# RULES OF PROCEDURE

## OF THE DISCIPLINE COMMITTEE

## OF THE COLLEGE OF CHIROPRACTORS OF ONTARIO

### Pursuant to the *Statutory Powers Procedure Act*

Approved by Council: November 30, 2012

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## GENERAL MATTERS

### RULE 1. Interpretation

1.1 In these rules, unless the context requires otherwise:

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

"**College**" means the College of Chiropractors of Ontario;

"**Discipline Committee**" means the Discipline Committee of the College;

"**Holiday**" has the same meaning as in s. 88 of the *Legislation Act, 2006*, as amended.;

"**Independent Legal Counsel**" means a lawyer retained pursuant to s. 44 of the Code to give advice to the Discipline Committee, a Panel and/or a Pre-Hearing Conference Chair with respect to a proceeding;

**"Notice of Hearing"** means a notice of hearing issued pursuant to s. 6 of the SPPA together with a referral pursuant to s. 36 of the Code, and includes any amendment pursuant to s. 40 of the Code;

"**Panel**" means a panel 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 before a Panel; or (b) a person otherwise entitled by law to be a party to a proceeding before a Panel;

"**Pre-Hearing Conference Chair**" has the meaning set out in sub-

rule 5.3; "**Registrar**" means the registrar of the College;

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

1.2 These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of all proceedings on their merits.

### RULE 2. Application

2.1 These rules apply to all proceedings resulting from referral of allegations to the Discipline Committee pursuant to s. 36 of the Code.

2.2 The Chair of the Discipline Committee, a Pre-Hearing Conference Chair and a Panel may exercise any of their powers under these rules on their own initiative or at the request of a party.

2.3 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.

2.4 In respect of any proceeding, the Chair of the Discipline Committee, a Pre-Hearing Conference Chair, or a Panel may, at any time, waive or vary the requirements of these rules and any procedural order made in the proceeding, and any procedure agreed by the parties, subject to any other order made by the Panel.

2.5 In respect of any proceeding, the Chair of the Discipline Committee, a Pre-Hearing Conference Chair, or a Panel may, at any time, issue procedural directions or orders with respect to the application of the rules, subject to any other order made by the Panel.

2.6 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.

**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 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 Pre-Hearing Conference Chair or a Panel may extend or abridge any time prescribed by these rules or in an order on such terms as are just, subject to any other order made by the Panel.

**SERVICE AND FILING OF DOCUMENTS**

**RULE 4. Written Communications and Service and Filing of Documents**

4.1 Documents and communications shall be in electronic format.

4.2 Every document that is served or filed shall include with it the following information:

(a) identification of the party on whose behalf it is delivered;

(b) the name, address, telephone number, and e-mail address of the party's representative or, if the party is unrepresented, of the party;

(c) the name of the proceeding to which the document relates; and

(d) identification of the person(s) or representative(s) being served.

4.3 Documents shall be combined into a text-searchable PDF that includes:

(a) an index;

(b) document tabs;

(c) electronic bookmarks; and

(d) page numbers.

4.4 Documents and communications shall be delivered to all participants and to the Independent Legal Counsel by:

(a) email;

(b) secure file transfer service;

(c) another method directed or permitted by the Panel; or

(d) another method agreed to by the recipient.

4.5 This rule does not apply to:

(a) summonses, which must be served personally on the person summoned in accordance with s. 12 of the SPPA; and

(b) the notice of hearing which may be served by any method that provides notice to the member in accordance with s. 6(1) of the SPPA.

4.6 Documents served after 4:00 p.m. shall be deemed to have been served on the next day that is not a Holiday.

4.7 All documents required to be served on a party under these rules shall also be served on Independent Legal Counsel, by any of the methods set out in sub-rule 4.3.

4.8 Where a document has been served in a manner other than one set out in sub-rule 4.3, 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.

4.9 Documents shall be filed with the Discipline Committee together with an Affidavit indicating who has been served with the documents and what documents have been so served.

