



College of  
**Midwives**  
of Ontario

Ordre des  
**sages-femmes**  
de l'Ontario

# Discipline Rules of Procedure

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## Rule 1: Interpretation

### 1.01 Definitions

1.01(1) In these Rules, unless the context requires otherwise,

“**chair**” means the chair of the full Discipline Committee or their designate;

“**Code**” means the Health Professions Procedural Code, being Schedule 2 to the Regulated Health Professions Act, 1991;

“**College**” means the College of Midwives of Ontario;

“**counsel**” means a person legally authorized to represent a party or other participant at a discipline hearing;

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

“**direction**” is a type of order that is procedural in nature and is often made informally by the chair of the Discipline Committee under Rule 6.01;

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

“**document**” includes handwritten files, printed files, electronic media, sound recordings, video tapes, photographs, charts, graphs, plans, maps, surveys, book of accounts and information recorded or stored by means of any device;

“**electronic**”, with respect to a proceeding, means a proceeding held by video conference, telephone conference, or some other form of electronic technology, which allows persons to speak to and hear one another, and “electronically” has a corresponding meaning;

“**hearing panel**” means a panel of the Discipline Committee presiding over a proceeding;

“**discipline staff**” means the employee or employees of the College who are specifically assigned the duty of providing administrative assistance to the Discipline Committee;

“**holiday**” means:

- (a) any Saturday or Sunday,
- (b) New Year’s Day,
- (c) Family Day

- (d) Good Friday,
- (e) Victoria Day,
- (f) Canada Day,
- (g) Civic Holiday,
- (h) Labour Day,
- (i) Thanksgiving Day,
- (j) Christmas Day,
- (k) Boxing Day,
- (l) any special holiday proclaimed by the Governor General or the Lieutenant Governor, and
- (m) any other day designated by the College as a holiday, and
- (n) where New Year's Day, Canada Day, Christmas Day or Boxing Day falls on a Saturday or Sunday, the day designated by the College as that holiday;

“**independent legal counsel**” means a person legally authorized to represent a participant in a discipline hearing appointed by the Discipline Committee to provide advice in accordance with section 44 of the Code;

“**member**” means a member of the College who is the subject of a proceeding before the Discipline Committee, and includes former members;

“**motion**” is a request made to the Discipline Committee to make an order in a particular proceeding;

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

“**order**” means any decision made by the Discipline Committee, the chair or a pre-hearing chair and includes a procedural direction given by the Discipline Committee, the chair or a pre-hearing chair;

“**panel chair**” means the person chairing the hearing or the motion;

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

“**pre-hearing chair**” means the person designated by the chair to preside over the pre-hearing conference;

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

“**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

- 1.02(1) These Rules shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding before the Discipline Committee.
- 1.02(2) Where matters are not provided for in these Rules they shall be determined by analogy to them, and in a manner consistent with them and consistent with the Regulated Health Professions Act, 1991 and the Statutory Powers Procedure Act.
- 1.02(3) Where a party or participant in the proceeding is not represented by counsel, anything these Rules permit or require counsel to do shall be done by the party.

1.03 Computation, Extension or Abridgment of Time

- 1.03(1) In the computation of time under these Rules or an order of the Discipline Committee, 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 prescribed, holidays shall not be counted;
  - (c) where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday; and
  - (d) service of a document made after 4:00 p.m. or at any time on a holiday shall be deemed to have been made on the next day that is not a holiday.
- 1.03(2) The Discipline Committee may extend or abridge any time prescribed by these Rules or by an order on such terms or conditions as the Discipline Committee considers just, either before or after the expiration of the prescribed time.

Rule 2: Application and Waiver of Rules

2.01 Application of Rules

- 2.01(1) These Rules apply to all proceedings before the Discipline Committee of the College including, with all necessary modifications, to applications for reinstatement under sections 72 and 73 of the Code.

2.02 Initiation of Rules

- 2.02(1) The Discipline Committee may exercise any of its powers under these Rules at the

request of a party, a motion participant, or on its own initiative.

2.03 Compliance and Waiver

- 2.03(1) 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 invalid.
- 2.03(2) Where the parties or motion participants consent to waiving compliance with a provision of these Rules, they may seek approval of the waiver from the Discipline Committee by filing a request, in writing, with the discipline staff.
- 2.03(3) A party or motion participant who does not have the consent of the other party or motion participants to waive compliance with a provision of these Rules shall seek a direction from the chair or shall bring a motion to the Discipline Committee under Rule 5 requesting the waiver.
- 2.03(4) A motion requesting that compliance with a provision of these Rules be waived can be made before or after a failure to comply with these Rules has occurred.
- 2.03(5) The Discipline Committee may refuse to approve a request or grant an order waiving compliance with a provision of these Rules where a party or motion participant does not act on a timely basis or on any other ground.
- 2.03(6) The Discipline Committee may waive compliance with 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.
- 2.03(7) The Discipline Committee may issue general or specific practice directions at any time.
- 2.03(8) Despite anything in these Rules, the Discipline Committee may make any order that is necessary to control its process. In making such an order the Discipline Committee shall consider the public interest, the interests of participants and the member's right to make full answer and defence.

### Rule 3: Form, Delivery, and Filing of Documents

3.01 Form of Documents

- 3.01(1) The first and last page of every document prepared for proceedings before the Discipline Committee shall, to the extent practical, be coloured as follows:
  - (a) buff if prepared by counsel for the College;
  - (b) blue if prepared by the member or counsel for the member; and

- (c) green if prepared by any other person.

3.02 Delivery of Documents

3.02(1) Subject to clause 1.03(1)(d), delivery of documents is deemed to be effective when delivered:

- (a) by personal service on the date of service;
- (b) by regular, registered, or certified mail on the fifth day after the day of mailing to the last known address of the person;
- (c) by email on the same day as the transmission to the last known email address of the person, where the email is not returned as undeliverable to the sender and where the last known email address of the person is an email address:
  - (i) registered with the College, where the person is a member; or
  - (ii) used by the person to send an email within the preceding four (4) months; and
  - (iii) every recipient has a duty to confirm receipt of all email messages in proceedings covered by these Rules.
- (d) by courier, including Priority Post, to the last known address of the person, on the second day after the document was given to the courier by the person sending the document; or
- (e) as directed by the Discipline Committee.

3.03 Filing Documents with the Discipline Committee

3.03(1) All documents to be filed in a proceeding shall be filed with the discipline staff, together with a statement of delivery, in accordance with Form 1, confirming that copies of the document(s) have been served, as required, on the other party or motion participants, except where they are filed in the course of an appearance in the proceeding.

3.03(2) Documents may be filed with the discipline staff prominently marked "Attention: discipline staff" by:

- (a) leaving the documents with a person at the reception desk at the College's physical office;

- (b) mailing or sending the documents by courier to the discipline staff at the current mailing address for the College; or
  - (c) sending one (1) copy of the document by email to the current email address of the discipline staff and requesting and receiving a reply acknowledging receipt of the email.
- 3.03(3) The party filing a document shall file seven (7) copies of the document (five (4) copies for the panel, one (1) copy for the record of proceedings, one (1) copy for Independent Legal Counsel and one (1) copy for the court reporter), unless it is sent by facsimile or email, in which case the party shall ensure that eight (7) copies of the document are conveyed to the discipline staff within twenty-four (24) hours of the time of filing.
- 3.03(4) A document shall not be considered filed until it is actually received by the discipline staff.
- 3.03(5) A person can confirm whether a document has been filed by telephoning or sending an email to the discipline staff.

