

CDHO

COLLEGE OF DENTAL
HYGIENISTS OF ONTARIO

Rules of Procedure of the Discipline Committee of the College of Dental Hygienists of Ontario

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RULE 1 – INTERPRETATION AND APPLICATION

1.01 Definitions

1.01(1) In these rules, unless the context requires otherwise,

Allegations	Substantive claims that a registrant may have performed an act(s) of professional misconduct or incompetence.
Anonymized Notice of Hearing	A Notice of Hearing in which the name of the client or the alleged victim has been removed.
Chair	Refers to the chair of the Discipline Committee or her or his designate. This includes the chair of the Panel.
Closed Hearing	A hearing which is not open to the public. Also called an <i>in camera</i> hearing (see “In Camera” below).
College	The College of Dental Hygienists of Ontario.
Complaint	A concern raised against a registrant by another person.
Complainant	An individual who makes a complaint against a registrant.
Consent	Agreement between the parties. For example, the parties may request that the panel postpone (adjourn) the start of the hearing “on consent”.
Counsel	Lawyer(s) for a party.
Deliver	To serve on every other party or, in the case of a motion, on a motion participant, and to file with the Hearings Coordinator with proof of service.
Dental Hygiene Standards of Practice	Generally accepted standards of professional behaviour and conduct, expected of every registrant. Standards outline the knowledge, skill and judgment required to practise safely and ethically.
Deterrence – General	Where a penalty that is imposed on a registrant also serves the purpose of deterring other registrants from doing the same thing.
Deterrence – Specific	Where a penalty is imposed to prevent the registrant from performing the act again.
Discipline Committee	Refers to the Discipline Committee of the College, and includes a panel of the Discipline Committee.



Discipline Panel	A group of three to five (usually five) members of the Discipline Committee appointed by the Committee’s chair to hear evidence on allegations against a registrant. The panel is empowered to make a decision as to whether the registrant committed acts of professional misconduct or is incompetent, based on the evidence presented. A quorum consists of three members, at least one of whom must be a public member.
Disclosure	Provision of all relevant, non-privileged documents by one party to another party.
Electronic Proceeding	A proceeding held by telephone conference call or another form of electronic technology that permits the parties to communicate with and hear one another simultaneously.
Fact	Something that is verifiable and can be proved by evidence.
Finding	A decision of the panel based upon the evidence and submission(s) presented.
Health Professions Procedural Code	Schedule 2 of the <i>RHPA</i> containing provisions governing College structures and procedure (the “Code”).
Hearing	Similar to a trial. The final stage of the discipline process where evidence is heard and submissions are made before a neutral panel that will adjudicate on the issues in dispute.
Hearings Coordinator	The CDHO’s liaison to the Discipline Committee who is also responsible for coordinating Hearings and Pre-hearing conferences.
“Holiday”	means, <ul style="list-style-type: none"> (a) any Saturday or Sunday, (b) New Year’s Day, (c) Family Day, (d) Good Friday, (e) Victoria Day, (f) Canada Day, (g) Civic Holiday, (h) Labour Day, (i) Thanksgiving Day, (j) Christmas Day, (k) Boxing Day, (l) any special holiday proclaimed by the Governor General or the Lieutenant Governor, and (m) any other day designated by the College as a holiday.
In Camera	A proceeding that is closed to the public (see “Closed Hearing”, above)

Incompetence	Defined in section 52(1) of the Code to mean “the member’s 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”.
Independent Legal Counsel	A lawyer, independent of the College and the registrant, whose role is to provide advice to the panel, at the request of the panel.
Joint Submissions	When the parties make submissions that they have agreed upon, on finding or penalty (or both), to the panel.
Motion	A request by one party for some action on the part of the panel (see Section 13, below).
Motion Participant	A party and any other person who would be affected by the order sought through a motion.
Notice of Hearing	A legal document for the College outlining the allegations against a registrant and the orders a panel may make in the case of a finding. It is served upon the registrant.
Open Hearing	A hearing which the public can attend.
Order	A decision made by the Discipline Committee or the chair that includes a direction given by the Discipline Committee or the chair.
Party	An individual or entity who is a part of the hearing process and is usually represented by legal counsel. The usual parties are the College and the Registrant.
Pre-hearing Conference	A meeting of the parties in advance of the Hearing, or in special circumstances before completion of the hearing, to determine whether or not the parties can agree on any of the issues, and to discuss motions that might be brought forward, scheduling, etc. Pre-hearing conferences are held on a without-prejudice basis.
Presiding Officer or Pre-Hearing Chair	The person designated by the chair to preside over a pre-hearing conference.
Proceeding	Any step in the discipline hearing process including a motion, a pre-hearing conference and the hearing itself.
Professional Misconduct	Defined in section 51(1) of the Code to mean: “(a) the member has been found guilty of an offence that is relevant to the member’s suitability to practise; (b) the governing body of a health profession in a jurisdiction other than Ontario has found that the member committed an act of professional misconduct that would, in the opinion of the panel, be an act of professional misconduct as defined in the regulations; (b.O.1) the member has failed to co-operate with the Quality

	Assurance Committee or any assessor appointed by that committee; (b.1) the member has sexually abused a patient; or (c) the member has committed an act of professional misconduct as defined in the regulations.”
Public Member	Member appointed by the Lieutenant Governor in Council.
<i>Regulated Health Professions Act, 1991</i> (the “RHPA”)	The legislation that defines much of the College’s responsibilities and practices including the process for handling discipline matters.
Public Register	Database in which information about registrants, including the outcome of a disciplinary proceeding is recorded.
Registrant	A member of the College of Dental Hygienists of Ontario.
Registrar	The Chief Administrative Officer of the College.
Seized	A legal concept to describe the requirement that a panel made up of specific members must complete a hearing that has commenced after the panel has heard a plea to the allegations in the Notice of Hearing.
Submissions	Arguments about findings or penalty, often presented by legal counsel for the parties.
Summons	A written order from the Discipline Committee to a person to appear at a hearing.
Unrepresented	When a party (e.g. the registrant) does not have legal counsel.
Vulnerable witness	A witness who, in the opinion of the Discipline Committee, will have difficulty testifying or will have difficulty testifying in the presence of a party for appropriate reasons related to age, handicap, illness, trauma, emotional state or similar cause of vulnerability.

