



DISCIPLINE HEARINGS: INFORMATION FOR MEMBERS

The following is intended to provide an overview of the discipline process of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the "College"). Please review this document carefully as it contains important information. This document is not legal advice. If there is any conflict between this document and the applicable legislation or rules, the legislation or rules take precedence. It is strongly recommended that you seek legal advice and retain a lawyer to represent you at a Discipline hearing.

Purpose of Discipline Hearings

As part of the College's mandate to regulate Traditional Chinese Medicine and Acupuncture in the public interest, the Inquiries Complaints and Reports Committee may refer allegations of professional misconduct or incompetence to the College's Discipline Committee for a hearing.

A hearing is a formal proceeding, similar to a trial in a court, conducted by a Panel of members of the Discipline Committee. The Discipline Committee will consider evidence and determine if, based on the evidence, the Member committed an act or acts of professional misconduct or is incompetent. If the Discipline Committee finds that the Member committed acts of professional misconduct or is incompetent, it will then determine what penalty should be imposed. In hearings before the Discipline Committee, the parties are the College and the Member against whom the allegations have been made.

The purpose of disciplinary hearings is to help the College ensure that its mandate of public protection is carried out. Discipline hearings ensure that Members govern themselves in accordance with the *Regulated Health Professions Act*, the *Traditional Chinese Medicine Act, 2006* in addition to other statutes and regulations governing the profession. This includes maintaining standards of practice of the profession.

Disciplinary hearings also help the College preserve public confidence in the profession by:

- Providing public access to the discipline process through a public complaints process;
- Allowing the public access to discipline proceedings by way of open hearings; and
- Publishing the Discipline Committee's decisions in the College's publications on its website.

It is strongly recommended that you retain a lawyer to represent you at a discipline hearing.

Notice of Hearing

After a referral to the Discipline Committee in relation to specified allegations of professional misconduct or incompetence has been made, the matter will be assigned to the College's lawyer (the "Prosecutor"). The Prosecutor will prepare a Notice of Hearing to be sent to you that will set out a date for a hearing. The Prosecutor will also provide you with a copy of all relevant information within the College's possession, which is called "Disclosure" (discussed in more detail below).

The Notice of Hearing contains the allegations of professional misconduct or incompetence that have been made against you. The College has the burden of proving the allegations set out in the Notice of Hearing. The standard of proof that the College must meet is the civil standard of proof, on a "balance of



probabilities”. Simply put, this standard means that the Discipline Committee must decide whether it is more likely than not that you engaged in the conduct that you are alleged to have engaged in.

Once you receive the Notice of Hearing, you or your lawyer should contact the Prosecutor assigned to the case to discuss how you intend to proceed.

Legal Representation

A discipline hearing is a serious matter. If you face allegations of professional misconduct before the Discipline Committee, you should consider whether you want to retain a lawyer, paralegal or an agent at your own expense (in compliance with the requirements of the *Law Society Act*). There is no requirement for you to retain a legal practitioner (you can represent yourself) but the College is represented by a lawyer at hearings.

Disclosure

The College will, as part of its disclosure obligations, disclose all relevant documents in its possession to the Member. Any party that wants to rely on evidence at the hearing must disclose the evidence to the other party and must provide the other party with a reasonable opportunity to examine the evidence before the hearing. Each party is required to serve to on every other party a list of all documents that the party intends to produce or enter as evidence at the hearing, and if not previously produced, copies of all the documents. The parties must do so as soon as reasonably practicable after the Notice of Hearing is served, but in any case, at least 10 days before the hearing.

Where a party wants to call a witness at the hearing to provide oral testimony, they must disclose the identity of the witness at least 10 days before the hearing. If the witness is to testify about material matters that have not otherwise been disclosed, the party calling the witness must also provide a written statement containing the substance of the witness’ anticipated oral evidence to the other party at least 10 days before the hearing.

A party can also present evidence of any of its witnesses in the form of an affidavit that has been sworn or affirmed by that witness. The party shall serve copies of the affidavit on all other parties at least 10 days before the hearing, and file the original affidavit with the Discipline Committee. The witness can still be called to testify at the hearing and the opposing party has the right to cross-examine that witness.