#### Rule 4: Pre-Hearing Conferences

##### 4.01 Mandatory Pre-hearing Conferences

- 4.01(1) The parties shall attend a pre-hearing conference, unless the chair directs otherwise, and shall be prepared to discuss all of the topics set out in the pre-hearing conference memorandum, including scheduling hearing dates.

##### 4.02 Without Prejudice Basis

- 4.02(1) A pre-hearing conference shall not be open to the public and, except for any orders, directions, agreements and undertakings made at a pre-hearing conference, it shall proceed on a without prejudice, confidential basis unless the parties consent otherwise.

##### 4.03 Scheduling

- 4.03(1) The pre-hearing conference shall be scheduled by the discipline staff. Where there is difficulty in scheduling the pre-hearing conference, the pre-hearing chair may issue a direction scheduling it.

##### 4.04 Pre-Hearing Chair

- 4.04(1) The chair shall designate a member of the Discipline Committee or any other person to serve as the pre-hearing chair at the pre-hearing conference.

- 4.04(2) The pre-hearing chair may give directions or, if the pre-hearing chair is a member of the Discipline Committee, make any order(s) that they considers necessary or advisable with respect to the conduct of the proceeding.
- 4.04(3) The pre-hearing chair and any member of the Discipline Committee who observes a pre-hearing conference shall not form part of the panel that hears the matter, unless the parties consent.
- 4.05 Electronic Pre-hearing Conferences
- 4.05(1) Pre-hearing conferences shall be held in electronically unless the chair or the pre-hearing chair directs that the pre-hearing conference shall be held in-person.
- 4.06 Pre-hearing Conference Memorandum
- 4.06(1) At least ten (10) days before the pre-hearing conference, each party shall deliver a completed pre-hearing conference memorandum, in accordance with Form 2A.
- 4.07 Procedures at Pre-hearing Conference
- 4.07(1) At the pre-hearing conference, the presiding officer shall first 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.
- 4.07(2) After the discussion referred to in subrule (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;
  - (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 that cannot be heard before the commencement of the hearing;
  - (g) when the witnesses to be called at the hearing must be available to testify;
  - (h) the use and scheduling of panels of expert witnesses; and
  - (i) any other matter that may assist in the just and most expeditious disposition of the proceeding.

4.08 Report of the Pre-Hearing Chair

- 4.08(1) Any orders, directions, agreements and undertakings made at a pre-hearing conference shall be recorded in a report prepared by or under the direction of the pre-hearing chair, in accordance with Form 2B, and a copy of the report shall be distributed to the parties.
- 4.08(2) If a party disagrees with the accuracy of the pre-hearing chair's report, the party shall, within seven (7) days after receiving the report, deliver written notice of the specific area of disagreement.
- 4.08(3) The party receiving written notice described in subrule 4.07(2) shall, within five (5) days, deliver any responding comments after which time the pre-hearing chair may revise or confirm the report.

4.09 Additional Pre-Hearing Conferences

- 4.09(1) At any time the chair, the pre-hearing chair or a hearing panel may require the parties to participate in an additional pre-hearing conference.

Rule 5: Motions – Generally

5.01 Initiating Motions

- 5.01(1) A person may initiate a motion by delivering a motion record, which shall include the notice of motion, in accordance with Form 3A, all affidavits and any materials to be relied upon, unless the nature of the motion or the circumstances make the motion record impractical.
- 5.01(2) All procedural or interlocutory (i.e., outside of the actual hearing) issues shall be raised in a motion as soon as possible and shall be heard at least ten (10) days 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.
- 5.01(3) 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 the prior permission of the chair is obtained in accordance with the procedure in Rule 6.

5.03 Delivery (Including Filing) of Motion Materials

- 5.03(1) The person initiating a motion, other than a motion in writing, shall deliver the motion record, at least fifteen (15) days before the date the motion is to be heard.
- 5.03(2) The responding motion participants, other than a motion in writing, shall deliver

their materials in the form of a responding motion record at least nine (9) days before the date the motion is to be heard.

5.03(3) Other than a motion in writing, where a motion participant intends to rely on a factum, written submissions or a book of authorities, those documents shall be delivered, in the case of the person initiating the motion, at least seven (7) days before, and in the case of a responding motion participant, at least three (3) days before, the date the motion is to be heard.

5.03(4) Where a motion is heard in writing, the person initiating the motion shall deliver their motion record together with any factum, written submissions or book of authorities upon which they intend to rely at least fourteen (14) days before the first date the person wishes the motion to be heard. Any responding motion participant shall deliver their responding motion record together with any factum, written submissions or book of authorities upon which they intend to rely within seven (7) days of receiving the motion record of the person initiating the motion.

5.03(5) All documents delivered on a motion shall have consecutively numbered pages and a table of contents describing each document including, for a motion record, each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter.

5.04 Assigning a Motion Panel and Scheduling Motion Dates

5.04(1) The chair, in accordance with subsection 4.2 of the Statutory Powers Procedure Act, shall assign one or more members of the Discipline Committee to hear each motion

5.04(2) A motion participant who believes that the hearing should not be heard by members of the Discipline Committee who sat on the motion panel shall request a direction from the motion panel on the matter in the notice of motion or by a notice of cross-motion.

5.04(3) Other than a motion in writing and where a motion date was not obtained in advance, the discipline staff shall contact the participants to schedule a date for the motion after the person initiating the motion has delivered their motion record. Where there is difficulty in scheduling the motion, the chair may issue a direction to schedule it.

5.05 Evidence on Motions

5.05(1) Evidence on a motion shall be given by affidavit unless the Discipline Committee orders that it be given in some other form or unless otherwise provided by law.

5.05(2) All affidavits used on a motion shall:

- (a) be confined to the statement of facts within the personal knowledge of the witness, except that the affidavit may contain statements of the witness'

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 witness and affirmed before a person authorized to administer affirmations, which person shall also mark all exhibits as such to the affidavit.

5.05(3) A motion participant shall not cross-examine the witness who provided an affidavit filed by another motion participant unless the motion participant consents or the Discipline Committee directs otherwise.

5.05(4) The Discipline Committee shall not direct that the witness who provided an affidavit be cross-examined unless the interests of the case require otherwise.

5.05(5) Subrules 5.05(3) and (4) do not prevent a witness who provided an affidavit from being cross-examined on an affidavit during the hearing itself.

5.06 Draft Orders

5.06(1) Immediately after a motion has been determined, the person initiating the motion shall, and any other motion participant, may:

- (a) prepare a draft order, in accordance with Form 3B; and
- (b) seek written approval from the other motion participants as to its form and content; and deliver the draft order together with any written approval(s) to the discipline staff.

