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2024

RULES OF PROCEDURE

of the Discipline Committee

Effective March 28, 2024

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RULE 1 - INTERPRETATION AND APPLICATION

1.01 Definitions

In these rules, unless the context requires otherwise,

“Chair” means the Chair of the Discipline Committee or their designate;

“Code” means the *Health Professions Procedural Code* which is Schedule 2 to the *Regulated Health Professions Act, 1991*, SO 1991, c 18;

“College” means the College of Respiratory Therapists of Ontario;

“deliver” means to serve on every other party or, in the case of a motion, motion participant, and to file a copy with the College together with proof of service, and **“delivery”** and **“delivering”** have corresponding meanings;

“Discipline Committee” means the Discipline Committee of the College, and includes a panel of the Discipline Committee;

“electronic” or **“electronic proceeding”** means a proceeding held by telephone conference call, videoconference, or some other form of electronic technology allowing persons to communicate with one another;

“hearing” means the process before a Discipline panel constituted under section 38 of the *Code* which commences with the filing of a Notice of Hearing;

“hearings officer” means the designated person at the College responsible for administration of Discipline Committee hearings;

“holiday” has the same meaning as in the *Rules of Civil Procedure*, RRO 1990, Regulation 194, as amended;

“Independent Legal Counsel” means the lawyer or lawyers who are retained by the College to provide advice to the Discipline Committee in accordance with section 44 of the *Code*;

“Member” means a Respiratory Therapist who holds a certificate of registration with the College;

“motion participant” is a party and any other person who would be affected by the order sought;

“order” means any decision made by the Discipline Committee or the Chair and includes a direction given by the Discipline Committee or the Chair;

“panel” means a panel of members of the Discipline Committee selected by the Chair to hold a hearing, pursuant to section 4.2 of the *Act*, or section 38 or subsection 73(2) of the *Code*;

“party” means a party under section 41 of the *Code*;

“presiding officer,” in respect of a pre-hearing conference, means the person designated by the Chair to preside over the pre-hearing conference;

“proceeding” means any step in the discipline hearing process and includes a motion, a pre-hearing conference and the hearing itself;

“service” means notice as required under section 39 of the *Regulated Health Professions Act, 1991*, SO 1991, c 18;

“SPPA” means the *Statutory Powers Procedure Act*, RSO 1990, c S.22;

“vulnerable witness” means a witness who, in the opinion of the Discipline Committee, will have difficulty testifying or will have difficulty testifying in the presence of a party for appropriate reasons related to age, handicap, illness, trauma, emotional state or similar cause of vulnerability.

1.02 Interpretation of Rules

- (1) These rules shall be liberally construed to secure the just and, where the Member’s right to a fair hearing would not be compromised, the most expeditious determination of the allegations against the Member.
- (2) Where matters are not provided for in these rules, the practice shall be determined by analogy to them.
- (3) In these rules, the singular includes the plural, the plural includes the singular, and reference to either gender or “they”/“their” includes any gender.

1.03 Application of Rules

- (1) These rules apply to all proceedings before the Discipline Committee including, with all necessary modifications, applications for reinstatement made under sections 72 and 73 of the *Code*.
- (2) A panel may exercise any of its powers under these rules on its own initiative or at the request of a party.
- (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.
- (4) In respect of any proceeding before it, a panel may waive or vary the requirements of any of these rules at any time in accordance with rule 3.
- (5) In respect of any proceeding before it, a panel may issue procedural directions or orders with respect to the application of the rules.
- (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.

1.04 Computation, Extension or Abridgment of Time

- (1) In the computation of time under these rules or under an order, except where the contrary intention appears,
 - (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, even where the words “at least” are used;

- (b) where a period of less than seven (7) days is required, holidays shall not be counted; and
 - (c) where the time for doing an act under these rules expires on a holiday, the act may be done on the next day that is not a holiday.
- (2) Where a time of day is mentioned in these rules, in an order or in any document in a proceeding, the time referred to shall be taken as Eastern Standard Time or Eastern Daylight Time, as applicable.
 - (3) The Discipline Committee may extend or abridge any time required by these rules or an order on such terms or conditions as the Discipline Committee considers just either before or after the expiration of the time.

RULE 2 - ACCOMMODATION AND LANGUAGE

2.01 Right to Accommodation

Participants in proceedings before the Discipline Committee are entitled to accommodation of *Human Rights Code* protected needs. The hearings officer must be notified of a need for accommodation as soon as possible.

2.02 Language of Communications

Written communications with the College and the Discipline Committee may be in French or English.

2.03 Use of Interpreter

- (1) A party or witness appearing before the Discipline Committee may use an interpreter. Interpretation services will be provided by the College on request to the hearings officer.
- (2) A party intending to call a witness whose testimony will require interpretation must notify the hearings officer as soon as possible and, in any event, no later than seven days before the day on which the witness will testify.

2.04 Language of Proceedings

- (1) A proceeding shall be conducted in English, French or both English and French.
- (2) The Member is entitled to choose the language of the proceeding and may communicate their request to the College in writing through the hearings officer.
- (3) In accordance with s. 86(4) of the Code, a person's right under this sub-rule is subject to limits that are reasonable in the circumstances.
- (4) A Member who wishes to change the language of the proceeding from the language in which it started shall make the request in writing to the hearings officer within 60 days of the date of service of the notice of hearing.

