

# An Overview of the Inquiry Panel Process

## Issued by the Inquiry Committee

The purpose of this Overview is to briefly outline the Inquiry Panel process. It explains how the Inquiry Panel of the College of Registered Nurses of Manitoba (the “College”) considers allegations made in a Notice of Hearing against a Registered Nurse who is a member of the College (the “Member”).

***This document contains general information only. It is not legal advice. The Inquiry Panel retains jurisdiction to control its own process and may not necessarily follow the procedure described below in every case.***

***The Inquiry Committee strongly recommends that a Member who has been served with the Notice of Hearing consult a lawyer. The allegations contained in a Notice of Hearing can have serious consequences for a Member.***

***Members who choose to represent themselves at a hearing should consult “Brief Summary of Inquiry Panel Hearing Process for Self-Represented Litigants” dated Fall 2020.***

## I. Introduction

### What is the Inquiry Committee?

The Inquiry Committee consists of members and former members of the College as well as Public Representatives. When a matter is referred to the Inquiry Committee, the chair or vice-chair of the Inquiry Committee selects a panel from among the members of the Inquiry Committee to hold a hearing.

### What is the Inquiry Panel?

The Inquiry Panel hears allegations made in a Notice of Hearing against Members under *The Regulated Health Professions Act*<sup>1</sup>. The Inquiry Committee and Inquiry Panels

are governed by s. 114 through s. 129 of *The Regulated Health Professions Act*.

### Who will hear the case?

An Inquiry Panel consists of at least three members of the Inquiry Committee at least 1/3 of whom must be public representatives. One of the members will be the chair of the hearing. Please see s. 115 of *The Regulated Health Professions Act* in this regard. The Inquiry Panel is represented by a lawyer who is not a member of the Panel.

### When and where are hearings scheduled?

A Member will receive a Notice of Hearing issued by the Registrar/CEO of the College. It will set the date, time and place of the Inquiry Panel hearing. Hearings of the Inquiry Panel will generally take place at the offices of the College of Registered Nurses of Manitoba. It is located at 890 Pembina Highway, Winnipeg, Manitoba.

### Who are the Parties to the Hearing?

The two parties to a hearing are the Complaints Investigation Committee (“CIC”) and the Member. The CIC and the Member both have the right to participate in the hearing before the Inquiry Panel. The CIC will be represented by a lawyer and the Member has the right to be represented by a lawyer.

Other persons attending the hearing such as witnesses or members of the public are not parties.

### What happens if a party cannot attend or wants to change the hearing date?

A Notice of Hearing from the College cannot be ignored. If a Member does not attend, the hearing may proceed in the absence of the Member.

If a Member is not able to attend the hearing, or otherwise requires an adjournment, the Member’s lawyer (or the Member if unrepresented) should contact the lawyer for

<sup>1</sup> If an investigation was initiated before May 31, 2018, the matter must proceed under *The Registered Nurses Act*. The Notice of Hearing will indicate whether the matter is proceeding under the *Regulated Health Professions Act* or the *Registered Nurses Act*. The process under the *Registered Nurses Act* may be different than described in this document.

the CIC to discuss the matter. This should be done well before the hearing as the lawyer for the CIC will need time to obtain instructions from the CIC. If the parties can agree on an adjournment, a consent adjournment can usually be arranged. The Member will be asked to consent in writing to the adjournment.

If the CIC does not consent to an adjournment, the Member or their lawyer must still attend the hearing. At that time, the Member can ask the Panel for an adjournment. This is called a “contested adjournment”. The Member’s lawyer (or the Member if unrepresented) will be asked to explain why an adjournment is required and the lawyer for the CIC will be asked why the CIC opposes the adjournment. The Inquiry Panel will review the request and decide if the date is changed.

### **What if the Inquiry Panel does not agree to change the hearing date?**

If the Inquiry Panel does not agree to change the hearing date, the hearing will proceed as scheduled. Accordingly, if there is a contested adjournment, the member should be prepared to proceed with the hearing if they are unsuccessful in their adjournment request.

## **II. Preparing for the hearing**

### **Does a Member require a lawyer?**

A Member is strongly encouraged to retain a lawyer. However, a lawyer is not required and a Member may choose to represent themselves. Members who choose to represent themselves should consult “Brief Summary of Inquiry Panel Hearing Process for Self-Represented Litigants” dated Fall 2020 which can be found on the College’s website.

### **Are hearings open to the public?**

Yes. All hearings are open to the public unless the Inquiry Panel decides otherwise. Section 122(3) of *The Regulated Health Professions Act* sets out the factors the Inquiry Panel must consider when determining if a hearing is to be closed to the public.

### **How can a witness be required to attend the hearing?**

Often witnesses will attend the hearing voluntarily. Prior to the hearing, advise all relevant witnesses of the date, time

and place of the hearing.