5.06(2) A draft order delivered in accordance with subrule 5.06(1) shall be treated as a submission and may be reviewed, amended if necessary, and signed by a person hearing the motion.

5.06(3) This Rule does not apply to orders made on the record during the hearing.

5.07 Time Limits on Oral Submissions

5.07(1) No motion participant shall take more than one hour, including a reply, to make oral submissions on a motion without the prior permission of the Discipline Committee.

5.08 Communications with the Discipline Committee

5.08(1) Any communications to the Discipline Committee regarding a motion shall be in writing and copied to the other motion participant(s).

5.09 Renewing or Rearguing a Motion

- 5.09(1) A motion participant shall not renew or reargue a matter that has previously been determined on a motion unless permission has been obtained from the chair in accordance with Rule 4.
- 5.09(2) Despite subrule (1), where circumstances make it impractical for a motion participant to have obtained permission from the chair, permission to renew or reargue a matter that has previously been determined on a motion may be obtained from the Discipline Committee during the hearing by means of written submissions.
- 5.09(3) Despite subrule (1), a motion participant may renew or reargue a motion if that is provided for in the order of the panel hearing the motion.
- 5.09(4) Despite subrule (1), a motion participant may renew a motion at the hearing solely for the purpose of putting on the record, for the purpose of any appeal, that the motion participant does not agree with the previous ruling.

#### Rule 6: Motions – Specific Motions

- 6.01 Procedure for Seeking Direction from the Chair
  - 6.01(1) Where the chair can direct or order anything under these Rules such as permitting waiver of the Rules or scheduling a motion, a party or, in the case of a motion, a motion participant, may make submissions in writing to the chair.
  - 6.01(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.
  - 6.01(3) The other parties or motion participants may respond to the submissions described in subrule (2) by addressing a letter to the chair and delivering a copy of the letter.
  - 6.01(4) The chair shall not give a direction or make an order where the submissions have been delivered under subrule (2) unless at least 3 days have passed since the first submission was delivered unless it is urgent that the chair do so.
  - 6.01(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.
- 6.02 Motions for Adjournment
  - 6.02(1) A party may request an adjournment of a hearing date(s) by delivering a Request for Adjournment, in accordance with Form 4 as part of its motion record.
  - 6.02(2) If the hearing has not commenced, the chair may:

- (a) issue a direction for a request that is on consent or unopposed;
- (b) hear and dispose of a request for adjournment that is opposed after hearing the parties by teleconference; or
- (c) direct a hearing of the request by motion under Rule 5 before the chair, a motion panel or the hearing panel.

6.02(3) If the hearing has commenced, the panel chair may:

- (a) issue a direction for a request that is on consent or unopposed; or
- (b) direct a hearing of the request by motion under Rule 5 before the hearing panel.

6.03 Motions for Non-Party Participation

6.03(1) A person who is not a party who wishes to participate in the hearing shall bring a motion under Rule 5 and section 41.1 of the Code.

6.03(2) The notice of motion shall set out the extent of participation the person proposes to have in the hearing.

6.03(3) If the Discipline Committee allows the person to participate in the hearing, these Rules shall apply to the person as if they were a party except where doing so would be inconsistent with the Discipline Committee's determination of the extent of the person's participation in the hearing.

6.04 Motions for Production of Documents in the Possession of a Third Party

6.04(1) A motion for the production of documents in the possession of a third party shall be brought in accordance with Rule 5 to be heard at the commencement of the hearing or as soon afterwards as possible.

6.04(2) A party seeking production of documents in the possession of a third party shall submit to the discipline staff a Summons to Witness, in accordance with the form provided on the Government of Ontario online Central Forms Repository<sup>1</sup>, for signature by the chair.

6.04(3) The Summons to Witness shall not require the production of any documents before the commencement of the hearing.

6.04(4) A party's motion record and other materials relating to the production of documents

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<sup>1</sup> At the time that the Rules were last updated, the form under the *Statutory Power Procedures Act* could be found at: <http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf?opendatabase&ENV=WWE>

shall be served on the person in possession or control of the documents and to any other person having a significant interest, including a privacy interest, in the documents.

6.04(5) Affidavits of service confirming service of the Summons to Witness and the motion record, as described in subrules 6.04(3) and (4) shall be delivered at least two (2) days before the hearing of the motion.

6.04(6) The motion shall be considered in accordance with section 42.2 of the Code.<sup>2</sup>

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<sup>2</sup> Section 42.2 of the *Code* read as follows on the date this Rule was prepared:

**Production orders**

**42.2 (1)** Where, in relation to a hearing involving allegations of a member's misconduct of a sexual nature, the member seeks an order of the panel of the Discipline Committee for the production and disclosure of a record that contains information for which there is a reasonable expectation of privacy from a person who is not a party to the hearing, any one or more of the following assertions made by the member are not sufficient on their own to establish that the record is likely relevant to an issue in the hearing or to the competence of a witness to testify:

1. That the record exists.
2. That the record relates to medical or psychiatric treatment, therapy or counselling that the complainant or a witness has received or is receiving.
3. That the record relates to the incident that is the subject-matter of the proceedings.
4. That the record may disclose a prior inconsistent statement of the complainant or a witness.
5. That the record may relate to the credibility of the complainant or a witness.
6. That the record may relate to the reliability of the testimony of the complainant or a witness merely because the complainant or witness has received or is receiving psychiatric treatment, therapy or counselling.
7. That the record may reveal allegations of sexual abuse of the complainant or a witness by a person other than the member.
8. That the record relates to the sexual activity of the complainant or a witness with any person, including the member.
9. That the record relates to the presence or absence of a recent complaint.
10. That the record relates to the sexual reputation of the complainant or a witness.
11. That the record was made close in time to a complaint or report or to the activity that forms the subject-matter of the allegation against the member. 2017, c. 11, Sched. 5, s. 18.

Same

(2) A panel of the Discipline Committee may order the person who has possession or control of the record to produce the record or part of the record if the panel is satisfied that the member has established that the record is likely relevant to an issue in the hearing or to the competence of a witness to testify in the hearing and the production of the record is necessary in the interest of justice. 2017, c. 11, Sched. 5, s. 18.

Factors to be considered

- (3) In determining whether to grant an order for the production of records in accordance with this section, the panel shall consider,
- (a) the regulatory nature of the proceedings;
  - (b) the primary purpose of the proceedings, which is to protect the public and regulate the profession in the public interest;
  - (c) the privacy interest of the complainant or a witness in the record sought; and
  - (d) the nature and purpose of the record sought in the motion. 2017, c. 11, Sched. 5, s. 18.

Standing

(4) Despite subsection 41.1 (1), the panel shall, upon the application of any person who has a privacy interest in the records referred to in subsection (1) of this section, grant the person standing on the member's motion for production of the records. 2017, c. 11, Sched. 5, s. 18.