- (5) Documents provided in a language other than English or French shall be accompanied by a translation of the document into the language of the proceeding. The translation must be prepared by a qualified translator who certifies that the translation is a true and accurate to the best of the translator's skill and ability. The party or person providing the document is responsible for the cost of its translation.

RULE 3 - DOCUMENTS

3.01 Notice to be in Writing

Where these rules require notice to be given, it shall be given in writing, which shall include fax or email transmission, unless otherwise provided in the rules.

3.02 Service of Documents

- (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 email address of the party or the representative of the party;
 - (e) by courier to the last known address of the party or the representative of the party; or
 - (f) by any other means authorized by a panel.
- (2) Subject to sub-rule (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;

unless the intended recipient of the document establishes that they, acting in good faith and through circumstances beyond their control, did not receive the document in a timely way.

- (3) Documents served by personal delivery or electronically after 4:00 p.m. shall be deemed to have been served on the next day that is not a holiday.
- (4) Where a document has been served in a manner other than one set out in sub-rule (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.
- (5) A panel may make an order dispensing with service of a document on a person, other than a document whose purpose is to provide notice of a hearing, where the panel is satisfied that all reasonable efforts have been made to serve the document on the person, and that it is necessary in the interest of justice to dispense with service.

3.03 Filing of Documents

- (1) Documents to be filed with the Discipline Committee in advance of a hearing shall be filed in accordance with sub-rule (2), together with an affidavit indicating who has been served with the documents and what documents have been so served.
- (2) Documents to be filed should be directed to the Discipline Committee c/o the College, and may be filed (a) by personal delivery, (b) by regular, certified or registered mail, (c) by courier, or (d) by email.
- (3) Documents are deemed to be filed on the date they are received at the offices of the College.
- (4) A party filing a document other than by email shall file a sufficient number of copies of the document for:
 - (a) in the case of a hearing, all members of the relevant panel, Independent Legal Counsel, and the court reporter, or, if this is number is not known, seven (7) copies; and
 - (b) in the case of a pre-hearing conference, the presiding officer and Independent Legal Counsel.

3.04 Information to Appear on Served or Filed Documents

A person who serves or files a document should include with it the following information:

- (a) the person's name, address, telephone number, and email address, as applicable or, if the person is represented by a representative, the name, address, telephone number, and email address of the representative, as applicable;
- (b) the name of the proceeding to which the document relates; and
- (c) the name of the person or representative being served.

RULE 4 - WAIVER OF A RULE

4.01 Methods of Waiving a Rule

- (1) Compliance with any provision of these rules may be waived on the consent of the parties and, where relevant, motion participants, or upon an order of the Discipline Committee where it considers a waiver to be in the interests of justice.
- (2) A party or motion participant requesting that a provision of these rules be waived who does not have the consent of the parties and, where relevant, motion participants, shall bring a motion to the Discipline Committee requesting the waiver.
- (3) A motion under this rule may be made after a failure to comply with these rules has occurred.
- (4) The Discipline Committee may refuse to grant a motion for a waiver from a provision of these rules where a party or motion participant does not act on a timely basis.
- (5) The Discipline Committee may waive a provision of these rules on its own initiative if it first gives notice to the parties or motion participants and provides an opportunity for submissions to be made.

RULE 5 - SUBMISSIONS TO THE CHAIR

5.01 Procedure for Making Submissions to the Chair

- (1) Where these rules provide that the Chair can direct or order anything, a party or, in the case of a motion, a motion participant, may make submissions in writing to the Chair regarding the requested or proposed direction or order.
- (2) A party or motion participant may make submissions to the Chair by addressing a letter to the Chair and delivering a copy of the letter to the Chair or to Independent Legal Counsel, c/o the College. Any such submissions shall be copied to all other parties or motion participants.
- (3) The other parties or motion participants may respond to the submissions described in sub-rule (2) by addressing a letter to the Chair and delivering a copy of the letter to the Chair or to Independent Legal Counsel, c/o the College. Any such submissions shall be copied to all other parties or motion participants.

- (4) Where submissions have been delivered under sub-rule (2), the Chair shall not give a direction or make an order unless at least three (3) days have passed since the first submission was delivered, or unless it is urgent that the Chair do so or the parties agree otherwise.
- (5) Where the Chair has given a direction or made an order before receiving submissions under this rule, the Chair may reconsider the direction or order and may confirm, vary, suspend or cancel the direction or order.
- (6) Where appropriate the Chair may direct that a matter that has been the subject of written submissions under this rule be dealt with in another manner.

RULE 6 - MOTIONS

6.01 Initiating Motions

- (1) A motion shall be made by a notice of motion in accordance with Form 5A unless the nature of the motion or the circumstances make a notice of motion impractical.
- (2) A motion for disclosure or a motion that may result in an adjournment of the hearing shall be brought 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.
- (3) A person bringing a motion shall deliver the notice of motion and materials in support of the motion in accordance with sub-rule 6.04(2), at least ten (10) days before the motion is to be heard.
- (4) The other motion participants shall deliver their materials in accordance with sub-rule 6.04(3), at least five (5) days before the motion is to be heard.
- (5) The materials delivered in accordance with sub-rules (3) and (4) shall be delivered to the panel and may be reviewed by the panel prior to the motion hearing, unless the parties, on consent, specify otherwise.
- (6) Where it appears to the Chair that the number and nature of the motions brought in a proceeding are not leading to the most just and expeditious disposition of the matter, the Chair may direct that no further motions be brought before the commencement of the hearing unless prior permission is obtained (from the Chair) in accordance with the procedure in rule 5.
- (7) Notwithstanding the above, a person may seek to bring an urgent motion before the commencement of the hearing, if the request is made in writing as set out in rule 5 and on notice to all motion participants.

