

CDSS DISCIPLINE HEARING INFORMATION AND PROCESS MANUAL

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1. INTRODUCTION

The purpose of this manual is to provide clarity and guidance regarding a Discipline Hearing (“hearing”) before the College of Dental Surgeons of Saskatchewan (“CDSS” or “College”). The manual outlines key concepts, procedures, and expectations relevant to the participation in the disciplinary process, such that the hearing is conducted in an organized, transparent, and legally sound manner, ensuring clarity and fairness in the process and accommodation for all necessary parties.

2. RULES AND PROCEDURE

Where The Dental Disciplines Act, 1997 (“DDA” or “Act”), the CDSS Regulatory and/or Administrative Bylaws, and this document does not explicitly dictate appropriate procedure, the Discipline Committee (“DC”) typically adheres to the Saskatchewan King’s Bench Rules of Court where applicable to the situation. These rules can be located at: <https://publications.saskatchewan.ca/api/v1/products/73108/formats/81637/download>.

3. LEGAL COUNSEL

Discipline proceedings are serious matters. It can be difficult to represent oneself considering the hearing must adhere to all appropriate legal and procedural rules, and the registrant is expected to follow the rules. The Professional Conduct Committee (“PCC”) and the DC each have their own independent legal counsel whose role and function is to support the committee as their client. Neither the PCC’s legal counsel nor the DC’s legal counsel can provide the registrant with legal advice.

It is always recommended that a “registrant whose conduct is the subject of a hearing” (“registrant” or “defence”) retain a lawyer to represent them at a discipline hearing and to assist them with the disciplinary process. Expenses for legal representation are the responsibility of the registrant, as per section 33(4) of the Act.

This document is intended to provide a general overview of the discipline and hearing process and is not intended as a substitute for legal advice for the registrant's specific circumstance.

4. FORMAL COMPLAINT

A Formal Complaint is a written report of the investigation decision prepared by the PCC, usually with the assistance of its legal counsel, that is provided to the registrant and DC outlining the charges of professional incompetence and/or misconduct.

A copy of the Formal Complaint is sent to the registrant at least 14 days before the date of the hearing, as per section 33(1)(a) of the Act.

The formal complaint will be sent by email to the registrant's email address as last shown in the registry or by registered mail to the registrant's address as last shown in the registry.

5. NOTICE OF HEARING

A Notice of Hearing is a formal document issued by the CDSS informing the registrant subject to the complaint of the date, time, and place of the disciplinary hearing. It serves as an official notification of the charges against the registrant.

The date, time, and place of the hearing is served on the registrant at least 14 days before the date of the hearing, as per section 33(1)(b) of the Act.

As per section 52(1) of the Act, the service of the Notice of Hearing may be served by:

1. Personal service to:
 - i) the registrant;
 - ii) in the case of a partnership, any partner of the registrant; or
 - iii) in the case of a corporation, any officer or director of the corporation

2. Registered mail to the last business or residential address of the person to be served shown on the register

A notice or document sent by registered mail is deemed to have been served on the seventh day following the date of its mailing, as per section 52(2).

It is the responsibility of all registrants to ensure that their address, as shown in the registry, is current and accurate. The person who made the complaint pursuant to section 29 of the Act is to be advised of the date, time, and place of the hearing, as per section 33(15)(a) of the Act.

6. THE PROFESSIONAL CONDUCT COMMITTEE

The PCC shall prosecute or direct the prosecution of the complaint, but PCC members shall not participate in any other manner in the hearing of the complaint except as witnesses when required, as per section 33(2) of the Act.

7. THE DISCIPLINE COMMITTEE

The DC shall hear the complaint and shall determine whether or not the member is guilty of professional misconduct and/or professional incompetence, notwithstanding that the determination of a question of fact may be involved, and

the discipline committee need not refer any question to a court for adjudication, as per section 33(3) of the Act.

The case will be heard by a panel of the DC, as per sections 32(6) of the Act.

The panel generally consists of at least three members of the DC - at least one Public Representative and a majority of practicing dentist registrants, as per sections 32(2) and (3) of the Act.

The DC will be supported on legal issues by its own independent legal counsel at the expense of the College, as per section 33(4) of the Act. The role of counsel to the DC is to advise on procedural matters and the conduct of the hearing.

The panel is independent and impartial.

The panel will hear and determine the matter based solely upon the evidence which is presented to it.

The DC may accept any evidence that it considers appropriate and is not bound by rules of law concerning evidence, as per section 33(4) of the Act.

The DC will also determine whether or not the evidence presented is relevant and material to the issues before them.

The panel members should ensure that they are free of bias and that they have not prejudged the matter.

8. BURDEN AND ONUS OF PROOF

The PCC bears the burden of proving the allegations set out in the Formal Complaint. They are responsible for presenting evidence to prove the allegations of professional incompetence and/or professional misconduct – as per sections 26 and 27 of the Act - against the registrant.

The PCC is **not** required to meet the criminal standard of “proof beyond a reasonable doubt;” rather, the PCC must meet the civil standard of “proof on the balance of probabilities,” meaning that the DC must be satisfied that “it is more likely than not” that the alleged professional incompetence and/or professional misconduct occurred.

