

# Discipline

## Committee Rules



Revised April 2014



COLLEGE OF NURSES  
OF ONTARIO  
ORDRE DES INFIRMIÈRES  
ET INFIRMIERS DE L'ONTARIO

THE STANDARD OF CARE.

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## *Discipline Committee Rules*

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## Rule 1—Definitions

1.0 In these Rules, unless the context requires otherwise,

“**Act**” means the Statutory Powers Procedure Act

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

“**College**” means the College of Nurses of Ontario

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

“**Committee Chair**” means the chair of the full Committee

“**Discipline panel**” means a panel of Committee members selected by the Committee Chair pursuant to either s. 4.2 of the Act or s. 38 of the *Code*

“**Electronic hearing**” means a hearing held by conference telephone or videoconference or some other form of electronic technology allowing persons to hear one another, and includes a pre-hearing conference, a motion, a discipline hearing, the rendering of an oral reprimand, and a hearing for reinstatement.

“**Hearing**” means the process before a Discipline panel constituted under s. 38 of the Code which commences with the filing of a Notice of Hearing and the Member being asked whether he or she admits or denies the allegations contained in the Notice of Hearing.

“**Member**” means a member of the College who has been named in a Notice of Hearing

“**Notice of Hearing**” means a document issued by the College which contains one or more allegations of professional misconduct or incompetence against a Member

“**Oral hearing**” means a hearing in which the parties or their counsel or agents attend before the tribunal in person.

## Rule 2—Procedural and Interlocutory Motions

2.0 This Rule applies to procedural or interlocutory motions brought before Discipline panels of 1 or 3 members of the Committee selected by the Committee Chair pursuant to s. 4.2 of the *Act*.

2.1 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.

2.2 A person bringing a procedural or interlocutory motion shall provide to the other motion participants the Notice of Motion and materials in support of the motion by the Tuesday that is at least 10 days before the motion is to be heard.

2.3 The other motion participants shall provide their materials by the Tuesday that is at least 3 days before the motion is to be heard.

2.4 Where the parties consent, a Discipline panel before which a procedural or interlocutory motion is brought may hold a written hearing of the motion in accordance with s. 5.1 of the *Act*.

- 2.5 Where a written hearing of the motion is held, the Discipline panel shall fix the dates and times by which submissions and/or evidence shall be provided to the responding party and the Discipline panel by the moving party, and to the moving party and the Discipline panel by the responding party.
- 2.6 Where the parties consent, a Discipline panel before which a procedural or interlocutory motion is brought may hold an electronic hearing of the motion in accordance with s.5.2 of the Act.

### **Rule 3—Production From Third Parties**

- 3.0 A summons sought on behalf of a Member for the production of documents that are not in the College's possession shall not require the production of any documents before the commencement of the hearing.
- 3.1 A motion relating to the production of documents from third parties by summons as described in Rule 3.0 shall not be heard until the commencement of the hearing.
- 3.2 A Notice of Motion relating to the production of documents as described in Rule 3.0 shall be provided to the person possessing the documents and to any other person having a significant interest, including privacy interest, in the documents.

### **Rule 4—Withdrawal of Allegations**

- 4.0 Where a hearing has not commenced and the parties consent, a Discipline panel constituted by the Committee Chair under s. 4.2 of the *Act* may make an order authorizing the College to withdraw the allegations contained in a Notice of Hearing.

### **Rule 5—Electronic Hearings**

- 5.0 Pursuant to s. 5.2 of the *Act*, a Discipline panel may hold all or part of a hearing by telephone conference call, videoconference or any other form of electronic communication.
- 5.1 The factors to be considered in determining whether to hold all or part of a hearing as an electronic hearing shall include:
  - (a) in cases where one party objects, whether there is significant prejudice to the objecting party;
  - (b) in all cases, whether the panel's ability to hold a fair and adequate hearing will be prejudiced; and
  - (c) in all cases other than where the only purpose of the hearing is to deal with procedural matters, whether the reasons for requesting an electronic hearing outweigh the desirability that members who are the subject of discipline proceedings should attend discipline hearings in person.
- 5.2 For the purpose of this rule, a hearing includes a pre-hearing conference, a motion, a discipline hearing, the rendering of an oral reprimand, and a hearing for reinstatement.
- 5.3 A person requesting an electronic hearing shall give notice of an electronic hearing and the discipline committee shall provide an opportunity to the parties to make submissions on the issue.
- 5.4 The notice of an electronic hearing shall include:

