

Fitness to Practise Committee

Rules and Practice Direction

Revised September 2012

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Fitness to Practice Committee Rules and Practice Direction, Revised September 2012

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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 Fitness to Practise Committee of the College
- “Committee Chair” means the chair of the Committee
- “Fitness to Practise 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, and a fitness hearing.
- “Hearing” means the process before a Fitness to Practise Panel referred under s. 64 of the Code.
- “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 the allegation of incapacity against a Member
- “Oral Hearing” means a hearing in which the parties or their counsel attend before the tribunal in person.

RULE 2 – ELECTRONIC HEARINGS

- 2.0 Pursuant to s. 5.2 of the *Statutory Powers Procedure Act*, a Fitness to Practise Panel may hold all or part of a hearing by telephone conference call, videoconference or any other form of electronic communication, unless a party objects and satisfies the panel that holding an electronic rather than an oral hearing is likely to cause the party significant prejudice.
- 2.1 For the purpose of this rule, a hearing includes a pre-hearing conference, a motion, a fitness to practise hearing, a hearing to vary an existing order, and a hearing to seek re-instatement of a certificate of registration.
- 2.2 A person requesting an Electronic Hearing shall give Notice of an Electronic Hearing and the Fitness to Practise Panel shall provide an opportunity to the parties to make submissions on the issue.
- 2.3 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.
- 2.4 Subject to Rule 2.0, 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 Fitness to Practise Panel orders otherwise.
- 2.5 Subject to Rule 2.0, where the purpose of the Electronic Hearing is to hear the viva voce evidence of a witness, the hearing shall proceed by way of videoconference, unless the parties consent or the Fitness to Practise Panel orders otherwise.

- 2.6 If all or part of a hearing is conducted by electronic means, all of the parties are entitled to receive every document that the Fitness to Practise 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.
- 2.7. At least 48 hours before an Electronic Hearing 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.
- 2.8 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 10 minutes before the proceeding is scheduled to commence.
- 2.9 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.
- 2.10 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.

RULE 3 – DUTY OF EXPERT

3.0 It is the duty of every expert engaged by or on behalf of a party to provide evidence in relation to a Fitness to Practise 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 Fitness to Practise Panel may reasonably require to determine a matter in issue.

3.1 The duty in Subrule 3.0 prevails over any obligation owed by the expert to the party by whom or on whose behalf he or she is engaged.

PRACTICE DIRECTION

No. 1

Case Conferences

- 1.1 The Committee recognizes that the public interest is served by ensuring that the Committee's mandate to impartially hear and determine allegations of incapacity, allegations of breach of conditions, and applications for reinstatement, is carried out in a fair and prompt manner.

- 1.2 Once a matter is referred to the Committee, the Chair of the Committee will direct the hearings administration staff to contact the parties 12 weeks (84 days) but no sooner than six weeks from the date of referral or imposition of an interim order, whichever is later and schedule a case conference with the parties that is no later than 16 weeks (112 days) from the date of referral or imposition of an interim order, whichever is later. The case conference will be conducted by the Chair or another member of the Committee, as selected by the Chair (hereinafter referred to as the "Case Conference Officer").
 - a) If one or both of the parties is unable to schedule a case conference within the time set out above, the hearings administration staff should be advised immediately, at which time the parties will be asked to provide their available dates so that a case conference can be scheduled within 6 weeks (42 days) of the time frame set out above.
 - b) The case conference will be conducted via telephone, unless one or both of the parties requests an in-person case conference or if the Case Conference Officer directs otherwise. Where one party seeks an in-person case conference, the Case Conference Officer will decide how the case conference will proceed.

- 1.3 The hearings administration staff shall contact the parties, or if they are represented by legal counsel, their counsel, and attempt to schedule the case conference call on a date and time that is convenient for the parties and the Case Conference Officer. When possible, the parties shall advise the hearings administration staff how much time will be required for the case conference.

- a) Once a date for the case conference has been scheduled, any requests to adjourn the date shall be made in writing to the Chair of the Committee.
- 1.4 If a hearing date is not scheduled at the case conference, the Case Conference Officer shall direct the hearings administration staff to schedule a second case conference no later than 12 weeks (84 days) of the first case conference, unless the Case Conference Officer determines otherwise.
- 1.5 The Case Conference Officer may direct Independent Legal Counsel to attend on the case conference.
- 1.6 All communications at the case conference and the Case Conference Officer's notes and records shall be deemed to be without prejudice, except for any agreements reached by the parties, which will be reflected in a document entitled Report of the Case Conference Officer. The Report will be directed to the hearings administration staff, and where the Case Conference Officer is not the Chair of the Committee, the Report will be copied to the Chair.
- 1.7 If a hearing has not been commenced or the matter not been scheduled for a consent order review within 52 weeks (360 days) of the date of referral or imposition of an interim order, whichever is later, the Chair of the Fitness to Practise Committee will require the parties, or if represented by counsel, their counsel to participate in a further case conference, at which time the Case Conference Officer shall schedule a date for the hearing within 12 weeks (84 days) of the case conference.
- 1.8 The parties are encouraged to work towards a resolution of the matter. Where a resolution is reached, Counsel for the College is asked to advise hearings administration staff of the resolution as soon as practical so that any pending case conferences may be adjourned.
- 1.9 Where the member is self-represented, the Chair of the Committee in her/his discretion may dispense of the need for a case conference as described in paragraph 1.2 above.