Where a party wants to rely on an expert witness, the party must disclose the identity of the expert and a copy of a written report signed by the expert containing the substance of the expert’s anticipated oral evidence at least 10 days before the commencement of the hearing. An “expert witness” is someone qualified to give opinion evidence about matters outside the general scope of knowledge of the Panel members. For example, the Discipline Committee often hears expert evidence about what the standards of practice of the profession are, and whether those standards were breached in a particular case.

Where the evidence a party wants to call is not oral, written or documentary evidence, the party must provide a written description of the evidence.

These rules of disclosure ensure that each party is prepared for the hearing.



Pre-Hearing Conference

There are a number of preliminary matters that should be determined before a hearing takes place, such as how many witnesses will be called, what facts the parties agree on (if any), and what are the contentious issues. To assist with narrowing the issues and to help expedite the time required for a hearing, the Chair of the Discipline Committee will direct the parties to participate in a pre-hearing conference as soon as practicable after the Notice of Hearing has been served.

Pre-hearing conferences are closed to the public and all discussions at a pre-hearing conference occur on a “without prejudice” basis. This means that nothing discussed at the pre-hearing conference can be disclosed at the hearing. The purpose of the pre-hearing conference is to plan for the hearing and to determine if any of the issues can be settled. The person who chairs the pre-hearing conference will not be a member of the Discipline Committee Panel at the hearing (unless both parties consent). If none of the issues can be settled, a pre-hearing conference is a helpful opportunity for the parties to discuss any issues that may arise at a hearing, as well as scheduling issues, including how long a hearing may take.

Motions

A motion is a request to the Discipline Committee to obtain a ruling or decision on a specific matter relevant to a case. Parties must notify the Discipline Committee of any intention to file a motion so that a motion date can be scheduled. The party bringing the motion must give written notice to all other parties and file it with the Discipline Committee at least 3 days before the motion is to be heard, setting out the grounds of the motion, the evidence to be relied upon, the proposed hearing method and the relief sought. The party bringing the motion must then serve the documentary evidence to be relied upon, as well as the Notice of Motion, with the Discipline Committee two days before the motion is to be heard.

Certain motions may be brought in advance of the hearing – these are called “pre-hearing motions”. An example of a pre-hearing motion is a motion to request an adjournment. Other motions, such as motions to require a third party to produce documents, must be brought at the hearing.

A pre-hearing conference can be helpful in assisting you to determine what motions, if any, should be brought in advance of the hearing.

Hearings

A hearing is a formal proceeding before an independent Panel of the Discipline Committee made up of members of the profession and the public. The hearing is a full legal and adversarial process – each party presents its own case and represents its own interests. There are specific roles and duties for each individual involved in a hearing. It is important that you appreciate that Discipline Hearings are similar to court proceedings, and therefore there are rules that are required to be following during the hearing.

There is a specific order to the Discipline Hearings, which is set out below, as well as a high degree of formality. All witnesses will be sworn or affirmed as to the truth of their evidence before they are permitted to commence their evidence. Any documentary evidence to the hearing will be entered as exhibits during the hearing.



With respect to decorum, the Panel is given the same respect as a judge at trial. For hearings that are proceeding in person, the Panel will enter the hearing room last and all persons present are required to stand (unless they are physically unable to do so) when the Panel enters the room and remain standing until advised by the Chair of the Panel to be seated. The same protocol applies when the Panel exits the hearing room. Additionally, the Panel will not speak with the Member or the Prosecutor during breaks.

If you have been given notice of the hearing, including the date, time, place and purpose of the hearing, and you fail to attend the hearing, the hearing may proceed in your absence.

In certain circumstances, it is possible for a hearing to be adjourned to a later date than previously scheduled. If you require an adjournment, you should contact the Prosecutor and Independent Legal Counsel as soon as possible (additional information regarding Independent Legal Counsel's role is included below). You should consult the Discipline Committee's rules (discussed below) which provide more information on how to seek adjournments (see Rule 24).

Discipline Committee Rules

The Discipline Committee has its own set of rules which contain information regarding its process. These rules, called the *Rules of Procedure of the Discipline Committee of the College*, are available on the College's website and a link to them is at the bottom of this sheet. They contain important information, including information about pre-hearing conferences, the deadline and process to file materials with the Discipline Committee, the parties' disclosure obligations and the process parties must follow when bringing motions. You should review these rules carefully.