Interpretation

(5) In subsection (1),

6.05 Motion to Remove Register Information from Public Access

6.05(1) An application under clause 23(11)(c) of the Code, to remove information contained in the register from public access pursuant to paragraph 23(2)10 of the Code, shall be made by motion in accordance with Rule 5 and shall be heard and determined in writing by a panel of the Discipline Committee, unless the Discipline Committee orders otherwise.

6.05(2) The motion record shall include the decision and reasons of the Discipline Committee, which resulted in the information being posted on the register.

6.05(3) After a motion has been heard and determined by the Discipline Committee, a new application shall not be made for at least one year, unless there has been a material change in circumstances or new evidence has become available since the last application.

6.06 Motion to Vary an Order

6.06(1) A person may make a motion to the Discipline Committee in accordance with Rule 5 to have an order varied, suspended, or cancelled on the grounds of facts arising or discovered after the order was made and the Discipline Committee may vary, suspend or cancel the order when it deems such action appropriate.

6.06(2) A motion to vary, suspend or cancel an order does not act as a stay of the original order.

6.06(3) This Rule does not apply to the findings or final orders of a hearing panel which are addressed in Rule 12.04.

6.07 Withdrawal of Allegations

6.07(1) Where a hearing has not commenced, the parties consent, and an explanation has been provided, a panel constituted by the chair under section 4.2 of the Statutory Powers Procedure Act may make an order authorizing the College to withdraw the allegations contained in a notice of hearing.

## Rule 7: Disclosure

7.01 Reciprocal Disclosure

7.01(1) A party to a hearing shall, at least ten (10) days before the pre-hearing conference,

(a) disclose to the other party the existence of every document and thing that

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“allegations of a member’s misconduct of a sexual nature” include, but are not limited to, allegations that the member sexually abused a patient. 2017, c. 11, Sched. 5, s. 18.

the party will refer to or give in evidence at the hearing; and

- (b) produce to the other party a list of witnesses and a witness statement for any witness to be called by that party, or for any witness where a statement does not exist, a summary of the evidence that the witness will give at the hearing, including in either case, the name and contact information for the witness, the substance of the evidence of the witness and any document that the witness will refer to.

7.01(2) Where a party discovers a document or thing that it will refer to or give in evidence at the hearing or discovers a witness or additional substance of the evidence of an already identified witness after the disclosure date specified in subrule 7.01(1), the party shall make the disclosure immediately after the discovery.

7.02 Inspection and Delivery of Documents

7.02(1) Each party to a hearing shall, if requested:

- (a) make available for inspection by the other party, at least ten (10) days before the hearing, all documents and things the party will produce or enter as evidence at the hearing; and
- (b) deliver to the other party, at least ten (10) days before the hearing, copies of all documents and, where feasible, things that the party will produce or enter as exhibits at the hearing.

7.03 Failure to Comply

7.03(1) If a party fails to comply with Rules 7.01 or 7.02, the party may not refer to or enter into evidence at the hearing, the document or the evidence of the witness, as the case may be, without the consent of the Discipline Committee, which may be given on such terms and conditions as the Discipline Committee considers just.

7.04 Evidence Protected from Disclosure

7.04(1) Despite anything in these Rules, a party or participant in the proceedings is not required to disclose or produce any document or evidence that is privileged or otherwise protected from disclosure by law including quality assurance information protected by sections 83 and 83.1 of the Code.

## Rule 8: Written and Electronic Proceedings

8.01 Request for a Written or Electronic Proceeding

8.01(1) In addition to the other provisions in the Rules providing for written or electronic proceedings and subject to sections 5.1 and 5.2 of the Statutory Powers Procedure

Act, the Discipline Committee may order that a hearing, part of a hearing, or a step in the proceeding be held in writing or electronically and may hold any combination of written, electronic and oral hearings, provided that the obligation to hold the hearing in public can be met.

8.01(2) A person requesting that a hearing, part of a hearing, or a step in the proceeding be conducted in writing or electronically shall deliver a Request for a Written or Electronic Proceeding, in accordance with Form 5.

8.01(3) The notice of an electronic hearing shall include:

- (a) a statement of the time and purpose of the hearing, and details about the manner in which the hearing will be held;
- (b) a statement that the only purpose of the hearing is to deal with procedural matters, if that is the case;
- (c) a statement that the party notified may, if the purpose of the hearing is to deal with matters other than procedure, by satisfying the tribunal that holding the hearing as an electronic is likely to cause the party significant prejudice, require the tribunal to hold the hearing as an oral hearing, and an indication of the procedure to be followed for the purpose; and
- (d) a statement that if the party notified neither acts under clause (c), if applicable, nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding

8.01(4) Before making an order under subrule 8.01(1), the Discipline Committee shall provide the parties and, where applicable, any motion participants with an opportunity to make submissions on the issue.

8.02 Procedure on Written or Electronic Proceeding

8.02(1) Where all or part of a proceeding is conducted in writing or electronically, every party and, where applicable, any motion participant is entitled to receive every document that the Discipline Committee receives.

8.02(2) Unless the Rules provide otherwise, every party and, where applicable, every motion participant, shall deliver every document upon which they intend to rely, in sequentially numbered pages at least three (3) days before the proceeding.

8.02(3) Where all or part of a proceeding is conducted electronically, every person participating shall join the proceeding in the manner prescribed by the discipline staff at least five minutes before the proceeding is scheduled to commence.

## Rule 9: Taking Evidence Before the Hearing

9.01 Initiating the Taking of Evidence Before the Hearing

- 9.01(1) A party who intends to introduce the evidence of a person at the hearing and who has made all the required disclosure with respect to the evidence of that witness may, with the consent of the other party or by order of the Discipline Committee, examine the witness under affirmation for the purpose of having the transcript and video recording of the witness' testimony available to be tendered as evidence at the hearing.
- 9.01(2) The Discipline Committee may make an order under subrule 9.01(1) if it is satisfied that the order would not cause significant prejudice to a party and would not prevent the panel from fully and fairly understanding the evidence.
- 9.02 Requirement to Record the Examination
- 9.02(1) The party who intends to introduce the evidence of the witness under this Rule shall ensure that the examination is video-recorded and that a transcript of the examination is created, at the party's expense, by a certified court reporter or a person with similar qualifications acceptable to the Discipline Committee, and shall deliver a certified copy of the transcript and video recording of the evidence at least three (3) days before the hearing is scheduled to commence.
- 9.02(2) The examination shall take place at the date, time and place consented to by the parties or ordered by the Discipline Committee.
- 9.02(3) The Discipline Committee may impose terms or conditions in the order for an examination including a term that the party intending to call the witness shall pay for the reasonable travel expenses of the other party.
- 9.03 Procedure at the Examination
- 9.03(1) A witness examined under subrule 9.01(1) may, after being 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.
- 9.03(2) Where a question is objected to, the objector shall state briefly the reason for the objection, and the question, objection and reason for the objection shall be recorded.
- 9.03(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 hearing panel before the evidence is used at a hearing.
- 9.03(4) A ruling on the propriety of a question that is objected to and not answered may be obtained on motion to the hearing panel.
- 9.03(5) Where the question is not answered under subrule 9.03(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 outside of the hearing or at the hearing to answer the question.