6.02 Scheduling a Motion

- (1) A person bringing a motion to be heard, other than at a scheduled pre-hearing conference or at a hearing, shall obtain available dates and times for the hearing of the motion by contacting the College and shall attempt to obtain agreement from the other motion participants as to a date and time for the hearing of the motion.
- (2) A person bringing a motion shall inform the College of the estimated length of time it will take to argue the motion when first seeking available dates and times.
- (3) If after reasonable efforts, in the absence of an agreement for the date and time, the Chair may fix a date for the hearing of the motion.

6.03 Evidence on Motions

- (1) Evidence on a motion shall be given by affidavit unless the Discipline Committee directs that it be given in some other form or unless otherwise provided by law.
- (2) All affidavits used on a motion shall,
 - (a) be confined to the statement of facts within the personal knowledge of the deponent, except that the affidavit may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit; and
 - (b) be signed by the deponent and sworn or affirmed before a person authorized to administer oaths or affirmations, which person shall also mark all exhibits as such to the affidavit.
- (3) A motion participant may not cross-examine the deponent of an affidavit filed by another motion participant unless the Discipline Committee directs otherwise.
- (4) The Discipline Committee shall not direct that the deponent of an affidavit be cross-examined unless the interests of the case require otherwise.

6.04 Materials on Motions

- (1) The person bringing a motion shall deliver the notice of motion and other materials in support of the motion in the form of a motion record.
- (2) The motion record shall contain the notice of motion, all affidavits to be relied upon and any other material to be relied upon.
- (3) If another motion participant intends to rely upon materials, the motion participant shall deliver those materials in the form of a responding motion record.
- (4) A motion record and responding motion record shall have consecutively numbered pages and a table of contents describing each document, including

each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter.

- (5) A motion participant may deliver separately from the motion record or responding motion record a book of authorities and written submissions.
- (6) The book of authorities and written submissions shall be delivered at least three (3) days before the motion is to be heard.

6.05 Assigning a Motion Panel

- (1) The Chair shall, in accordance with section 4.2 of the *SPPA*, assign a panel of one or more members of the Discipline Committee to hear each motion.
- (2) The quorum of a panel of the Discipline Committee to hear a motion is one (1).
- (3) The Chair may direct that a larger or differently constituted panel hear a motion if he Chair received submissions in accordance with rule 5.
- (4) A motion participant who believes that the motion ought to be heard by members of the Discipline Committee who will not sit on the hearing panel shall request a direction from the Chair on the matter in the notice of motion or a notice of cross-motion.

6.06 Hearing Motions Electronically or Writing

Motions may be heard electronically or in writing at the direction of the Chair or of the panel of the Discipline Committee who will hear the motion.

6.07 Written Order

- (1) After a motion has been determined, counsel for the College shall prepare a draft of the formal order and deliver it to the College, after counsel has obtained the approval of the other motion participants as to its form and content or made reasonable efforts to do so.
- (2) The order of the Discipline Committee disposing of a motion shall be in Form 6B.
- (3) An order delivered in accordance with sub-rule (1) may be reviewed, amended if necessary, and signed by the Chair or the chair of the panel that heard the motion.
- (4) This rule does not apply to orders made on the record during the hearing.

6.08 Renewing or Re-arguing a Motion

- (1) A motion participant shall not renew or re-argue a matter that has been previously determined on a motion, unless permission has been obtained from the Chair in accordance with rule 5.

- (2) Despite sub-rule (1), where circumstances make it impractical for a motion participant to have obtained permission from the Chair, permission to renew or re-argue a matter previously determined may be obtained from the Discipline Committee during the hearing by means of written submissions.
- (3) Despite sub-rule (1), a motion participant may renew or re-argue a motion if that is provided for in the order in question.

6.09 Time Limits on Oral Submissions

No motion participant shall take more than one (1) hour, including a reply, to make oral submissions on a motion heard orally or electronically, except with permission of the Chair of the Discipline Committee or the panel.

RULE 7 - PRE-HEARING CONFERENCES

7.01 Initiating Pre-hearing Conferences

- (1) The Discipline Committee may direct the parties to participate in a pre-hearing conference.
- (2) The Chair shall designate a person to act as the presiding officer.
- (3) A presiding officer shall not sit on a panel that hears preliminary motions or the merits of the proceeding except with the consent of the parties.
- (4) The presiding officer shall, after consultation with the College, and the parties, schedule a date for the pre-hearing conference to be held and shall notify the parties of the date.
- (5) A pre-hearing conference will be held electronically by videoconference or teleconference, unless the Chair of the Discipline Committee or the presiding officer directs otherwise.

7.02 Pre-hearing Conference Memorandum

- (1) Where a pre-hearing conference is directed, the parties shall complete a pre-hearing conference memorandum in accordance with Form 7A.
- (2) The College shall deliver its pre-hearing conference memorandum twenty (20) days before the date of the conference and the Member shall deliver their pre-hearing conference memorandum ten (10) days before the date of the conference.