Electronic Hearings

The default mode of hearing is currently electronic. In the case of electronic hearings, the College will provide log-in information to the parties in advance of the hearing and will also be available to troubleshoot any issues in advance of the hearing. It is recommended that you [contact](#) the Hearings Office in advance of the hearing to ensure that any issues are addressed before the hearing.

Electronic hearings are subject to the same rules and decorum as in-person hearings. You must ensure that you are in a quiet space and can focus on the hearing. Nobody else should be in the room with you with the exception of lawyers, paralegals or representatives. If a member wishes to have a support person present, they must seek permission in advance from the Prosecutor. Even if the Prosecutor consents, the Panel has the final decision. Finally, members will want to ensure that they do not have access to documents (electronic or paper) when they testify. If documents are needed, the member will want to alert the Prosecutor in advance. The rationale is that when a person is testifying, they should only rely upon their memory and not be aided by documents. There are exceptions. However, this will need to be discussed with the Prosecutor and the Panel.

The Individuals Involved in a Discipline Hearing

The parties to a discipline hearing are the College and the Member against whom allegations have been made. Any other witnesses who may be permitted to give evidence at the hearing, including the complainant if the hearing involves a complaint against the Member, are not parties. Note that if a party calls a witness to testify, that witness will usually not be permitted to attend the hearing until their testimony is completed.



The other participants involved in the hearing will include the Panel, Prosecutor, Court Reporter, Independent Legal Counsel, as well as College staff and any witnesses called by either party.

The Panel

The Chair of the Discipline Committee will assign a Panel to preside at a hearing and consider the allegations contained in the Notice of Hearing. The Panel will be composed of three to five people, including a Chair of the Panel (who will not necessarily be the Chair of the Discipline Committee). The Chair has the responsibility of ensuring that the hearing is conducted fairly and efficiently.

The role of the Panel is similar to that of a judge (and jury) – it will render a decision and give its reasons. The decision becomes public information upon completion of the hearing.

The mandate of the Panel is to:

- Consider the allegations set out in the Notice of Hearing and determine the facts of the case;
- Determine whether, upon the evidence and the facts, the allegations have been proven;
- Determine whether, in respect of the allegations so proved, you have committed an act of professional misconduct or are incompetent; and
- If a finding of professional misconduct or incompetence is made, determine the penalty to be imposed in cases where such findings have been made.

The Panel has the right to ask questions of clarification from witnesses.

The Discipline Committee Panel will also have its own lawyer commonly referred to as Independent Legal Counsel (“ILC”). This lawyer does not represent the College and is not a member of the Panel. More information regarding ILC is provided below.

The Prosecutor

The Prosecutor will present the available evidence to prove the allegations as set out in the Notice of Hearing. The Prosecutor must provide sufficient evidence in order for the Panel to make a finding or findings on the allegations. If the Prosecutor does not tender enough evidence to meet the burden of proof (described above) the Panel will not make a finding of professional misconduct or incompetence.

The role of the Prosecutor is to present the case for the College. The Prosecutor cannot provide legal advice to you or to witnesses. It is strongly suggested that you seek legal advice and if necessary, retain your own legal counsel to represent you.

Independent Legal Counsel

The College also retains legal counsel to provide impartial legal advice to the Panel. Note that even though the College pays for the services of ILC, the ILC is completely independent of the College. The Panel is permitted to seek legal advice from ILC with respect to legal and/or procedural issues that arise during a hearing. The right to legal advice is important for the Panel, as most Panel members are not lawyers. ILC may provide advice on any given questions of law, procedure or evidence. ILC does not vote or influence the Panel’s decision. Advice given to the Panel by ILC will be shared with the parties so that they can make



submissions about it if they wish. ILC is independent of the College and the Member; ILC cannot give legal advice to the parties.

Court Reporter

A court reporter transcribes verbatim the entire proceedings. The College is required to have and maintain the record in all disciplinary proceedings. You can request a copy of the transcripts, however there is a fee for obtaining them.