- 9.03(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 serve a copy of it to the other party.
- 9.04 Use of Recorded Examination at the Hearing
- 9.04(1) At the hearing, any party may use the transcript and video-recording of an examination as the evidence of the witness unless the hearing panel orders otherwise.
- 9.04(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 hearing panel.
- 9.04(3) Where a witness is ordered or requested to give evidence at the hearing under subrule 9.04(2), the party who tendered the evidence under subrule 9.04(1) shall arrange for the witness to attend at the party's expense unless otherwise order by the hearing panel.
- 9.04(4) The transcript and any video-recording need not be read or played during the hearing with the parties present unless a party or the hearing panel requires the reading of a transcript or the playing of a video-recording.
- 9.04(5) Where the reading of a transcript or the playing of a video-recording is required under subrule 9.04(4), the party who initiated the examination under subrule 9.01(1) shall conduct the reading or playing during the presentation of that party's case unless the hearing panel orders otherwise.
- 9.05 Application of this Rule Once a Hearing Commences
- 9.05(1) This Rule can be applied to take the evidence of a witness after a hearing has commenced where the hearing panel concludes it would be just and fair to do so.

#### Rule 10: Procedures for the Hearing

- 10.01 Early Hearing
- 10.01(1) A party may bring a motion under Rule 5 for an order directing an expedited hearing.
- 10.01(2) The Discipline Committee may order that a hearing be expedited in appropriate cases and may also direct that other parts of the proceeding, including the pre-hearing conference, also be expedited.
- 10.01(3) Where an interim order made pursuant to section 25.4 of the Code is in place, the

Discipline Committee shall expedite the proceedings, including scheduling the hearing early unless counsel for the member waives the duty in writing.

10.02 Notice of Constitutional Questions

10.02(1) Where a party intends to:

- (a) question the constitutional validity or applicability of legislation, a regulation or by-law made under legislation, or a rule of common law; or
- (b) seek a remedy under section 24(1) of the Canadian Charter of Rights and Freedoms,

the party shall deliver to the Attorneys General of Canada and Ontario, the other party and the Discipline Committee, notice of a constitutional question in the form required under section 109 of the Courts of Justice Act 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.

10.02(2) An Attorneys General or a party responding to a notice of a constitutional question shall deliver any responding materials at least five (5) days before the question is to be argued.

10.02(3) Where the Attorneys General of Canada and Ontario are entitled to notice, they are entitled to:

- (a) adduce evidence and make submissions to the Discipline Committee regarding the constitutional question; and
- (b) notice of any appeal in respect of the constitutional question.

10.03 Summoning Witnesses

10.03(1) A party who requires the attendance of a witness at a hearing shall submit to the discipline staff a Summons to Witness, in accordance with the form provided on the Government of Ontario online Central Forms Repository<sup>3</sup>, for signature by the chair.

10.03(2) A Summons to Witness shall be served personally on the person to whom it is directed along with the attendance money required by law<sup>4</sup> at least forty-eight (48) hours before the time fixed for the attendance.

10.04 Vulnerable Witnesses

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<sup>3</sup> At the time that the Rules were last updated, the form under *the Statutory Power Procedures Act* could be found at: <http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf?opendatabase&ENV=WWE>

<sup>4</sup> At the time that the Rules were last updated, the amount of attendance money required to be paid was set out in section 21 of Tariff A of the Rules of Civil Procedure found at: <https://www.ontario.ca/laws/regulation/900194>.

- 10.04(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.
- 10.04(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.
- 10.04(3) The Discipline Committee shall not make an order under subrule 10.04(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.
- 10.04(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 a full and candid account of the vulnerable witness' testimony or to prevent an abuse of the process.
- 10.04(5) Where the Discipline Committee makes an order under subrule 10.04(4), it may appoint counsel for the purpose of conducting the cross-examination.
- 10.04(6) The Discipline Committee may make other orders protecting vulnerable witnesses, such as an order prohibiting the publication of their identities where required by law<sup>5</sup> or where it concludes it is just and fair to do so.
- 10.05 Expert Witnesses
- 10.05(1) Each party shall inform any prospective expert witness that it is the duty of an expert to assist the Discipline Committee only on matters within their expertise and that this duty overrides any obligation to the person from whom the expert has received instructions or payment. The expert shall be required to certify that they are aware of and understand this duty by signing an Acknowledgment of Duty of Expert Witness, in accordance with Form 6.
- 10.05(2) An expert report shall contain the following information:
1. The expert's name, address and area of expertise.
  2. The expert's qualifications and educational and practice experiences in their area of expertise.
  3. The instructions provided to the expert in relation to the proceeding.
  4. The nature of the opinion being sought and each issue in the proceeding to

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<sup>5</sup> For example, section 47 of the *Code* requires the hearing panel to make an order prohibiting the identification of a witness whose testimony is in relation to a member's misconduct of sexual nature.

which the opinion relates.

5. The expert's opinion respecting each issue and, the expert's reasons for their opinion, including,
  - i. a description of the factual assumptions on which the opinion is based,
  - ii. a description of any research conducted by the expert that led the expert to form the opinion, and
  - iii. a list of every document, if any, reviewed by the expert in forming the opinion.
6. An acknowledgement of the duty of an expert signed by the expert in Form 6.

10.05(3) Where the Discipline Committee hears testimony from an expert witness, it may admit as an exhibit at the hearing the report of the expert witness.

10.05(4) Where the Discipline Committee hears testimony from an expert witness, but does not admit the expert's report as an exhibit at the hearing, the party tendering the expert witness shall file Form 6, signed by the expert, as an exhibit.

10.05(5) Subject to Rule 7.04, the College shall deliver to the member any expert report it has in its possession at the time of making disclosure and shall deliver any other expert report it obtains within fifteen (15) days of receiving it, but in any event, at least sixty (60) days before the commencement of the hearing.

10.05(6) The member shall deliver any expert report it intends to rely on at least thirty (30) days before the commencement of the pre-hearing conference.

10.05(7) The Discipline Committee may extend or abridge the time provided for delivery of an expert report before or after the expiration of the time, and may make directions it considers just, to ensure that a party is not prejudiced by any extension or abridgment of time ordered.

10.05(8) An expert witness may not testify with respect to an issue, except with leave of the hearing panel, unless the substance of the opinion with respect to that issue is set out in the report of the expert, served under this Rule.

10.05(9) The requirement to prepare and deliver an expert report shall not be required of a treating registered health care practitioner who is called as a witness at a hearing to testify exclusively about treatment provided, so long as the treating practitioner's legible notes and anticipated evidence is disclosed in accordance with Rule 7.

10.06 Alternative Ways of Receiving Evidence-in-Chief

10.06(1) Where a witness' statement was video-recorded by a representative of the College during its investigation, any party calling the witness may introduce the witness' evidence in chief by presenting the video-recording and transcript of the statement, prepared by a certified court reporter or a person with similar qualifications acceptable to the Discipline Committee, where the witness adopts the statement as accurate.

