLLEGE OF NATUROPATHS OF ONTARIO**  
**Pursuant to the *Statutory Powers Procedure Act***

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## GENERAL MATTERS

### RULE 1. Interpretation

1.1 In these rules, unless the context requires otherwise:

“**Act**” means the *Naturopathy Act, 2007*;

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

“**Chief Executive Officer or CEO**” means the CEO of the College;

“**Code**” means the Health Professions Procedural Code, Schedule 2 to the *Regulated Health Professions Act, 1991*, as amended;

“**College**” means the College of Naturopaths of Ontario;

“**Counsel**” means a person legally authorized to represent a party or other participant at a discipline hearing;

“**Discipline Committee**” means the Discipline Committee of the College;

“**Discipline Hearing**” means the hearing where the Discipline Committee receives evidence and submissions on the merits of the Proceeding;

“**Discipline Staff**” means the employee or employees of the College who are specifically assigned the duty of providing administrative assistance to the Discipline Committee;

“**Electronic**” with respect to a proceeding means a proceeding held by telephone conference call, online videoconferencing platform or some other means of electronic communication allowing persons to hear and communicate with one another simultaneously;

“**Hearing**” means the process before a Panel in which the Panel receives evidence and/or submissions regarding an issue for determination in a Proceeding, including the merits of the Proceeding;

“**Holiday**” has the same meaning as in the *Rules of Civil Procedure*, R.R.O. 1990, Regulation 194, as amended;

“**Independent Legal Counsel**” means a lawyer retained to give advice to the Discipline Committee, a Panel and/or a Presiding Officer with respect to a Proceeding;

“**Member**” means a member of the College who is the subject of a Proceeding before the Discipline Committee and includes a former member. “Member” may be used interchangeably with “Registrant”;

“**Motion**” is a request made to the Discipline Committee to make an order in a particular Proceeding;

**“Motion Participant”** is a Party and any person who would be affected by the order sought in a Motion;

**“Oral Hearing”** means a Hearing in which the Parties or their counsel or agents attend before the Discipline Committee in person, and includes an attendance by electronic means;

**“Panel”** means a panel of members of the Discipline Committee selected by the Chair of the Discipline Committee to hold a Hearing, pursuant to s. 4.2 of the SPPA, or s. 38 or s. 73(2) of the Code;

**“Party”** means (a) a person specified by the Code as a party to a Proceeding or Hearing; or (b) a person otherwise entitled by law to be a party to a Proceeding or Hearing;

**“Presiding Officer”** has the meaning set out in sub-rule 23.2;

**“Proceeding”** means a process before the Discipline Committee that commences with the referral of a matter to the Discipline Committee pursuant to the Code, and may include one or more Hearings on issues for determination by a Panel, in addition to a Discipline Hearing on the merits of the referred matter;

**“Registrant”** means a registrant of the College who is the subject of a Proceeding before the Discipline Committee and includes a former registrant. “Registrant” may be used interchangeably with “Member”

**“SPPA”** means the *Statutory Powers Procedure Act*, as amended;

**“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.

- 1.2 These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of all Proceedings on their merits.
- 1.3 Where matters are not provided for in these rules, the practice shall be determined by analogy to them, and in a manner consistent with them and consistent with the *Regulated Health Professions Act, 1991* and/or the SPPA.
- 1.4 Where a party or participant in the proceeding is not represented by counsel, anything these Rules permit or require counsel to do shall be done by the party.

## **RULE 2. Application and Waiver of the Rules**

- 2.1 These rules apply to all Proceedings before the Discipline Committee of the College including, with all necessary modifications, to applications for reinstatement under sections 72 and 73 of the *Code*.
- 2.2 A Panel may exercise any of its powers under these rules on its own initiative or at the request of a Party.

- 2.3 In respect of any Proceeding before it, a Panel may issue procedural directions or orders with respect to the application of the rules.
- 2.4 The Discipline Committee may, from time to time, issue procedural directions or practice guidelines with respect to the application of the Rules generally, as may be appropriate.
- 2.5 A failure to comply with these rules is an irregularity and does not render a Proceeding or a step, document or order in a Proceeding a nullity.
- 2.6 In respect of any Proceeding before it, the Discipline Committee may waive or vary the requirements of any of these rules at any time:
  - (a) on the consent of the Parties;
  - (b) on a Motion by a Party to the Proceedings; or
  - (c) where it is just and equitable, and/or in the public interest, to do so.
- 2.7 A Motion under subrule 2.6(b) may be made after a failure to comply with these rules has occurred.
- 2.8 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.
- 2.9 The Discipline Committee may waive a provision of these rules under subrule 2.6(c) 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 3. Time**

- 3.1 In the computation of time under these rules or an order of a Panel,
  - (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;
  - (b) where a period of less than seven (7) days is prescribed, Holidays shall not be counted;
  - (c) where the time for doing any act under these rules or an order expires on a Holiday, the act may be done on the next day that is not a Holiday.
- 3.2 A Panel may extend or abridge any time prescribed by these rules or make an order on such terms that the Panel deems just.

## **SERVICE AND FILING OF DOCUMENTS**

### **RULE 4. Service of Documents**

- 4.1 All documents required to be served under these rules shall be served by one of the following methods:
- (a) by personal delivery to the Party or the representative of the Party;
  - (b) by delivery to an adult person at the premises where the Party resides, is employed or carries on business, or where the representative of the Party carries on business;
  - (c) by regular, registered or certified mail to the last known address of the Party or the representative of the Party;
  - (d) electronically to the facsimile number of the Party or the representative of the Party;
  - (e) electronically to the e-mail address of the Party or the representative of the Party;
  - (f) by courier to the last known address of the Party or the representative of the Party; or
  - (g) by any other means authorized by a Panel.
- 4.2 Subject to sub-rule 4.3, service is deemed to be effective, when delivered:
- (a) by personal delivery, on the day of delivery;
  - (b) by mail, on the fifth day after the day of mailing;
  - (c) electronically, on the same day;
  - (d) by courier, on the earlier of the date on the delivery receipt or the second day after it was sent; or
  - (e) by any other means authorized by a Panel, on the date specified by the Panel;
  - (f) unless the intended recipient of the document establishes that he or she, acting in good faith and through circumstances beyond his or her control, did not receive the document in a timely way.
- 4.3 Documents served by personal delivery or electronically after 4:00 p.m. or at any time on a Holiday shall be deemed to have been served on the next day that is not a Holiday.
- 4.4 Where a document has been served in a manner other than one set out in sub-rule 4.1, a Panel may make an order validating service where the Panel is satisfied that:
- (a) the document came to the notice of the person being served; or
  - (b) the document was served in such a manner that it would have come to the notice of the person served, except for the person's own attempts to evade service.