1.02 Interpretation of Rules

- 1.02(1) These rules shall be liberally construed to secure the just and, where justice for the registrant would not be compromised, the most expeditious determination of the allegations against the registrant.
- 1.02(2) Where matters are not provided for in these rules, the practice shall be determined by analogy to them.
- 1.02(3) Where a registrant is not represented by a lawyer/paralegal/third party, anything these rules require or permit a lawyer to do shall be done by the registrant.

1.03 Application of Rules

- 1.03(1) These rules apply to all proceedings before the Discipline Committee of the College including, with all necessary modifications, applications for reinstatement made under sections 72 and 73 of the Code.

1.03(2) Despite anything in these Rules, the Discipline Committee can make any order that is necessary to control its process. In making such an order the Discipline Committee must take into consideration the public interest, the interests of witnesses and the registrant's right to make full answer and defence to the allegations.

1.04 Computation, Extension or Abridgment of Time

1.04(1) In the computation of time under these rules or under an order, except where the contrary intention appears,

- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even where the words "at least" are used;
- (b) where a period of less than seven days is required, holidays shall not be counted;
- (c) where the time for doing an act under these rules expires on a holiday, the act may be done on the next day that is not a holiday; and
- (d) service of a document made after 4:00 p.m. or at any time on a holiday shall be deemed to have been made on the next day that is not a holiday.

1.04(2) Where a time of day is mentioned in these rules, in an order or in any document in a proceeding, the time referred to shall be taken as the time observed locally.

1.04(3) The Discipline Committee may extend or abridge any time required by these rules, on such terms or conditions as the Discipline Committee considers just, either before or after the expiration of the time.

RULE 2 – DOCUMENTS

2.01 Form of Documents

2.01(1) Every document prepared for the Discipline Committee shall, to the extent practical, be provided in a readily comprehensible format.

2.02 Notice to be in Writing

2.02(1) Where these rules require notice to be given, it shall be given in writing.

2.03 Filing of Documents

2.03(1) All documents to be filed pursuant to a motion shall be filed with the Hearings Coordinator, except where they are filed in the course of a proceeding.

2.03(2) Any document may be filed with the Hearings Coordinator by leaving it with a person at the College or by mailing it or by sending it by courier to the Hearings Coordinator of the College at 175 Bloor Street East, North Tower, Suite 601, Toronto, Ontario, M4W 3R8, or, if it is less than 10 pages, by facsimile.

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- 2.03(3) A document filed with the Hearings Coordinator of the College shall be filed in an envelope or, where filed by facsimile, with a cover sheet clearly marked “Attention: Hearings Coordinator”.
- 2.03(4) A document shall not be considered filed until it is actually received by the Hearings Coordinator.
- 2.03(5) A party can confirm whether a document has been filed by telephoning the Hearings Coordinator.
- 2.03(6) The person filing a document, unless it is sent by facsimile, shall file seven copies of the document.

RULE 3 – WAIVER OF A RULE

3.01 Methods of Waiving a Rule

- 3.01(1) Any provision of these rules may be waived on the consent of the parties and, where relevant, motion participants, or upon an order of the Discipline Committee.
- 3.01(2) A party or motion participant requesting that a provision of these rules be waived who does not have the consent of the parties and, where relevant, motion participants, shall bring a motion to the Discipline Committee to permit the waiver.
- 3.01(3) A motion under this rule may be made after a failure to comply with these rules has occurred.
- 3.01(4) The Discipline Committee may refuse to grant a motion for a waiver from a provision of these rules where a party or motion participant does not act on a timely basis.
- 3.01(5) The Discipline Committee may waive a provision of these rules on its own initiative if it first gives notice to the parties or motion participants and provides an opportunity for submissions to be made in writing.

RULE 4 – SUBMISSIONS TO THE CHAIR

4.01 Procedure for Making Submissions to the Chair

- 4.01(1) Where the chair has the authority to make a direction or order, a party or, in the case of a motion, a motion participant, may make submissions in writing to the chair.
- 4.01(2) A party or motion participant may make submissions to the chair by including them in a letter to the chair and delivering the letter to the Hearings Coordinator, and serving a copy of the letter on the other party(ies) or motion participant(s).
- 4.01(3) The other parties or motion participants may respond to the submissions described in sub-rule (2) by including them in a letter to the chair and delivering the letter to the Hearings Coordinator and serving a copy of the letter on the other party(ies) or motion participant(s).
- 4.01(4) The chair shall not give a direction or make an order where the submissions have been delivered under sub-rule (2) unless at least 3 days have passed since the first submission was delivered unless it is urgent that the chair do so.
- 4.01(5) Where the chair has given a direction or made an order before receiving submissions under this rule, the chair may reconsider the direction or order and may confirm, vary, suspend or cancel the direction or order.

RULE 5 – MOTIONS

5.01 Initiating Motions

- 5.01(1) A motion shall be made by a notice of motion in accordance with Form 5A unless the nature of the motion or the circumstances make a notice of motion impractical.
- 5.01(2) All procedural or interlocutory issues shall be raised by way of a motion as soon as possible and shall be heard on a day that is at least two weeks before the day upon which the hearing is scheduled to commence unless the nature of the motion requires that it be heard during the hearing itself.
- 5.01(3) A person bringing a motion shall deliver the notice of motion and materials in support of the motion to the other party and to the committee, care of the Hearings Coordinator at least 15 days before the motion is to be heard.
- 5.01(4) The other motion participants shall deliver their materials to the moving party and the Hearings Coordinator at least nine days before the motion is to be heard.
- 5.01(4).1 Where a motion participant intends to rely on a factum, written submissions or book(s) of authorities, those documents must be delivered to the other party and to the committee, care of the Hearings Coordinator, in the case of a moving party, at least seven days in advance, and in the case of a responding party, at least three days in advance, of the date that the motion is to be heard.
- 5.01(5) Where it appears to the chair that the number and nature of the motions brought in a proceeding are not leading to the most just and expeditious disposition of the matter, the chair may direct that no further motions be brought before the commencement of the hearing unless the prior permission of the chair is obtained in accordance with the procedure in Rule 4.