- (a) a statement of the time and purpose of the hearing, and details about the manner in which the hearing will be held;
  - (b) a statement that the only purpose of the hearing is to deal with procedural matters, if that is the case;
  - (c) a statement that the party notified may, if the purpose of the hearing is to deal with matters other than procedure, by satisfying the tribunal that holding the hearing as an electronic is likely to cause the party significant prejudice, require the tribunal to hold the hearing as an oral hearing, and an indication of the procedure to be followed for the purpose; and
  - (d) a statement that if the party notified neither acts under clause (c), if applicable, nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding.
- 5.4 Subject to Rule 5.0, where the purpose of the hearing is to deal with procedural matters or a pre-hearing conference, the electronic hearing may proceed by way of telephone conference call, unless the panel orders otherwise.
- 5.6 Subject to Rule 5.0, where the purpose of the electronic hearing is to hear the viva voce evidence of a witness or to render an oral reprimand, the hearing shall proceed by way of videoconference, unless the parties consent or the panel orders otherwise.
- 5.7 If all or part of a hearing is conducted by electronic means, all of the parties are entitled to receive every document that the discipline panel receives. For the purpose of this rule, a document includes a sound recording, videotape, film, photograph, chart, graph, map and information recorded or stored by means of any device.
- 5.8 At least 48 hours before an electronic proceeding is scheduled to commence, every person participating in the proceeding shall give notice to the hearings administrator of the telephone number and location where he or she can be reached for the proceeding.
- 5.9 Every person participating in the proceeding shall ensure that he or she can be reached at the telephone number provided to the hearings administrator at least 5 minutes before the proceeding is scheduled to commence.
- 5.10 Unless otherwise provided in the rules every person participating in the electronic hearing shall deliver every document, in sequentially numbered pages, that he or she intends to rely upon at least 3 days before the hearing.
- 5.11 Where an exhibit is not a document and it is not reasonably practicable to produce a documentary likeness of that exhibit, such as a photograph, the party shall have a right of reasonable access to the exhibit prior to final submissions.
- 5.12 Where:
- (a) all or part of a hearing has proceeded as an electronic hearing at a Member's request, and
  - (b) the hearing results in a finding of professional misconduct or incompetence, the Discipline panel may, pursuant to s.53.1 of the *Code*, order that the Member pay all or part of the College's reasonable costs and expenses associated with holding the hearing as an electronic hearing.

## **Rule 6—Awards of Costs or Costs and Expenses Late Notification of Case Settlement**

- 6.0 In this rule, “late notification of case settlement” means notification to a Discipline panel’s hearings administrator that a hearing will be uncontested, where that notification is made within 10 days prior to the date scheduled for the commencement of the hearing.
- 6.1 A late notification of case settlement may result in costs or costs and expenses being awarded against a party who is responsible for the lateness in the notification pursuant to s. 53 or 53.1 of the *Code*.
- 6.2 In determining the amount of costs or costs and expenses to award against a party that is responsible for a late notification of case settlement, the Discipline panel shall take into account the following factors, among other relevant considerations:
- (a) any final date by which the opposite party stipulated that an offer of case settlement must be accepted;
  - (b) the extent to which the offer of case settlement referred to in paragraph (a), above, is substantially identical to the offer of case settlement ultimately accepted;
  - (c) whether the lateness of the notification could have been avoided;
  - (d) the number of days on which the hearing had been scheduled to proceed; and
  - (e) 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 notification of case settlement.

## **Rule 7—Awards of Costs or Costs and Expenses Late Request for Adjournment**

- 7.0 In this rule, “late request for adjournment” means an adjournment that is requested within 10 days prior to the date scheduled for the commencement of the hearing.
- 7.1 Upon completion of the case, a late request for adjournment may result in costs or costs and expenses being awarded against a party who is responsible for the late request for adjournment pursuant to s. 53 or 53.1 of the *Code*.
- 7.2 In determining the amount of costs or costs and expenses to award against a party that is responsible for a late request for adjournment, the Discipline panel 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 had been scheduled to proceed; and
  - (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.

## **Rule 8—Pre-Hearing Conferences**

- 8.0 In a matter that has been referred to the Discipline Committee, a pre-hearing conference shall be scheduled in accordance with the Discipline Committee Guidelines.

