



PRACTICE DIRECTION

Complaints, Investigations & Appeals

Initial Approval: November 22, 2018

Effective Date: January 1, 2019

Reviewed with NO Changes

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Practice Directions set out requirements related to specific aspects of 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 the College. All members 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 supplements the College's requirements and procedures that relate to the resolution of complaints, investigations and appeals pursuant to Part 8 of the RHPA.

1. COMPLAINTS AGAINST MEMBERS

1.1. Informal Resolution

- 1.1.1. When the College receives a complaint against a member, the member must respond to the complaint and otherwise participate in the process established for informal resolution of complaints in accordance with section 91(2)(b) as amended by section 187(4) of the RHPA.

1.2. Medical Consultant

- 1.2.1. The Registrar is assisted with the processing of complaints by a Medical Consultant engaged by the College. This person's title is the Medical Consultant to the Complaints Committee.
- 1.2.2. Members are required to respond to the Medical Consultant to the Complaints Committee in accordance with Part I of the Affairs of the College and Code of Ethics Bylaw.

1.3. Referral to the Investigation Committee

- 1.3.1. Where the Registrar is of the opinion that a complaint should be referred immediately to the Investigation Committee, the Registrar will refer the complaint to the Investigation Committee in accordance with s. 91(2)(b) as amended by s. 187(4) of the RHPA.

- 1.3.2. The following complaints will normally be referred directly to the Investigation Committee, unless the Registrar otherwise directs that the matter be referred to the Complaints Committee after consulting with the Medical Consultant to the Complaints Committee and/or the Medical Consultant to the Investigation Committee:
- 1.3.2.a. complaints which concern a diagnosis and/or treatment of a specialist or other care where it appears that the assistance of an external expert consultant will likely be required;
 - 1.3.2.b. complaints which involve allegations of boundary violations or other sexual misconduct on the part of a member;
 - 1.3.2.c. complaints against a member who is the subject of an open investigation; and/or
 - 1.3.2.d. any other complaint where it is anticipated that the statutory powers of the Investigation Committee and/or the Investigation Chair pursuant to the RHPA may be required to address concerns arising from the complaint.

2. PROCESSING OF A COMPLAINT

2.1. Responding to a Complaint

- 2.1.1. The following process applies to any matter referred to the Complaints Committee pursuant to section 91(2)(b) as amended by section 187(4) of the RHPA by the Registrar for review by a panel of the Complaints Committee:
- 2.1.1.a. The Registrar or the Medical Consultant to the Complaints Committee shall correspond with the Member:
 - 2.1.1.a.i. enclosing a copy of the complaint or a statement of the concerns referred to the Complaints Committee,
 - 2.1.1.a.ii. requiring an answer within 30 calendar days of the date of the College's correspondence to the Member, unless this time is abridged or extended by the Registrar or Medical Consultant,
 - 2.1.1.a.iii. advising the Member that his/her reply is not privileged and will be shared with the complainant.
 - 2.1.1.b. The Registrar or the Medical Consultant to the Complaints Committee shall correspond with the complainant advising:
 - 2.1.1.b.i. of the role of the College in protecting the public and the methods by which this is done, and
 - 2.1.1.b.ii. of the likely time lapse until the complaint will be reviewed.

- 2.1.1.c. The Registrar or the Medical Consultant to the Complaints Committee will obtain medical records, hospital records and such other information as the Medical Consultant deems necessary for the proper review of the complaint and may take such other action as he/she deems proper to obtain information relating to the complaint.

2.2. Procedure in relation to gathering additional information

- 2.2.1. The Medical Consultant to the Complaints Committee may do any one or more of the following:
 - 2.2.1.a. invite the complainant or the member to meet with the Medical Consultant to the Complaints Committee to provide further clarification; and/or
 - 2.2.1.b. obtain such additional information as the Medical Consultant to the Complaints Committee deems necessary for the Panel to appropriately review the concerns raised in the complaint or the member's response.

2.3. Procedure on Receipt of a Complaint about a Learner

- 2.3.1. Where a complaint is received respecting the provision of medical care by a physician assistant student, an undergraduate medical student or a postgraduate medical student, that complaint must be sent to:
 - 2.3.1.a. the student who is the subject of the complaint, and
 - 2.3.1.b. the attending staff physician responsible for the medical care provided by that student where the student is a medical student; or
 - 2.3.1.c. the attending physicians and/or supervising physician assistant where the student is a physician assistant student.
 - 2.3.1.d. the appropriate Dean of either post graduate or under graduate studies at the Max Rady College of Medicine, University of Manitoba.

3. COMPLAINTS INVOLVING VIRTUAL MEDICINE

- 3.1. Where the College receives a complaint respecting the conduct of a Member practising virtual medicine, the College will process the complaint irrespective of the jurisdiction where the patient resides.