5.02 Limitations on Bringing a Motion in Advance of the Hearing

- 5.02(1) Subject to sub-rule (2), only motions which are procedural or temporary may be brought by a person in advance of the hearing. This may include motions for:
- (a) the exchange of documents;
 - (b) the oral or written examination of a party;
 - (c) the exchange of witness statements and reports of expert witnesses;
 - (d) the provision of additional details about the allegations;
 - (e) a party to provide a list disclosing all relevant documents and things in the possession or control of the party;
 - (f) the ability of a party to view documents;
 - (g) any other form of disclosure;
 - (h) adjourning the hearing; and/or
 - (i) waiving a rule.
- 5.02(2) A motion with respect to the following matters must be heard at the hearing:

- (a) the exclusion of the public from all or part of a hearing;
- (b) whether two or more matters directed or referred to the Discipline Committee, whether or not involving the same registrant, should be heard together;
- (c) the exclusion of witnesses from the hearing;
- (d) constitutional issues;
- (e) orders respecting the accommodation of witnesses;
- (f) orders relating to the production of documents from third parties; and
- (g) any matter that a panel hearing a motion adjourns to the Discipline Panel presiding over the hearing.

5.03 Motions for Adjournment

- 5.03(1) If the hearing has not commenced and if both parties are not agreeable to an adjournment,
- (a) The party seeking the adjournment shall make the request by letter to the chair of the Discipline Committee filed with the Hearings Coordinator and copied to the responding party, setting out the request, the reasons for the request, the nature of the allegations against the registrant, available dates for the hearing to be rescheduled as confirmed with the Hearings Coordinator, and the position of the responding party; and
 - (b) the chair or committee member designated by the chair may dispose of a request in writing that is on consent or unopposed, or may hear and dispose of a request for adjournment that is opposed after hearing the parties by electronic means, or may direct a hearing of the request by motion before the hearing panel.
- 5.03(2) If the hearing has commenced,
- (a) and the adjournment is on consent or unopposed, the party seeking the adjournment may make the request by letter to the chair of the panel (if the panel is not sitting), filed with the Hearings Coordinator and copied to the responding party, setting out the request, the reasons for the request, the nature of the allegations against the registrant, available dates for the hearing to be scheduled as confirmed with the Hearings Coordinator, and the position of the responding party. The chair or a committee member designated by the chair may dispose of the request in writing or direct a hearing of it by electronic means or otherwise;
 - (b) and the adjournment is opposed, it shall proceed by way of notice of motion with supporting material pursuant to Rule 5.01 and shall be heard and determined by the hearing panel, unless otherwise agreed.

5.04 Scheduling a Motion

- 5.04(1) A person bringing a motion to be heard other than at a scheduled pre-hearing conference or at a hearing shall obtain available dates and times for the hearing of the motion from the Hearings Coordinator, and shall attempt to obtain agreement from the other motion participants as to a date and time for the hearing of the motion.
- 5.04(2) If the person bringing a motion cannot, after reasonable efforts, obtain agreement for a date and time under sub-rule (1), the person shall seek directions from the chair in accordance with Rule 4.

5.05 Evidence on Motions

- 5.05(1) Evidence on a motion shall be given by affidavit unless the Discipline Committee directs that it be given in some other form or unless otherwise provided by law.
- 5.05(2) All affidavits used on a motion shall,
- (a) be confined to the statement of facts within the personal knowledge of the deponent, except that the affidavit may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit; and
 - (b) be signed by the deponent and sworn or affirmed before a person authorized to administer oaths or affirmations, which person shall also mark all exhibits as such to the affidavit.
- 5.05(3) A motion participant may not cross examine the deponent of an affidavit filed by another motion participant unless the Discipline Committee directs otherwise.
- 5.05(4) The Discipline Committee shall not direct that the deponent of an affidavit be cross-examined unless the interests of the case require otherwise.
- 5.05(5) Sub-rules (3) and (4) do not prevent a deponent from being cross examined on an affidavit during the hearing itself.

5.06 Materials on Motions

- 5.06(1) The person bringing a motion shall deliver the notice of motion and other materials in support of the motion in the form of a motion record.
- 5.06(2) The motion record shall contain the notice of motion, all affidavits to be relied upon and any other material to be relied upon.
- 5.06(3) If another motion participant intends to rely upon materials, the motion participant shall deliver those materials in the form of a responding motion record.
- 5.06(4) A motion record and responding motion record shall have consecutively numbered pages and a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter.
- 5.06(5) Despite sub-rules (2) and (3), a motion participant may deliver separately from the motion record or responding motion record a book of authorities and a factum consisting of a concise statement of the facts and law relied on by the motion participant.

5.07 Assigning a Motion Panel

- 5.07(1) The chair shall, in accordance with section 4.2 of the *Statutory Powers Procedure Act*, assign a panel of one or more members of the Discipline Committee to hear each motion.
- 5.07(2) The chair may direct that a larger or differently constituted panel hear a motion if the chair receives submissions in accordance with Rule 4.
- 5.07(3) A motion participant who believes that the motion ought to be heard by members of the Discipline Committee who will not sit on the hearing panel shall request a direction from the motion panel on the matter in the notice of motion or a notice of cross-motion.

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5.08 Hearing Motions Electronically

- 5.08(1) Motions other than motions brought at a scheduled pre-hearing conference or at a hearing shall be heard electronically in accordance with these rules unless the chair or the Discipline Committee directs otherwise.

5.09 Written Order

- 5.09(1) Immediately after a motion has been determined, the moving party shall, and any other motion participant affected by an order may, prepare a draft of the formal order, seek approval by other affected parties as to its form and content and deliver it to the Hearings Coordinator.
- 5.09(2) The order shall be in accordance with Form 5B.
- 5.09(3) An order delivered in accordance with sub-rule (1) shall be treated as a submission under Rule 4 and may be reviewed, amended if necessary and signed by the chair.
- 5.09(4) This rule does not apply to orders made on the record during the hearing.

5.10 Renewing or Rearguing a Motion

- 5.10(1) A motion participant shall not renew or reargue a matter that has previously been determined on a motion unless permission has been obtained from the chair in accordance with Rule 4.
- 5.10(2) Despite sub-rule (1), where circumstances make it impractical for a motion participant to have obtained permission from the chair, permission to renew or reargue a matter that has previously been determined on a motion may be obtained from the Discipline Panel during the hearing.
- 5.10(3) Despite sub-rule (1), a motion participant may renew or reargue a motion if that is provided for in the order of the panel hearing the motion.
- 5.10(4) Despite sub-rule (1), a motion participant may renew a motion at the hearing solely for the purpose of putting on the record, for the purpose of any appeal, that the motion participant does not agree with the previous ruling.