7.03 Procedure at Pre-hearing Conference

- (1) At the pre-hearing conference, the presiding officer shall discuss the following with the parties:
 - (a) whether any or all of the issues can be settled;
 - (b) whether the issues can be simplified;

- (c) whether there are any agreed facts; and
 - (d) the advisability of attempting other forms of resolution of the matter.
- (2) After the discussion referred to in sub-rule (1), the presiding officer shall discuss with the parties and then may give directions or, if the presiding officer is a member of the Discipline Committee, make orders about the following:
- (a) the scheduling of any motions that can be heard before the hearing;
 - (b) the content and timing of any additional disclosure, and may, to protect the privacy of any person, impose terms or conditions upon the extent and method of disclosure and the use of the information disclosed;
 - (c) the delivery and form of any documents to be used at the hearing and whether the documents can appropriately be reviewed by the Discipline Committee before the commencement of the hearing;
 - (d) the delivery of written arguments and books of authorities and whether these can appropriately be reviewed by the Discipline Committee before the commencement of the hearing;
 - (e) the scheduling of the hearing;
 - (f) the scheduling of any motions to be heard before the commencement of the hearing;
 - (g) the disclosure of a list of witnesses and other hearing participants to the Discipline Committee for the purposes of reviewing potential conflicts or an appearance of bias;
 - (h) when the witnesses to be called at the hearing must be available to testify;
 - (i) the use and scheduling of panels of expert witnesses; and
 - (j) any other matter that may assist in the just and most expeditious disposition of the proceeding.
- (3) The presiding officer or Independent Legal Counsel, on the instruction of the Chair, shall prepare a report after the pre-hearing conference that lists every agreement reached, every direction given or order made and every undertaking given by the parties and shall send a copy of the report to the parties.
- (4) If a party disagrees with a direction given at a pre-hearing conference by a presiding officer who is not a member of the Discipline Committee, the party shall, within three (3) days after the conference, deliver written notice of the proposed change(s) to the Chair and make submissions in accordance with rule 5. The Chair may direct a further pre-hearing conference be held before the same or another presiding officer.
- (5) If a party becomes aware of additional circumstances that would materially affect the conduct of the hearing, before the commencement of the hearing, the

party may request the presiding officer to schedule a supplementary pre-hearing conference.

- (6) The provisions of rule 7 apply to further or supplementary pre-hearing conferences with necessary modifications.

7.04 Motions at the Pre-hearing Conference

Where the presiding officer is a member of the Discipline Committee, a party may bring a motion to be heard at the pre-hearing conference in accordance with rule 6.

RULE 8 - DISCLOSURE AND PRODUCTION

8.01 Disclosure

- (1) "Document" may include a sound recording, videotape, file, photograph, chart, graph, plan, survey, book of account, or information recorded or stored by means of any device.
- (2) The parties shall make such disclosure as is required by law and may make such additional disclosure as will assist to make the pre-hearing conference and the hearing effective and fair. Nothing in this rule 8 shall limit the disclosure obligations otherwise imposed on the parties by law.

8.02 Documentary Disclosure

- (1) Each party to a proceeding shall deliver to every other party (a) a list of, and (b) if not previously produced, copies of, all documents and things that the party intends to produce or tender as evidence at the hearing on the merits, in the case of the College, as soon as is reasonably practicable after the Notice of hearing is served, and in the case of any other party, as soon as is reasonably practicable after disclosure by the College under this rule, but in any case at least ten (10) days before the commencement of the hearing on the merits.
- (2) A party who does not disclose a document or thing in compliance with sub-rule (1) may not refer to the document or thing or introduce it in evidence at the hearing on the merits without leave of the panel, which may be on any conditions that the panel considers just.

8.03 Fact Witness Disclosure

- (1) A party to a proceeding shall serve every other party a list of the witnesses the party intends to call to testify on the party's behalf at the hearing on the merits, in the case of the College, as soon as is reasonably practicable after the Notice of hearing is served, and in the case of any other party, at least ten (10) days before the commencement of the hearing on the merits.
- (2) If material matters to which a witness is to testify have not otherwise been disclosed, a party to a proceeding shall provide to every other party a summary of the evidence that the witness is expected to give at the hearing on the merits,

in the case of the College, as soon as reasonably practicable after the Notice of hearing is served, and in the case of any other party, as soon as is reasonably practicable after disclosure by the College under this rule, but in any case at least ten (10) days before the commencement of the hearing on the merits.

- (3) A witness summary shall contain:
 - (a) the witness's name;
 - (b) the substance of the evidence of the witness; and
 - (c) reference to any documents to which that the witness will refer.
- (4) A party who does not include a witness in the witness list or provide a summary of the evidence a witness is expected to give in accordance with these rules may not call that person as a witness without leave of the panel, which may be on any conditions as the panel considers just.
- (5) A witness may not testify to material matters that were not previously disclosed without leave of the panel, which may be on any conditions that the panel considers just.