- 10.06(2) With the consent of the other party or where the hearing panel permits, any party calling a witness may introduce a witness' evidence in chief by filing an affidavit signed by the witness where the witness adopts the affidavit as accurate.
- 10.06(3) A party adverse in interest to a witness whose evidence has been introduced under subrules 10.06(1) or 10.06(2) may, subject to any different order by the hearing panel, cross-examine the witness and the party calling the witness may re-examine the witness in the usual manner.
- 10.07 Excluding Witnesses
  - 10.07(1) The Discipline Committee may order that one or more witnesses be excluded from the hearing until called to give evidence.
  - 10.07(2) An order under subrule 10.07(1) may not be made in respect of a party to the proceeding or a witness whose presence is required to instruct counsel, but the Discipline Committee may require any such witness to give evidence before the other witnesses are called to give evidence on behalf of that party.
  - 10.07(3) Where an order is made excluding one or more witnesses from the hearing, no person shall communicate or permit the communication to an excluded witness of any evidence given or discussion held during the witness' absence from the hearing until after the witness has been called and has given evidence.
- 10.08 Oral and Written Argument
  - 10.08(1) The Discipline Committee may place reasonable limits on the length of oral submissions.
  - 10.08(2) The Discipline Committee may, after hearing submissions, 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 and timing of such written arguments.
- 10.09 Filing Draft Order
  - 10.09(1) Where a party seeks an order from the Discipline Committee before or at a hearing, that party shall file, at the time of its submissions, a draft order in the form that the party is requesting the Discipline Committee to adopt and sign.
  - 10.09(2) Where an order is sought on consent, the written approval of the other party to the draft order shall be filed with the draft order.
- 10.10 Public Access
  - 10.10(1) A hearing shall be open to the public in accordance with section 45 of the Code.

- 10.10(2) Information about a hearing shall be published on the College's website in accordance with section 23 of the Code.
- 10.10(3) Transcripts of hearings are available to the public in accordance with section 48 of the Code.
- 10.10(4) If a member of the public wishes to have access to a copy of any other part of the record of the Discipline Committee, they shall bring a motion before the Discipline Committee upon notice to the parties, and such motion shall be made, considered and decided in writing by the chair of the Discipline Committee or by a panel of the Discipline Committee appointed by the chair, without an oral hearing.
- 10.10(5) Documents released by the Discipline Committee to the public shall, unless directed otherwise, not contain the names of patients or any information that could identify a patient.
- 10.11 Interfering with a Hearing
- 10.11(1) No person may take or attempt to take a photograph, audio or video recording or other record by any means at a proceeding or publish, broadcast, reproduce or otherwise disseminate a photograph, audio or video recording or other record taken unless permitted to do so by the Rules or an order of the Discipline Committee.
- 10.11(2) Subrule 10.11(1) does not apply to:
- (a) a person unobtrusively making handwritten or typed notes or sketches at a proceeding;
  - (b) a party or a party's counsel unobtrusively making an audio recording at a proceeding that is used only as a substitute for handwritten or typed notes for the purposes of the proceeding;
  - (c) a person taking a photograph, audio or video recording or other record with the prior written authorization of the Discipline Panel;
  - (d) the court reporter; or
  - (e) a person using a device to compensate for a disability.

## Rule 11: Costs

- 11.01 Procedure for Requesting Costs
- 11.01(1) A party requesting an order for costs and expenses other than on consent shall, where practicable, deliver a detailed written explanation of the basis upon which the costs and expenses requested are calculated.
- 11.01(2) Where the request for costs and expenses includes disbursements or out-of-pocket expenses, these may be proved by an affidavit attaching a copy of any invoice or

receipt.

- 11.01(3) The Discipline Committee may order up to two thirds of the costs or expenses associated with the investigation and hearing preparation.
- 11.01(4) The Discipline Committee may direct that the issue of costs, including how costs and expenses should be calculated, be dealt with through written submissions or at a motion conducted separately from the hearing under Rule 5 with any necessary modifications.
- 11.01(5) Where the request for costs or expenses includes the cost or expenses to the College of conducting a day of hearing, no evidence of the cost or expense of a day of hearing is needed if the request is equal or less than the amount set out in Tariff A.
- 11.02 Costs for Non-Compliance with Rules or Unreasonable Conduct
  - 11.02(1) 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 that party to comply with these Rules.
  - 11.02(2) Where the Discipline Committee concludes that the conduct or course of conduct of a party was unreasonable, frivolous or vexatious or the party acted in bad faith, it may order the party to pay another party's costs.
  - 11.02(3) Examples of unreasonable conduct by a party can include, depending on the circumstances, a late request for an adjournment, the late acceptance of an offer for a joint submission and an unreasonable refusal to conduct part or all of the proceedings in writing or electronically.
- 11.03 Costs for a Late Request for Adjournment
  - 11.03(1) In this rule, a later request for adjournment means an adjournment that is requested within ten (10) business days of the date scheduled for the commencement of the hearing.
  - 11.03(2) A late request for an adjournment may result in costs or costs and expenses being awarded, as a term granting the adjournment, against the party who is responsible for the late request for the adjournment, if the conduct of the party has been unreasonable, frivolous or vexatious or if the party has acted in bad faith.
  - 11.03(3) In determining the amount of costs and expenses to award against the party responsible for a late request for an adjournment, the Discipline Committee shall take into account the following factors, among other relevant considerations: whether the lateness of the adjournment request could have been avoided; the number of days on which the hearing has been scheduled to proceed; the amount of the costs or costs and expenses, as the case may be, borne by the party seeking costs or costs and expenses as a result of the late request for adjournment; and

the conduct or course of conduct by the party and whether this has been unreasonable, frivolous or vexatious or the party has acted in bad faith.

## Rule 12: Decision and Reasons

### 12.01 Delivery Methods

12.01(1) In addition to the methods described in section 18 of the Statutory Powers Procedure Act, the Discipline Committee may send each party a copy of its final decision or order, including any written reasons, by:

- (a) courier;
- (b) personal service; or
- (c) email.

### 12.02 Deemed Received

12.02(1) A document sent out in accordance with subrule 12.01(1) shall be deemed to be received in accordance with Rule 3.02.

### 12.03 Correction of Errors

12.03(1) A party may, within thirty (30) days after receiving a copy of the Discipline Committee's decision, order or written reasons, request that the Discipline Committee correct any typographical, formatting, calculation, or similar errors by delivering such request, in writing.

12.03(2) The Discipline Committee may, on its own initiative and at any time, correct any typographical, formatting, calculation, or similar errors made in its decision, order or written reasons.

12.03(3) Where the Discipline Committee makes a correction on its own initiative, it shall advise the parties.

### 12.04 Reconsideration of Decisions

12.04(1) With the consent of the other party, a party may request the reconsideration of a decision released by a hearing panel if the decision contains a substantive defect that may reasonably have affected the outcome of the hearing.

12.04(2) A request for reconsideration must be delivered within twenty-one (21) days after that decision was issued by the hearing panel.

12.04(3) A request for reconsideration shall set out the facts and reasons upon which the party requesting reconsideration submits that the hearing panel should reconsider its decision, and the relief sought.