- 4.5 A Panel may make an order dispensing with service of a document on a person, other than a document whose purpose is to provide notice of a Hearing, where the Panel is satisfied that all reasonable efforts have been made to serve the document on the person, and that it is necessary in the interest of justice to dispense with service.

**RULE 5. Filing of Documents**

- 5.1 All documents to be filed in a proceeding shall be filed with the Discipline Staff, except where they are filed in the course of a Hearing.
- 5.2 Documents to be filed with the Discipline Committee in advance of a Hearing shall be filed together with an Affidavit indicating who has been served with the documents and what documents have been so served.
- 5.3 Documents may be filed with the Discipline Staff in an envelope or, where by facsimile and/or email, with a cover sheet, clearly marked "Attention: Discipline Staff" by:
- (a) leaving the documents with a person at the College of Naturopaths of Ontario, 150 John Street, 10<sup>th</sup> Floor, Toronto, Ontario, M5V 2E3;
  - (b) sending the documents by regular, certified or registered mail or courier to the College of Naturopaths of Ontario, 150 John Street, 10<sup>th</sup> Floor, Toronto, Ontario, M5V 2E3;
  - (c) sending one (1) copy by email to the attention of Discipline Staff to [hearings@collegeofnaturopaths.on.ca](mailto:hearings@collegeofnaturopaths.on.ca) and requesting and receiving a reply acknowledging receipt of the email.
- 5.4 Documents are deemed to be filed on the date they are received by the Discipline Staff at the offices of the College.
- 5.5 A Party filing a document other than by email shall file a USB key containing a PDF copy of the document, as well as, for any in person hearing, a sufficient number of paper copies of the document for:
- (a) in the case of a Hearing, all members of the relevant Panel, Independent Legal Counsel, and the court reporter, or, if this number is not known, seven (7) copies; and
  - (b) in the case of a Pre-Hearing Conference, the Presiding Officer.
- 5.6 A person can confirm whether a document has been filed by emailing or telephoning the Discipline Staff at the College of Naturopaths of Ontario.

**RULE 6. Form of Documents**

- 6.1 Unless otherwise directed in these rules, every document filed in a Proceeding, to the extent practical, shall meet the following standards:

- (a) The text shall be printed, typewritten, written or reproduced legibly, with double spaces between the lines and a margin of approximately 40 millimetres on the left-hand side.
- (b) The characters used shall be of at least 12 point or 10 pitch size.

#### One Side or Both

6.2 The text may appear on one side or on both sides of the paper. O. Reg. 396/91, s. 2.

#### Standards — Electronic Documents

6.3 A document that is issued or filed electronically in accordance with these rules is sufficient, despite subrule (1), if it meets the standards of the software authorized by the Ministry of the Attorney General for the purpose. O. Reg. 43/14, s. 2.

- (a) A person who serves or files a document should include with it the following information:
  - (i) the person's name, address, telephone number, facsimile number and e-mail address, as applicable; or
  - (ii) if the person is represented by a representative, the name, address, telephone number, facsimile number and e-mail address of the representative, as applicable; and
  - (iii) the name of the Proceeding to which the document relates; and
  - (iv) the name of the person or representative being served.

## **SUBMISSIONS TO THE CHAIR**

### **RULE 7. Procedure for Making Submissions to the Chair of the Discipline Committee**

- 7.1 Where these rules provide that the Chair of the Discipline Committee 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.
- 7.2 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 to Discipline Staff. Any such submissions shall be copied to all other Parties or Motion Participants.
- 7.3 The other Parties or Motion Participants may respond to the submissions described in subrule 7.2 by addressing a letter to the Chair and delivering a copy of the letter to Discipline Staff. Any such submissions shall be copied to all other Parties or Motion Participants.

- 7.4 Where the submissions have been delivered under subrule 7.2, the Chair shall not give a direction or make an order unless at least 3 days have passed since the first submission was delivered unless it is urgent that the Chair do so.
- 7.5 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.
- 7.6 Where appropriate the Chair may direct that a matter that has been the subject of written submissions under this Rule be dealt with in another manner.

## **MOTIONS**

### **RULE 8. Initiating Motions**

- 8.1 A motion shall be made by a Notice of Motion unless the nature of the Motion or the circumstances make a Notice of Motion impractical. The Notice of Motion shall set out the grounds of the Motion, the evidence to be relied upon, and the relief sought.
- 8.2 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 fourteen (14) days before the day upon which the Discipline Hearing is scheduled to commence unless the nature of the Motion requires that it be heard during the Discipline Hearing itself.
- 8.3 A moving party shall prepare a Motion Record, containing the Notice of Motion and any Affidavit evidence relied upon in support of the motion, and shall serve and file the Motion Record at least fifteen (15) days in advance of the date that the motion is to be heard.
- 8.4 The other Motion Participants shall deliver their Responding Motion Record at least nine (9) days in advance of the date that the Motion is to be heard.
- 8.5 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 (7) days in advance, and in the case of a responding party, at least three (3) days in advance, of the date that the Motion is to be heard.
- 8.6 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 7.

### **RULE 9. Motions to Decide Preliminary Issues**

- 9.1 A person bringing a Motion to be heard other than at a scheduled pre-hearing conference or at the Discipline Hearing shall obtain available dates and times for the Hearing of the Motion from the Discipline Staff and shall attempt to obtain agreement from the other Motion Participants as to a date and time for the hearing of the Motion.
- 9.2 In constituting a Panel to hear a Motion to decide a preliminary issue in a Proceeding, the Chair of the Discipline Committee may assign a member or members of the Discipline Committee who are the same as or different from the members of the Panel assigned to hear the merits of the Proceeding.
- 9.3 The Chair may direct that a larger or differently constituted panel hear a motion if the chair receives submissions in accordance with RULE 7.
- 9.4 A Motion Participant who believes that the motion ought to be heard by members of the Discipline Committee who will not sit on the Discipline Hearing panel shall request a direction from the motion panel on the matter in the Notice of Motion or a Notice of Cross-Motion.
- 9.5 The Chair or a Panel may direct that a motion filed under this rule be heard and determined at the Discipline Hearing on the merits of the Proceeding.

**RULE 10. Evidence on Motions**

- 10.1 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.
- 10.2 All Affidavits used on a Motion shall be:
  - (a) 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 affirmed before a person authorized to administer oaths or affirmations, which person shall also mark all exhibits as such to the Affidavit.
- 10.3 A Motion Participant may not cross-examine the deponent of the Affidavit filed by another Motion Participant unless the Discipline Committee directs otherwise.
- 10.4 The Discipline Committee shall not direct that the deponent of an Affidavit be cross-examined unless the interests of the case require otherwise.
- 10.5 Subrules 10.3 and 10.4 do not prevent a deponent from being cross-examined on an Affidavit during the hearing of the Motion itself.