8.04 Expert Opinion Disclosure

- (1) A party who intends to call an expert to give expert opinion evidence at a hearing shall:
 - (a) inform the other parties of the intent to call the expert;
 - (b) identify the expert and the issue(s) on which the expert's opinion will be tendered;
 - (c) serve the other parties with a copy of the expert's written report or, if there is no written report, an affidavit, or a witness summary in accordance with sub-rule 8.03; and
 - (d) file an "Acknowledgement of Expert's Duty" signed by the expert, in Form 8A.
- (2) The College shall serve any expert report or affidavit upon which the College intends to rely at the hearing at least sixty (60) days before the start of the hearing, unless it intends to tender an expert at the hearing to give evidence in reply to the Member's expert only.
- (3) The Member shall serve any expert report upon which the Member intends to rely at least thirty (30) days before the start of the hearing.
- (4) The College shall serve any reply expert report at least fifteen (15) days before the start of the hearing.

- (5) Where an expert report is filed, it shall at a minimum include the following information:
 - (a) qualifications of the expert;
 - (b) the instructions provided to the expert;
 - (c) the nature of the opinion being sought;
 - (d) the factual assumptions upon which the opinion is based; and
 - (e) a list of documents reviewed by the expert.
- (6) A party who fails to comply with sub-rule (1) may not call the expert as a witness or file the expert's report or affidavit without leave of the panel, which may be on any conditions that the panel considers just.

8.05 Disclosure Orders

At any stage in a proceeding, a panel may order that a party:

- (a) provide to another party and to the panel any particulars that the panel considers necessary for a full and satisfactory understanding of the subject of the proceeding; and/or
- (b) make any other disclosure required by these rules, within the time limits and on any conditions that the panel may specify.

8.06 Production of Documents from Non-Parties

- (1) A summons for the production of documents that are not in the possession of a party shall not require the production of any documents before the commencement of the hearing.
- (2) Notice of a motion relating to the production of documents shall be served on the person possessing the documents and on any other person with a significant interest, including a privacy interest, in the documents.

RULE 9 - ELECTRONIC HEARINGS AND PROCEEDINGS

9.01 Initiating an Electronic Hearing

- (1) The Discipline Committee may hold all or part of a hearing electronically, unless a party objects and satisfies the panel that holding an electronic rather than an in-person, oral hearing is likely to cause the party significant prejudice.
- (2) Before ordering an electronic hearing, the Discipline Committee shall provide notice and an opportunity to the parties to make submissions on the issue.

- (3) Where the Discipline Committee orders an electronic hearing and a notice of an electronic hearing has not previously been given, the hearings officer shall give notice of the electronic hearing in accordance with section 6 of the *SPPA* unless the parties waive the requirement.

9.02 Procedure on Electronic Proceedings

- (1) This rule applies to any proceeding held electronically including motions, pre-hearing conferences and hearings.
- (2) At least 48 hours before an electronic proceeding is scheduled to commence, every person participating in the proceeding shall give notice to the College of their email address and the telephone number where they can be reached for the proceeding.
- (3) Every person participating in the proceeding shall ensure that they can be reached at the telephone number and/or email address provided in accordance with sub-rule (2), beginning at least five minutes before the proceeding is scheduled to commence.

RULE 10 - WRITTEN HEARINGS AND PROCEEDINGS

10.01 Initiating a Written Hearing

- (1) In the case of a hearing the sole purpose of which 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.
- (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.
- (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.

10.02 Procedure on Written Hearings

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 in the written materials; and/or

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

RULE 11 - TAKING EVIDENCE BEFORE THE HEARING

11.01 Initiating the Taking of Evidence Before the Hearing

- (1) A party who intends to introduce the evidence of a person at the hearing and who has made all required disclosure in respect of the evidence of that witness may, with the consent of the parties or by order of the Discipline Committee, examine the witness on oath or affirmation before the hearing for the purpose of having the witness' testimony available to be tendered as evidence at the hearing.
- (2) The Discipline Committee may make an order under sub-rule (1) if it is satisfied that the order would not cause significant prejudice to a party and would not prevent the Discipline Committee from fully and fairly understanding the evidence.
- (3) The party who intends to introduce the evidence of the witness shall ensure that the examination is recorded, at the party's cost, by a certified court reporter or a person with similar qualifications acceptable to the Discipline Committee and shall deliver a copy of the transcript of the evidence at least three days before the hearing is scheduled to commence.
- (4) The party who intends to introduce the evidence of the witness shall also ensure that the examination is videotaped, at the party's cost, unless the parties consent or the Discipline Committee orders otherwise and shall file a copy of the videotape at least three days before the hearing is scheduled to commence.
- (5) The examination shall take place at the time, date and location consented to or ordered by the Discipline Committee.
- (6) The Discipline Committee may impose terms or conditions in the order for an examination including that the party intending to call the witness pay for the reasonable travel expenses of the lawyers for the other parties and the Member (where the Member is not the party intending to call the witness).

11.02 Procedure at the Examination

- (1) A witness examined under sub-rule 11.01(1) may, after being sworn or affirmed by a person authorized to do so, be examined, cross-examined and re-examined in the same manner as a witness at a hearing.
- (2) Where a question is objected to, the objector shall state briefly the reason for the objection, and the question and the brief statement shall be recorded.

- (3) The party objecting to a question may, after the objection, permit the question to be answered subject to a ruling being obtained from the Discipline Committee before the evidence is used at a hearing.
- (4) A ruling on the propriety of a question that is objected to and not answered may be obtained on motion to the Discipline Committee.
- (5) Where the question is not answered under sub-rule (3) and the objection is found not to be valid, the person who objected shall ensure that the witness is produced at the expense of the person who objected for another examination before the hearing or at the hearing to answer the question.
- (6) Any document used during the examination that is intended to be filed as an exhibit at the hearing shall be marked at the examination by the person introducing it so it can be identified later and the person introducing it shall deliver a copy of it.