5.11 Time Limits on Oral Submissions

- 5.11(1) The Discipline Committee may set reasonable time limits on oral submissions by the parties.

RULE 6 – PRE-HEARING CONFERENCES

6.01 Initiating Pre-Hearing Conferences

- 6.01(1) A pre-hearing conference may be scheduled while a hearing is being conducted, if the parties agree that it would be useful.
- 6.01(2) The chair shall designate a person to act as the presiding officer or Pre-Hearing Chair. The person selected must not be a member of the Discipline Panel conducting or selected to conduct the hearing.

- 6.01(3) The presiding officer shall, after consultation with the Hearings Coordinator, counsel for the registrant and counsel for the College, schedule a date for the pre-hearing conference to be held and shall notify the parties of the date.
- 6.01(4) Unless the presiding officer agrees otherwise, senior counsel for the College and the registrant or, where the registrant is represented by counsel, senior counsel for the registrant, shall attend at the pre-hearing conference.
- 6.01(5) The presiding officer may direct a pre-hearing conference to be held electronically.

6.02 Pre-Hearing Conference Memorandum

- 6.02(1) Where a pre-hearing conference is scheduled to be held the parties shall complete a pre-hearing conference memorandum in accordance with Form 6A. The pre-hearing conference memorandum should identify the factual and legal issues in dispute, and briefly set out the party's position.
- 6.02(2) Counsel for the College shall deliver its pre-hearing conference memorandum not less than twenty days before the date of the pre-hearing conference.
- 6.02(3) The registrant shall deliver a responding pre-hearing conference memorandum.
- 6.02(4) Where the presiding officer concludes that a pre-hearing conference memorandum is inadequate for the most effective use of the pre-hearing conference, he or she may, subject to sub-rule (5), require the party to deliver a more adequate memorandum by a specified date and may adjourn the date of the conference.
- 6.02(5) Despite anything in these rules, a registrant is not required to disclose evidence that would prejudice the registrant's defence of the allegations and which also is not otherwise disclosable by law.

6.03 Procedure at Pre-Hearing Conference

- 6.03(1) At the pre-hearing conference, the presiding officer shall discuss the following with the parties:
 - (a) whether any or all of the issues can be settled;
 - (b) whether the issues can be simplified;
 - (c) whether there are any agreed facts; and
 - (d) the advisability of attempting other forms of resolution of the matter.
- 6.03(2) The presiding officer shall also discuss with the parties and then may give directions about any of the following:
 - (a) the scheduling of any motions that can be heard before the hearing;
 - (b) the content and timing of any additional disclosure;
 - (c) the delivery and form of any documents to be used at the hearing and whether the documents can appropriately be reviewed by the Discipline Committee before the commencement of the hearing;
 - (d) the delivery of written arguments and books of authorities and whether these can appropriately be reviewed by the Discipline Committee before the commencement of the hearing;
 - (e) the scheduling of the hearing;
 - (f) the scheduling of any motions that cannot be heard before the commencement of the hearing;
 - (g) when the witnesses to be called at the hearing must be available to testify;

- (h) the use and scheduling of panels of expert witnesses; and
 - (i) any other matter that may assist in the just and most expeditious disposition of the proceeding.
- 6.03(3) The presiding officer or independent legal counsel shall prepare a report after the pre-hearing conference listing every agreement reached under sub-rule (1), every direction given under sub-rule (2) and every undertaking given by the parties and shall send a copy of the report to the parties.
- 6.03(4) If a party becomes aware of additional circumstances that would materially affect the conduct of the hearing before the commencement of the hearing, the party shall immediately, subject to sub-rule 6.02(5), deliver a written notice of the circumstances and the presiding officer may schedule a supplementary pre-hearing conference.
- 6.03(5) The provisions of Rule 6 apply to further or supplementary pre-hearing conferences with necessary modifications.
- 6.04 Motions at the Pre-Hearing Conference**
- 6.04(1) Where the presiding officer is a member of the Discipline Committee, a party may bring a motion to be heard at the pre-hearing conference in accordance with Rule 5.

RULE 7 – DISCLOSURE AND PRODUCTION

7.01 Disclosure

- 7.01(1) The parties shall make such disclosure as is required by law and may make such additional disclosure as will assist to make the pre-hearing conference and the hearing effective and fair.
- 7.01(2) A party to a hearing shall disclose to the other parties by ten days before the hearing, the existence of every document and thing that the party will refer to or give in evidence at the hearing.
- 7.01(3) Each party to a hearing shall, if requested:
- 7.01(3).1 make available for inspection by another party by ten days before a hearing all documents that the party will produce or enter as evidence at the hearing;
 - 7.01(3).2 deliver to each of the other parties by ten days before the hearing copies of all documents that the party will produce or enter as exhibits at the hearing.
- 7.01(4) If a party fails to comply with the provisions of rule 7.01, that party may not refer to the document or thing or introduce the document or thing in evidence at the hearing without the approval of the Discipline Committee, which may be on such terms and conditions as the Discipline Committee considers just.

7.02 Motions for Disclosure

- 7.02(1) All motions for disclosure shall be brought in accordance with sub-rule 5.01(2) unless special circumstances require that the motion be brought later.
- 7.02(2) On a motion for disclosure, the Discipline Committee may order that a party or a person who will lead evidence at a hearing shall make disclosure in accordance with these rules.

- 7.02(3) When the Discipline Committee orders disclosure it may, to protect the privacy of any person, impose terms or conditions upon the extent and method of disclosure or the use of the information disclosed.
- 7.02(4) Any person who receives disclosure must only use the information for the purposes of the proceedings, and must not use it for any other reason. The person must also ensure that any other person to whom he or she gives the information undertakes to similarly restrict the use of the information.
- 7.02(5) Where a patient's medical or clinical records form part of disclosure of the College's case and/or where production of a patient's medical or clinical records is ordered by a Discipline Panel, the registrant must return those documents to the College or to the Custodian of such records within 30 days after the completion of the proceedings, including the disposition of any appeal.
- 7.02(6) Where the Discipline Panel orders additional disclosure or production of documents in the possession of a third party, it may, to protect the privacy of any person, impose terms or conditions upon the extent and method of disclosure or the use of the information.
- 7.02(7) This rule does not prevent the College from using the information obtained for other regulatory purposes.