4.10 Documents to be filed should be directed to the Registrar, and may be filed (a) by personal delivery, (b) by regular, certified or registered mail, (c) by facsimile, (d) by courier, or (e) where the Chair of the Discipline Committee or a Panel consents, by email.

4.11 Documents are deemed to be filed on the date they are received by the Registrar.

**PRE-HEARING CONFERENCES**

**RULE 5. Pre-Hearing Conference**

5.1 The Chair of the Discipline Committee may direct the parties to participate in one or more pre- hearing conferences.

5.2 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, including whether a party shall make disclosure earlier than required by sections 42 and 42.1 of the Code;

(b) identification and simplification of issues;

(c) identification of 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;

(e) the estimated duration of the 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 argument on objections or motions;

(f) identification of potential intervenors pursuant to s. 41.1 of the Code;

(g) identification of facts, documents or evidence that may be agreed upon;

(h) the possibility of settlement of any or all issues between the parties;

(i) scheduling dates for the hearing of the proceeding on its merits; and

(j) any other matter that may assist in the just and expeditious disposition of the proceeding.

5.3 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 "**Pre-Hearing Conference Chair**").

5.4 A Pre-Hearing Conference Chair shall not sit on the Panel that hears the proceeding, unless the parties consent.

5.5 A pre-hearing conference at which only procedural matters will be discussed may be held in person or electronically by videoconference or by teleconference.

5.6 A pre-hearing conference at which matters other than procedural matters will be discussed may be held:

(a) in person; or

(b) electronically by videoconference or by teleconference, unless a party satisfies the Pre-Hearing Conference Chair that the party will suffer significant prejudice as a result of the electronic format.

5.7 Notice of a pre-hearing conference shall be served on the parties at least fourteen days before the pre-hearing conference is scheduled to take place.

5.8 The notice of a pre-hearing conference shall include:

(a) the date, time, place (or, in the case of an electronic pre-hearing, the manner of participation) and purpose of the pre-hearing conference;

(b) any direction of the Pre-Hearing Conference Chair regarding whether the parties are required to exchange or file documents or a pre-hearing memorandum as prescribed in sub-rule 5.9 of these rules and, if so, the issues to be addressed and the day when they are required;

(c) any direction of the Pre-Hearing Conference Chair regarding whether the parties are required to attend in person, and

(i) if so, that they may be represented by a representative; or

(ii) if not, that their representative must be given authority to make agreements and undertakings on their behalf respecting the matters to be addressed at the prehearing conference;

(d) a statement that, if a party does not participate (in person or by a representative, as required) at the pre-hearing conference, the Pre-Hearing Conference Chair may proceed in the absence of that party; and

(e) a statement that the Pre-Hearing Conference Chair may make orders with respect to the conduct of the proceeding which will be binding on all parties.

5.9 Unless otherwise directed by the Pre-Hearing Conference Chair, the parties shall, at least ten days prior to the pre-hearing conference, serve on the other party a pre-hearing memorandum in writing outlining the following:

(a) a summary of the party's case, including factual contentions;

(b) a list of issues to be determined at the hearing;

(c) a list of motions to be brought at or prior to the hearing;

(d) any disclosure issues;

(e) the identity of experts and acknowledgement that expert reports have been served;

(f) any possibility of settlement;

(g) confirmation of readiness for the hearing;

(h) an estimate of the number of days needed for the party's case; and

(i) any other matters, as directed by the Pre-hearing Conference Chair.

5.10 The pre-hearing conference memorandum may attach key documents that will assist in the discussion of issues at the pre-hearing conference.

5.11 A pre-hearing conference shall be held in the absence of the public.

5.12 The Pre-Hearing Conference Chair may direct the parties to participate in a continuation of the pre-hearing conference at any stage of a proceeding:

(a) at the Pre-Hearing Conference Chair's own initiative; or

(b) at the request of any party who has given sufficient reasons for believing it may be useful and effective.