If a witness fails to attend a hearing for whatever reason (including not wanting to participate), the hearing may still continue. In order to address this risk, a party can ask the Registrar of the College to issue a notice for the witness to appear at the hearing. This is called a “Notice to Attend.” A sample Notice to Attend can be found on the College’s website. A Notice to Attend must be served on the witness, together with witness fees, in the same manner as a witness in an action in court (s. 119 of *The Regulated Health Professions Act*).

One should consult a lawyer for advice on how to properly serve a Notice to Attend. If a witness still fails to attend after being properly served with a Notice to Attend, this may be grounds for an adjournment on such terms as the Inquiry Panel deems appropriate.

The Notice to Attend may also require a witness to produce records that are relevant to the proceeding. If there is a dispute as to relevance, the Inquiry Panel will determine whether documents are relevant.

### **Will the Inquiry Panel accept sworn/affirmed statements if a person cannot attend the hearing?**

The Inquiry Panel may accept evidence in the form of a sworn/affirmed affidavit. If the evidence contained in an affidavit is likely to be disputed, the person swearing/affirming the affidavit must be produced as a witness for the purposes of cross-examination.

Unsworn material is generally not accepted as evidence unless all parties consent.

## **III. The hearing**

### **How long will the hearing take?**

Hearings usually start at 9:30 a.m. and finish by 4:30 p.m. The Inquiry Panel will announce lunch and will usually take short breaks as required throughout the hearing.

The length of the hearing will vary depending on complexity and the number of witnesses called to testify. Sometimes hearings are scheduled for more than one day.

### **What if the hearing does not finish?**

The Inquiry Panel will adjourn the hearing at an appropriate time and will arrange a future hearing date or dates with the parties.

### What happens when one arrives at the hearing?

At the College's offices, everyone must sign in with the receptionist. The receptionist will direct individuals to the appropriate room.

### Where does the hearing take place?

The hearing takes place in a large boardroom at the offices of the College. The tables and chairs will be arranged in a hearing format. The general public will sit in chairs located behind the parties.

### Can witnesses who attend the hearing remain in the hearing room?

When the hearing starts, witnesses may be asked to remain outside of the hearing room. When it is time for a witness to testify, the witness will be invited to enter the hearing room. Witnesses who are finished testifying may choose to remain in the hearing room and sit with the general public subject to the availability of space.

### Are proceedings recorded?

There is a court reporter at the hearing of the Inquiry Panel who will record the proceeding. Following the hearing, a party may obtain a copy of the transcript upon paying the applicable transcription fee.

## IV. The hearing process

### How does a hearing start?

The Inquiry Panel will enter the hearing room and sit at the front of the room facing the parties who will sit at a table across from them.

The Chair of the Inquiry Panel will start the hearing, which will include introductions by the Inquiry Panel, the lawyer for the Inquiry Panel, as well as the Member (and their lawyer) and the lawyer for the CIC.

The Inquiry Panel will start the hearing and address procedural matters before it moves to the substance of the allegations made in a Notice of Hearing.

It will be generally at this point that a Member is asked to plead guilty or not-guilty to the charges in the Notice of Hearing.

### What happens if a Member pleads not-guilty?

If a Member decides to plead not guilty to the allegations in a Notice of Hearing, the practice of the Inquiry Panel is the

following:

#### 1. Opening Statements

The Inquiry Panel may ask the parties if they wish to make an opening statement. The lawyer for the CIC will go first. The Member will then have the ability to make an opening statement, if they wish. The Member also has the option to make an opening statement at a later point (namely after the case of the CIC is closed and the Member opens their case).

In an opening statement, one can tell the Inquiry Panel what the case is about and what evidence one expects to call without getting into the details of the specific evidence. This is not the time to argue the case. The time for argument will come later in the hearing.

#### 2. Evidence in the Hearing Generally

The lawyer for the CIC will proceed to call evidence first. The Member will call evidence second. The lawyer for the CIC may then call rebuttal evidence if necessary.

Evidence can be the verbal testimony of witnesses (including the Member) and documents submitted through a witness.

If there is more than one witness, the party calling the witnesses may choose the order in which they are heard.

If the Member wishes to testify as a witness, it is generally the practice that the Member will begin their case by testifying as the first witness.

Witnesses must tell the truth at the hearing. All witnesses for both parties will be asked to state their full name and swear an oath or affirm that they will tell the truth.

When one party has finished presenting its entire case, the other party will follow the same process for all of their witnesses.

#### 3. Direct Examination of a Witness

Direct examination is the questioning of a witness by the party who called them. Direct examination is used so that the Inquiry Panel can hear evidence in support of a party's case.

The person asking the questions (normally a lawyer) should ask clear and direct questions of one's witness to have them testify to the facts one wishes to bring out. Questions should not suggest an answer, otherwise the other party may object to the question.

