

**DISCIPLINE COMMITTEE GUIDELINES**

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## **INTRODUCTION**

1. The Discipline Committee of the College of Chiropractors of Ontario (the “Committee”) is committed to protecting the public and ensuring fairness to members of the chiropractic and podiatry profession (“Members”) against whom allegations of professional misconduct or incompetence have been made, or who apply for the issuance of a licence after revocation (“reinstatement”). To promote fairness, efficiency, certainty and the timely determination of allegations of professional misconduct and incompetence, or applications for reinstatement, the Committee has established the following guidelines in relation to pre-hearing conferences, hearing dates, timelines for the issuance of decisions and reasons, and other matters relating to proceedings before it.

## **DISCLOSURE BY THE COLLEGE**

2. The Committee recognizes the importance of disclosure of all relevant information (whether inculpatory or exculpatory) in the College’s possession to the fairness of proceedings before Discipline panels. The College’s disclosure obligation is a continuing one. Consequently, after initial disclosure has been made, it is incumbent upon the College to provide timely disclosure of information subsequently coming into the College’s possession and information previously considered irrelevant but whose relevance has subsequently come to light. The Committee recognizes that there are circumstances where the College is not required to disclose information because it is privileged.
3. The Committee considers that barring exceptional circumstance, disclosure should take place within the following time frames:
  - a. no later than 30 days prior to the pre-hearing conference, and
  - b. in the case of documents that come into the College’s possession subsequent to the period referred to in (a), on a timely basis.
4. The Committee recognizes that disclosure can be effected by providing copies of

documents to counsel for the Member (or, where the Member is self-represented, to the Member), or by providing reasonable access to original documents, or a combination of providing copies of some documents and reasonable access to others, depending on the circumstances.

## **PRE-HEARING CONFERENCES**

5. The Committee considers that pre-hearing conferences may be a valuable and important stage in the proceedings, at which there may be a candid discussion of the strength of the College's case, the Member's potential liability for being found guilty of professional misconduct and/or incompetence, procedural issues, and the potential narrowing of issues to be determined by the Discipline panel assigned to conduct the hearing.
6. The Committee expects that the prosecutor and the Member, or counsel defending the Member, will take steps to fully inform themselves about the facts of the case, the issues presented by the case and the issues to be discussed at the pre-hearing conference. Regardless of whether the Member is represented by legal counsel, the Member shall attend the pre-hearing conference. The Committee endorses the use of telephone or video conference if it is impossible, or not practical, for counsel and/or the Member to appear in person.
7. The Committee recognizes that the parties are entitled to the candid view of the pre-hearing conference Chair as to the strength of the College's case and the Member's liability to be found guilty of professional misconduct or incompetence and the appropriate penalty to be imposed in consequence of a finding of either professional misconduct or incompetence.
8. The Committee recognizes and endorses the practice of parties using the pre-hearing conference as a means of narrowing the issues to be determined by the Discipline panel assigned to conduct the hearing. The Committee strongly endorses the practice of parties agreeing as to the evidence of a particular witness or formulating agreed statements of

fact, where it is possible for counsel to do so. Similarly, the Committee strongly endorses the practice of parties agreeing as to the contents of document books to be used at hearings.

9. The Committee expects that the pre-hearing conference Chair will schedule hearing date(s) at the pre-hearing. For that reason, the parties and their counsel are expected to have their calendars or schedules with them at the pre-hearing conference.

#### **HEARING DATES**

10. The Committee recognizes that the public interest is served by ensuring that the Committee's mandate to impartially hear and determine allegations of professional misconduct and/or incompetence or applications for reinstatement, is carried out in a fair and prompt manner.

11. It is the Committee's expectation that dates for hearing the merits of a matter will be set by the parties within six months (180 days) of the date of referral to the Discipline Committee, and that hearings will commence within nine months (270 days) of the date of referral.

12. Requests by either or both of the parties for an adjournment of a hearing date prior to the commencement of the hearing must be made in writing to the Chair of the Discipline Committee, and will only be granted where procedural fairness necessitates an adjournment.

#### **MOTION MATERIALS REVIEWED BY PANELS PRIOR TO MOTION BEING HEARD**

13. In the case of oral or electronic motion hearings, the Committee's practice is to provide filed motion materials to each member of the panel hearing the motion in advance of the motion hearing wherever practical, in order to promote efficient use of hearing time. The Committee understands, however, that panels should not commence their deliberations on the motion until after the hearing has been held.

## **WRITTEN SUBMISSIONS**

14. The Committee endorses the practice of assisting Discipline panels in the determination of the issues before it through the provision of written submissions. Written submissions on motions should be served and filed in accordance with the *Rules of Procedure*. Where parties intend to file written submissions on the merits of a proceeding in addition to making oral submissions, parties are encouraged to exchange their written submissions in advance of the oral submissions, where practical. Where appropriate, the panel may make an order as to the procedure for filing written submissions on the merits of a proceeding.

## **CONDUCT AT HEARINGS**

15. The Committee expects and appreciates that proceedings taking place before Discipline panels will be conducted with civility and courtesy.

16. The Committee expects that submissions of the parties will be directed to the Chair and members of the Discipline panel.

17. To facilitate the orderly flow of proceedings, the Committee expects that counsel will have available ten (10) copies of any exhibit(s) they wish to enter or authorities to which they refer.

18. The Committee endorses the practice of assisting Discipline panels in the determination of difficult legal issues through the provision of written argument.