**RULE 11. Materials on Motions**

- 11.1 The Moving Party shall deliver the Notice of Motion and other materials in support of the Motion in the form of a Motion Record in accordance with subrule 8.3.

- 11.2 The Motion Record shall contain the Notice of Motion, all Affidavits to be relied upon and any other material to be relied upon in support of the Motion.
- 11.3 If another Motion Participant intends to rely upon materials, the Motion Participant shall deliver those materials in the form of a Responding Motion Record.
- 11.4 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.
- 11.5 Despite subrules 11.3 and 11.4, 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, which shall be delivered in accordance with subrule 8.5.

**RULE 12. Time Limits on Oral Submissions**

- 12.1 Each motion participant shall not exceed one (1) hour, to make oral submissions on a motion heard orally or electronically, including any reply submissions, except with permission of the Chair of the Discipline Committee or the Panel.

**RULE 13. Hearing Motions Electronically**

- 13.1 Motions other than motions brought at a scheduled Pre-Hearing Conference or at the Discipline Hearing shall be heard electronically in accordance with these rules, unless the Chair or the Discipline Committee directs otherwise.

**RULE 14. Written Order**

- 14.1 Immediately after a Motion has been determined, the Moving Party shall, and any other Motion Participant affected by the order may, prepare a draft of the formal order, seek written approval by other affected parties as to its form and content, and deliver it to the Discipline Staff.
- 14.2 A draft order delivered in accordance with subrule 14.1 shall be treated as a submission and may be reviewed, amended if necessary, and signed by a person hearing the motion.
- 14.3 This Rule does not apply to orders made on the record during the hearing.

**NON-PARTY PARTICIPATION**

**RULE 15. General Non-Party Participation**

- 15.1 A person who is not a Party who wishes to participate in the Discipline Hearing shall bring a motion in accordance with these rules and, despite subrule 9.4, the Chair shall assign the Panel that will be conducting the Hearing to hear the motion.

- 15.2 The Notice of Motion shall set out the extent of participation the person proposes to have in the Discipline 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.
- 15.3 If the Discipline Committee allows the person to participate in the Discipline 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 Discipline Hearing.
- 15.4 If the Discipline Committee allows the person to participate in the Discipline 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.

**RULE 16. Notice of Constitutional Questions**

- 16.1 Where a Party intends to raise a question concerning 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 s. 24(1) of the *Canadian Charter of Rights and Freedoms*, notice of a constitutional question shall be served on the other Parties and the Discipline Committee as soon as the circumstances requiring notice become known and, in any event, at least fifteen (15) days before the question is to be argued.
- 16.2 Where the Attorneys General of Canada and Ontario are entitled to notice of a constitutional question, pursuant to s. 109(1) of the *Courts of Justice Act*, each is entitled to adduce evidence and make submissions to the Discipline Committee regarding the constitutional question.

**DISCLOSURE**

**RULE 17. Interpretation**

- 17.1 In RULE 18 to RULE 21, "**document**" includes a sound recording, videotape, file, film, photograph, chart, graph, map, plan, survey, book of account, and information recorded or stored by means of any device.
- 17.2 "**Particulars**" includes:
- (a) the grounds upon which any remedy or order is being sought or opposed in the Proceeding; and
  - (b) a general statement of the alleged material facts upon which the Party relies in the Proceeding.

17.3 Nothing in RULE 18 to RULE 21 limits the disclosure obligations otherwise imposed by law on the parties.

**RULE 18. Documentary Disclosure**

18.1 Each Party to a Proceeding shall deliver to every other Party (a) a list of, and (b) if not previously produced, copies of, all documents and things that the Party intends to produce or enter as evidence at the Discipline Hearing, in the case of the College, as soon as is reasonably practicable after the Notice of Hearing is served, and in the case of any other party, as soon as is reasonably practicable after disclosure by the College under this Rule, but in any case at least ten (10) days before the commencement of the Pre-Hearing Conference.

18.2 A Party who does not disclose a document or thing in compliance with sub-rule 18.1 may not refer to the document or thing or introduce it in evidence at the Discipline Hearing without leave of the Panel, which may be on any conditions that the Panel considers just.

18.3 Where a party discovers a document or thing that it will refer to or give in evidence at the hearing after the disclosure date specified in subrule 18.1, the party shall make the disclosure immediately after the discovery.

**RULE 19. Fact Witness Disclosure**

19.1 A Party to a Proceeding shall serve every other Party a list of the witnesses the Party intends to call to testify on the Party's behalf at the Discipline Hearing, in the case of the College, as soon as is reasonably practicable after the Notice of Hearing is served, and in the case of any other Party, at least ten (10) days before the commencement of the Pre-Hearing Conference.

19.2 If no affidavit has been served in accordance with RULE 45 (Evidence by Affidavit), and material matters to which a witness is to testify have not otherwise been disclosed, a Party to a Proceeding shall provide to every other Party a summary of the evidence that the witness is expected to give at the Discipline Hearing on the merits, in the case of the College, as soon as reasonably practicable after the Notice of Hearing is served, and in the case of any other party, as soon as is reasonably practicable after disclosure by the College under this Rule, but in any case at least ten (10) days before the commencement of the Discipline Hearing.

19.3 The disclosure obligations set out in Rule 19.2 shall not apply to witnesses called in Reply that the College had no reasonable expectation of calling in-chief.

19.4 A witness summary shall contain:

(a) the substance of the evidence of the witness;

(b) reference to any documents to which that witness will refer; and

(c) the witness's name and address or, if the witness's address is not provided, the name and address of a person through whom the witness can be contacted.

- 19.5 A Party who does not include a witness in the witness list or provide a summary of the evidence a witness is expected to give in accordance with these rules may not call that person as a witness without leave of the Panel, which may be on any conditions as the Panel considers just.
- 19.6 A witness may not testify to material matters that were not previously disclosed without leave of the Panel, which may be on any conditions that the Panel considers just.