- 12.04(4) A responding party may, within five (5) days of receiving a request for reconsideration, deliver brief written submissions on the request.
- 12.04(5) The hearing panel may decide the request for reconsideration in writing, without an oral hearing.

### Rule 13: Reinstatement of Applications

#### 13.01 Initiating a Reinstatement Application

13.01(1) A person making an application for reinstatement under sections 72 and 73 of the Code shall serve on the Registrar ten (10) copies of the following:

- (a) notice of the application in the form prescribed by the Registrar, specifying:
  - (i) the order sought;
  - (ii) the grounds of the application and:
    - A) a declaration of good conduct in a form acceptable to the Registrar;
    - B) a statement, in a form acceptable to the Registrar, of every location where the person has practised the profession during the previous five years and the number of hours the person has practised the profession at each location; and
    - C) a statement, in a form acceptable to the Registrar, of every activity the person has taken during the previous five years to maintain current knowledge, skills and judgment in practising the profession;
  - (iii) an estimate of the anticipated length of the hearing;
- (b) the record of the original hearing and the record of any previous applications for reinstatement;
- (c) the transcript of the original hearing and any previous applications for reinstatement; and
- (d) any document and a summary of any oral evidence that the person will introduce.

#### 13.02 Scheduling a Reinstatement Hearing

- 13.02(1) The Discipline Committee shall not schedule a reinstatement application for a hearing until the person making the application has complied with subrule 13.01.
- 13.02(2) When a reinstatement application has been scheduled for a hearing, the discipline staff shall deliver a notice of hearing to the parties.

#### Tariff A

##### COST AND EXPENSES FOR THE COLLEGE TO CONDUCT A DAY OF HEARING

The fee for prosecuting counsel, fee of independent legal counsel, and fee of court reporter is \$5,000

Form 1 – Statement of Delivery

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Discipline Committee  
of the College of Midwives of Ontario

College of Midwives of Ontario

- and -

[name of member]

STATEMENT OF DELIVERY  
OF [name of participant]

I, \_\_\_\_\_, confirm that the following document(s) [describe each of the documents delivered e.g., Motion Record, Factum, Book of Authorities, etc.]:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

were served upon [indicate the name of the individual(s) to whom the documents were addressed and their coordinates]:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

via [check the applicable method of delivery]:

- personal service
- regular, registered or certified mail (indicate which one)\_\_\_\_\_
- facsimile
- email courier
- as directed by the Discipline Committee
- other method of delivery (specify)\_\_\_\_\_

on [indicate the date you send the documents]:

Date [dd/mm/yyyy]\_\_\_\_\_.

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature

Form 2A – Pre-Hearing Conference Memorandum

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Discipline Committee  
of the College of Midwives of Ontario

College of Midwives of Ontario

- and -

[name of member]

PRE-HEARING CONFERENCE MEMORANDUM OF  
[THE COLLEGE OR MEMBER'S NAME]

Date of pre-hearing conference:

Name of the College's Counsel:

Name of the Member's Counsel (if applicable):

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BACKGROUND INFORMATION

1. Set out the allegations or attach a copy of the notice of hearing or statement of allegations 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. How should this matter be settled?
10. Set out the facts, in numbered paragraphs, that you believe should be agreed to.
11. Set out a numbered list of the documents you believe should be admitted into evidence on agreement, as part of a joint brief of documents.

#### ADDITIONAL STEPS BEFORE THE HEARING

12. On the subject of disclosure:
  - a) Has the College made full disclosure to the member?
  - b) Has the member made disclosure to the College in accordance with the Discipline Committee's Rules of Procedure?
  - c) Are there any issues with respect to disclosure?
  - d) Have you produced all of the expert reports upon which you intend to rely?
  - e) If you have not yet made all required disclosure, why not and by what date will it be done?
13. On the subject of motions:
  - a) Do you anticipate bringing any motions before or during the hearing?
  - b) If so, what order will you seek and on what grounds?
  - c) When do you intend to bring each motion?
14. On the subject of a documents brief:
  - a) Set out a numbered list of the documents you expect to enter into evidence.
  - b) If there is to be a joint book of documents, should the hearing panel be able to review the brief before the hearing?
  - c) If so, by what date can the brief be delivered?
15. On the subject of a book of authorities:
  - a) Will you be referring to any authorities other than the Regulated Health Professions Act, 1991, the Statutory Power Procedures Act, Midwifery Act, 1991

and the regulations under those statutes? If so, list them.

- b) If so, who should prepare the book of authorities and when should it be delivered?
- c) Should the hearing panel or independent legal counsel be able to review the book of authorities before the hearing?

#### PLANNING THE HEARING

16. On the subject of witnesses:

- a) In numbered paragraphs, list your fact witnesses in the order that you expect to call them and estimate the length of time it will take to hear their entire evidence, including cross-examination and questions from the hearing panel:

Number	Witness Name	Estimated Time
(i)		
(ii)		

- b) It is the preference of the Discipline Committee to identify any potential conflicts of interest or circumstances giving rise to a reasonable apprehension of bias at the earliest possible opportunity. Is there any reason why the witness list cannot be circulated to the hearing panel?
- c) Do you anticipate calling any expert witnesses?
- d) If so, have you disclosed a copy of the expert's report to the other side?

17. On the subject of scheduling the hearing:

- a) Are there any special considerations affecting the setting of a hearing date arising from the availability of witnesses or otherwise?
- b) Estimate how many days will be required for your case in total:
  - (i) How long will it take you to make your opening and closing submissions on the issue of finding?
  - (ii) How long will it take to dispose of any motions you anticipate bringing during the hearing, including adequate time for deliberation by the hearing panel?
  - (iii) How long will it take to hear the evidence of all of your anticipated fact witnesses, including any cross-examination and questions from the hearing panel? [This estimate should be consistent with paragraph 16a above.]

(iv) How long will it take to hear the evidence of all of your anticipated expert witness(es), including any cross-examination and questions from the hearing panel?

(v) In the event that the hearing panel makes a finding, how long do you anticipate requiring for any submissions and evidence on the issue of what order the hearing panel should make?

c) When will you be prepared for the hearing to commence?

[Date]

[Signature of most responsible counsel who  
will be attending at the hearing]

Form 2B – Pre-Hearing Conference Report of the Pre-Hearing Chair

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Discipline Committee  
of the College of Midwives of Ontario

College of Midwives of Ontario

- and -

[name of member]

PRE-HEARING CONFERENCE REPORT OF THE PRE-HEARING CHAIR

A pre-hearing conference was held in this matter on [date].