If a Member does not have legal counsel, that Member can still give evidence. It will not be in a question and answer format. The Member can give direct evidence by telling the

Inquiry Panel the facts that the Member believes is relevant to their case. However, this is not the time to argue the case. A Member will have the opportunity to argue at a later part of the proceeding.

If a party disagrees with the evidence of a witness it is not appropriate to interrupt the testimony of that witness. The correct procedure is to wait for cross-examination.

#### **4. Cross-examination of a Witness**

After a witness has finished giving their direct examination, the opposing party is allowed to ask the witness questions.

It is a good idea to take notes about questions that occur during direct examination so one will be prepared to ask them during cross-examination.

#### **5. Re-examination of a Witness**

After each witness has been cross-examined, the party who called the witness has a chance to ask further questions of the witness in order to explain or clarify testimony brought out during cross-examination. Questions asked during re-examination are limited to matters that were raised during cross-examination. It is not an opportunity to raise issues that one forgot to deal with in one's direct examination. Re-examination is usually brief or a party may choose not to re-examine a witness at all.

#### **6. Questions from the Inquiry Panel**

After re-examination, members of the Inquiry Panel may ask questions of the witness. If the Inquiry Panel does, the Inquiry Panel will ask both the lawyer for the CIC and the lawyer for the Member (or the Member if unrepresented) if there is anything arising from the Panel's questions and, if so, parties will be given an opportunity to question the witness on matters arising from the Panel's questions.

#### **7. Closing Statements or Arguments**

After both sides have presented their evidence, both the lawyer for the CIC and the lawyer for the Member (or the Member if unrepresented) will take turns presenting closing statements/argument. This is the point where one can submit copies of prior cases or statutes/regulations one wants the Panel to consider.

The lawyer for the CIC will go first followed by the lawyer for the Member (or the Member if unrepresented). There is a limited right of reply by the lawyer for the CIC.

There is no need to repeat everything that was said. One should only stress the important facts and one should mention anything that one does not agree with and the reason(s) for the disagreement.

A closing statement should be a party's interpretation of the evidence and how the law should be applied to the evidence. It is not a time when new facts can be raised.

The Inquiry Panel may ask questions during or after closing statements.

After all of the evidence has been heard and the submissions of the parties have been presented, the Panel will adjourn to deliberate. This may take several days or even weeks depending upon how complicated the matter was. The parties will be advised of the Panel's decision in writing.

If the Member is found not guilty, the hearing is at an end. If the Member is found guilty of one or more of the charges, the hearing will be reconvened as described below.

### **What happens if a Member pleads Guilty or is found to be Guilty After a Hearing?**

If a Member pleads guilty or is found to be guilty after a full hearing (as described above), the hearing will proceed to submissions on penalty and costs.

Here, the lawyer for the CIC may provide information about any past censures or orders made against the Member. Further, the Member may provide information about their character through letters of support, for example.

During submissions on penalty and costs, other background information can be provided by or on behalf of the CIC and the Member. The background information provided during this phase of the hearing should not be controversial. If there is a dispute about the background facts, the Panel may require that witnesses be called and cross-examined.

After the submissions on penalty and costs have been presented by both parties, the Panel will adjourn to deliberate before issuing a decision and Order. The parties will be advised of the Panel's decision and order in writing.

## **V. What orders can the panel make?**

The types of orders that an Inquiry Panel may make are found in s. 126 and s. 127 of The Regulated Health Professions Act. The Inquiry Panel could order one or more of the following: a reprimand, a suspension, a fine or a cancellation of the Member's certificate of practice. Further, the Inquiry Panel can also impose conditions on a Member's ability to practice and may order the Member to pay all or part of the costs of the proceedings.

## Do's and Don'ts at the Hearing

### DO'S

- Make sure that one's witnesses are on time for the hearing (even early if possible).
- Be respectful and polite to everyone in the hearing room, including the other party.
- Cellular phones or electronic devices must be turned off.
- Listen carefully and speak calmly and clearly so that the panel can take proper notes.
- Take notes during the hearing so that one can respond to any issues raised by the other party at the appropriate time.
- Address one's comments to the Chair of the Inquiry Panel.
- If one has an objection, raise it with the Inquiry Panel.
- Remain calm and control one's emotions.

### DON'TS

- It is not necessary for one to stand when the panel enters or exits the room.
- Do not interrupt or argue when the Inquiry Panel or the other party is speaking. Only one person may speak at a time. If one disagrees with something the other party tells the Inquiry Panel, write it down. The Inquiry Panel will give parties time to disagree, but only when it is the appropriate time.
- Don't use slang, unless one is quoting exactly what someone said.
- Don't argue with anyone including the Inquiry Panel.
- If one's witness is on the stand and there is a break in the hearing, one must not contact or discuss the case with one's witness until their testimony is complete.
- A party must not leave the hearing room until the Inquiry Panel adjourns the hearing.
- Don't bring food into the hearing room. Water is available in the hearing room generally speaking.
- No one should take photos or audio/video recordings of the proceedings.

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