College Staff

Usually, College staff will be present during the hearing. They are responsible for making all pre-hearing arrangements, such as ensuring the hearing room is booked, that all technology is functioning appropriately and arranging for the reporter and ILC. Staff will also ensure that discipline decisions are distributed and published as required and will monitor the Member's compliance with any penalty order made by the Panel.

Contested vs. Uncontested Hearings

Hearings occur in two stages.

The first stage of the hearing is focused on whether you committed an act or acts of professional misconduct or incompetence. The Prosecutor will start by reviewing the allegations in the Notice of Hearing. Once the Panel has reviewed the Notice of Hearing, you will be asked how you respond to the allegations. You can either deny some or all of the allegations, in which case the hearing will proceed on the basis that the denied allegations are contested. You can also admit some or all of the allegations, which is the equivalent of a guilty plea. Additional information is provided below.

The question of a possible penalty is not addressed in this part of the hearing – the only decision for the Panel to make is whether the allegations in the Notice of Hearing have been established on a balance of probabilities (described above). If the Panel finds that you committed an act or acts of professional misconduct or incompetence, the second stage of the hearing is focused on what penalty is appropriate.

Either or both stages of the hearing can proceed on a contested basis or uncontested basis.

Contested Hearings

Where a hearing occurs on a fully **contested** basis, the Member disputes the allegations. Following opening statements of each party's general position regarding the allegations, the Panel will hear evidence. The Prosecutor will make their opening statement first, and you will then have the right to make an opening statement. The opening statement is not evidence – the purpose is to assist the Panel in understanding what the case is about, what the parties' respective positions are, and the anticipated evidence supporting those positions, including which witnesses the parties will be calling and what they expect the witnesses will say. There is no requirement for you to make an opening statement.

The College will present its evidence first. Evidence may be in the form of documents or in the form of oral testimony given by witnesses. When the College has finished asking questions of their witnesses, you will have the opportunity to cross-examine the witness. It is important to remember that questions must be



relevant to the allegations in the Notice of Hearing. Each party is responsible for ensuring that its witnesses attend the hearing, and if necessary, witnesses can be served with a summons to require their attendance at the hearing. A summons to witness must ordinarily be served personally on the witness at least two days before the date on which the witness is to appear. The Hearings Office can assist you to obtain a summons, but the Hearings Office they will not participate in the service of that summons. That is your responsibility.

The parties have the right to object to any questions asked by the opposing party if they believe it is improper. Some examples include if the question seeks irrelevant or hearsay information. You are required to explain your objection and you must address the Chair of the Panel when doing so. The Panel may ask the witness to be excused and may turn to ILC to seek their views, and the parties will have an opportunity to comment on any advice from ILC to the Panel. The Panel will then make a decision regarding whether the question is improper.

Once the College has advised the Panel that they have no other evidence to tender, the Panel will advise you that you have the opportunity to present your case. If you have not yet provided an opening statement, you can do so now. You can then call the witnesses (one by one) to testify before the Panel. You have the right to testify in your own defence, but you are not obliged to do so. If you do testify, then the Prosecutor will be able to cross-examine you on your evidence.

Note that you are not obligated to present any evidence during the hearing. Remember the burden to prove the allegations rests with the College. However, if you do not present any evidence the Panel will only be relying upon the evidence tendered by the College.

After each party has presented their evidence, they will have an opportunity to provide closing submissions, summarizing the evidence that was presented during the hearing, including the evidence of the witnesses who testified or documents that were referred to, as well as the parties' arguments. It is important to remember that submissions are not evidence – you should keep this in mind when deciding whether or not to testify.

The Panel will retire. They will then consider the evidence and decide whether you have committed an act or acts of professional misconduct or incompetence as alleged in the Notice of Hearing.

If the Panel decides that you have committed an act or acts of professional misconduct, the Panel will then consider what penalty is appropriate (discussed below). Each party will have an opportunity to make submissions and present evidence during the penalty phase of the hearing.

Uncontested Hearings

Where a hearing proceeds on an **uncontested** basis, you are agreeing that you have committed an act or acts of professional misconduct and you enter into an Agreed Statement of Facts. The Agreed Statement of Facts is a written document that will be tendered to the Panel instead of calling witnesses. The Agreed Statement of Facts sets out the facts that are agreed to between the parties. Where hearings proceed on an uncontested basis, there is no need to present oral evidence; all the evidence is contained in the Agreed Statement of Facts. The Agreed Statement of Facts will also usually include an admission or admissions of professional misconduct. The admission(s) must be voluntary and informed to be accepted by the Discipline Committee.



