



INVESTIGATION COMMITTEE POLICY

Disposition Principles and Considerations

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Revised with Changes:

CONTEXT

The decisions that the Investigation Committee (“Committee”) may make in accordance with *The Regulated Health Professions Act* (“RHPA”) are set out at section 102:

102(1) After reviewing the investigator's report, the complaints investigation committee may do one or more of the following:

- a. refer the complaint, in whole or in part, to the inquiry committee;
- b. direct that no further action be taken;
- c. refer the complaint to mediation, if the investigation committee decides that it is of concern only to the complainant and the investigated member, both of whom agree to mediation;
- d. censure the investigated member,
 - a. if at least one committee member has met with the investigated member and the investigated member agrees to accept the censure, and
 - b. the committee has decided that no action is to be taken against the investigated member other than censure;
- e. accept the voluntary surrender of the investigated member's registration or certificate of practice;
- f. accept an undertaking from the investigated member that provides for one or more of the following:
 - i. assessment of the investigated member's capacity or fitness to practise the regulated health profession,
 - ii. counselling or treatment of the investigated member,
 - iii. monitoring or supervision of the investigated member's practice,
 - iv. completion by the investigated member of a specified course of studies by way of remedial training,
 - v. placing conditions on the investigated member's right to practise the regulated health profession, which may include the conditions relating to reinstatement set out in section 106 of the RHPA;
- g. take any other action it considers appropriate that is not inconsistent with or contrary to the RHPA or the regulations or by-laws.

Additional Investigation Committee policies that apply to specific actions that may be taken by the Committee pursuant to subsection 102(1) of the RHPA include:

1. Mediation (*to be developed*),
2. Undertakings,
3. Censure,
4. Voluntary Surrender; and
5. Referral to the Inquiry Committee.

POLICY

A. Guiding principles

The paramount and overriding mandate of the College, and therefore the Investigation Committee, is to:

1. protect the public;
2. uphold professional standards in the practice of medicine; and
3. preserve public confidence in the profession's ability to self-regulate.

This mandate must guide the Investigation Committee in disposing of all complaints under subsection 102(1) of the RHPA.

The Investigation Committee should also consider the following principles in deciding what if any action should be taken under subsection 102(1) of the RHPA, including referral to the Inquiry Committee:

1. In general, a remedial approach designed to educate, correct problems and prevent recurrence is consistent with the College's mandate to protect the public and should be taken where appropriate.
2. Formal discipline should be reserved for complaints involving either blatant disregard for ethical principles or significant breaches of professional obligations or standards of practice.
3. The final disposition of a complaint should be proportionate to the nature and gravity of the misconduct and the degree of investigated member's responsibility. The Investigation Committee's assessment in this regard may include consideration of one or more of the following factors:
 - a. the experience of the investigated member;
 - b. the degree of departure from the expected professional standard;
 - c. any advantage gained, or sought to be gained;
 - d. the number of times the offending conduct occurred;
 - e. the impact of the misconduct upon any person or the profession; and
 - f. the presence or absence of any other mitigating or aggravating circumstance.

4. The Investigation Committee must consider the investigated member's remedial and rehabilitative prospects, including the following:
 - a. any actions undertaken by the investigated member to mitigate any harm done to affected individuals or to the profession;
 - b. evidence that the investigated member has acknowledged the misconduct and taken steps to disclose and redress it;
 - c. realized and prospective rehabilitative and remedial efforts;
 - d. the member's approach to the investigation;
 - e. the investigated member's prior professional conduct history; and
 - f. whether another actor has addressed the complaint (e.g. court, educational institution or regional health authority).

5. The disposition of a complaint should be consistent with the disposition reached in other similar complaints involving similar circumstances.

B. Denunciation and deterrence

The Investigation Committee must assess the degree of focus on denunciation and deterrence required in the circumstances, included any indication for specific deterrence for the investigated member and general deterrence for the profession. In doing so, the Committee should be mindful that denunciation and deterrence are generally not primary goals in professional regulation absent certain aggravating circumstances, including bad faith or other serious integrity issues.

Denunciation and deterrence will often be a significant focus in complaints involving billing fraud, sexualized boundary violations and other blatant disregard of ethical principles, professional obligations or standards of practice. The Committee's assessment in this regard is relevant to the question of whether it should take a remedial or disciplinary approach in addressing a complaint.

The Committee should consider as part of this assessment whether alternative measures are available that may achieve general deterrence, including newsletter items or certain means to address systems issues.

C. Disposition without formal discipline

For the purposes of this policy, formal discipline means censure or referral to the Inquiry Committee.

The investigation committee should look at its options from two perspectives:

1. the severity of the possible disposition; and
2. the suitability of the possible disposition.

In terms of severity of the possible disposition, the options which do not involve formal discipline include the following:

1. mediation;

2. providing a reminder;
3. offering advice or recommendations;
4. making criticism;
5. referral within the College itself, including to the Standards Committee, the Prescribing Practices Program or the Physician Health Program;
6. accepting an undertaking [see IC Policy – Undertakings]; and/or
7. accepting a voluntary surrender of registration and/or certificate of practice [see IC Policy – Voluntary Surrender].