5.13 Parties shall request a further pre-hearing conference as soon as they are aware of anything that may affect the timely and efficient conduct of a scheduled motion or hearing.

5.14 The Pre-Hearing Conference Chair may meet with each party separately to encourage settlement.

5.15 All communications made for the purpose of settlement of the proceeding are made without prejudice and shall not be communicated to any member of the Panel that hears the proceeding, or otherwise disclosed, unless the parties consent.

5.16 On consent of the parties, or after giving the parties an opportunity to make submissions, a Pre-Hearing Conference Chair may make such orders, consistent with these rules, as considered 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, subject to any other order made by the Panel.

5.17 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 Pre-Hearing Conference Chair; and

(b) shall be recorded in a memorandum prepared by or under the direction of the Pre-Hearing Conference Chair; which shall be provided to the parties and to the Panel that hears the proceeding.

## DISCLOSURE

### RULE 6 Disclosure

6.1 At any stage in a proceeding, a Panel may order that a party make any disclosure required by law, within the time limits and on any conditions that the Panel may specify.

## NOTICE OF CONSTITUTIONAL QUESTIONS

### RULE 7. Notice of Constitutional Questions

7.1 A party that intends to raise a constitutional question shall comply with s. 109 of the *Courts of Justice Act*, as amended.

## ACKNOWLEDGMENT OF EXPERT'S DUTY

### RULE 8. Acknowledgement of Expert’s Duty

8.1 A party who intends to call an expert to give expert opinion evidence at a hearing shall file an “Acknowledgement Form – Expert’s Duty” signed by the expert, in the form appended to these rules, before the commencement of the hearing

## MOTIONS

### RULE 9. Procedure for Motions

9.1 A motion in a proceeding may be determined by way of,

(a) oral hearing;

(b) electronic hearing; or

(c) in writing without the attendance of the parties.

9.2 Where a party intends to bring a motion, either at or prior to the hearing, written notice shall be given to all other parties and filed with the Discipline Committee at least ten days before the motion is to be heard setting out the grounds of the motion, the evidence to be relied upon, the proposed hearing method and the relief sought.

9.3 The party bringing the motion shall serve and file the Notice of Motion, the documentary evidence relied upon and written submissions (if any) at least seven days before the motion is to be heard.

9.4 Any other party intending to rely upon documentary evidence or written submissions in response to the motion shall serve and file them at least three days before the motion is to be heard.

9.5 Written submissions delivered for a motion shall not exceed 10 pages, double spaced, without leave of the Pre-Hearing Conference Chair or the Panel.

### RULE 10. Motions to Decide Preliminary Issues

10.1 Where a party intends to bring a motion to decide an issue in a proceeding prior to a hearing on the merits, and proposes that the motion be heard orally or electronically, the party shall obtain an appointment for the return date of the motion from the appropriate employee of the College operating under the direction of the Chair of the Discipline Committee.

10.2 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.

10.3 A Panel may direct that a motion filed under this rule be heard and determined at the hearing on the merits of the proceeding

## ELECTRONIC HEARINGS

### RULE 11. Electronic Hearings

11.1 In the case of a hearing whose only purpose is to deal with procedural matters, the Chair of the Discipline Committee, the Pre-Hearing Conference Chair or a Panel, may direct that all or part of a hearing be heard electronically, subject to any other order made by the Panel.

11.2 In the case of a hearing to deal with matters other than procedural matters, the Chair of the Discipline Committee, the Pre-Hearing Conference Chair or a Panel, may, subject to any other order made by the Panel, direct that all or part of a hearing be heard electronically, on consent of the parties, or after giving the parties an opportunity to make submissions, unless the Chair or the Panel is satisfied that holding an electronic hearing is likely to cause significant prejudice to a party.

11.3 If a direction has been given that all or part of a hearing be held electronically and a notice of an electronic hearing has not previously been given, the College shall give notice of the electronic hearing in accordance with section 6 of the SPPA unless the parties waive the requirement.