Note that the Panel may also conduct an oral plea inquiry to ensure that you are admitting to the allegations in a voluntary fashion. Some of the questions that can be posed to you during the plea inquiry include the following:

- Do you understand the nature of the allegation(s) made against you?
- Do you understand that by not contesting the allegation, you are waiving the right to require the College to prove the case against you and the right to have a full hearing?
- Did you voluntarily decide to enter a plea to the allegations against you?

In uncontested hearings, agreement is reached on finding (as described above) and penalty. When both parties agree to the penalty (see below) that should be ordered, the Panel will be provided with a document called a Joint Submission on Penalty.

Joint Submissions on Penalty are generally accepted by the Discipline Committee unless to do so would be contrary to the public interest and would bring the administration of the Discipline Process into disrepute. This is a very high threshold to meet, i.e., the penalty agreed to be the parties would have to be much higher or much lower than had been ordered by the Discipline Committee (or the discipline committee of other similar regulators) in the past for similar conduct. This means that even if the Panel would have made the terms different, that is not enough to allow it to reject or “tinker” with what has been jointly agreed to by the parties.

Penalties

If the Discipline Committee determines that you have committed an act or acts of professional misconduct, it will impose a penalty. The Discipline Committee has the power to order the following penalties:

- Requiring you to appear before the panel to be reprimanded (in some cases of sexual abuse, a reprimand is mandatory);
- Direct the Registrar to revoke your certificate of registration (in some cases of sexual abuse, revocation is mandatory);
- Direct the Registrar to suspend your certificate of registration;
- Direct the Registrar to impose terms, conditions and limitations on your certificate of registration;
- If the findings of professional misconduct include sexual abuse, require you to reimburse the College for funding provided to the complainant for therapy and counselling and to post security to guarantee the payment of any amounts you are required to reimburse the College;
- Requiring you to pay a fine of not more than \$35,000 to the Minister of Finance.

Costs

The Discipline Committee also has the power to order costs if there is a finding of professional misconduct. These are separate and apart from the penalty and are meant to have the Member bear some of the costs incurred in the investigation and prosecution of the matter. If the Member and the College agree to the costs that should be ordered, it will be included in the Joint Submission on Penalty.



If the Discipline Committee finds that you are incompetent (meaning that your professional care of a patient displayed a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates that the member is unfit to continue to practise or that the member's practice should be restricted), then the Discipline Committee Panel may make an order for revocation, suspension or the imposition of terms, conditions or limitations on your certificate of registration.

Open to the Public

Discipline hearings are open to the public except in rare cases where the Discipline Committee determines the hearing should be closed. The decisions of the Discipline Committee are also made public.

In certain circumstances, the Panel has the power to order a publication ban. For example, in sexual abuse matters, a publication ban may be ordered on the request of a witness who is testifying about allegations of a member's misconduct of a sexual nature involving that witness. The order would require that no person shall publish the identity of the witness or any information that could disclose their identity.

Decision and Reasons

After the hearing, the Discipline Committee Panel will give its decision and reasons in writing to the parties.

Appeals

After the decision of the Discipline Committee is released, either party can appeal the decision to the Divisional Court by serving and filing a Notice of Appeal within 30 days. The Divisional Court may overturn, affirm or modify the order of the Discipline Committee. Please note that you will want to familiarize yourself with the necessary documents, procedures and deadlines of the Divisional Court should an appeal be filed.

Resources

You are encouraged to consult the following resources for more information:

[*Regulated Health Professions Act, 1991, S.O. 1991, c. 18*](#)

[*Health Professions Procedural Code, being Schedule 2 to the Regulated Health Professions Act, 1991*](#)

[*Traditional Chinese Medicine Act, 2006, S.O. 2006, c. 27*](#)

[*Statutory Powers Procedure Act, R.S.O. 1990, c. S.22*](#)

[Rules of Procedure of the Discipline Committee of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario](#)