- 3.2. Where the College receives a complaint from a Manitoba resident respecting the conduct of a person who is not registered in Manitoba but who is alleged to be practising virtual medicine in Manitoba, the College will seek the consent of the complainant to forward the complaint to the Regulatory Authority in the jurisdiction where the person alleged to be practising telemedicine in Manitoba is registered, where applicable.

4. COMPLAINTS COMMITTEE DECISION

- 4.1. Following its review of a matter, a panel of the Complaints Committee must attempt to resolve it informally if the Complaints Committee considers informal resolution to be appropriate in accordance with section 92.2(1) of the RHPA. It may also do one or more of the following:
 - 4.1.1. provide advice to the member in accordance with section 92.2(2) of the RHPA;
 - 4.1.2. refer the matter to another College committee; or
 - 4.1.3. refer the matter to such other body as it may deem appropriate provided that such referral is in accordance with section 140 of the RHPA.
- 4.2. Where the matter arose as a referral under *The Prescription Drugs Costs Assistance Act*, the Complaints Committee may refer the member to an educational program approved by the Chair of the Complaints Committee panel and accept an undertaking from that member in relation to that member's participation in the educational program. If a panel of the Complaints Committee accepts an undertaking from a member, the Medical Consultant to the Complaints Committee is responsible for monitoring compliance with the undertaking.
- 4.3. The results of the Complaints Committee review must be communicated to the complainant and the physician in writing.
- 4.4. The complainant will be informed of his/her right to request that the matter be referred to the Investigation Committee in accordance with section 92.2(3) of the RHPA.

5. REFERRALS TO THE INVESTIGATION COMMITTEE

- 5.1. The Registrar and Investigation Committee Chair are assisted with matters referred to the Investigation Committee by a Medical Consultant engaged by the College. This person's title is the Medical Consultant to the Investigation Committee.
- 5.2. The Medical Consultant to the Investigation Committee is deemed to be appointed as the investigator by the Registrar pursuant to s. 96 of the RHPA, as amended by Part 14

for all complaints referred to the Investigation Committee unless the Chair of the Investigation Committee determines that it is appropriate to appoint another person as the investigator.

- 5.3. Members are required to respond to the Medical Consultant to the Investigation Committee in accordance with Part I of the Affairs of the College. Members are required to respond to the Medical Consultant to the Investigation Committee in accordance with Part I of the Affairs of the College and Code of Ethics Bylaw and Part 8 of the RHPA.

6. APPEALS FROM INVESTIGATION COMMITTEE DECISIONS

- 6.1. 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:
- 6.1.1. 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.
 - 6.1.2. If there are insufficient members of Council without a conflict of interest, the Chair of Council may appoint members of the College who are not members of Council, provided at least one third of this panel is composed of public representatives.
 - 6.1.3. 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.
- 6.2. 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.
- 6.3. 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:
- 6.3.1. directs that no further action be taken;
 - 6.3.2. accepts an undertaking from the investigated member; or
 - 6.3.3. takes any other action it considers appropriate that is not inconsistent with or contrary to this Act or the regulations or by-laws.
- 6.4. 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.

Procedure on Receipt of Notice of an Appeal

- 6.5. 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 member.
- 6.6. Both the complainant and the investigated member will have 30 calendar days within which to make a written submission.

Date of Hearing the Appeal

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

Appeal Material

- 6.8. The Registrar must include the following in the material submitted to Appeal Panel for its consideration of an appeal of an investigation committee decision:
 - 6.8.1. The Investigation committee decision;
 - 6.8.2. The Notice of Appeal; and
 - 6.8.3. The written submissions of the Complainant and the Investigated member.

Meeting

- 6.9. When an Appeal Panel meets to consider an appeal:
 - 6.9.1. Neither the complainant nor the investigated member is permitted to attend the meeting.
 - 6.9.2. The Panel may have legal counsel to assist it in relation to the appeal.
 - 6.9.3. 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.

Appeal Panel Decision

- 6.10. Appeal Panels have the ability to exercise the following powers:
 - 6.10.1. dismiss the appeal;
 - 6.10.2. make any decision that in its opinion ought to have been made by the investigation committee; or
 - 6.10.3. refer the matter back to the investigation committee for further investigation or consideration in accordance with any direction that the panel may give.

- 6.11. 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.
- 6.12. Both the investigated member and the complainant must be given written notice of the Appeal Panel's decision and the reasons for it.
- 6.13. The Appeal Panel's decision and the reasons for it must be communicated to the complainant, the investigated member and the Medical Consultant to the Investigation Committee in writing by way of a written Notice of Decision and Reasons for Decision.
- 6.14. There is no appeal from a decision of the Appeal Panel.