11.4 Electronic proceedings may be conducted by telephone conference or videoconference.

11.5 At least 48 hours before an electronic proceeding is scheduled to commence, all persons participating in the proceeding shall give notice to the Registrar of telephone numbers and email addresses where they can be reached for the proceeding.

11.6 Unless otherwise provided in the rules, or by an order of a Panel or Pre-Hearing Conference Chair, all persons participating in the proceeding shall serve and file every document, in sequentially numbered pages, they intend to rely upon at least three days before the proceeding.

11.7 All persons participating in the electronic proceeding shall ensure that they can be reached at the telephone number or email address provided to the Registrar beginning at least five minutes before the proceeding is scheduled to commence.

11.8 In the case of an electronic hearing by videoconference:

(a) all participants at a site shall be in full view of the camera at all times;

(b) all locations connected to the videoconference shall be visible to one another at all times; and

(c) once the hearing commences, the camera shall not be turned off without leave of the Panel.

## WRITTEN HEARINGS

### RULE 12. Hearings in Writing

12.1 In the case of a hearing whose only purpose is to deal with procedural matters, the Chair of the Discipline Committee, the Pre-Hearing Conference Chair or a Panel, may direct that all or part of a hearing be heard in writing, subject to any other order made by the Panel.

12.2 In the case of a hearing to deal with matters other than procedural matters, the Chair of the Discipline Committee, the Pre-Hearing Conference Chair or a Panel, may, subject to any other order made by the Panel, 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 satisfied that there is a good reason not to do so.

12.3 If direction has been given that all or part of a 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.

12.4 A direction that all or part of a hearing be held in writing may specify:

(a) dates for service and filing of written materials;

(b) the categories of information that must be included written materials; and/or

(c) any other aspect of the procedure for exchanging and filing written materials.

## TIME LIMITS

### RULE 13. Time Limits

13.1 In an oral or electronic proceeding, time limits may be set in respect of all or part of the hearing, after giving the parties an opportunity to make submissions.

13.2 If time limits in respect of all or part of a hearing have been set, the Panel may make an order that 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.

## EVIDENCE AT HEARINGS

### RULE 14. Summons to Witness

14.1 A party may obtain a summons to witness pursuant to s. 12 of the SPPA by request to the Chair of the Discipline Committee or such other person as may be designated by the Discipline Committee Chair, copied to the other parties and independent legal counsel.

### RULE 15. Evidence by Agreement

15.1 A Panel may receive, orally or in writing, a statement of facts that are agreed upon by the parties as evidence of those facts.

15.2 A statement of agreed facts under sub-rule 15.1 may address some or all of the facts in issue in the proceeding.

### RULE 16. Transcript of Testimony or Evidence by Affidavit

16.1 A party may present, and a Panel may receive, the evidence of any witness in the form of a certified transcript of testimony or an affidavit sworn or affirmed by the witness.

16.2 Where a party presents the evidence of a witness in the form of a transcript or 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 transcript or affidavit may re-examine the witness.

16.3 Where a party intends to present the evidence of a witness in transcript or affidavit form, the party shall serve copies of the transcript or affidavit on all other parties at least 10 days before the commencement of the hearing, and file the transcript or original affidavit with the Discipline Committee.

16.4 Where an opposing party is served with a transcript an affidavit of a witness, the opposing party shall, at least three 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.

16.5 If no opposing party gives notice in accordance with sub-rule 16.4 that the opposing party intends to cross-examine a witness whose evidence is to be presented by transcript or affidavit, the witness's attendance at the hearing is not required, unless the Panel orders otherwise.

16.6 A Panel may make an order striking evidence that is presented in affidavit form and is inadmissible.

**RULE 17. Evidence by Witness Panel**

17.1 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.

17.2 An expert opinion witness panel shall be heard by the following procedure, unless the Panel directs a different procedure:

(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.