In attendance were:

[list each attendee and their capacity]

Agreements

The parties agreed to the following:

1. On the subject of settlement:
2. On the subject of disclosure:
3. On the subject of motions:
4. On the subject of a documents brief:
5. On the subject of a brief of authorities:
6. On the subject of witnesses:
7. On the subject of scheduling the hearing:
8. Other:

Undertakings

The [College/Counsel for the College or member/Counsel for the member] provided the following undertaking(s) at the pre-hearing conference:

Directions or Orders

The pre-hearing chair gave the following direction(s) or made the following order(s) at the pre-hearing conference:

Date: \_\_\_\_\_

Signature of the Pre-Hearing chair: \_\_\_\_\_

Form 3A – Notice of Motion

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Discipline Committee  
of the College of Midwives of Ontario

College of Midwives of Ontario

- and -

[name of member]

NOTICE OF MOTION

THE [NAME OF PERSON INITIATING THE MOTION] WILL make a motion to the Discipline Committee of the College of Midwives of Ontario on a date and time to be fixed by the discipline staff or as soon after that time as the motion can be heard, at [address of the College], Ontario.

THE PROPOSED METHOD OF HEARING THE MOTION IS:

in person       electronically       in writing

THE ANTICIPATED AMOUNT OF TIME REQUIRED TO HEAR THE MOTION IS<sup>6</sup>:

30 minutes or less	<input type="checkbox"/>	half day	<input type="checkbox"/>
60 minutes or less	<input type="checkbox"/>	full day	<input type="checkbox"/>
60 to 90 minutes	<input type="checkbox"/>	____ days	<input type="checkbox"/>
90 to 120 minutes	<input type="checkbox"/>	N/A (in writing)	<input type="checkbox"/>

THE MOTION IS FOR:

1. [Set out, in separately numbered paragraphs, the precise relief sought]
- 2.

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<sup>6</sup> Please note that the Rules provide that no motion participant shall take more than one hour, including a reply, to make oral submissions on a motion without the prior permission of the Discipline Committee.

THE GROUNDS FOR THE MOTION ARE:

1. [Set out, in separately numbered paragraphs, each of the grounds to be argued, including a reference to any statutory provision or rule to be relied upon]
- 2.
- 3.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE MOTION:

1. [List, in separately numbered paragraphs, any affidavit(s) and/or other documentary evidence to be relied upon]
- 2.
- 3.

Date: [Insert]  
facsimile  
represented,

[Name, address, telephone and  
number of the person initiating the  
motion or, if the person is  
the person's counsel.]

TO: [Name, address, telephone and facsimile number  
of the other motion participants or, if the motion  
participant(s) is represented, their counsel.]

Form 3B – Draft Order

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Discipline Committee  
of the College of Midwives of Ontario

College of Midwives of Ontario

- and -

[name of member]

ORDER

THIS MOTION, made by [identify the person initiating the motion] for [state or summarize the relief sought in the notice of motion], was heard on [date], [at address OR in writing OR by conference call].

ON READING the [set out the materials filed on the motion] and on [hearing OR reading] the submissions of counsel for [identify motion participants and indicate where they appeared in person or where no one appeared for a motion participant even though they were duly served],

THE DISCIPLINE COMMITTEE ORDERS:

1. that...;
2. that...; and
3. that...

DATED at Toronto, this [day] of [month], [year].

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[Chair Name], Chair of Discipline Committee Panel

Form 4 – Request for Adjournment

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Discipline Committee  
of the College of Midwives of Ontario

College of Midwives of Ontario

- and -

[name of member]

REQUEST FOR ADJOURNMENT

1. A request for adjournment is being made by:

- the College                       the Member                       jointly, by both parties

2. The hearing has:

commenced, and has been scheduled as follows:

dates heard: \_\_\_\_\_

dates remaining: \_\_\_\_\_

OR

not commenced and is scheduled for the following date(s):

\_\_\_\_\_

3. The reason for the request is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. The nature of the allegations against the Member are [or attach a copy of the Notice of Hearing]:

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5. If the request is not being made jointly, confirm that the other party has been advised that this request is being made and set out their position on the request:

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6. Provide at least six alternative dates or sets of dates, as the case may be, that the parties are available for the matter to proceed, which fall within 60 days of the date(s) requested to be adjourned:

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Date: [Insert]

[Name, address, telephone and facsimile number of the requesting party or their counsel]

Signature of requesting party: \_\_\_\_\_

By signing this request for adjournment, the person identified above confirms that they have served a copy of this form to the party(ies) set out below and that the information contained in this form is accurate.

TO: [Name, address, telephone and facsimile number of the responding party or their counsel]

- The [chair/chair of the panel] is granting this request for adjournment on the following terms, if any:

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- The chair/chair of the panel is not granting this written request for adjournment.

AND, where applicable, the chair is directing that the request for adjournment be heard and disposed of by way of:

- teleconference
- motion under Rule 5 before the [chair/hearing panel],
- or other \_\_\_\_\_

Date: \_\_\_\_\_

Signature of Chair/Chair of the Panel: \_\_\_\_\_

Form 5 – Request for a Written or Electronic Proceeding

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Discipline Committee  
of the College of Midwives of Ontario

College of Midwives of Ontario

- and -

[name of member]

REQUEST FOR A WRITTEN OR ELECTRONIC PROCEEDING

THE [NAME OF MOVING PARTY] is requesting that the hearing, part of the hearing or a step in the proceeding be conducted in writing or electronically.

SPECIFICALLY, [NAME OF MOVING PARTY] is requesting that:

- the pre-hearing be conducted electronically;
- the hearing be conducted electronically;
- a step in the proceeding be conducted electronically;
- a step in the proceeding be conducted in writing;
- other \_\_\_\_\_

THE DETAILS OF THE REQUEST are as follows:

1. Clarify the nature of the proceeding or step(s) identified above and indicate any dates that have been scheduled:

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2. The purpose of the proceeding or step identified above is to:

deal with a procedural matter(s)

OR

as follows:

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3. Indicate whether the request is for teleconferencing, videoconferencing or another form of electronic hearing and explain why:

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Date: [Insert]

[Name, address, telephone and facsimile number of the requesting party or their counsel].

Signature of requesting party: \_\_\_\_\_

By signing this Request for a Written or Electronic Proceeding, the person identified above confirms that they have served a copy of this form to the party or parties set out below and that the information contained in this form is accurate.

TO: [Name, address, telephone and facsimile number of the responding party or their counsel].

Form 6 – Acknowledgment of Duty of Expert Witness

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Discipline Committee  
of the College of Midwives of Ontario

College of Midwives of Ontario

- and -

[name of member]

ACKNOWLEDGEMENT OF DUTY OF EXPERT WITNESS

I, [Name of Expert], of the city of [Name of City where expert resides] in the province of [Name of Province], have been engaged by or on behalf of [Name of Party], to provide evidence in relation to a discipline proceeding regarding the above-noted member.

I acknowledge and agree that it is my duty to:

- (a) provide opinion evidence that is fair, objective and neutral;
- (b) provide opinion evidence related only to matters that are within my area of expertise; and
- (c) provide such assistance as the hearing panel may reasonably require to determine a matter at issue.

I acknowledge and agree that the duty referred to above prevails over any obligation I may owe to any party by whom or on whose behalf I have been engaged.

Date: \_\_\_\_\_

Signature of Expert: \_\_\_\_\_

NOTE: This form must be included in any report signed by the expert and provided for the purposes of Rule 10.05 of the Rules of Procedure.



College of  
**Midwives**  
of Ontario

Ordre des  
**sages-femmes**  
de l'Ontario