**RULE 20. Expert Opinion Disclosure**

- 20.1 A Party who intends to call an expert to give expert opinion evidence at a Hearing shall:
- (a) inform the other Parties of the intent to call the expert;
  - (b) identify the expert and the issue(s) on which the expert's opinion will be tendered;
  - (c) serve the other Parties with a copy of the expert's written report or, if there is no written report, an affidavit in accordance with RULE 45 (Evidence by Affidavit), or a witness summary in accordance with sub-rule 19.3; and
  - (d) file an "Acknowledgement Form – Expert's Duty" signed by the expert, in the form appended to these rules.
- 20.2 The College shall serve any expert report or affidavit or witness summary upon which the College intends to rely at the Hearing at least sixty (60) days before the commencement of the Hearing.
- 20.3 The Registrant shall serve any expert report upon which he or she intends to rely at least thirty (30) days before the commencement of the Hearing.
- 20.4 The College may serve a reply expert report at least fifteen (15) days before the commencement of the Hearing.
- 20.5 Where an expert report is filed, it shall at a minimum include the following information:
- (a) qualifications of the expert;
  - (b) the instructions provided to the expert;
  - (c) the nature of the opinion being sought;
  - (d) the factual assumptions upon which the opinion is based; and
  - (e) a list of documents reviewed by the expert.
- 20.6 A Party who fails to comply with sub-rule 20.1 may not call the expert as a witness or file the expert's report or affidavit without leave of the Panel, which may be on any conditions that the Panel considers just.

**RULE 21. Disclosure Orders**

- 21.1 At any stage in a Proceeding, a Panel may order that a Party:
- (a) provide to another Party and to the Panel any particulars that the Panel considers necessary for a full and satisfactory understanding of the subject of the Proceeding; and/or
  - (b) make any other disclosure required by law or as required by these rules within the time limits and/or on any conditions that the Panel may specify.
- 21.2 All Motions for disclosure or further particulars shall be brought in accordance with subrule 8.2 unless special circumstances require that the Motion be brought later.
- 21.3 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.

## **RULE 22. Production of Documents**

- 22.1 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 Discipline Hearing.
- 22.2 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 Registrant. Such Motions shall be scheduled at least forty-five (45) days in advance of hearing evidence, unless otherwise ordered by the Committee.
- 22.3 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 Discipline Staff and served a reasonable time in advance of the date for the hearing of the motion, and an affidavit of service shall be filed on the return of the motion.
- 22.4 The motion shall be considered in accordance with section 42.2 of the Code.

## **PRE-HEARING CONFERENCES**

### **RULE 23. Initiating a Pre-Hearing Conference**

- 23.1 A Pre-Hearing Conference is mandatory unless exempted by the Chair of the Discipline Committee and both Parties consent.

- 23.2 The Chair of the Discipline Committee may assign a member of the Discipline Committee or any other person to preside at a Pre-Hearing Conference (the “**Presiding Officer**”). Either on his or her own initiative or at the request of any Party, the Chair may determine that the Presiding Officer shall be a professional member of the Discipline Committee.
- 23.3 The pre-hearing conference may be conducted either electronically or in person.
- 23.4 A Presiding Officer and any member of the Discipline Committee who observes a pre-hearing conference shall not sit on a Panel that hears preliminary motions or the merits of the Proceeding, unless the Parties consent.
- 23.5 If the Chair of the Discipline Committee assigns a lawyer to act as Presiding Officer that lawyer shall not act as Independent Legal Counsel at the Proceeding or on any motion scheduled in advance of the Proceeding, unless the Parties’ consent.
- 23.6 The Presiding Officer shall, after reasonable consultation with the Discipline Staff, counsel for the College and the Registrant or counsel for the Registrant, schedule a date for the Pre-Hearing Conference to be held and shall notify the Parties of the date. Where consultation does not enable a mutually agreed upon date for the Pre-Hearing Conference, the Presiding Officer shall set the date unilaterally and shall notify the Parties of the date.
- 23.7 The Registrant(s) whose conduct is the subject of the Disciplinary Hearing shall be present at the Pre-Hearing Conference unless excused by the Presiding Officer or Chair of the Discipline Committee prior to the date of the Pre-Hearing Conference.

**RULE 24. Pre-hearing Conference Memorandum**

- 24.1 Where a pre-hearing conference is held, the parties shall complete a pre-hearing conference memorandum, unless otherwise directed by the Presiding Officer.
- 24.2 The College shall deliver its pre-hearing conference memorandum twenty (20) days before the date of the conference and the Registrant shall deliver his/her pre-hearing conference memorandum ten (10) days before the date of the conference.
- 24.3 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 24.4, require the Party to deliver a more adequate memorandum by a specific date and may adjourn the date of the conference.
- 24.4 Despite anything in these Rules, a party or participant in the proceedings is not required to disclose or produce any document or evidence that is privileged or otherwise protected from disclosure by law, including quality assurance information protected by sections 83 and 83.1 of the *Code*.

**RULE 25. Subject Matter of a Pre-Hearing Conference**

- 25.1 Subject to RULE 33 (Adjournments), prospective dates for the Discipline Hearing shall be established at a Pre-Hearing Conference.

25.2 The subject matter considered at a pre-hearing conference may include any of the following:

- (a) issues relating to disclosure and the exchange of information;
- (b) identification and simplification of issues;
- (c) identification of preliminary motions to be raised;
- (d) procedural issues, including the dates by which any steps in the Proceeding are to be taken or begun, and the scheduling of the various stages of the Hearing on the merits;
- (e) the estimated duration of the Discipline Hearing, and the time to be allotted to each Party, either globally for the entire Hearing, or for any component of the Hearing, including: opening statements; examinations in chief, cross-examinations and re-examinations of witnesses; closing submissions; and, subject to sub-rule 34.2, argument on objections or motions;
- (f) identification of potential intervenors;
- (g) the use and scheduling of witness panels;
- (h) identification of facts, documents or evidence that may be agreed upon;
- (i) the possibility of filing affidavit evidence in place of examination in chief and/or where the evidence is not controversial;
- (j) the possibility of settlement of any or all issues between the Parties; or
- (k) any other matter that may assist in the just and expeditious disposition of the Proceeding.

**RULE 26. Discussion of Settlement at a Pre-Hearing Conference**

- 26.1 At the Pre-Hearing Conference, the Presiding Officer may meet with each Party separately to encourage settlement.
- 26.2 A Pre-Hearing Conference shall be held in the absence of the public, and, any discussion of settlement at a Pre-Hearing Conference and all statements made by the Parties regarding settlement shall be on a without prejudice, confidential basis, unless the Parties consent otherwise.

**RULE 27. Orders, Agreements and Undertakings at a Pre-Hearing Conference**

- 27.1 On consent of the Parties, or after giving the Parties an opportunity to make submissions, a Presiding Officer may give directions or, if a Presiding Officer is a member of the Discipline Committee, make orders, consistent with these rules, as he or she considers necessary or advisable with respect to the conduct of the Proceeding, including any procedural order that may be made by a Panel under these rules.

