



INVESTIGATION COMMITTEE POLICY

Voluntary Surrender of Registration or Certificate of Practice

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CONTEXT

Pursuant to subsection 102(1)(e) of *The Regulated Health Professions Act* (“RHPA”), after reviewing the investigator's report respecting a complaint, the Investigation Committee may accept the voluntary surrender of the investigated member's registration and/or certificate of practice:

102(1) After reviewing the investigator's report, the investigation committee may do one or more of the following: [...] (e) accept the voluntary surrender of the investigated member's registration or certificate of practice; [...]

POLICY

General principles

Disposing of a matter pursuant to subsections 102(1)(e), 105 and 106 of the RHPA is appropriate where:

1. the Committee is satisfied that formal discipline is not warranted based on the application of the principles and factors set out in the **IC Policy – Disposition Principles and Considerations**;
2. it is appropriate for the investigated member to cease practicing medicine;
3. the investigated member is willing to voluntarily surrender their registration or certificate of practice; and
4. it would effectively and efficiently address concerns arising in the matter, including those related to public safety for any reason, including the ability to publish both the fact of and the circumstances of the voluntary surrender.

Costs of investigation

In accepting voluntary surrender under subsection 102(1)(e), the Investigation Committee may make an order for costs respecting the investigation of the complaint:

105(2) The investigation committee may order the investigated member to pay [...] (b) all or part of the costs of the investigation up to the time that the voluntary surrender takes effect.

In determining whether to order the investigated member to pay all or any portion of the investigation costs, the Investigation Committee should consider the following factors:

1. the length and complexity of the investigation and the extent to which costs associated with the use of external resources such as an independent consultant have been incurred;
2. the investigated member's cooperation in the investigation, including whether unnecessary cost was accrued as a result of the investigated member's approach to the investigation; and
3. whether the investigated member has demonstrated undue hardship or an inability to pay.

Preconditions for reinstatement

In accepting voluntary surrender under subsection 102(1)(e) of the RHPA, the Investigation Committee may, pursuant to subsection 105(1) of the RHPA, make an order respecting certain conditions on reinstatement:

105(1) If the investigation committee accepts the voluntary surrender of an investigated member's registration or certificate of practice under subsection 102(1), it may direct the investigated member to do one or more of the following, to the satisfaction of a specified person or committee, before the registration or certificate of practice may be reinstated:

- (a) take counselling or receive treatment;
- (b) complete a specified course of studies;
- (c) obtain supervised experience under a restricted certificate of practice issued for that purpose.

In directing conditions under subsection 105(1), the Investigation Committee may make an order for costs:

105(2) The investigation committee may order the investigated member to pay (a) all or part of any costs incurred by the college in monitoring compliance with a direction given under subsection (1); [...]

Absent exceptional circumstances, the investigated member should be expected to pay all costs incurred by the college in monitoring compliance with a direction given under subsection 105(1) of the RHPA.

Reinstatement following voluntary surrender

If the investigated member wishes to have their certificate of registration and/or certificate of practice reinstated subsequent to voluntary surrender under subsection

102(1)(e), then they must apply to the Investigation Committee pursuant to section 106 of the RHPA for reinstatement:

106 A voluntary surrender remains in effect until the investigation committee is satisfied that the conduct or complaint under investigation has been resolved. At that time, the committee may impose conditions on the investigated member's right to practise the regulated health profession, including requirements that he or she do one or more of the following:

- (a) limit his or her practice;
- (b) practise under supervision;
- (c) not engage in sole practice;
- (d) permit periodic inspections or audits of his or her practice, including inspections or audits of practice records;
- (e) report to the committee or the registrar on specific matters;
- (f) comply with any other conditions the committee considers appropriate in the circumstances;
- (g) pay all or part of the costs incurred by the college in monitoring compliance with the conditions.

When determining whether the conduct or complaint has been satisfactorily resolved and the investigated member's certificate of registration and/or certificate of practice be reinstated in accordance with section 106, the Investigation Committee should consider the investigated member's current competence and fitness to practice and whether all other requirements for registration and certification under the RHPA and the *College of Physicians and Surgeons of Manitoba General Regulation* ("General Regulation") are met. In so doing, the Committee should rely on the following:

1. information collected during the investigation prior to voluntary surrender as to the facts underlying the circumstances which led to the voluntary surrender; and
2. information it collects following the voluntary surrender, not only as to the facts underlying the circumstances which led to the voluntary surrender, but also relevant information as to the investigated member's current circumstances and/or conduct since the voluntary surrender, including, but not limited to:
 - a. remedial efforts undertaken by the investigated member;
 - b. any subsequent similar complaints against the investigated member; and
 - c. whether the investigated member has met all preconditions for reinstatement prescribed under subsection 105(1) of the RHPA, if applicable.

Absent exceptional circumstances, the investigated member should always be expected to pay all costs incurred by the college respecting any conditions imposed under section 106 of the RHPA in accordance with subsection 106(g).

Publication

The circumstances that led to the voluntary surrender may be made available to the public by the Investigation Committee:

105(3) Subject to subsection (4), the investigation committee may make available to the public the name of the investigated member, the fact that the member has voluntarily surrendered his or her registration or certificate of practice and a description of the circumstances that led to the voluntary surrender.