7.03 Motions for Production of Documents from a Third Party

- 7.03(1) A summons for the production of documents that are not in the possession of a party shall not require the production of any documents before the commencement of the hearing.
- 7.03(2) A motion relating to the production of documents in the possession of a third party may require the examination of the documents by the Discipline Committee, including motions to which the provisions of the *Mental Health Act* may apply. Such motions shall be heard at least 45 days before the beginning of the hearing, unless otherwise ordered by the Discipline Committee.
- 7.03(3) Notice of a motion relating to the production of documents shall be served on the person possessing the documents and on any other person with a significant interest, including a privacy interest, in the documents.

7.04 Obtaining a Summons to Compel the Attendance of a Witness

- 7.04(1) A party wishing to obtain a summons to compel a witness to attend the hearing must provide the name of the witness to the chair of the Discipline Committee.
- 7.04(2) The summons may require the person summonsed to produce at the hearing, documents and things specified in the summons.
- 7.04(3) The summons must be served personally on the person to be summonsed.
- 7.04(4) The person summonsed is entitled to receive the same fees or allowances for attending or participating in the hearing as are paid to a person summonsed to attend before the Superior Court of Justice. The party obtaining the summons must pay the fees or allowances.

RULE 8 – ELECTRONIC HEARINGS AND PROCEEDINGS

8.01 Initiating an Electronic Hearing

- 8.01(1) The Discipline Committee may order an electronic hearing or part of a hearing, where the parties consent.
- 8.01(2) Before ordering an electronic hearing, the Discipline Committee shall provide notice and an opportunity to the parties to make submissions on the issue.
- 8.01(3) Where the Discipline Committee orders an electronic hearing and a notice of an electronic hearing has not previously been given, the Hearings Coordinator of the College shall give notice of the electronic hearing in accordance with section 6 of the *Statutory Powers Procedure Act* unless the parties waive the requirement.
- 8.01(4) The Discipline Committee may order that part of a hearing be held electronically where the parties consent.

8.02 Procedure on Electronic Proceedings

- 8.02(1) This rule applies to any proceeding held electronically including motions, pre-hearing conferences and hearings.
- 8.02(2) At least 48 hours before an electronic proceeding is scheduled to commence, every person participating in the proceeding shall give notice to the Hearings Coordinator of the College of the telephone number where he or she can be reached for the proceeding.
- 8.02(3) Unless otherwise provided in the rules, every person participating in the proceeding shall deliver every document, in sequentially numbered pages, he or she intends to rely upon at least three (3) days before the proceeding.
- 8.02(4) Every person participating in the proceeding shall ensure that he or she can be reached at the telephone number provided to the Hearings Coordinator of the College beginning at five minutes before the proceeding is scheduled to commence.

RULE 9 – TAKING EVIDENCE BEFORE THE HEARING

9.01 Initiating the Taking of Evidence Before the Hearing

- 9.01(1) A party who intends to introduce the evidence of a person at the hearing and who has made all required disclosure in respect of the evidence of that witness may, with the consent of the parties or by order of the Discipline Committee, examine the witness on oath or affirmation before the hearing for the purpose of having the witness' testimony available to be tendered as evidence at the hearing.
- 9.01(2) The Discipline Committee may make an order under sub-rule (1) if it is satisfied that the order would not cause significant prejudice to a party and would not prevent the Discipline Committee from fully understanding the evidence.
- 9.01(3) The party who intends to introduce the evidence of the witness shall ensure that the examination is recorded, at the party's cost, by a certified court reporter or a person with similar qualifications

acceptable to the Discipline Committee and shall deliver a copy of the transcript of the evidence at least three days before the hearing is scheduled to commence.

- 9.01(4) The party who intends to introduce the evidence of the witness shall also ensure that the examination is videotaped, at the party's cost, unless the parties consent or the Discipline Committee orders otherwise and shall file a copy of the videotape at least three days before the hearing is scheduled to commence.
- 9.01(5) The examination shall take place at the date, time and place consented to or ordered by the Discipline Committee.
- 9.01(6) The Discipline Committee may impose terms or conditions in the order for an examination including a term or condition that the party intending to call the witness pay for the reasonable travel expenses of the lawyers for the other parties and the registrant (where the registrant is not the party intending to call the witness).

9.02 Procedure at the Examination

- 9.02(1) A witness examined under sub-rule 9.01(1) may, after being sworn or affirmed by a person authorized to do so, be examined, cross examined and re-examined in the same manner as a witness at a hearing.
- 9.02(2) Where a question is objected to, the objector shall state briefly the reason for the objection, and the question and the brief statement shall be recorded.
- 9.02(3) The party objecting to a question may, after the objection, permit the question to be answered subject to a ruling being obtained from the Discipline Committee before the evidence is used at a hearing.
- 9.02(4) A ruling on the propriety of a question that is objected to and not answered may be obtained on motion to the Discipline Committee.
- 9.02(5) Where the question is not answered under sub-rule (3) and the objection is found not to be valid, the person who objected shall ensure that the witness is produced at the expense of the person who objected for another examination before the hearing or at the hearing to answer the question.
- 9.02(6) Any document used during the examination that is intended to be filed as an exhibit at the hearing shall be marked at the examination by the person introducing it so it can be identified later and the person introducing it shall deliver a copy of it.

9.03 Use of Examination at the Hearing

- 9.03(1) At the hearing, any party may use the transcript and videotape of an examination made under this rule as the evidence of the witness unless the Discipline Committee orders otherwise.
- 9.03(2) A witness who has been examined under this rule shall not be called to give evidence at the hearing except on the order of or at the request of the Discipline Committee.
- 9.03(3) Where a witness is ordered or requested to give evidence at the hearing under sub-rule (2), the party who tendered the evidence under sub-rule (1) shall arrange for the witness to attend at the party's expense.