- 27.2 Orders, agreements and undertakings made at a pre-hearing conference:
- (a) shall govern the conduct of the Proceeding and are binding upon the Parties to the Proceeding, unless otherwise ordered by the Presiding Officer; and
  - (b) shall be recorded in a memorandum prepared by or under the direction of the Presiding Officer, which shall be provided to the Parties and to the Panel that hears the merits of the Proceeding.
- 27.3 If a Party disagrees with a direction given at a Pre-Hearing Conference, the Party shall, within three (3) days after the conference, deliver written notice of the proposed change to the direction and the Chair of the Discipline Committee may direct a further Pre-Hearing Conference be held before the same or another Presiding Officer.
- 27.4 If a Party disagrees with the accuracy of the Presiding Officer's memorandum, the Party shall, within seven (7) days after receiving the memorandum, deliver to the Presiding Officer and the other Party, written notice of the specific area of disagreement.
- 27.5 The Party receiving the written notice described in subrule 27.4 shall, within five (5) days, deliver any responding comments to the other party and to the Presiding Officer, after which time the Presiding Officer may revise the memorandum.

**RULE 28. Motions at the Pre-hearing Conference**

- 28.1 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 8.

**ELECTRONIC HEARINGS**

**RULE 29. Initiating an Electronic Hearing**

- 29.1 The Discipline Committee, the Chair or his or her designate may order all or part of a proceeding to be heard as an electronic Hearing, provided that the Hearing is open to the public.
- 29.2 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, and every effort shall be made to have the witnesses participate by means where the Panel can both see and hear the witnesses simultaneously.
- 29.3 A Party who wishes to call a witness to give evidence under subsection 29.3 pursuant to an order made by the Committee, shall give notice to the Discipline Staff and the other Parties of its intention to do so not less than ten (10) days before the witness is scheduled to testify.

**RULE 30. Procedure on Electronic Proceedings**

- 30.1 This rule applies to any proceeding held electronically including Motions, Pre-Hearing Conferences and Hearings.
- 30.2 At least 48 hours before an electronic proceeding is scheduled to commence, the Hearings Office shall instruct participants on how to participate in electronic proceedings and the participants shall comply with those instructions.
- 30.3 Every person participating in the proceeding shall provide the Hearings Office with contact information (including at a minimum a telephone number where he or she can be reached just prior and during the proceeding).
- 30.4 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 to Hearings Office at least three (3) days before the proceeding.
- 30.5 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.

## **WRITTEN HEARINGS**

### **RULE 31. Initiating a Written Hearing**

- 31.1 In the case of a Hearing whose only purpose is to deal with procedural matters, the Chair of the Discipline Committee, or a Panel, may direct that all or part of a Hearing be heard in writing.
- 31.2 In the case of a Hearing to deal with matters other than procedural matters, the Chair of the Discipline Committee, or a Panel, may direct that all or part of a Hearing be heard in writing, on consent of the Parties, or after giving the Parties an opportunity to make submissions, unless the Chair or the Panel is satisfied that there is a good reason not to do so.
- 31.3 Where the Chair of the Discipline Committee or a Panel orders that all or part of Hearing be held in writing and a notice of a written Hearing has not previously been given, the College shall give notice of the written Hearing in accordance with section 6 of the SPPA unless the Parties waive the requirement.

### **RULE 32. Procedure on Written Hearings**

- 32.1 Where a Panel holds all or part of Hearing in writing, the Panel may give direction to the Parties as to:
  - (a) dates for service and filing of written materials;
  - (b) the categories of information that must be included in the written materials; and/or
  - (c) any other aspect of the procedure for exchanging and filing written materials.

## ADJOURNMENTS

### **RULE 33. Requests for Adjournment**

- 33.1 Requests for adjournment of a Hearing date shall be made at the earliest opportunity that the Party or counsel making the request becomes aware that an adjournment is required. A Party seeking an adjournment shall attempt to obtain the consent of the other Parties before bringing a request before the Discipline Committee.
- 33.2 Where the request is made before the Hearing has commenced, the Party seeking the adjournment shall make the request by letter to the Chair of the Discipline Committee filed with the Discipline Staff and copied to the responding party, setting out:
- (i) the request;
  - (ii) the reasons for the request;
  - (iii) the nature of the allegations against the Registrant;
  - (iv) available dates for the hearing to be rescheduled as confirmed with the Discipline Staff; and
  - (v) the position of the responding party.
- 33.3 Where a request for an adjournment is made before the Hearing date and is made on consent or is unopposed, the Chair of the Discipline Committee or such committee member designated by the Chair may dispose of the request in writing.
- 33.4 Where a request for an adjournment made before the Hearing date is opposed, the Chair may dispose of the request after hearing the parties by electronic means, or may direct a Hearing of the request by motion before the Panel.
- 33.5 If the Hearing has commenced, and the adjournment is on consent or unopposed:
- (a) 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 Discipline Staff and copied to the responding party, setting out:
    - (i) the request;
    - (ii) the reasons for the request;
    - (iii) the nature of the allegations against the Registrant;
    - (iv) available dates for the Hearing to be rescheduled as confirmed with the Discipline Staff; and the position of the responding party; and

(b) 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.

33.6 Where a request for an adjournment is made after the Hearing has commenced and the adjournment is opposed, it shall proceed by way of Notice of Motion with supporting material pursuant to RULE 8 and shall be heard and determined by the Panel, unless otherwise agreed.

## **TIME LIMITS**

### **RULE 34. Time Limits**

34.1 A Panel may set time limits in an oral or electronic Hearing before it, in respect of all or part of a Hearing, after giving the Parties an opportunity to make submissions in that regard.

34.2 Where a Panel sets time limits in respect of all or part of a Hearing, the Panel may make an order that the total time spent by all Parties arguing an objection or motion shall be deducted from the time remaining for the Party who is unsuccessful on that objection or motion, subject to the discretion of the Panel.

## **SEIZURE BY A PANEL OF THE MERITS**

### **RULE 35. Seizure by a Panel of the Merits**

35.1 A Panel is seized of the merits of a Proceeding once the Notice of Hearing has been entered as an exhibit at a Hearing for the purpose of determining the merits of the Proceeding.

35.2 Whether or not a Panel has heard a preliminary issue in a Proceeding, if that Panel is not yet seized of the merits of a Proceeding, the Chair of the Discipline Committee may appoint a different Panel to hear and determine the merits of the Proceeding.

## **TAKING EVIDENCE BEFORE THE DISCIPLINE HEARING**

### **RULE 36. Initiating the Taking of Evidence before the Discipline Hearing**

36.1 A Party who intends to introduce the evidence of a person at the Discipline Hearing on the merits 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 Discipline Hearing for the purpose of having the witness's testimony available to be tendered as evidence at the Discipline Hearing.

