

Approved by Council: November 30, 2012

RULES OF PROCEDURE
OF THE DISCIPLINE COMMITTEE
OF THE COLLEGE OF CHIROPRACTORS 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:

“**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 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 Pre-Hearing Conference Chair with respect to a proceeding;

“**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 14.1;

“**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 before a Panel.

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 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 before it, a Panel may waive or vary the requirements of any rule at any time:

- (a) on the consent of the parties; or
- (b) where it is just and equitable, or in the public interest, to do so.

2.5 In respect of any proceeding before it, a Panel may issue procedural directions or orders with respect to the application of the rules.

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 Panel may extend or abridge any time prescribed by these rules or in an order of the a Panel on such terms as are 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, if the recipient has consented in advance to service by e-mail;
- (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.

4.3 Documents served by personal delivery or electronically after 5:00 p.m. shall be deemed to have been served on the next day that is not a Holiday.

4.4 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 4.1.

4.5 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.

RULE 5. Filing of Documents

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

5.2 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.

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

RULE 6. Information to Appear on Served or Filed Documents

- 6.1 A person who serves or files a document should include with it the following information:
- (a) the person's name, address, telephone number, facsimile number and e-mail address, as applicable; or
 - (b) 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
 - (c) the name of the proceeding to which the document relates; and
 - (d) the name of the person or representative being served.

MOTIONS

RULE 7. General Procedure for Motions

- 7.1 A motion in a proceeding may be determined by a Panel by way of,
- (a) oral hearing;
 - (b) electronic hearing; or
 - (c) in writing without the attendance of the parties.
- 7.2 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 three 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.
- 7.3 The party bringing the motion shall serve the documentary evidence relied upon, and shall file sufficient copies of the Notice of Motion along with the documentary evidence relied upon with the Discipline Committee two days before the motion is to be heard.
- 7.4 Any other party intending to rely upon documentary evidence shall serve it and file sufficient copies of it one day before the motion is to be heard.

RULE 8. Motions to Decide Preliminary Issues

- 8.1 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.

- 8.2 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.
- 8.3 A Panel may direct that a motion filed under this rule be heard and determined at the hearing on the merits of the proceeding.

NOTICE OF CONSTITUTIONAL QUESTIONS

RULE 9. Notice of Constitutional Questions

- 9.1 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 tribunal as soon as the circumstances requiring notice become known and, in any event, at least fifteen days before the question is to be argued.
- 9.2 Where the Attorneys General of Canada and Ontario are entitled to notice, each is entitled to adduce evidence and make submissions to the Discipline Committee regarding the constitutional question.

ACKNOWLEDGEMENT OF EXPERT'S DUTY

RULE 10. Acknowledgement of Expert's Duty

- 10.1 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.

DISCLOSURE

RULE 11. Disclosure Orders

- 11.1 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.

PRE-HEARING CONFERENCES

RULE 12. Initiating a Pre-Hearing Conference

12.1 The Chair of the Discipline Committee shall direct the parties to participate in a pre-hearing conference as soon as practical after a Notice of Hearing has been served.

RULE 13. Subject Matter of a Pre-Hearing Conference

13.1 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;
- (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, subject to sub-rule 21.2, argument on objections or motions;
- (f) identification of potential intervenors;
- (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; or
- (i) any other matter that may assist in the just and expeditious disposition of the proceeding.

RULE 14. Procedure for a Pre-Hearing Conference

14.1 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**”).

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

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

- 14.4 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 teleconference, unless a party satisfies the Pre-Hearing Conference Chair that the party will suffer significant prejudice as a result of the electronic format.
- 14.5 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.
- 14.6 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 14.7 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 counsel or agent; or
 - (ii) if not, that their counsel or agent must be given authority to make agreements and undertakings on their behalf respecting the matters to be addressed at the prehearing conference; and
 - (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;
 - (e) a statement that, if the person(s) designated to preside at the prehearing conference, he or she may make orders with respect to the conduct of the proceeding which will be binding on all parties.
- 14.7 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 outstanding motions to be brought at 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.

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

14.9 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 his or her own initiative; or
- (b) at the request of any party, setting out the reasons for believing it may be useful and effective.

RULE 15. Discussion of Settlement at a Pre-Hearing Conference

15.1 At the pre-hearing conference, the Pre-Hearing Conference Chair may meet with each party separately to encourage settlement.