11.03 Use of Examination at the Hearing

- (1) At the hearing, any party may use the transcript and videotape of an examination made under this rule as the evidence of the witness unless the Discipline Committee orders otherwise.
- (2) A witness who has been examined under this rule shall not be called to give evidence at the hearing except on the order of or at the request of the Discipline Committee.
- (3) Where a witness is ordered or requested to give evidence at the hearing under sub-rule (2), the party who tendered the evidence under sub-rule (1) shall arrange for the witness to attend at the party's expense.
- (4) The transcript and any videotape need not be read or played during the hearing with the parties present unless a party or the Discipline Committee requires the reading of a transcript or the playing of a videotape.
- (5) Where the reading of a transcript or the playing of a videotape is required under sub-rule (4), the party who initiated the examination under sub-rule 11.01(1) shall conduct the reading or playing during the presentation of that party's case unless the Discipline Committee orders otherwise.

RULE 12 - NON-PARTY PARTICIPATION

12.01 Motions by Non-Parties

- (1) A person who is not a party who wishes to participate in the hearing shall bring a motion in accordance with these rules and the Chair shall assign the panel that will be conducting the hearing to hear the motion.
- (2) The notice of motion shall set out the extent of participation the person proposes to have in the hearing and shall be accompanied by the evidence upon

which the person intends to rely in support of the motion and written submissions in support of the motion.

- (3) If the Discipline Committee allows the person to participate in the hearing, the person shall comply with the rules as much as is practical unless to do so would be inconsistent with the Discipline Committee's determination of the extent of the person's participation in the hearing.
- (4) If the Discipline Committee allows the person to participate in the hearing, the other parties shall apply the rules to the person as much as is practical unless to do so would be inconsistent with the Discipline Committee's determination of the extent of the person's participation in the hearing.

12.02 Notice of Constitutional Questions

- (1) Where a party intends to raise a question about 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 subsection 24(1) of the *Canadian Charter of Rights and Freedoms*, notice of a constitutional question shall be delivered and shall also be served on the Attorneys General of Canada and Ontario as soon as the circumstances requiring notice become known and, in any event, at least fifteen (15) days before the question is to be argued.
- (2) Where the Attorneys General of Canada and Ontario are entitled to notice, either or both of them are entitled to adduce evidence and to make submissions to the Discipline Committee regarding the constitutional question.

RULE 13 - ADJOURNMENTS

- (1) A hearing may be adjourned by the Discipline Committee in accordance with this rule.
- (2) In accordance with section 21 of the *SPPA*, in deciding whether to grant an adjournment, the Discipline Committee may consider one or more of the following factors:
 - (a) the sufficiency of the reasons advanced for the request to adjourn;
 - (b) the timeliness of the request;
 - (c) the resources of the Discipline Committee;
 - (d) any prejudice to the parties;
 - (e) whether any adjournments have been granted previously;
 - (f) the consent of the parties; and
 - (g) any other relevant factor.

- (3) The Discipline Committee may grant adjournments on such terms and conditions as it considers just.
- (4) Any party seeking an adjournment shall attempt to obtain the consent of the other party before bringing a motion to adjourn before the Discipline Committee.
- (5) If consent is obtained pursuant to sub-rule (4), the party seeking the adjournment shall contact the College and provide notice in writing of the request for an adjournment, the reasons for the request, and the consent of the other party.
- (6) Where the parties consent to an adjournment and are able to agree to the new date(s) to be scheduled for the hearing, they shall file a completed request specifying the reason for the adjournment and at least three (3) proposed dates when they would be available for the hearing. The Chair will consider the request and, if the Chair is in agreement, the parties will be notified and it will not be necessary for the parties to attend before the Discipline Committee to reschedule the hearing.
- (7) Where consent is not obtained, or the Chair does not agree to the adjournment of the hearing, the party seeking the adjournment shall bring a motion before the Discipline Committee in accordance with rule 6.

RULE 14 - PROCEDURE DURING THE HEARING

14.01 Withdrawal of Allegations

Where the parties consent, a panel of the Discipline Committee may make an order authorizing the College to withdraw one or more allegations contained in a Notice of Hearing.

14.02 Electronic Devices and Publication of Proceedings

- (1) No person shall,
 - (a) take or attempt to take a photograph, motion picture, audio or video recording or other record capable of producing visual or aural representations by any means,
 - (i) of any person at a proceeding,
 - (ii) of any person entering or leaving a proceeding,
 - (iii) of any person in the building in which a proceeding of a Discipline Committee is held, where there is reasonable ground for believing that the person is there for the purpose of attending the proceeding; or

- (b) publish, broadcast, reproduce or otherwise disseminate a photograph, motion picture, audio or video recording or record taken in contravention of clause (a).
- (2) Sub-rule (1) does not apply to,
 - (a) a person unobtrusively making handwritten notes or sketches at a proceeding;
 - (b) a lawyer, representative or motion participant unobtrusively making an audio recording at a hearing that is used only as a substitute for handwritten notes for the purposes of the proceeding;
 - (c) a person taking a photograph, motion picture, audio or video recording or other record with the authorization of the Discipline Committee or presiding officer, as appropriate, for any purpose of the proceeding; or
 - (d) a person taking a photograph, motion picture, audio or video recording or other record with the authorization of the Discipline Committee and the consent of the parties and of the witnesses to be recorded, for such educational or instructional purposes as the panel approves.