RULES OF PROCEDURE OF THE DISCIPLINE COMMITTEE

- 9.03(4) The transcript and any videotape need not be read or played during the hearing with the parties present unless a party or the Discipline Committee requires the reading of a transcript or the playing of a videotape.
- 9.03(5) Where the reading of a transcript or the playing of a videotape is required under sub-rule (4), the party who initiated the examination under sub-rule 9.01(1) shall conduct the reading or playing during the presentation of that party's case unless the Discipline Committee orders otherwise.

RULE 10 – EARLY HEARING

- 10.01(1) A party may bring a motion for an order directing an expedited hearing.
- 10.01(2) The Discipline Committee may order that a hearing be expedited, where it believes appropriate, and may also direct that any pre hearing conference or motion be expedited accordingly.

RULE 11 – NON PARTY PARTICIPATION

11.01 General Non Party Participation

- 11.01(1) A person who is not a party who wishes to participate in the hearing shall bring a motion in accordance with these rules and, despite rule 5.05, the chair shall assign the panel that will be conducting the hearing to hear the motion.
- 11.01(2) The notice of motion shall set out the extent of participation the person proposes to have in the hearing, and shall be accompanied by the evidence upon which the person intends to rely in support of the motion and written submissions in support of the motion.
- 11.01(3) If the Discipline Committee allows the person to participate in the hearing, the person shall comply with the rules as much as is practical unless to do so would be inconsistent with the Discipline Committee's determination of the extent of the person's participation in the hearing.
- 11.01(4) If the Discipline Committee allows the person to participate in the hearing, the other parties shall apply the rules to the person as much as is practical unless to do so would be inconsistent with the Discipline Committee's determination of the extent of the person's participation in the hearing.

11.02 Notice of Constitutional Questions

- 11.02(1) Where a party intends to raise a question about the constitutional validity or applicability of legislation, a regulation or bylaw made under legislation, or a rule of common law, or where a party claims a remedy under subsection 24(1) of the *Canadian Charter of Rights and Freedoms*, notice of a constitutional question shall be delivered and shall also be served on the Attorneys General of Canada and Ontario as soon as the circumstances requiring notice become known and, in any event, at least 15 days before the question is to be argued.
- 11.02(2) Where the Attorneys General of Canada and Ontario are entitled to notice, he or she or both of them are entitled to adduce evidence and to make submissions to the Discipline Committee regarding the constitutional question.

RULE 12 – PROCEDURE DURING THE HEARING

12.01 Vulnerable Witnesses

- 12.01(1) The Discipline Committee may order that a support person be permitted to be present and to sit near a vulnerable witness while testifying and may issue directions regarding the conduct of the support person during the testimony of the witness.
- 12.01(2) The Discipline Committee may order that a vulnerable witness testify outside the hearing room or behind a screen or other device that would allow the vulnerable witness not to see the registrant if the Discipline Committee is of the opinion that the exclusion is necessary to obtain a full and candid account of the matter.
- 12.01(3) The Discipline Committee shall not make an order under sub-rule (2) unless arrangements are made for the registrant, the Discipline Committee and counsel for the parties to watch the testimony of the vulnerable witness by means of closed-circuit television or otherwise and the registrant is permitted to communicate with counsel while watching the testimony.
- 12.01(4) The Discipline Committee may order that a registrant not personally conduct the cross-examination of a vulnerable witness if the Discipline Committee is of the opinion that the order is necessary to obtain a full and candid account of the vulnerable witness' testimony.
- 12.01(5) Where the Discipline Committee makes an order under sub-rule (4), it may appoint counsel for the purpose of conducting the cross examination.

12.02 Oral and Written Argument

- 12.02(1) The Discipline Committee may place reasonable limits on the length of oral submissions.
- 12.02(2) The Discipline Committee may, after hearing submissions, order the parties to submit written arguments on some or all of the issues at the hearing, and may give directions as to the form and timing of such written arguments.

12.03 Access to Hearing Record by the Public

- 12.03(1) If a member of the public wishes to have access to all or part of the record of the Discipline Committee other than the notice of hearing or the transcript of the evidence, he or she shall bring a motion before the Discipline Committee upon notice to the parties, and such motion shall be made, considered and decided in writing by the chair of the Discipline Committee or by a panel of the Discipline Committee appointed by the chair, without an oral hearing.
- 12.03(2) Subject to sub-rule (3), a hearing must be open to the public.
- 12.03(3) A Discipline Panel may make an order that the public be excluded from all or part of a hearing if the panel is satisfied that,
 - (a) a witness or party may disclose matters involving public security;
 - (b) a witness or party may disclose financial or personal or other matters of such a nature that the harm created by disclosure would outweigh the benefits of an open hearing;

- (c) a person involved in a criminal, civil or other proceeding may be prejudiced; or
 - (d) the safety of a person may be jeopardized.
- 12.03(4) In situations where the Discipline Panel makes an order excluding the public from the hearing, it may make other orders that it considers necessary to prevent the matters disclosed at the hearing from being disclosed to the public, if harm created by disclosure would outweigh the benefits of an open hearing. This may include orders banning the publication or broadcasting of those matters. However, the Discipline Panel cannot make an order that prevents the publication of anything that is contained in the register and already available to the public.
- 12.03(5) A Discipline Panel may make an order that the public be excluded from the part of a hearing dealing with a motion for an order under sub-rule (3). It may also make other orders it considers necessary to prevent the public disclosure of matters disclosed in the submissions relating to any such motion, including prohibiting the publication or broadcasting of those matters.
- 12.03(6) Before the Discipline Panel makes an order under sub-rule (3), the panel may allow a person to whom the order relates and his or her representative to attend the hearing and to make submissions. The Discipline Panel also has the discretion to allow another person to attend if, in the opinion of the Discipline Panel, to do so does not undermine the reasons for making the order and does not cause undue prejudice to a party.
- 12.03(7) The Discipline Panel must ensure that any order it makes under this Rule, and its reasons, are available to the public in writing.

12.04 Electronic Devices and Publication of Proceedings

- 12.04(1) No person shall
- (a) take or attempt to take a photograph, audio or video recording or other record by any means at a proceeding; or
 - (b) publish, broadcast, reproduce or otherwise disseminate a photograph, audio or video recording or other record taken in contravention of this sub-rule.
- 12.04(2) Sub-rule (1) does not apply to:
- (a) a person unobtrusively making handwritten or typed notes, or sketches at a proceeding;
 - (b) a party or a party’s representative unobtrusively making an audio recording at a proceeding that is used only as a substitute for handwritten or typed notes for the purposes of the proceeding;
 - (c) a person taking a photograph, audio or video recording or other record with the prior written authorization of the Discipline Panel; or
 - (d) a disabled person using a device to compensate for a disability.

