



INVESTIGATION COMMITTEE POLICY

Censure

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CONTEXT

The Investigation Committee has the authority under subsection 102(1)(d) of *The Regulated Health Professions Act* (“RHPA”) to censure an investigated member if:

1. at least one member of the Investigation Committee has met with the investigated member and the investigated member agrees to accept the censure; and
2. the Investigation Committee has decided that no action is to be taken against the investigated member other than censure.

Section 104 of the RHPA contains the following provisions as to what happens if an investigated member is censured:

104(1) When an investigated member is censured under subsection 102(1), the investigation committee may require him or her to appear in person before the committee to be censured.

104(2) Subject to subsection (3), the investigation committee may make available to the public the name of an investigated member who has been censured and a description of the circumstances that led to the censure.

104(3) If, in agreeing to accept a censure, the investigated member admits to suffering from an ailment, emotional disturbance or addiction that impairs his or her ability to practise the regulated health profession, the investigation committee

- (a) must not make any information about the investigated member or the censure available under subsection (2); and
- (b) may inform an employer, person or entity referred to in section 134 of the censure and provide a description of the circumstances that led to it.

104(4) The investigation committee may order an investigated member who is censured to pay all or part of the costs of the investigation.

Subsection 2.5(1)(e) of the *College of Physicians and Surgeons of Manitoba General Regulation* (“General Regulation”) requires that the following information be included on a register created under subsection 2.2 (i.e. the register of regulated members and the register of regulated associate members):

[...] subject to section 104 of the Act, any censure accepted by the member under section 102 of the Act and a notation as to how a description of the circumstances that led to the acceptance of the censure can be obtained from the college [...].

Subsections 28(3), (4) and (5) of the RHPA set out what information entered on the register for a member must be made available to the public. In addition, the following information must also be made available to the public during normal business hours pursuant to subsection 2.6(1)(b) of the General Regulation:

[...] (b) the information described in clause 2.5(1)(e) if the censure was accepted by the member in the current calendar year or the 10 previous calendar years [...].

The combined effect of subsections 9.6(1)(l), 9.9(4) and 9.6(6) of the General Regulation is that information about a censure that must be public on the register must be on the member's profile unless the Investigation Committee orders that the member's name not be published for any reason.

POLICY

A. Considerations Regarding Offering a Censure

The Investigation Committee must consider its **Disposition Policy** and the following factors in determining whether it is appropriate to offer an investigated member a censure:

1. The Investigation Committee is prohibited from taking any other action with respect to a particular complaint if the investigated member accepts a censure, including taking a remedial approach;
2. The investigated member must agree to accept a censure;
3. A censure is formal discipline which results in publication of the investigated member's name and the circumstances warranting formal discipline unless the exceptions of subsection 104(3) of the RHPA and subsection 9.6(4)(b) of the General Regulation apply;
4. If formal reprimand, publication and recovery of costs are the primary goals of the investigation committee, then offering a censure may be an appropriate alternative to referral to Inquiry;
5. If the Investigation Committee is satisfied that formal discipline is warranted, its options are offering a censure to the investigated member or referral of the investigated member to the Inquiry Committee;
6. An investigated member who is offered a censure must be advised that if the censure is not accepted, absent exceptional circumstances, the complaint will be referred to the Inquiry Committee.

B. PUBLICATION

The RHPA provides that the Investigation Committee may make available to the public the name of an investigated member who has been censured and a description of the circumstances that led to the censure except where, in agreeing to accept a censure, the investigated member admits to suffering from an ailment, emotional disturbance or addiction that impairs his or her ability to practise medicine (see subsection 104(3) of the RHPA).

Subsection 9.6(4)(b) of the General Regulation requires publication of the censure unless the Investigation Committee orders that the member's name not be published to protect the privacy of a patient or a patient's family or the safety of any person.

The following general principles in relation to publication will be applied by the Investigation Committee in respect to publication of censures:

1. The fact of a censure and the circumstances which led to the censure will be published in the Report of Disciplinary Proceedings and on the College's website unless publication is prohibited by subsection 104(3) of the RHPA.
2. The investigated member's name will be published, and the censure will appear on the member's profile unless publication is prohibited by subsection 104(3) of the RHPA or the Investigation Committee orders that the investigated member's name not be published to protect the privacy of a patient or a patient's family or the safety of any person in accordance with or subsection 9.6(4)(b) of the General Regulation.
3. If an investigated member's name is excluded from the publication, the publication will contain the Investigation Committee's reasons for withholding the name.
4. Determining whether to exclude a member's name from the publication of a censure involves a balancing of the public's right to be aware of College proceedings with the privacy rights of patients and potential safety issues. Unless the Investigation Committee is satisfied that exclusion of the member's name is necessary to protect the privacy of a patient or a patient's family or the safety of any person, the investigated member's name will be included in the publication. In making this determination, the factors considered by the Investigation Committee should include:
 - a. whether the facts of the censure include disclosure of intimate, financial, medical or other personal matters that would impact a patient's privacy;
 - b. whether the inclusion of the member's name could reasonably be anticipated to compromise the anonymity or privacy of the patient or the patient's family;
 - c. any evidence that the safety of any individual could be jeopardized by inclusion of a name.

C. ADMINISTRATION OF THE CENSURE

1. When the Investigation Committee has offered a censure and the investigated member has indicated a willingness to accept the censure, the Chair of the Investigation Committee (“Chair”) shall direct the process by which the censure will be administered.
2. Provided that the investigated member has already met with a member of the Investigation Committee as required by subsection 102(1)(d)(i) at the time the matter is decided by the Investigation Committee, the censure may be administered in writing, but the Chair may still require with the investigated member to meet with a member of the Investigation Committee, generally the Chair, for the censure to be administered.
3. If the investigated member has not met with a member of the Investigation Committee, a member of the Investigation Committee, generally the Chair, must meet with the investigated member to administer the censure.
4. The requirement of subsection 102(1)(d)(i) of the RHPA for a meeting with the investigated member can be satisfied by using any method of communication that permits the investigated member and the member of the Investigation Committee to communicate with each other simultaneously, including telephone or video conference.
5. When a censure is administered, the purpose is to acknowledge the misconduct and convey the Investigation Committee’s expectation that the investigated member commits to improvement. It should include the following steps:
 - a. confirmation that:
 - i. the investigated member has agreed to accept the censure and that the member has a copy of the censure signed by the Registrar,
 - ii. any costs awarded have been paid or satisfactory arrangements for payment of the costs have been made, and
 - iii. publication will include the member’s name, or if the name is not included, the reasons as to why;
 - b. portions or all the censure may be read; and
 - c. acknowledgement of the purpose of a censure, including advising the member that:
 - i. it is a judgment of the investigated member’s peers; and
 - ii. the College expects that the investigated member to reflect on this fact and commit to self-improvement and learning.