14.03 Oral and Written Argument

- (1) The Discipline Committee may place reasonable limits on the length of oral submissions.
- (2) The Discipline Committee may order the parties to submit written arguments on some or all of the issues at the hearing and may give directions as to the form, timing and page or word limits of such written arguments.

14.04 Access to Hearing Record by the Public

If a member of the public wishes to have access to all or part of the record of the Discipline Committee other than the Notice of Hearing or the transcript of the evidence, they shall bring a motion before the Discipline Committee upon notice to the parties.

14.05 Vulnerable Witnesses

- (1) The Discipline Committee may order that a support person be permitted to be present and to sit near a vulnerable witness while testifying and may issue directions regarding the conduct of the support person during the testimony of the witness.
- (2) The Discipline Committee may order that a vulnerable witness testify outside the hearing room or behind a screen or other device that would allow the vulnerable witness not to see the Member if the Discipline Committee is of the opinion that the exclusion is necessary to obtain a full and candid account of the matter.
- (3) The Discipline Committee shall not make an order under sub-rule (2) unless arrangements are made for the Member, the Discipline Committee and counsel for the parties to watch the testimony of the vulnerable witness by means of

closed-circuit television or otherwise and the Member is permitted to communicate with counsel while watching the testimony.

- (4) The Discipline Committee may order that a Member not personally conduct the cross-examination of a vulnerable witness if the Discipline Committee is of the opinion that the order is necessary to obtain the vulnerable witness' testimony.
- (5) Where the Discipline Committee makes an order under sub-rule (4), it may appoint counsel for the purpose of conducting the cross-examination.

RULE 15 - EVIDENCE AT THE HEARING

15.01 Evidence by Agreement

- (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.
- (2) A statement of agreed facts under sub-rule (1) may address some or all of the facts in issue in the proceeding.

15.02 Evidence by Affidavit

- (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.
- (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 ten (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.
- (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 ten (10) days before the commencement of the hearing.
- (4) Where an opposing party is served with an affidavit of a witness, the opposing party shall, at least five (5) days prior to the start of the hearing, notify the party who served the affidavit as to whether the adverse party intends to cross-examine the witness at the hearing.
- (5) If no opposing party gives notice in accordance with (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.

- (6) A panel may make an order striking evidence that is presented in affidavit form and is inadmissible.

RULE 16 - COSTS

16.01 Costs for Non-Compliance with Rules

Where the Discipline Committee is entitled to order the payment of costs or expenses by a party, the Discipline Committee may consider the failure of a party to comply with these rules in determining the amount of costs or expenses to be paid.

16.02 Hearing as to Costs

The issue of costs of a Proceeding shall be heard at the same time and in the same manner in which the issue of penalty is heard, unless the panel is satisfied that there is a good reason for not doing so.

RULE 17 - GIVING NOTICE OF FINAL DECISION

- (1) In addition to the methods described in section 18 of the *SPPA*, the Discipline Committee may send each party a copy of its final decision or order, including the reasons if any have been given, by any of the methods set out in sub-rule 3.02(1).
- (2) If a copy is sent by courier, it shall be sent to the most recent address known to the Discipline Committee and shall be deemed to be received by the party on the day the copy is signed for by a person at that address.

RULE 18 - REINSTATEMENT APPLICATIONS

18.01 Initiating Reinstatement Applications

- (1) In this rule, “applicant” means a person making application for reinstatement under sections 72 and 73 of the *Code*.
- (2) This rule applies to applications for reinstatement made under sections 72 and 73 of the *Code*.
- (3) The applicant shall deliver to the College a notice of the application specifying the order sought, the grounds of the application, the documentary and oral evidence that the applicant will introduce, the proposed method of hearing, and the anticipated length of the hearing.
- (4) Unless the Discipline Committee directs otherwise, the applicant shall deliver to the College five 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 applicant will introduce.

- (5) The College shall not schedule a reinstatement application for a hearing until the applicant complies with sub-rules (3) and (4).
- (6) When a reinstatement application has been scheduled, the Discipline Committee shall arrange for the service of a Notice of Hearing on the parties.

RULE 19 - RECONSIDERATION OF DECISIONS

- (1) In this rule,
 - (a) “request for reconsideration” means an application under sub-rule (2),
 - (b) “other participants in the hearing” refers to non-parties permitted to participate in a hearing under section 41.1 of the *Code*, if any.
- (2) A party may apply for reconsideration of a decision released by the Discipline Committee if the decision contains a substantive error or omission that may have affected the outcome of the hearing.
- (3) A request for reconsideration must be,
 - (a) made within twenty-one (21) days of the reasons for the decision having been released;
 - (b) served on the other party, other participants in the hearing (if any), and Independent Legal Counsel, and
 - (c) filed with the College, who will provide the request for reconsideration to the panel of the Discipline Committee that released the decision under reconsideration.
- (4) A request for reconsideration should set out the facts and reasons upon which the party requesting reconsideration submits that the panel of the Discipline Committee should reconsider its decision, and the relief sought.
- (5) A responding party may, within five (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 College.
- (6) The Discipline Committee may release its decision on the reconsideration in writing, without conducting or reconvening an oral or electronic hearing.

