



## INVESTIGATION COMMITTEE POLICY

### Referral to the Inquiry Committee

**Initial Approval:** February 12, 2020

**Effective Date:** February 12, 2020

**Revised with Changes:**

#### CONTEXT

Pursuant to subsection 102(1) of *The Regulated Health Professions Act* (“RHPA”), after reviewing the investigator's report respecting a complaint, one of the options available to the Investigation Committee (“Committee”) is to refer the complaint, in whole or in part, to the Inquiry Committee. As part of the Committee’s deliberations, when referral to the Inquiry Committee is being considered it should be mindful of its policy on dispositions (see IC Policy - Dispositions – General Principles) in addition to the following specific principles and factors.

#### POLICY

##### A. Guiding Principles

1. The duty of the Committee is to:
  - a. impartially and with skill, engage in a reasonable investigation of the complaint/matter, and
  - b. on completion of the investigation, conduct a provisional assessment of the reliability of the complainant’s evidence, the evidence of the investigated member, the evidence of any other key witness(es), and any other evidence obtained in the investigation.
2. The test for referral to the Inquiry Committee is whether:
  - a. there are reasonable grounds to believe that guilt could properly be proved on the balance of probabilities based upon admissible evidence; and
  - b. it is in the public interest.
3. The question is not whether the Investigation Committee is persuaded respecting what occurred. The test is whether it can be proven.

##### B. Relevant Factors

1. In considering the likelihood of meeting the requisite standard of proof (2.a. above), the following are relevant considerations to be weighed:
  - a. An analysis of the primary issues and the evidence which would be presented regarding these issues, including an assessment of the

documentary evidence and the evidence of the complainant(s)/patient(s), the investigated member and other witnesses;

- i. The strengths and weaknesses of the Committee's case based upon all the information available;
  - ii. The submission of the investigated member in response to the investigator's report; and
  - iii. The strengths and weaknesses of the anticipated defenses.
- b. In considering the public interest, the following factors may be weighed:
- i. the nature and seriousness of the complaint;
  - ii. any harm caused to the complainant(s) / patients, or the reputation of the profession;
  - iii. the current status of the investigated member;
  - iv. alternatives to an inquiry, including the investigated member's remedial potential;
  - v. an analysis of the benefits to be gained by an inquiry, including an analysis of the interests of the public to be served by an inquiry and the need for public protection and deterrence;
  - vi. a member's professional conduct history, if any;
  - vii. the likelihood of achieving the desired result without a formal hearing (e.g. the member's voluntary resignation from practice, restrictions imposed upon practice or other remedial steps); and
  - viii. the willingness of the complainant(s) or other key witnesses to participate.

### **C. Legal Advice**

The committee must carefully consider legal advice from its legal counsel in determining whether to refer a matter to the inquiry committee.