- 36.2 The Discipline Committee may make an order under subrule 36.1 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.
- 36.3 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 (3) days before the Discipline Hearing is scheduled to commence.
- 36.4 The Party who intends to introduce the evidence of the witness shall also ensure that the examination is filmed, at the Party's cost, unless the parties consent or the Discipline Committee orders otherwise and shall file a copy of the recording at least three (3) days before the Discipline Hearing is scheduled to commence.
- 36.5 The examination shall take place at the date, time and place consented to or ordered by the Discipline Committee.
- 36.6 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 Registrant (where the Registrant is not the party intending to call the witness).

**RULE 37. Procedure at the Examination**

- 37.1 A witness examined under subrule 36.1 may, after being 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.
- 37.2 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.
- 37.3 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 Discipline Hearing.
- 37.4 A ruling on the propriety of a question that is objected to and not answered may be obtained on motion to the Discipline Committee.
- 37.5 Where the question is not answered under subrule 37.2 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 Discipline Hearing or at the Discipline Hearing to answer the question.
- 37.6 Any document used during the examination that is intended to be filed as an exhibit at the Discipline 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.

**RULE 38. Use of Examination at the Discipline Hearing**

- 38.1 At the Discipline Hearing, any party may use the transcript and video recording of an examination made under this rule as the evidence of the witness unless the Discipline Committee orders otherwise.
- 38.2 A witness who has been examined under this rule shall not be called to give evidence at the Discipline Hearing except on the order of or at the request of the Discipline Committee.
- 38.3 Where a witness is ordered or requested to give evidence at the Discipline Hearing under subrule 36.2, the Party who tendered the evidence under subrule 36.1 shall arrange for the witness to attend at the Party's expense.
- 38.4 The transcript and any videotape need not be read or played during the Discipline Hearing with the Parties present unless a Party or the Discipline Committee requires the reading of a transcript or the playing of a videotape.
- 38.5 Where the reading of a transcript or the playing of a video recording is required under subrule 38.4, the Party who initiated the examination under subrule 36.1 shall conduct the reading or playing during the presentation of that Party's case unless the Discipline Committee orders otherwise.
- 38.6 This Rule can be applied to take the evidence of a witness after a hearing has commenced where the hearing panel concludes it would be just and fair to do so.

## **EARLY HEARINGS**

### **RULE 39. Early Hearing**

- 39.1 A Party may bring a Motion for an order directing an expedited Hearing.
- 39.2 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.
- 39.3 Where an interim order made pursuant to section 25.4 of the *Code* is in place, the Discipline Committee shall expedite the proceedings, including scheduling the hearing early unless counsel for the Registrant waives the duty in writing.

## **PROCEDURE DURING A HEARING**

### **RULE 40. Vulnerable Witnesses**

- 40.1 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.
- 40.2 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.
- 40.3 The Discipline Committee shall not make an order under subrule 40.2 unless arrangements are made for the Registrant, 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 Registrant is permitted to communicate with counsel while watching the testimony.
- 40.4 The Discipline Committee may order that a Registrant 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 or to prevent an abuse of the process.
- 40.5 Where the Discipline Committee makes an order under subrule 40.4, it may appoint counsel for the purpose of conducting the cross-examination.
- 40.6 As per the Code, the Discipline Committee may make other orders protecting vulnerable witnesses, such as an order prohibiting the publication of their identities where required by law or where it concludes it is just and fair to do so.

**RULE 41. Oral and Written Argument**

- 41.1 The Discipline Committee may place reasonable limits on the length of oral submissions.
- 41.2 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.

**RULE 42. Access to Hearing Record by the Public**

- 42.1 Upon issuance of the Decision and Reasons of a Panel of the Discipline Committee, Discipline Staff shall post all exhibits filed at the Hearing, and any other information the Panel specifies, to a dedicated page on the College's website, unless otherwise provided by the Code or an order of the Panel.
- 42.2 Pending the application of Rule 42.1, a member of the public may request a copy of the notice of hearing, agreed statement of facts, joint submission on order and costs or the transcript of the evidence by contacting Discipline Staff, unless an order has been made under the Code to close the hearing or to prevent public disclosure of matters other than the name or identity of patients.
- 42.3 Pending the application of Rule 42.1, if a member of the public wishes to have access to an exhibit(s) filed at a Discipline Hearing, or any record referred to in subrule 42.1 that is

the subject of an order under section 45 of the Code, other than an order banning the publication of the name or identity of any patients, 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.

- 42.4 Documents released by the Discipline Committee to the public shall not contain the name of patients or any information that could identify the patient.

### **RULE 43. Filing of Draft Order**

- 43.1 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.

## **EVIDENCE AT HEARINGS**

### **RULE 44. Evidence by Agreement**

- 44.1 A Panel may receive, orally or in writing, a statement of facts that are agreed upon by the Parties as evidence of those facts.
- 44.2 A statement of agreed facts under sub-rule 44.1 may address some or all of the facts in issue in the Proceeding.

### **RULE 45. Evidence by Affidavit**

- 45.1 A Party may present, and a Panel may receive, the evidence of any of the Party's witnesses in the form of an affidavit that has been affirmed by the witness.
- 45.2 Where a Party presents the evidence of a witness in the form of an affidavit:
- (a) the Party may examine the witness for not more than 10 minutes, or such other time as the Panel may direct;
  - (b) each opposing Party may cross-examine the witness; and
  - (c) if the witness is cross-examined, the Party who filed the affidavit may re-examine the witness.
- 45.3 Where a Party intends to present the evidence of a witness in affidavit form, the Party shall serve copies of the affidavit on all other Parties at least ten (10) days before the

commencement of the Hearing, and file the original affidavit with the Discipline Committee at the Hearing.

- 45.4 Where an opposing Party is served with an affidavit of a witness, the opposing Party shall, at least five (5) days prior to the commencement of the Hearing, notify the Party who served the affidavit as to whether or not the adverse Party intends to cross-examine the witness at the Hearing.
- 45.5 If no opposing Party gives notice in accordance with sub-rule 45.4 that the opposing Party intends to cross-examine a witness whose evidence is to be presented by affidavit, the witness's attendance at the Hearing is not required, unless the Panel orders otherwise.
- 45.6 A Panel may make an order striking evidence that is presented in affidavit form and is inadmissible.

**RULE 46. Evidence by Witness Panel**

- 46.1 A Panel may receive evidence from a panel or panels of witnesses composed of two or more persons, on terms directed by the Panel, if the Parties have first had an opportunity to make submissions in that regard.

*Expert Opinion Witness Panel*

- 46.2 Where a Panel agrees to receive evidence from a panel of expert witnesses opining on the same question, unless the Panel directs that a different procedure should apply:
- (a) each expert witness shall give their opinion and may:
    - (i) comment on the opinions of other expert witnesses on the panel;
    - (ii) pose questions to the other expert witnesses on the panel; and/or
    - (iii) make a concluding statement;
  - (b) the members of the witness panel may then be cross-examined and re-examined by counsel in the sequence directed by the Panel.

