



PRACTICE DIRECTION

Appeals from Investigation Committee Decisions

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Practice Directions set out requirements related to specific aspects of the practice of medicine. Practice Directions are used to enhance, explain, or guide registrants with respect to the subject matter relevant to the practice of medicine. Practice Directions provide more detailed information than contained in *The Regulated Health Professions Act*, Regulations, Bylaws, and Standards of Practice issued by CPSM. All registrants must comply with Practice Directions, per s. 86 of *The Regulated Health Professions Act*.

This Practice Direction is made under the authority of s. 85 of the RHPA and represents requirements of CPSM registrants in so far as appropriate.

1. Appeals from Investigation Committee Decisions

- 1.1. Where a matter may be heard by an appeal panel of Council pursuant to s. 108 of the RHPA, the appeal will ordinarily be heard by a Panel of the Executive Committee in accordance with the authority delegated to it by Council pursuant to Part F of the Affairs of the College and Code of Ethics Bylaw and in any event in accordance with the following criteria:
 - 1.1.1. This panel must consist of at least three members of Council who will sit on the panel, one third of whom must be public representatives.
 - 1.1.2. If there are insufficient members of Council without a conflict of interest, the Chair of Council may appoint registrants of CPSM who are not members of Council, provided at least one third of this panel is composed of public representatives.
 - 1.1.3. No person may be appointed to this panel who has taken part in the review or investigation of the matter that is the subject of the appeal.
- 1.2. The process for the hearing and determination of the appeals from a decision of the Investigation Committee set out in this Practice Direction supplements the mandatory requirements of sections 108 through 109 of the RHPA as amended by Part 14 of the RHPA.
- 1.3. Section 108(1) of the RHPA limits the right of appeal of a complainant in respect to any decision made by the Investigation Committee to only those decisions in which the Investigation Committee does one or more of the following:

- 1.3.1. directs that no further action be taken;
- 1.3.2. accepts an undertaking from the investigated registrant; or
- 1.3.3. takes any other action it considers appropriate that is not inconsistent with or contrary to this Act or the regulations or by-laws.

1.4. To initiate an appeal, the complainant must give the Registrar a written notice of appeal, including reasons for the appeal, within 30 calendar days after receiving notice of the Investigation Committee's decision. No appeals can be accepted after the appeal period has expired.

1.5. The complainant may make a written submission within 30 calendar days after providing written notice of appeal and reasons. No written submission can be accepted after the appeal period has expired

2. Procedure on Receipt of Notice of an Appeal

2.1. Upon receipt of Notice of Appeal pursuant to section 108(1) of the RHPA, the Registrar must acknowledge receipt of the Notice of Appeal to the complainant and provide a copy of the Notice of Appeal to the investigated registrant.

2.2. Both the complainant and the investigated registrant will have 30 calendar days within which to make a written submission.

3. Date of Hearing the Appeal

3.1. The Chair of Council is responsible to fix a date for the hearing of the appeal after all the Appeal Material has been assembled.

4. Appeal Material

4.1. The Registrar must include the following in the material submitted to Appeal Panel for its consideration of an appeal of an investigation committee decision:

- 4.1.1. The Investigation committee decision;
- 4.1.2. The Notice of Appeal; and
- 4.1.3. The written submissions of the Complainant and the Investigated registrant.

5. Meeting

5.1. When an Appeal Panel meets to consider an appeal:

- 5.1.1. Neither the complainant nor the investigated registrant is permitted to attend the meeting.

- 5.1.2. The Panel may have legal counsel to assist it in relation to the appeal.
- 5.1.3. The Panel may request any additional information it deems necessary and have access to the Investigator's Report and any documentation gathered by the investigation committee for the purposes of its investigation.

6. Appeal Panel Decision

- 6.1. Appeal Panels have the ability to exercise the following powers:
 - 6.1.1. dismiss the appeal;
 - 6.1.2. make any decision that in its opinion ought to have been made by the investigation committee; or
 - 6.1.3. refer the matter back to the investigation committee for further investigation or consideration in accordance with any direction that the panel may give.
- 6.2. Appeals from decisions of Investigation Committee are not fresh hearings of the matter. Appeal Panels adhere to the principle of law that for the exercise of a discretionary power, that discretion must be brought to bear on every case, and each case must be considered on its own merits. Within that context, the general guidelines established by Council Policy apply to appeals from decisions of the Investigation Committee.
- 6.3. Both the investigated registrant and the complainant must be given written notice of the Appeal Panel's decision and the reasons for it.
- 6.4. The Appeal Panel's decision and the reasons for it must be communicated to the complainant, the investigated registrant and the Medical Consultant to the Investigation Committee in writing by way of a written Notice of Decision and Reasons for Decision.
- 6.5. There is no appeal from a decision of the Appeal Panel.