RULE 13 – GIVING NOTICE OF FINAL DECISION

13.01 Notice of Decision

- 13.01(1) In addition to the methods described in section 18 of the Statutory Powers Procedure Act, the Discipline Committee shall send each party a copy of its final decision or order, including the reasons given,



- (a) by express mail/courier/any form of registered mail,
 - (b) by personal service,
 - (c) by facsimile, or
 - (d) by electronic mail.
- 13.01(2) If a copy is sent by express mail/courier/any form of registered mail, it shall be sent to the most recent address known to the College and shall be deemed to be received by the party on the day the copy is signed for by a person at that address. If a copy is sent by facsimile or by electronic mail, it shall be sent to the most recent facsimile number or e-mail address known to the College and shall be deemed to be received by the party at the end of the day the facsimile or e-mail was sent.

RULE 14 – COSTS

14.01 Costs for Non-Compliance with Rules

- 14.01(1) Where the Discipline Committee is entitled to order the payment of costs or expenses by a party, the Discipline Committee may consider the failure of a party to comply with these rules.

14.02 Costs Against the College

- 14.02(1) Where the registrant seeks costs against the College pursuant to section 53 of the Code, the Discipline Committee may direct that the issue be dealt with by a motion conducted separately from the hearing with any necessary modifications.

14.03 Costs Against the Registrant

- 14.03(1) Where the College seeks costs against the registrant pursuant to section 53.1 of the Code, the Discipline Committee may direct that the issue be dealt with by a motion conducted separately from the hearing under Rule 5 with any necessary modifications.

14.04 Procedure for Requesting Costs

- 14.04(1) Upon request by the Panel, a party requesting an order for costs or expenses shall, where practicable, deliver a detailed written explanation of the basis upon which the costs or expenses requested are calculated.
- 14.04(2) Where the request for costs or expenses includes disbursements or out of pocket expenses, these may be proved by an affidavit attaching a copy of any invoice or receipt.
- 14.04(3) The Discipline Committee may direct that the amount of costs and expenses be calculated at a motion conducted separately from the hearing under Rule 5 with any necessary modifications.

RULE 15 – REINSTATEMENT APPLICATIONS

15.01 Initiating Reinstatement Applications

- 15.01(1) This rule applies to applications for reinstatement made under sections 72 and 73 of the Code.

RULES OF PROCEDURE OF THE DISCIPLINE COMMITTEE

- 15.01(2) A registrant making an application for reinstatement shall deliver to the Hearings Coordinator a notice of the application specifying the order sought, the grounds for the application, the documentary and oral evidence that the registrant will introduce and the anticipated length of the hearing.
- 15.01(3) Unless the Discipline Committee directs otherwise, the registrant making an application for reinstatement shall deliver copies of the record of the original hearing and the record of any previous applications for reinstatement, copies of the transcript of the original hearing and any previous applications for reinstatement (whether or not the transcript has previously been ordered), and copies of any document the registrant will introduce.
- 15.01(4) The Hearings Coordinator of the College shall not schedule a reinstatement application for a hearing until the registrant complies with sub-rules (2) and (3).
- 15.01(5) When a reinstatement application has been scheduled, the Discipline Committee shall deliver a notice of hearing to the parties.

FORM 5A

NOTICE OF MOTION

[General Heading]

NOTICE OF MOTION

THE [IDENTIFY MOVING MOTION PARTICIPANT] WILL make a motion to the Discipline Committee of the College of Dental Hygienists of Ontario on [day], [date], at [time], or as soon after that time as the motion can be heard, at 175 Bloor Street East, North Tower, Suite 601, Toronto, Ontario.

THE MOTION IS FOR [state here the precise relief sought].

THE GROUNDS FOR THE MOTION ARE [specify the grounds to be argued, including a reference to any statutory provision or rule to be relied on].

THE FOLLOWING DOCUMENTARY EVIDENCE WILL be used at the hearing of the motion: [list the affidavits or other documentary evidence to be relied on].

[Date]

[Name, address, telephone and facsimile number of moving motion participant's lawyer or moving motion participant]

TO: [Name, address, telephone and facsimile number of responding motion participant's lawyer or responding motion participant]

FORM 5B

ORDER

File No.

DISCIPLINE COMMITTEE OF THE
COLLEGE OF DENTAL HYGIENISTS OF ONTARIO

[names of panel members])
) [day and date of order]
)

BETWEEN:

COLLEGE OF DENTAL HYGIENISTS OF ONTARIO

and -

[NAME OF REGISTRANT]

ORDER

THIS MOTION, made by [identify moving motion participant] for [state the relief sought in the notice of motion, except to the extent that it appears in the operative part of the order], was heard this day [(or heard on (date))], at the College of Dental Hygienists of Ontario, 175 Bloor Street East, North Tower, Suite 601, Toronto, Ontario, M4W 3R8 [or by conference call].

ON READING the [give particulars of the material filed on the motion] and on hearing the submissions of counsel for [identify motion participants], [where applicable, add "(identify motion participant) appearing in person" or "no one appearing for (identify motion participant), although properly served as appears from (indicate proof of service)],

1. **THE DISCIPLINE COMMITTEE ORDERS** that ...
2. **THE DISCIPLINE COMMITTEE ORDERS** that ...

[signature of chair]

FORM 6A

PRE-HEARING CONFERENCE MEMORANDUM

[General Heading]

PRE-HEARING CONFERENCE MEMORANDUM

OF THE COLLEGE

[OR OF THE REGISTRANT, AS THE CASE MAY BE]

Date of Pre-Hearing Conference:

Counsel for the College:

Counsel for the Registrant:

BACKGROUND INFORMATION

1. Please attach a copy of the notice of hearing to this memorandum.
2. Set out a brief statement of the theory of the College's case as you understand it, including factual contentions.
3. Set out a brief statement of the theory of the Registrant's case as you understand it, including factual contentions.
4. Provide a description of the legal issues to be determined at the hearing.
5. For every witness you may call at the hearing, set out or attach a statement of the substance of the evidence of the witness.
6. Attach a copy of any document that would assist the pre-hearing conference to be more effective.