105(4) If, in agreeing to voluntarily surrender his or her registration or certificate of practice, the investigated member admits to suffering from an ailment, emotional disturbance or addiction that impairs his or her ability to practise the regulated health profession, the investigation committee

(a) must not include information that the investigated member suffers from an ailment, emotional disturbance or addiction when making the circumstances that led to the voluntary surrender available under subsection (3); and

(b) must inform an employer, person or entity referred to in section 134 of the voluntary surrender and provide a description of the circumstances that led to it.

Nothing in this policy limits the circumstances that the Investigation Committee may ultimately determine should be included in any related publication otherwise permitted or required by the RHPA. The following general principles apply:

1. The investigated member's name, the fact of a voluntary surrender and the circumstances which led to the voluntary surrender will be published on the College's website unless publication is prohibited by subsection 105(4) of the RHPA or the Investigation Committee is otherwise satisfied that it is not in the public interest to publish the information.
2. In assessing the public interest in relation to publication, the Committee will consider the need to protect the privacy of a patient or a patient's family or the safety of any person. Determining whether to exclude certain information, including the member's name, from publication involves a balancing of the public's right to be aware of College proceedings with the privacy rights of patients and potential safety issues. Unless the Investigation Committee is satisfied that exclusion of certain information is necessary to protect the privacy of a patient or a patient's family or the safety of any person, all pertinent circumstances will be included in the publication. In making this determination, the factors considered by the Investigation Committee should include:

- a. whether the circumstances which led to voluntary surrender include disclosure of intimate, financial, medical or other personal matters that would impact a patient's privacy;
 - b. whether the inclusion of certain information could reasonably be anticipated to compromise the anonymity or privacy of the patient or the patient's family; and
 - c. any evidence that the safety of any individual could be jeopardized by inclusion of certain information.
3. If an investigated member's name is excluded from the publication, the publication will contain the Investigation Committee's reasons for withholding the name.

Unless the investigated member acknowledges any or all of the circumstances that led to voluntary surrender that the Committee determines should be published, the publication should confirm that:

1. The circumstances set out in the publication were considered by the Investigation Committee but were not referred to the Inquiry Committee for adjudication; and
2. The circumstances set out in the publication do not constitute findings of fact by the Investigation Committee, and, as such, no findings of professional misconduct have been made with respect to the investigated member in the matter.

The member's public profile and the College's registers

The *College of Physicians and Surgeons of Manitoba General Regulation* ("General Regulation") contains several provisions relevant to the recording of a voluntary surrender of which the Committee and the investigated member should be aware. The following summarizes the relevant provisions:

- The General Regulation requires that the fact of a voluntary surrender respecting a member be recorded in the register. It also requires a recording in the register of any direction made under 105 of the RHPA or conditions imposed under section 106 of the RHPA.
- Subsection 2.6 of the General Regulation requires that the College make the fact of the voluntary surrender available to the public if the member has not had his or her certificate of practice reinstated or has not been issued a new certificate of practice.
- Subsection 2.6 of the General Regulation also requires conditions imposed under section 106 be made available to the public other than a condition or conditions for the diagnosis, treatment or monitoring of treatment of an ailment, emotional disturbance or addiction that a member is suffering, or has suffered from in the past.

- Subsection 2.6 of the General Regulation does not require that the College make available to the public the circumstances which led to the voluntary surrender or any directions made under subsection 105 of the RHPA. This is a matter of consideration for the Investigation Committee under subsection 105(3) of the RHPA.
- Subsections 9.6(1)(l) of the General Regulation, which determines what information must be on a member's profile, provides that any information that is public under subsection 2.6 of the General Regulation must be on the member's public profile. The fact of the voluntary surrender will therefore appear on the member's profile as will any conditions imposed under section 106 that are made available to the public pursuant to subsection 2.6 of the General Regulation. It should be noted that if a member is not practicing, the College's usual process is to take down the public profile. It is therefore unlikely that the fact of a voluntary surrender would ever appear in a member's public profile.

Process to be followed

Where the Investigation Committee resolves to accept a voluntary surrender of an investigated member's registration and/or certificate of practice, the following process will usually be followed to ensure that the terms of the surrender and publication are understood and acceptable to both the investigated member and the Committee:

1. The investigated member will be required to sign an undertaking pursuant to which the investigated member:
 - a. surrenders their registration, certificate of practice or both at a specific time; and
 - b. acknowledges the circumstances that led to the voluntary surrender.
2. Where possible, the investigated member should be notified in advance of the Investigation Committee's disposition as to whether it will consider making a direction under subsection 105(1) of the RHPA such that the investigated member has an adequate opportunity to make a submission.
3. Where the Investigation Committee resolves a complaint pursuant to subsection 102(1), it will provide its written reasons for doing so in its Notice of Decision. It should state in its reasons any recommendations it has in terms of requirements that should be imposed under 106 of the RHPA in the event of reinstatement. The Investigation Committee will also issue an Order, if applicable, containing:
 - a. any direction for a restriction on reinstatement under subsection 105(1);
 - b. any Order for costs made under subsection 105(2); and/or
 - c. an Order for publication under subsection 105(3).