The Committee is not limited to only one of the above options in relation to a particular complaint. In fact, it is often useful to reinforce a criticism or advice with some form of remediation. That said, that the vast majority of members take any criticism made by the Committee very seriously and take steps to improve their practice. For this reason, criticism is frequently sufficient to achieve improvement. When criticism is the chosen disposition, the investigated member should be informed of the Committee's expectation that its criticism should be taken very seriously, and that it is expected that the the member will reflect upon the Committee's criticism, learn from their participation in the process, and make appropriate changes to their practice.

There are certain remedial options that are only appropriate for certain types of conduct and members who are both willing and able to engage as required. Referral for remediation may be appropriate in cases where the investigated member appears to have an area of deficiency with respect to skill, knowledge and/or judgment that could be addressed with corrective measures, with or without appropriate assessment to determine what corrective measures are indicated. In some cases, remediation may not be appropriate or necessary because the concerns can be addressed by limitations on the members scope of practice. In other circumstances, both remedial action and limitation pending success of corrective measures are necessary. In any such circumstances the Committee should be satisfied that the investigated member has demonstrated an acceptance of and willingness to remediate deficiencies and/or abide by limitations on their practice. These dispositions should be formalized by an appropriate undertaking:

1. for assessment, treatment and/or counselling where the investigated member's conduct appears to be caused by an ailment, emotional disturbance or addiction; and/or
2. to formalize the commitment to participate in remediation where it appears that the investigated member needs to take specific corrective action (e.g. an undertaking to ensure that the investigated member's records will meet certain specified standards and agreement to undergo a monitoring process to ensure compliance with the standards); and/or
3. to limit the investigated member's scope of practice.

D. Formal Discipline

In determining if misconduct warrants formal discipline, it is useful to determine if it falls into one of the following two broad categories:

1. Moral turpitude

Moral turpitude describes deliberate misconduct committed with a view to personal advantage in obvious disregard for professional responsibilities. Such conduct may reflect a questionable moral character and/or a disregard for ethical imperatives such as putting first the interests of the patient. As such, provable allegations of such conduct generally warrant censure or referral to the inquiry committee.

2. Significant breaches of professional obligations and/or of standards of practice

Significant breaches or repetitive breaches usually involve conduct that a reasonable, competent and ethical member would realize is significantly wrong and potentially harmful. The conduct may be willful or in reckless disregard of professional obligations. Significant breaches can merit censure or referral to the Inquiry Committee, especially if there are aggravating factors. However, significant breaches are not always censured or referred to the Inquiry Committee. Consideration of mitigating factors and aggravating factors should inform the decision as to the appropriate disposition in such cases.

- a. Mitigating factors may include:
 - i. an isolated occurrence;
 - ii. conduct which appears to be attributable to an error of judgment related to inexperience, ill health, or a similar life circumstance, and where steps may be taken to make it unlikely to occur again;
 - iii. the investigated member accepts responsibility for the conduct and responds appropriately (e.g. apologizes and/or takes steps to redress the wrong);
 - iv. the investigated member takes effective corrective action (e.g. practice restriction or further education); and
 - v. where it appears unlikely, for whatever reason, that the investigated member will engage in similar conduct in the future.

- b. Aggravating factors may include:
 - i. repetitive conduct or conduct over an extended period that may or may not amount to a pattern of practice;
 - ii. any advance warning to the investigated member about the conduct;
 - iii. the investigated member placed their own interests first;
 - iv. conduct that is a recurring problem in the profession;
 - v. if the investigated member does not accept responsibility or otherwise respond appropriately to the complaint; and
 - vi. if the conduct reflects a character trait that warrants further action.

Formal disciplinary action is generally not necessary to address minor breaches of professional obligations or standards unless there are significant aggravating factors. For minor breaches, criticism of the investigated member, with or without remediation is often enough (see above).

If a determination is made that the complaint rises to the level of formal discipline, the choices are censure or referral to the Inquiry Committee.

3. Censure

If a member accepts a censure, the Committee is prevented from taking other action, such as requiring remediation. If reprimand and publication, with or without costs, are the primary focus of the discipline, then censure is an appropriate and efficient choice. It should always be made clear to the investigated member where censure is offered that if the censure is not accepted, then referral to the Inquiry Committee is usually the next step, exempting for extraordinary circumstances (e.g. new evidence). When the committee is seriously considering censuring a member, it should consider the factors set out in **IC policy – Censure** and obtain legal advice from its legal counsel.

4. Referral to the Inquiry Committee

If disciplinary action beyond reprimand is the investigation committee's objective and/or the member is not willing to accept a censure, then a formal disciplinary hearing before an Inquiry Panel may be necessary. Referral to the Inquiry Committee will involve a review and consideration of the factors identified in the Committee's Referral to the Inquiry Committee policy and consideration of legal advice from its legal counsel. For more information, see IC policy – Referral to the Inquiry Committee.