*Fact Witness Panel*

- 46.3 Where a Panel agrees to receive evidence from a panel of witnesses all of whom are called by the same Party, unless the Panel directs that a different procedure should apply:
- (a) the Party who calls the witness panel may conduct an examination in chief of the witnesses on the panel and may:
    - (i) do so in any order;
    - (ii) go back and forth between witnesses; and/or
    - (iii) address questions to the panel as a whole;

- (b) any Party who is adverse in interest to the Party who called the witness panel may cross-examine any of the witnesses on the witness panel, and may:
  - (i) do so in any order;
  - (ii) go back and forth between witnesses; and/or
  - (iii) address questions to the panel as a whole;
- (c) if a witness on a witness panel is cross-examined, the Party who called the witness panel may re-examine that witness.

*Other Witness Panel*

- 46.4 Where a Panel agrees to receive evidence from any other type of witness panel, the Panel may give direction as to the applicable procedure.
- 46.5 RULE 45 (Evidence by Affidavit) applies to the evidence of witness panels, with necessary modifications.

**RULE 47. Expert Witnesses**

- 47.1 Where the Committee hears testimony of an expert witness, it may admit as an exhibit at the Hearing the report of the expert witness.
- 47.2 It is the duty of the expert engaged by or on behalf of a Party to provide evidence in relation to a Discipline Hearing:
  - (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 the expert's area of expertise; and
  - (c) To provide such additional assistance as the Discipline Committee may reasonably require to determine a matter in issue.
- 47.3 The duty in subrule 47.2 prevails over any obligation owed by the expert to the Party by whom or on whose behalf the expert is engaged.

**COSTS**

**RULE 48. Procedure for Requesting Costs**

- 48.1 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.
- 48.2 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.

48.3 The Discipline Committee may direct that the amount of costs and expenses be calculated at a Motion conducted separately from the hearing under RULE 8 with any necessary modifications.

**RULE 49. Costs for Non-compliance with Rules**

49.1 Where the Discipline Committee is entitled to order the payment of costs and/or expenses by a Party pursuant to section 53 or 53.1 of the Code, the Discipline Committee may consider, among other factors, the failure of a Party to comply with these Rules and whether the conduct of the Party has been unreasonable, frivolous or vexatious or whether a Party has acted in bad faith, including but not limited to late requests for adjournments.

**RULE 50. Costs for a Late Request for Adjournment**

50.1 In this rule, a late request for adjournment means an adjournment that is requested within five (5) business days of the date scheduled for the commencement of the hearing.

50.2 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.

50.3 In determining the amount of 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.

**GIVING NOTICE OF FINAL DECISION**

**RULE 51. Method of Notice**

51.1 In addition to the methods described in section 18 of the SPPA, 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;

- (b) by personal service;
- (c) by facsimile; or
- (d) by email.

51.2 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 email, it shall be sent to the most recent facsimile number or email address known to the College and shall be deemed to be received by the Party at the end of the day the facsimile or email was sent.

## **CORRECTING, CLARIFYING AND REVIEWING DECISIONS/ORDERS**

### **RULE 52. Corrections and Clarifications**

- 52.1 A Panel may at any time, on the request of a Party or at its own initiative, correct a typographical error, error of calculation, technical error or other similar error made in an order or decision of that Panel. Where the Panel makes a correction on its own initiative, it shall advise the parties.
- 52.2 A Panel may at any time, on the consent of the Parties, clarify an order or decision of that Panel that contains a misstatement, ambiguity or other similar error.
- 52.3 If any member of the Panel that made the original order is unable, for any reason, to participate in the consideration of a request for a correction or clarification, a quorum of the original Panel will suffice for the purpose of this rule.

## **RECONSIDERATION OF DECISIONS**

### **RULE 53. Reconsideration of Decisions**

- 53.1 In this Rule,
- (a) “Request for Reconsideration” means an application under sub-rule 53.5.2,
  - (b) “other participants in the Hearing” refers to non-Parties permitted to participate in a Hearing under s.41.1 of the Code, if any.
- 53.2 With the consent of the other Party to the Hearing, a Party may apply for reconsideration of a decision released by the Discipline Committee if the decision contains a substantive error or omission that may have affected the outcome of the Hearing.
- 53.3 A Request for Reconsideration must be:

- (a) Served on the other Party, other participants in the Hearing (if any), and ILC; and
  - (b) Filed, with the Discipline Committee c/o the offices of the College. The Request for Reconsideration will be provided to the Panel that released the decision under reconsideration or if the Panel is not available, to the Chair of the Discipline Committee.
- 53.4 A Request for Reconsideration should set out, in consecutively numbered paragraphs, the facts and reasons upon which the Party requesting reconsideration submits that the panel of the Discipline Committee should reconsider its decision, and the relief sought.
- 53.5 A responding Party may, within five (5) days of receiving the Request for Reconsideration,
- (a) Serve brief written submissions supporting or opposing the a Request for Reconsideration on the other Party, other participants in the Hearing, if any, and ILC;
  - (b) File the submissions referred to in paragraph (a), above, with the Panel that released the decision under reconsideration.
- 53.6 The Panel may release its decision on the reconsideration in writing, without an oral Hearing.
- 53.7 A decision that has been reconsidered by a Panel in accordance with this rule shall contain reference to the date of the reconsideration and, where applicable, the fact that an amendment or variance was made.

## **REINSTATEMENT APPLICATIONS**

### **RULE 54. Initiating Reinstatement Applications**

- 54.1 The following rules apply, in addition to all other rules, to applications for reinstatement made under sections 72 and 73 of the Code.
- 54.2 A person making an application for reinstatement shall serve and file a notice of the application specifying the order sought, the grounds of the application, the evidence that the person will introduce, the proposed method of Hearing and the anticipated length of the Hearing.
- 54.3 Unless the Chair of the Discipline Committee directs otherwise, the person making an application for reinstatement shall serve and file sufficient 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 and copies of any document the person will introduce.
- 54.4 The CEO shall assist the person making an application for reinstatement to comply with sub-rule 54.3 by providing reasonable access to the necessary documents maintained in the College's files including extra copies of transcripts or documents that are already available.

- 54.5 The Discipline Committee shall not schedule a reinstatement application for a Hearing until the person making an application complies with sub-rules 54.2 and 54.3.
- 54.6 When a reinstatement application has been scheduled, the Chair of the Discipline Committee shall provide a copy of the application to the members of the Panel who will be Hearing the application at least ten days prior to the Hearing date.

