



INVESTIGATION COMMITTEE POLICY

Undertakings

Initial Approval: February 27, 2019

Effective Date: February 27, 2019

Revised with Changes:

CONTEXT

Investigation Committee's Authority

The Investigation Committee has the authority to accept a voluntary undertaking from an investigated member, including in the following circumstances:

1. as an interim measure to facilitate the investigated member addressing deficiencies through remediation before the complaint under investigation is brought to the Investigation Committee for final disposition;
2. where it is in the public interest that the investigated member either limit or temporarily cease their practice of medicine pending the outcome of the investigation or an inquiry; and/or
3. as a resolution of a matter in accordance with subsection 102(f)(i) of *The Regulated Health Professions Act* ("RHPA").

Where an undertaking accepted by the Investigation Committee provides for placing conditions on the investigated member's right to practice, the Investigation Committee may, pursuant to section 107 of the RHPA, order the investigated member to pay all or part of the costs of the investigation and the costs incurred by the College in monitoring compliance with the conditions.

Inquiry Panel's Authority

An Inquiry Panel can accept an undertaking from an investigated member under subsection 126(1)(e) of the RHPA and in doing so may, pursuant to subsection, order:

1. the Investigation Committee and/or the chair of the Investigation Committee ("Chair") to monitor the undertaking; and
2. the member to pay all or part of the costs incurred by the College in monitoring compliance with the undertaking or conditions.

Publication

The RHPA and the *College of Physicians and Surgeons of Manitoba General Regulation* ("General Regulation") outline specific requirements regarding when undertakings, or conditions agreed to by members as part of an undertaking, must be

made available to the public and when publication is prohibited. It should be noted that the RHPA defines conditions to include restrictions and limitations.

Subsection 2.5(1)(g) of the *General Regulation* requires that the following information be included on a register created under subsection 2.2 (i.e. the register of regulated members and the register of regulated associate members):

(g) any undertaking or agreement by the member, including but not limited to an undertaking accepted under section 102 of the Act, that provides for one or more of the following:

- (i) an assessment of the member's capacity or fitness to practise medicine,
- (ii) counselling or treatment of the member,
- (iii) the monitoring or supervision of the member's practice,
- (iv) the completion by the member of a specified course of studies by way of remedial training,
- (v) the placement of one or more conditions on the member's right to engage in the practice of medicine, including the conditions relating to reinstatement set out in section 106 of the Act;**

Subsection 2.6(1) of the *General Regulation* specifies what information on the register must be made available to the public. It includes any conditions accepted by a member described in subsection 2.5(1)(g)(v) **while the undertaking is in effect** other than a condition for the diagnosis, treatment or monitoring of a condition for the diagnosis, treatment or monitoring of treatment of an ailment, emotional disturbance or addiction that a member is suffering, or has suffered.

Subsection 9.6(1)(b) of the *General Regulation* addresses what must be included on the member's public profile. It requires that each profile contain information that is made available to the public under section 2.6 of the *College of Physicians and Surgeons of Manitoba General Regulation*.

The net effect of these provisions is that:

- When a member agrees to an assessment of the member's capacity or fitness to practice medicine, counselling or treatment of the member, monitoring or supervision of the member's practice or remedial training in an undertaking, that is **not** information that is made available to the public;
- If the undertaking involves agreement to a condition for the diagnosis, treatment or monitoring of treatment of an ailment, emotional disturbance or addiction that a member is suffering, or has suffered, the undertaking/condition is **not** accessible to the public.
- All other conditions, limitations and restrictions on the member's right to engage in the practice of medicine arising from undertakings are accessible to the public.

POLICY

A. Requiring Undertakings

1. An investigated member should be required to sign an appropriate undertaking confirming the investigated member's formal agreement to the terms of the undertaking:
 - a. where the investigator or the Investigation Committee identifies that an undertaking is appropriate to address concerns arising from the investigation by the investigated member formally agreeing to:
 - i. participate in an assessment of the member's capacity or fitness to practise medicine, and/or
 - ii. engage in counselling or treatment, and/or
 - iii. be monitored or supervised or complete remedial training; and/or
 - iv. pay all or a portion of the costs associated with any of the above,and/or
 - b. where the investigator or Investigation Committee is of the view that conditions, restrictions or limitations are required to address concerns about patient or public safety.
2. When an investigated member is required to sign an undertaking, the undertaking should include:
 - a. authorization from the investigated member for the necessary exchange/sharing of information with other individuals or organizations, including but not limited to the providers of remedial training or education, assessors, health care providers, supervisors and/or monitors; and
 - b. the investigated member's agreement to pay all or any of the costs associated with any terms of the undertaking.