## **ACCESS BY THE PUBLIC/MEDIA REPRESENTATIVES TO EXHIBITS**

19. Subject to the exceptions set out below, a member of the public or a media representative seeking access to (an) exhibit(s) that has/have been filed at a discipline hearing shall bring a motion before the Discipline panel, on written notice to any interested persons, including the College, the Member, and any persons having a proprietary or privacy interest in the exhibit. In doing so, the person requesting access shall identify the

purpose, scope of the access and the intended use being sought. If permission to duplicate the exhibit is requested, the person seeking access must provide evidence that the duplication will not adversely affect the integrity of the exhibit.

20. Unless an order has been made under subsection 45(2) of the *Health Professions Procedural Code*, closing the hearing, or subsection 45(3), preventing public disclosure of matters disclosed in the hearing that are contained in the Notice of Hearing (“NOH”), Agreed Statement of Facts (“ASF”) or a Joint Submission as to Penalty (“JSP”), it is unnecessary to bring a motion before the Discipline panel where a member of the public or a media representative seeks access to either an ASF or JSP. Copies of the NOH, ASF and JSP provided will not contain reference to names of patients or institutions where doing so would serve to identify the client(s) involved.

21. Prior to making its decision on the motion for access to the exhibit(s), the Discipline panel will entertain the submissions of the person seeking access, the College, the Member, and any other person(s) with an interest. Factors that the Discipline panel may consider include the following:

- a. the general principle that hearings be open to the public;
- b. the intended use of the exhibit(s);
- c. proprietary and privacy interests in the exhibit(s);
- d. the timing of the request, and specifically, whether it was made during or after the hearing;
- e. interference with the proper and orderly conduct of the hearing; and
- f. interference with the Member’s right to a fair hearing.

22. In the event that the Discipline panel decides to grant access, the scope of access and the use of the exhibit will be determined by the Discipline panel, e.g., whether inspection, copying or publication will be allowed, and, if publication is allowed, the form in which publication may take place (e.g., publication of a photograph as opposed to a verbal description of it). The Discipline panel must be satisfied that the security of the exhibit

will be protected and may provide for supervision and control of the exhibit by a person designated by it.

#### **REVIEW OF TRANSCRIPTS BY NON-PARTIES**

23. A person other than the College or the Member may purchase a copy of a transcript of any part of a hearing that was not closed and is not the subject of an order prohibiting public disclosure by contacting the College's Professional Conduct and Hearings office and paying the prescribed fee to the court reporter responsible for transcription of that portion of the hearing. No order of the Discipline panel is necessary in these circumstances. Instead, the Discipline panel meets its obligation under paragraph 48(1)(c) of the *Health Professions Procedural Code* by passing this guideline and delegating responsibility for its administration to College staff.

24. Where a person seeks to review copies of transcript in the College's possession, it is understood that the College has the discretion to limit or deny access to that transcript, and that the Discipline panel lacks jurisdiction to grant access to that transcript.

#### **TIMELINES FOR ISSUING DECISIONS AND REASONS**

25. The Committee strives for timeliness in the issuance of its decisions and reasons. To facilitate the attainment of this goal, the Committee considers it appropriate to establish the following target timelines for the issuance of decisions and reasons.

26. In the case of rulings on motions, Discipline panels will strive to provide their rulings so as not to unduly disrupt the hearing of the merits of the proceeding. Where the motion is argued at the hearing of the merits, or within the 15 days prior to the commencement of the hearing of the merits, the panel will aim to rule on the motion the same day, even if that means that reasons must follow separately. Where the motion has been made at a pre-hearing stage, it is the Committee's goal that the ruling on that motion will be made within 30 days of the argument of the motion and, in any event, at least 15 days prior to the commencement of the hearing on the merits.

27. In cases involving an ASF and JSP/costs, the panel will aim to issue its Decision and Reasons for Decision within 30 days of the conclusion of the hearing. Decision and Reasons as to penalty will be issued as soon as possible, and in any event, within 30 days of the conclusion of the parties' submissions as to penalty.

28. In contested matters, the panel will aim to issue its Decision and Reasons as to liability within 60 days of the conclusion of the hearing on liability. The panel will aim to issue its Decision and Reasons as to penalty and/or costs within 30 days of the conclusion of parties' submissions as to penalty and/or costs.

#### **TIMING OF PENALTY HEARINGS IN CONTESTED MATTERS**

29. In discipline hearings where the member attends the hearing on the merits and denies one or more of the allegations, and the panel makes a finding of professional misconduct and/or incompetence, the expectation is that the penalty phase of the hearing will not take place until after the release of the panel's written Decision and Reasons for Decision on the liability phase, unless both parties agree otherwise.

30. The expectation is that the penalty phase of the hearing will take place no later than two months after the release of the panel's written Decision and Reasons for Decision.

#### **ISSUANCE OF FORMAL ORDERS**

31. It is the Committee's practice to issue a formal order, where requested, upon the termination of the proceeding. In cases where the panel makes no finding of professional misconduct and/or incompetence, this will occur once the panel delivers its ruling on the liability phase. In cases where the panel makes a finding of professional misconduct and/or incompetence, this will occur once the panel delivers its ruling on the penalty phase.

32. The Committee will also issue a formal order, where requested, upon the delivery of a panel's ruling on a motion.



33. Parties are requested to provide the chair of the panel, through independent legal counsel, with a draft order that has been approved by all parties. The chair of the panel will review, and if acceptable, sign the order. If the parties cannot agree on the terms of the order, arrangements can be made to make submissions to the chair of the panel, who will settle the terms of the order.

#### **PUBLICATION OF DECISIONS AND REASONS**

34. Once issued, decisions and reasons are public.