15.2 Any discussion of settlement at a pre-hearing conference and all statements made by the parties regarding settlement are made without prejudice and shall not be communicated to any member of the Panel that hears the proceeding, unless the parties consent.

RULE 16. Orders at a Pre-Hearing Conference

16.1 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 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.

16.2 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 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.

ELECTRONIC HEARINGS

RULE 17. Initiating an Electronic Hearing

- 17.1 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 electronically.
- 17.2 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 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.
- 17.3 Where the Chair of the Discipline Committee or a Panel orders that all or part of 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.

RULE 18. Procedure on Electronic Hearings

- 18.1 Electronic proceedings may be conducted by telephone conference or videoconference.
- 18.2 At least 48 hours before an electronic proceeding is scheduled to commence, every person participating in the proceeding shall give notice to the Registrar of the telephone number or videoconference co-ordinates, as the case may be, where he or she can be reached for the proceeding.
- 18.3 Unless otherwise provided in the rules, or by an order of a Panel, every person participating in the proceeding shall serve and file every document, in sequentially numbered pages, he or she intends to rely upon at least 3 days before the proceeding.
- 18.4 Every person participating in the proceeding shall ensure that he or she can be reached at the telephone number or videoconference co-ordinates, as the case may be, provided to the Registrar beginning at least five minutes before the proceeding is scheduled to commence.
- 18.5 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 video-conference shall be visible to one another at all times; and
 - (c) once the hearing commences, the camera shall not be moved.

WRITTEN HEARINGS

RULE 19. Initiating a Written Hearing

- 19.1 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.
- 19.2 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.
- 19.3 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 20. Procedure on Written Hearings

- 20.1 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 written materials; and/or
 - (c) any other aspect of the procedure for exchanging and filing written materials.

TIME LIMITS

RULE 21. Time Limits

- 21.1 A Panel may set time limits in an oral or electronic proceeding before it, in respect of all or part of a hearing, after giving the parties an opportunity to make submissions in that regard.
- 21.2 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.

EVIDENCE AT HEARINGS

RULE 22. Evidence by Agreement

- 22.1 A Panel may receive, orally or in writing, a statement of facts that are agreed upon by the parties as evidence of those facts.
- 22.2 A statement of agreed facts under sub-rule 22.1 may address some or all of the facts in issue in the proceeding.

RULE 23. Evidence by Affidavit

- 23.1 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 sworn or affirmed by the witness.
- 23.2 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.
- 23.3 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 10 days before the commencement of the hearing, and file the original affidavit with the Discipline Committee.
- 23.4 Where an opposing party is served with an affidavit of a witness, the opposing party shall, at least 3 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.
- 23.5 If no opposing party gives notice in accordance with sub-rule 23.4 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.
- 23.6 A Panel may make an order striking evidence that is presented in affidavit form and is inadmissible.

RULE 24. Evidence by Witness Panel

- 24.1 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

- 24.2 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

24.3 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

24.4 Where a Panel agrees to receive evidence from any other type of witness panel, the Panel may give direction as to the applicable procedure.

24.5 Rule RULE 23 (Evidence by Affidavit) applies to the evidence of witness panels, with necessary modifications.

COSTS

RULE 25. Material to be Filed Regarding Costs

25.1 Where a party seeks costs of a proceeding under s. 53 or s. 53.1 of the Code, the party 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 lawyer(s), the rate sought for costs, and the rate actually charged by the party's lawyer;
 - (B) a list of disbursement expenses incurred by the party, and the amount incurred for each disbursement;
 - (C) the party's lawyer'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.

25.2 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.

RULE 26. Costs to be Heard in Writing

26.1 The issue of costs of a proceeding shall be heard in writing, unless the Panel is satisfied that there is a good reason for not doing so.

CORRECTING, CLARIFYING AND REVIEWING DECISIONS/ORDERS

RULE 27. Corrections and Clarifications

- 27.1 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.
- 27.2 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.
- 27.3 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 28. Initiating Reinstatement Applications

- 28.1 The following rules apply, in addition to all other rules, to applications for reinstatement made under sections 72 and 73 of the Code.
- 28.2 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.
- 28.3 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.
- 28.4 The Registrar shall assist the person making an application for reinstatement to comply with sub-rule 28.3 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.
- 28.5 The Discipline Committee shall not schedule a reinstatement application for a hearing until the person making an application complies with sub-rules 28.2 and 28.3.
- 28.6 When a reinstatement application has been scheduled, the College 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.

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