B. Monitoring

1. Responsibility:
 - a. Where the Investigation Committee accepts an undertaking from an investigated member which relates solely to the diagnosis, treatment or monitoring of treatment of an ailment, emotional disturbance or addiction that an investigated member is suffering, or has suffered from, the investigated member shall be referred to the Physician Health Program ("PHP") and the PHP will be responsible for monitoring the undertaking.
 - b. In all other cases, when the Investigation Committee accepts an undertaking from an investigated member, in the absence of special circumstances, the Chair will be appointed to monitor the

undertaking, and the Chair may delegate certain aspects of the process to the Medical Consultant to the Investigation Committee (“Medical Consultant”).

2. Monitoring Plan

- a. The Chair is responsible for establishing a specific monitoring plan, in writing, for each undertaking which is being monitored.
- b. The nature and extent of the information collected for monitoring will be at the discretion of the Chair, but may include the following:
 - i. third party reports from one or more of the investigated member’s caregivers, supervisors, monitors, a regional health authority and/or chaperones;
 - ii. billing records;
 - iii. prescribing records;
 - iv. medical records; and/or
 - v. member self-report regarding compliance.
- c. Where the investigated member is responsible for payment of costs of monitoring, the monitoring plan should provide for a means by which compliance with payment requirements on the part of the investigated member is being met.
- d. Monitoring plans should be reviewed at least annually to assess for continuing suitability and adequacy.

3. Body Fluid Monitoring

- a. All investigated members who have an undertaking which includes a requirement for body fluid monitoring must have that monitoring done at the site specified by the College.
- b. No monitoring of an investigated member’s body fluid should occur during a period when the member is not in practice pursuant to an undertaking to the College not to practice in the absence of special circumstances.
- c. If monitoring of an investigated member’s body fluid is to continue when the member is not practicing, the requirement for continued monitoring and the reason for same must be clearly communicated to the member in writing.

4. Reports

- a. Unless the Chair otherwise directs, any reports from third parties may be provided in a standard form approved by the Investigation Committee.

C. Release from or Revisions to Undertakings

1. Authority

- a. The authority to release an investigated member from or to make significant changes to an undertaking given by an investigated member generally rests with the Investigation Committee unless otherwise stated in this policy or ordered by the Investigation Committee or the Inquiry Panel.
- b. Where the Investigation Committee appoints the Chair to monitor an undertaking given by an investigated member, the Chair has authority to modify the undertaking, in accordance with the principle that the Chair may approve any change which does not alter the fundamental intent of the undertaking.
- c. Some specific examples of the types of changes the Chair may approve include:
 - i. any change to the specific caregiver or supervisor named in an undertaking;
 - ii. any change in practice location or other modification of a practice location restriction;
 - iii. any process for assessment of a member or former member for the purposes of re-entry to practice and/or expanded practice;
 - iv. any remediation process, including but not limited to any self-directed learning plan;
 - v. modification of the frequency of body fluid monitoring or alcohol testing; and/or
 - vi. modification of restrictions as to volume of services provided by a member, type of services provided by a member and practice supervision restrictions.
- d. Any variations approved by the Chair in accordance with this policy need not be individually approved by the Investigation Committee.

2. Remedial Education Programs

- a. Where an undertaking is limited to the investigated member being enrolled in a remedial education program, the investigated member will be automatically released from the undertaking upon receipt by the College of written confirmation from the provider of the program in a form acceptable to the Chair or the Medical Consultant that the member has satisfactorily completed the program.

3. All Other Undertakings

- a. All requests by an investigated member to be released from or for revisions to an undertaking must be in writing and supported by evidence to satisfy the onus on the investigated member to demonstrate to the satisfaction of the Chair, or the Investigation Committee as the case may be, that the release/revision is in the public interest.

4. The nature and extent of the information collected for consideration by the Investigation Committee or Chair in relation to a request for release/revisions will be at the discretion of the Medical Consultant in consultation with the Chair, but should include the past and current status of the investigated member's circumstances and may include the following:

- a. input from others, including but not limited to:
 - i. the investigated member's care provider(s);
 - ii. independent assessors; and/or
 - iii. the investigated member's practice supervisors(s) and/or monitor(s);
- b. past patient harm and risk of future patient harm;
- c. past history of compliance;
- d. intervening conduct;
- e. practice circumstances and setting;
- f. collegial support;
- g. assessment of the investigated member based on an interview with the Chair or the Medical Consultant;
- h. legal issues or concerns, including any criminal charges;
 - i. potential for referral to the PHP; and
 - j. any other factor the Chair considers relevant.

5. The decision of the Investigation Committee or Chair regarding release from or revisions to undertakings will be communicated to the investigated member in writing.