



## INVESTIGATION COMMITTEE POLICY

### Interim Suspension and Imposition of Conditions

Initial Approval: February 27, 2019  
Effective Date: February 27, 2019  
Revised with Changes:

#### CONTEXT

Pursuant to subsection 110(1) of *The Regulated Health Professions Act* (“RHPA”), the Investigation Committee or the Chair of the Investigation Committee (“Chair”) may direct the Registrar of the College to suspend or place conditions on the registration or certificate of practice of a member of the College who is the subject of an investigation pending the outcome of proceedings under Part 8 of the RHPA, but only if the Investigation Committee or the Chair considers it necessary to protect the public from exposure to serious risk.

The following provisions apply to interim suspensions or imposition of conditions on an investigated member pending the outcome of an investigation or inquiry under Part 8 of the RHPA:

#### RHPA:

##### **Notice of suspension or conditions**

110(2) Upon receiving a direction under subsection (1), the registrar must give written notice of the suspension or conditions and the committee or chair's reasons for the suspension or conditions to the investigated member and, where applicable, to the member's employer or another person specified in the regulations.

#### ***College of Physicians and Surgeons of Manitoba General Regulation:***

##### **Notice of suspension or conditions pending decision**

- 12.2 For the purpose of subsection 110(2) of the Act, the following are specified:
- (a) if known to the college, a person who engages the member to practise medicine on a full-time or part-time basis, including:
    - (i) a person who engages the member as a contractor,
    - (ii) a person who engages the member as a consultant, and
    - (iii) a person who engages the member as a volunteer;
  - (b) a hospital if the member is a member of the hospital's professional staff;
  - (c) a hospital or regional health authority that has granted privileges to the member;

- (d) any minister who administers the payment of fees for the health care that the member provides;
- (e) an external regulatory body in another jurisdiction in Canada.

## **RHPA:**

### **Appeal of suspension or conditions**

110(3) An investigated member whose registration or certificate of practice is suspended or has conditions placed on it under subsection (1) may, by giving notice in writing to the registrar, appeal the suspension or imposition of conditions to the council.

### **Hearing by council**

110(4) The council must hold a hearing as soon as reasonably possible but no later than 30 days after receiving the notice of appeal from the registrar.

### **Right to appear and be represented**

110(5) The college and the investigated member may appear and be represented by counsel at a hearing before the council, and the council may have counsel to assist it.

### **Powers on appeal**

110(6) On an appeal under this section, the council must decide whether the suspension or conditions are to be quashed, varied or confirmed, and may make an order as to any costs that may arise from its decision.

### **Application for stay**

110(7) The investigated member may apply to the court for an order staying a decision of the council under subsection (6) to vary or confirm the suspension or conditions pending the outcome of proceedings under this Part.

### **Application served on the registrar**

110(8) The application must be served on the registrar.

## ***The Affairs of the College and Code of Ethics Bylaw:***

Pursuant to subsection 91.b.vi, Council has delegated its authority to hear appeals of interim suspensions or imposition of conditions to the Executive Committee in accordance with its authority to delegate under subsection 17(1) of the RHPA.

## **POLICY**

When the Chair or Investigation Committee is considering exercising the authority granted by subsection 110(1) of the RPHA, the paramount concern is protection of the public and procedural fairness to the investigated member is essential. In this context, where imposition of interim suspension or interim terms and conditions is being considered,

unless the public interest demands immediate action with or without notice, the following process should be followed:

1. Before a decision as to whether imposition of interim suspension or terms and conditions is necessary, the investigated member should be provided with:
  - a. written notice identifying:
    - i. the underlying concerns being investigated which prompted the consideration; and
    - ii. the nature of the action(s) under consideration (interim suspension or interim terms and conditions);
  - b. an opportunity to address those concerns and/or suggest alternative action(s) by:
    - i. responding in writing; and
    - ii. meeting with the Chair, investigator or the Medical Consultant to the Investigation Committee.
2. In deciding as to whether and what, if any, interim action is necessary to protect the public from exposure to serious risk pursuant to subsection 110(1) of the RHPA, the Investigation Committee or the Chair as the case may be should consult with legal counsel as to the current state of the relevant law and consider the following factors:
  - a. the seriousness of the conduct giving rise to the risk;
  - b. the reliability of the evidence underlying the conduct and/or allegations;
  - c. the probability of harm if no action is taken; and
  - d. the availability of less restrictive measures to protect the public.
3. Where the Investigation Committee or Chair concludes that interim action pursuant to subsection 110(1) of the RHPA is necessary to protect the public from exposure to serious risk, written direction must be given to the Registrar, with a copy of the letter with reasons for the decision attached.
4. Pursuant to subsection 110(2) of the RHPA and subsection 12.2 of the *College of Physicians and Surgeons of Manitoba General Regulation*, the Registrar is obliged to give written notice of the interim suspension or conditions and the Investigation Committee or Chair's reasons for the interim suspension or conditions to the investigated member and, where applicable, to the member's employer and/or any of the following persons/institutions:
  - a. if known to the college, a person who engages the member to practise medicine on a full-time or part-time basis, including:
    - i. a person who engages the member as a contractor,
    - ii. a person who engages the member as a consultant, and
    - iii. a person who engages the member as a volunteer;
  - b. a hospital if the member is a member of the hospital's professional staff;
  - c. a hospital or regional health authority that has granted privileges to the member;
  - d. any minister who administers the payment of fees for the health care that the member provides;

- e. an external regulatory body in another jurisdiction in Canada.
5. The notice should:
    - a. be in 2 separate documents:
      - i. a formal notice which clearly sets out the action taken and only contains information accessible to the public; and
      - ii. a letter which must include:
        1. the reasons for the decision; and
        2. reference to the appeal provisions of the RHPA.
  6. Subsection 176(1) of the RHPA sets out the following means by which the notice can be given to those entitled to notice of the action taken. It provides that the notice is sufficiently given if it is:
    - a. delivered personally; or
    - b. sent by registered mail or by another service that provides the College with proof of delivery to the intended recipient at that person's last address appearing in the college's records.
  7. The notice and the Registrar's letter should be personally delivered to the investigated member or delivered by a means that provides the College with proof that the investigated member received the notice unless such means of delivery cannot reasonably be achieved in a timely fashion.
  8. Notice of the suspension or terms and conditions, where the conditions impact on prescribing, must also be promptly provided by the Registrar to the College of Pharmacists of Manitoba.
  9. Consideration must be given to the need to notify others who have relationships with the investigated member, such as caregivers and supervisors.
  10. The investigated member should also be provided with information on the steps he or she is expected to take to assist his or her patients in accessing appropriate medical care during any period of suspension of the investigated member's registration or certificate of practice as required by section 13 of the *Standards of Practice Regulation* as supplemented by Part 6.3 of *The Standards of Practice* adopted by Council and incorporated by reference into that Regulation.
  11. Consideration must be given to liaising with the police in the event of alleged criminal behaviour.
  12. Notice of the interim suspension or interim terms and conditions must be promptly posted on the physician's profile as required pursuant to subsections 9.6(1)(n) and (m) of the *College of Physicians and Surgeons of Manitoba General Regulation*.
  13. The Chair, in consultation with the Medical Consultant and legal counsel, shall approve standard wording to be included in the written notices and letters referenced in this policy.