## **MOTION TO REMOVE REGISTER INFORMATION**

### **RULE 55. Motion to Remove Register Information from Public Access**

- 55.1 An application under section 23(11) of the Code, for removal from public access of information contained in the Register under section 23(2)10 of the Code, shall be made by motion under RULE 8, and the motion record shall include the decision and reasons of the Discipline Committee and any supporting material to be relied upon.
- 55.2 If such application is made by way of joint submission or is unopposed, it may be heard and determined in writing by a Panel of the Discipline Committee.
- 55.3 After a motion has been heard and determined by the Discipline Committee, a new application shall not be made for at least one year, unless there has been a material change in circumstances or new evidence has become available since the last application.

## FORMS

[General Heading]

### NOTICE OF MOTION

**THE [IDENTIFY MOVING PARTY] WILL** make a motion to the Discipline Committee of the College of Naturopaths of Ontario on [day], [date], at [time], or as soon after that time as the motion can be heard at 150 John St., 10<sup>th</sup> floor, 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 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]

*[General Heading]*

*PRE-HEARING CONFERENCE MEMORANDUM*

**Discipline Committee  
of the College of Naturopaths of Ontario**

**College of Naturopaths of Ontario**

**- and -**

*[name of Registrant]*

**PRE-HEARING CONFERENCE MEMORANDUM OF  
[THE COLLEGE OR REGISTRANT'S NAME]**

Date of pre-hearing conference:

Name of the College's Counsel:

Name of the Registrant's Counsel (if applicable):

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**BACKGROUND INFORMATION**

1. Set out the allegations or attach a copy of the notice of hearing or statement of allegations 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 Registrant'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. How should this matter be settled?
10. Set out the facts, in numbered paragraphs, that you believe should be agreed to.
11. Set out a numbered list of the documents you believe should be admitted into evidence on agreement, as part of a joint brief of documents.

## **ADDITIONAL STEPS BEFORE THE HEARING**

12. On the subject of disclosure:
  - a) Has the College made full disclosure to the Registrant?
  - b) Has the Registrant made disclosure to the College in accordance with the Discipline Committee's Rules of Procedure?
  - c) Are there any issues with respect to disclosure?
  - d) Have you produced all of the expert reports upon which you intend to rely?
  - e) If you have not yet made all required disclosure, why not and by what date will it be done?
13. On the subject of motions:
  - a) Do you anticipate bringing any motions before or during the hearing?
  - b) If so, what order will you seek and on what grounds?
  - c) When do you intend to bring each motion?
14. On the subject of a documents brief:
  - a) Set out a numbered list of the documents you expect to enter into evidence.
  - b) If there is to be a joint book of documents, should the hearing panel be able to review the brief before the hearing?
  - c) If so, by what date can the brief be delivered?

15. On the subject of a book of authorities:
- a) Will you be referring to any authorities other than the *Regulated Health Professions Act, 1991*, the *Statutory Power Procedures Act* and the regulations under those statutes? If so, list them.
  - b) If so, who should prepare the book of authorities and when should it be delivered?
  - c) Should the hearing panel or independent legal counsel be able to review the book of authorities before the hearing?

### PLANNING THE HEARING

16. On the subject of witnesses:
- a) In numbered paragraphs, list your fact witnesses in the order that you expect to call them and estimate the length of time it will take to hear their entire evidence, including cross-examination and questions from the hearing panel:

| Number | Witness Name | Estimated Time |
|--------|--------------|----------------|
| (i)    |              |                |
| (ii)   |              |                |
  - b) It is the preference of the Discipline Committee to identify any potential conflicts of interest or circumstances giving rise to a reasonable apprehension of bias at the earliest possible opportunity. Is there any reason why the witness list cannot be circulated to the hearing panel?
  - c) Do you anticipate calling any expert witnesses?
  - d) If so, have you disclosed a copy of the expert's report to the other side?
17. On the subject of scheduling the hearing:
- a) Are there any special considerations affecting the setting of a hearing date arising from the availability of witnesses or otherwise?
  - b) Estimate how many days will be required for your case in total:
    - (i) How long will it take you to make your opening and closing submissions on the issue of finding?
    - (ii) How long will it take to dispose of any motions you anticipate bringing during the hearing, including adequate time for deliberation by the hearing panel?

(iii) How long will it take to hear the evidence of all of your anticipated fact witnesses, including any cross-examination and questions from the hearing panel? [*This estimate should be consistent with paragraph 16a above.*]

(iv) How long will it take to hear the evidence of all of your anticipated expert witness(es), including any cross-examination and questions from the hearing panel?

(v) In the event that the hearing panel makes a finding, how long do you anticipate requiring for any submissions and evidence on the issue of what order the hearing panel should make?

c) When will you be prepared for the hearing to commence?

[Date]

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

*[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 agreed that the following facts can be assumed to be correct for the purpose of the hearing:

*[list facts]*

The parties agreed 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 they will be heard are as follows:

| <i>Number</i> | <i>Nature of motion</i> | <i>Date to be heard</i> |
|---------------|-------------------------|-------------------------|
|---------------|-------------------------|-------------------------|

1.

The following motions will be argued at the hearing itself:

| <i>Number</i> | <i>Nature of motion</i> | <i>Estimate length of argument</i> |
|---------------|-------------------------|------------------------------------|
|---------------|-------------------------|------------------------------------|

1.

Other than for information that is discovered after the conference, disclosure is not complete *[or will be completed by (date)]*.

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

| <i>Number</i> | <i>Description</i> | <i>Party preparing</i> | <i>Date to be delivered</i> |
|---------------|--------------------|------------------------|-----------------------------|
|---------------|--------------------|------------------------|-----------------------------|

1

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

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

| <i>Number</i> | <i>Description</i> | <i>Party preparing</i> | <i>Date to be delivered</i> |
|---------------|--------------------|------------------------|-----------------------------|
|---------------|--------------------|------------------------|-----------------------------|

1

The Discipline panel may/should *[choose one]* review them before the hearing.

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

The proposed schedule for the hearing is as follows:

| <i>Date</i> | <i>Motions/arguments/witnesses</i> | <i>Estimate length of time</i> |
|-------------|------------------------------------|--------------------------------|
|-------------|------------------------------------|--------------------------------|

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 to 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]*

*(Title of Proceeding)*

**ACKNOWLEDGEMENT FORM – EXPERT’S DUTY**

1. My name is ..... *(name)*. I live at ..... *(city)*, in the ..... *(“Proyince” or “State”)* of ..... *(name of province/state)*.
2. I have been engaged by or on behalf of ..... *(name of Party/Parties)* to provide evidence in relation to the above-noted Proceeding.
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 Discipline 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*