- 8.1 Pre-hearing conferences are convened for the purpose of:
  - (a) ensuring that the Member has received sufficient disclosure of evidence in the College's possession;
  - (b) the simplification or narrowing of issues;
  - (c) the possibility of obtaining admissions which may facilitate the hearing;
  - (d) identifying procedural and legal issues that may arise at the hearing; and
  - (e) any other matter that may assist in the just, most expeditious and least expensive disposition of the proceeding.
- 8.2 The parties, and their counsel if the parties are represented, shall attend before a member of the Discipline Committee designated as a pre-hearing conference Chair. Where the Member does not attend, but his or her counsel is present, the Member shall be available by telephone to provide instructions to his or her counsel.
- 8.3 The pre-hearing conference Chair may direct a Member to attend the pre-hearing conference in person. This direction does not affect the right of the Member to be represented by counsel.
- 8.4 The pre-hearing conference Chair may direct that Independent Legal Counsel attend a pre-hearing conference.
- 8.5 At least 10 days before the pre-hearing conference, each party shall prepare a pre-hearing conference memorandum in accordance with Form 1A.
- 8.6 Despite anything in these rules, a member is not required to disclose evidence that would prejudice the member's defence of the allegations and which also is not otherwise disclosable by law.
- 8.7. All communications at a pre-hearing conference and the pre-hearing conference Chair's notes and records shall be deemed to be without prejudice settlement discussions, except for any agreements reached by the parties
- 8.8 The pre-hearing conference Chair may schedule the date(s) upon which the hearing is to take place.

## **Rule 9—Reconsideration Of Decisions**

- 9.0 In this Rule,
  - (a) "Request for Reconsideration" means an application under sub-rule 9.1,
  - (b) "Independent Legal Counsel" means independent legal counsel to the Discipline panel, and
  - (c) "other participants in the hearing" refers to non-parties permitted to participate in a hearing under s.41.1 of the Health Professions Procedural Code, if any.
- 9.1 With the consent of the other party, a party may apply for reconsideration of a decision released by a Discipline panel if the decision contains a substantive defect that may reasonably have affected the outcome of the hearing.
- 9.2 A Request for Reconsideration must be

- (a) served on the other party, other participants in the hearing (if any), and Independent Legal Counsel, and
  - (b) submitted to the Discipline panel that released the decision under reconsideration within 21 days after that decision was issued by the Discipline panel
- 9.3 A Request for Reconsideration should set out, in consecutively numbered paragraphs, the facts and reasons upon which the party requesting reconsideration submits that the Discipline panel should reconsider its decision, and the relief sought.
- 9.4 A responding party may, within 5 days of receiving a Request for Reconsideration,
- (a) serve brief written submissions supporting or objecting to a Request for Reconsideration on the other party, other participants in the hearing (if any), and independent legal counsel, and
  - (b) file the submissions referred to in paragraph (a), above, with the Discipline panel.
- 9.5 The Discipline panel may release its decision on the reconsideration in writing, without an oral hearing.
- 9.6 A decision that has been reconsidered by a Discipline panel in accordance with this rule shall contain reference to the date of the reconsideration and the fact that an amendment or variance was made.

## **Rule 10—Duty Of Expert**

- 10.0 It is the duty of every expert engaged by or on behalf of a party to provide evidence in relation to a Discipline Committee 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.
- 10.1 The duty in subrule 10.0 prevails over any obligation owed by the expert to the party by whom or on whose behalf he or she is engaged.
- 10.2 Any expert who gives evidence at a hearing shall certify, either in writing or during oral evidence, that he or she acknowledges and understands the duty described in subrule 10.0.

## **Rule 11.0—Case Management Conferences**

- 11.0 In a matter that has been referred to the Discipline Committee, the Chair of the Discipline Committee may direct the parties to attend a case management conference in accordance with the Discipline Committee Guidelines.
- 11.1 When a case management conference is directed by the Chair of the Discipline Committee, the parties, and their counsel if the parties are represented, shall attend before a person designated as a presiding officer. Where the Member does not attend, but his or her counsel is present, the Member shall be available by telephone to provide instructions to his or her counsel.
- 11.2 The presiding officer may direct a Member to participate in the case management



conference. This direction does not affect the right of the Member to be represented by counsel.

11.3 The presiding officer may direct that Independent Legal Counsel attend a case management conference.

11.4 All communications at a case management conference and the presiding officer's notes and records shall be deemed to be without prejudice settlement discussions, except for any agreements reached by the parties, which will be reflected in a document entitled Report of Presiding Officer.



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