SETTLEMENT AND AGREEMENTS

7. What are the prospects for settlement?
8. Have counsel discussed the matter and sought instructions?
9. Would this be a suitable case to attempt informal resolution?
10. Set out the facts in numbered paragraphs that you believe should be agreed to.
11. Set out a numbered list of documents that you believe should be admitted on agreement.

ADDITIONAL STEPS BEFORE THE HEARING

12. On the subject of motions:
 - Will you be bringing any motions before or during the hearing?
 - If so, what order will you seek and on what grounds?
 - When do you intend to bring each motion?
13. On the subject of disclosure:
 - Are there any issues with respect to disclosure?
 - Has the College made full disclosure to the registrant?
 - Have you produced all of the expert reports upon which you intend to rely?
 - If you have not yet made all required disclosure, why not and by what date will it be done?
14. On the subject of a documents brief:
 - Who will prepare and deliver a brief containing the notice of hearing and the documents admitted by agreement?
 - By what date will the brief be delivered?
 - Should the Discipline Committee be able to review the brief before the hearing?
15. On the subject of written arguments:
 - Are there any issues which should be the subject of written argument? If so, identify them.
 - When should the written arguments be delivered by?
 - Should the Discipline Committee be able to review the written arguments before the hearing?
16. On the subject of a book of authorities:
 - Will you be referring to any authorities other than the *Regulated Health Professions Act*, the *Health Professions Procedural Code* and the regulations defining professional misconduct? If so, list them.
 - Should those authorities be copied for the Discipline Committee or for independent legal counsel?
 - If so, who should prepare the brief of authorities and when should it be delivered?
 - Should the Discipline Committee or independent legal counsel be able to review the brief of authorities before the hearing?

PLANNING THE HEARING

17. On the subject of scheduling the hearing:
 - Are you ready for the hearing?
 - Are there any special considerations affecting the setting of a date arising from the availability of witnesses or otherwise?
 - How long will the hearing last?
 - Other than the motions listed above, the witnesses listed above and the normal submissions, is there anything else that will have to be dealt with during the hearing itself?
 - Estimate the length of time it will take to dispose of any motions you will bring during the hearing including adequate time for deliberation by the Discipline Committee.

RULES OF PROCEDURE OF THE DISCIPLINE COMMITTEE

- In numbered paragraphs, list your witnesses in the order that you will call them and estimated length of time it will take to hear their entire evidence, including cross examination and questions from the Discipline Committee:

<u>Number</u>	<u>Witness' Name</u>	<u>Estimated Time</u>
---------------	----------------------	-----------------------

1.

- How long will it take you to make your opening and closing submissions on the issue of finding?

18. List the witnesses you intend to have available to testify for each day of your case:

<u>Day</u>	<u>Witnesses Available Beginning that Day</u>
------------	---

1.

19. Do you believe the Discipline Committee would be assisted by hearing expert evidence by a panel of experts on any particular issue?

[Date]

[Signature of most responsible counsel who will be attending at the hearing]

CDHO PRE-HEARING CONFERENCE CHECKLIST

FOR USE BY THE PRESIDING OFFICER CHAIRING THE PRE HEARING CONFERENCE

1. DISCLOSURE

- Has counsel for the College completed disclosure?
- If not, by what date will disclosure be completed?
- Does counsel for the registrant agree that disclosure is complete? If not, explore and attempt to resolve any outstanding issues by giving directions, including fixing dates by which action is to be taken.

2. EXPERT REPORTS

- Will there be expert witnesses called at the hearing by either party?
- If so, has the party intending to call the expert furnished the other party with a copy of the expert's report as required by the *Regulated Health Professions Act*?
- If not, is it necessary to fix a date by which the expert's report will be delivered?

3. NARROWING THE ISSUES

- Have counsel considered whether there are matters that can be agreed upon in order to simplify the case, narrow the issues and shorten the hearing?
- Would it be possible to prepare and file an agreed statement of facts as to all or part of the factual background from which the issues arise?
- Can counsel agree to file written witness statements at the hearing for some of the intended witnesses, so that their personal attendance will not be necessary?
- Have counsel discussed the prospect of a joint submission as to penalty in the event that a finding is made against the registrant?

4. THE HEARING: WHEN AND HOW LONG

- What is counsel's best estimate of the time that will be needed to conduct the hearing? Is the time scheduled sufficient?
- Are there any unusual considerations affecting the scheduling of the hearing in this case, such as the limited availability of witnesses, the need to "break" the hearing, or a request to sit in the evening or on the weekends?
- Will counsel be asking the Committee to hear evidence that has been videotaped in advance of the hearing?
- Emphasize to counsel that:
 - (a) the date will not be changed unless extraordinary circumstances can be shown; and
 - (b) if counsel determine that for any reason they will require less time than has now been set aside for the case, they must notify the Hearings Coordinator of the College immediately.
- If the case is relatively uncomplicated and counsel expect the hearing to last two days or less, will counsel agree that, notwithstanding the fixed hearing date, the case may also be placed on "standby", to be called on short notice, subject to the availability of a Panel, should other scheduled cases unexpectedly adjourn or shorten?

5. DOCUMENT BOOKS AND STATEMENTS OF FACTS

- Will there be an agreed book of documents filed at the hearing?
- Will there be written statements of agreed facts filed at the hearing?

6. ISSUES REQUIRING DIRECTION

- Are counsel aware of any issues that will arise at the hearing that may be amenable to resolution now by direction of the presiding officer?
- If such issues must be resolved at the hearing, are there arrangements that can be made now to ensure that the hearing will not be unduly delayed or complicated (such as filing legal or factual material in advance)?
- If a motion has to be scheduled to decide any issue, this should be clearly identified and the presiding officer should bring to the parties' attention the requirements of the rules regarding motions.

7. OTHER MATTERS

- Is there any other way in which the chair can provide assistance to counsel in preparing and scheduling this case for hearing, so that the matter may be heard in the fairest manner possible, consistent with the Committee's need to make the best use of its time?

8. NOTE FOR PRE-HEARING CHAIR

- A written report on matters raised and settled at the Pre-Hearing Conference should be prepared and filed by the presiding officer or independent legal counsel with the Hearings Coordinator of the College after the Pre-Hearing Conference is concluded.
-