17.3 A panel of fact witnesses called by the same party shall be heard by the following procedure, unless the Panel directs a different procedure:

(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.

17.4 A Panel of any other type of witnesses shall be heard by the procedure directed by the Panel.

17.5 Rule 16 (Evidence by Transcript or Affidavit) applies to the evidence of witness panels, whit necessary modifications.

## COSTS

### RULE 18. Costs

18.1 This Rule applies to requests for costs made under s. 53 or 53.1 of the Code and requests for costs made under s. 17.1 of the SPPA.

18.2 Pursuant to section 17.1 of the SPPA, the Panel may order the payment of legal costs of a step in a proceeding if the conduct of a party has been unreasonable, frivolous or vexatious or a party has acted in bad faith.

18.3 A party that seeks costs shall, within 20 days of the release of the Panel's reasons for decision, or such other time as the Panel directs, serve and file:

(a) an outline of the costs claimed, including:

(i) the total amount claimed by the party for legal costs, inclusive of taxes, including;

(a) for each step in the proceeding, the hours spent by the party's representative(s), the rate sought for costs, and the rate actually charged by the party's representative(s);

(b) a list of disbursement expenses incurred by the party, and the amount incurred for each disbursement;

(c) the party's representative's signature, certifying that the hours claimed were spent, the rates shown are correct and that each disbursement was incurred as claimed;

(ii) where the College claims its costs and expenses incurred in investigating the matter and/or conducting the hearing under s. 53.1 of the Code, the total amount claimed under each of these headings, inclusive of taxes, including:

(a) where costs are claimed for time spent by staff of the College in investigating the matter or conducting the hearing, a breakdown of the hours spent and any other information necessary to understand the calculation of such costs;

(b) a list of disbursement expenses incurred by the College in investigating the matter or conducting the hearing, and the amount incurred for each disbursement;

(b) a written submission in support of the claim for costs, not to exceed 10 pages in length; and

(c) any other material ordered by a Panel.

18.4 Any party that is served with a request for costs may, within 20 days thereafter, or such other time as the Panel directs, serve and file responding submissions in writing, not to exceed 10 pages in length.

18.5 The issue of costs of a proceeding shall be heard in writing, unless the Panel is satisfied that there is a good reason to permit the parties to make oral submissions.

## CORRECTING, CLARIFYING AND REVIEWING DECISIONS/ORDERS

### RULE 19. Corrections and Clarifications to Orders and Decisions

19.1 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.

19.2 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.

19.3 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.

## REINSTATEMENT APPLICATIONS

### RULE 20. Initiating Reinstatement Applications

20.1 This rule applies, in addition to all other rules, to applications for reinstatement made under sections 72 and 73 of the Code.

20.2 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.

20.3 Unless the Chair of the Discipline Committee directs otherwise, the person making an application for reinstatement shall serve and file copies of the record and transcript of the original hearing and any previous applications for reinstatement, and copies of any document the person will introduce.

20.4 The application shall include:

(a) a certificate of good standing from every jurisdiction outside Ontario in which the person currently holds or held a license since suspension or revocation;

(b) the person's CPIC criminal record check; and

(c) every decision of a court or other tribunal made in proceedings in which the person was a party.

20.5 The Registrar shall assist the person making an application for reinstatement to comply with sub-rule 20.3 by providing reasonable access to the necessary documents maintained in the College's files including extra copies of transcripts (subject to section 48 of the Code) and documents that are already available.

20.6 The Discipline Committee shall not schedule a reinstatement application for a hearing until the person making an application complies with sub-rules 20.2 and 20.3.

# FORMS

## Acknowledgement Form – Expert's Duty

*(Title of Proceeding)*

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is ..... *(name)*. I live at ..... *(city)*, in the ..... *(province/state)* of ..... *(name of province/state)*.

2. I have been engaged by or on behalf of ..... *(name of party/parties)* to provide evidence in 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*