- (7) A decision that has been reconsidered by a panel of the Discipline Committee and amended or varied in accordance with this rule, shall contain reference to the date of the reconsideration and the fact that an amendment or variance was made.

**FORM 6A
NOTICE OF MOTION**

File No.

[General Heading]

NOTICE OF MOTION

THE [IDENTIFY MOVING PARTY] WILL make a motion to the Discipline Committee of the College of Respiratory Therapists of Ontario on [day], [date], at [time], or as soon after that time as the motion can be heard, at 180 Dundas Street West, Suite 2103, Toronto, Ontario. If you do not participate in the hearing in accordance with this notice, the Discipline Committee may proceed without you and you will not be entitled to any further notice in the proceeding.

THE MOTION IS FOR [state here the precise relief sought].

THE GROUNDS FOR THE MOTION ARE [specify the grounds to be argued, including a reference to any statutory provision or rule to be relied on].

THE FOLLOWING DOCUMENTARY EVIDENCE WILL be used at the hearing of the motion: [list the affidavits or other documentary evidence to be relied on].

[Date]

[Name, address, telephone and facsimile number of moving motion participant's lawyer or moving motion participant]

TO: [Name, address, telephone and facsimile number of responding motion participant's lawyer or responding motion participant]

**FORM 7A
PRE-HEARING CONFERENCE MEMORANDUM**

File No.

[General Heading]

**PRE-HEARING CONFERENCE MEMORANDUM
OF THE COLLEGE
[OR OF THE MEMBER, AS THE CASE MAY BE]**

Date of Pre-Hearing Conference:

College Counsel:

Member's Counsel (if any):

BACKGROUND INFORMATION

1. Please attach a copy of the Notice of Hearing to this memorandum.
2. Set out a brief statement of the theory of the College's case as you understand it, including factual contentions.
3. Set out a brief statement of the theory of the Member's case as you understand it, including factual contentions.
4. Provide a description of the legal issues to be determined at the hearing.
5. For every witness you may call at the hearing, set out or attach a statement of the substance of the evidence of the witness.
6. Attach a copy of any document that would assist the pre-hearing conference to be more effective.

SETTLEMENT AND AGREEMENTS

7. What are the prospects for settlement?
8. Have counsel discussed the matter and sought instructions?
9. Would this be a suitable case to attempt informal resolution?
10. Set out, in numbered paragraphs, the facts you believe should be agreed to.
11. Set out a numbered list of documents you believe should be admitted as hearing exhibits on agreement.

ADDITIONAL STEPS BEFORE THE HEARING

12. On the subject of motions:
 - Will you be bringing any motions before or during the hearing?
 - If so, what order will you seek and on what grounds?
 - When do you intend to bring each motion?
13. On the subject of disclosure:
 - Are there any outstanding issues with respect to disclosure?
 - Has the College made full disclosure to the Member?
 - Have you produced all expert reports upon which you intend to rely?
 - If you have not yet made all required disclosure, why not and by what date will it be done?
14. On the subject of a documents brief:
 - Which party will prepare and deliver a brief containing the notice of hearing, the documents admitted by agreement, and the presiding officer's report?
 - By what date will the brief be delivered?
 - Should the Discipline Committee be able to review the brief before the hearing?
15. On the subject of written arguments:
 - Are there any issues that should be the subject of written argument? If so, identify them.
 - When should the written arguments be delivered by?
 - Should the Discipline Committee be able to review the written arguments before the hearing?
16. On the subject of a book of authorities:
 - Will you be referring to any authorities other than the *Regulated Health Professions Act*, the *Health Professions Procedural Code* and the regulations defining professional misconduct? If so, list them.
 - Should copies of those authorities be made available to the Discipline Committee and Independent Legal Counsel in the form of a book of authorities?
 - If so, who should prepare the book of authorities and when should it be delivered?
 - Should the Discipline Committee and Independent Legal Counsel be able to review the authorities brief before the hearing?

PLANNING THE HEARING

17. On the subject of scheduling the hearing:

- Are you ready for the hearing?
- Are there any issues regarding the availability of witnesses or otherwise that may affect the ability to set a date for the hearing?
- How much time is needed for the hearing, including motions, opening statements, tendering evidence, and submissions?
- Other than the motions listed above, testimony from the witnesses listed below, and the normal submissions, is there anything else that will have to be dealt with during the hearing?
- Estimate the length of time it will take to dispose of any motions you will bring during the hearing including adequate time for deliberation by the Discipline Committee:
- In numbered paragraphs, list the witnesses you anticipate calling, in the order that you intend to call them, and estimated length of time it will take to hear their entire evidence, including cross-examination and questions from the Discipline Committee:

Witness Name

Estimated Time

1.

- How long will you require for your opening statement and closing submissions on the issue of findings?

18. List the witnesses you intend to have available to testify for each day of your case:

Day

Witnesses Available Beginning That Day

1.

19. Do you believe the Discipline Committee would be assisted by hearing expert evidence on any particular issue through a panel of experts?

[Date]

[Signature of counsel who will be attending the hearing]

**FORM 8A
ACKNOWLEDGMENT OF EXPERT'S DUTY**

File No.

[General Heading]

ACKNOWLEDGEMENT OF EXPERT'S DUTY

1. My name is (*name*). I live in (*city*), in the ("*Province*" or "*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