9. DISCLOSURE

The registrant is entitled to receive disclosure of the case so that they may determine a position and prepare a defence.

Disclosure is the process through which the PCC shares with the registrant the evidence and information obtained during the investigation that is relevant to the complaint. This may include documents collected, witness statements and/or interviews, expert reports, and any other evidence that may be used during the hearing.

It is essential for the registrant to carefully review all the disclosed materials to determine whether to dispute the allegations against them and/or to prepare the defence of the case effectively.

Due to the private and confidential nature of its content, as well as the CDSS' duties as a “Trustee” under the Health Information Protection Act, the disclosure will be provided to the registrant solely for the purpose of responding to the allegations and preparing for the CDSS hearing, and for no other purpose.

10. ADMISSIONS OF PROFESSIONAL INCOMPETENCE AND/OR PROFESSIONAL MISCONDUCT

If the registrant does not deny or dispute the allegation(s) in the Formal Complaint, the registrant may choose to formally admit to the allegation(s). This admission is an acknowledgment of guilt to the conduct alleged and will have the effect of removing the need for the PCC to prove the conduct occurred by calling witnesses and presenting evidence before the DC.

The admission to the allegation(s) in the Formal Complaint will mean the registrant is not only admitting the conduct alleged but also acknowledging that the conduct constituted professional incompetence and/or professional

misconduct, as per section 26 and 27 of the Act.

If the DC accepts the admission of professional incompetence and/or professional misconduct at the hearing based on the uncontested (undisputed) facts presented to them, the hearing will then shift to determining what should be the appropriate disciplinary penalty.

The registrant is encouraged to seek the advice of a lawyer when considering whether to admit to the alleged professional incompetence and/or professional misconduct so that the registrant is aware of what disciplinary sanctions may result.

Admitting to the allegations of professional incompetence and/or professional misconduct expedites the hearing process by eliminating the need for the DC to hear and assess contested evidence related to the allegations against the registrant. This can save time and resources for all involved parties.

Admitting professional incompetence and/or professional misconduct also demonstrates cooperation and acceptance of responsibility; the DC may take this admission into consideration when determining what disciplinary penalty should be imposed and may result in them ordering the registrant to pay a lesser amount of the costs of the investigation and disciplinary process. This will depend on the specific circumstances of the case and will be based on the discretion of the DC.

Whether the registrant chooses to admit or dispute (contest) the allegations, it is important to be aware of the potential and probable outcomes of the hearing. Seeking the assistance of a lawyer can help the registrant make an informed decision.

11. AGREED STATEMENT OF FACTS

An Agreed Statement of Facts is a document outlining the facts of the case that are agreed upon by both the registrant and the PCC which support the charges. This document helps to streamline the hearing process by reducing the need for evidence to be presented on matters that both the PCC's legal counsel and the defence agree upon.

If the registrant does not deny the allegations nor the evidence obtained in the investigation that supports the charges, all the evidence in a hearing can be submitted by way of an Agreed Statement of Facts.

The Agreed Statement of Facts will be signed by both parties once finalized and agreed upon.

12. BEFORE THE HEARING

A. CASE MANAGEMENT CONFERENCE

Leading up to the hearing, there may be one or more case management conferences where procedural matters are discussed and resolved.

A case management conference is held after the Formal Complaint have been referred to the DC and served to the registrant.

The case management conference is a meeting that occurs with the defence, legal counsel for the PCC, an experienced member of the DC who acts as the Chair of conference, the legal counsel for the DC, as well as CDSS staff involved in the hearing process.

The purpose of the case management conference is to narrow issues for the hearing and to identify legal and procedural issues for the panel.

The Chair of conference typically confirms:

- i. whether there are any objections to any members of the DC panel for the hearing;
- ii. whether there is any admission of incompetence or misconduct ('guilty plea');
- iii. the date, time, and expected length of the hearing;
- iv. the location or manner of the hearing (whether in-person or virtual);
- v. whether disclosure has been received and whether there are any issues or concerns with the disclosure;
- vi. the registrant's witness list;

- vii. the PCC's witness list;
- viii. qualifications of expert witnesses and any challenges thereto;
- ix. timing of exchange of any expert witness reports, rebuttals, and objections thereto;
- x. exchange of summary of evidence of the witnesses;
- xi. addressing how much notice is required to be given to the other party regarding any witnesses that are going to be called at the hearing;
- xii. whether there is agreement on facts or evidence;
- xiii. when any documents or evidence will be filed (submitted) by the parties;
- xiv. procedural timelines and deadlines;
- xv. prehearing motions; and
- xvi. previous decisions of the DC.

The Chair of conference will have decision-making authority if the parties are unable to reach a consensus agreement regarding procedural items.

Should the registrant fail to attend the Case Management Conference, it shall proceed in their absence.

B. PRE-HEARING MOTIONS

The parties should consider whether there are any matters for the panel to decide before the hearing commences.

If so, a motion can be brought requesting that the panel make a certain order. Some examples of pre-hearing motions are motions to require the PCC to make further and better disclosure, or to obtain the records being held by a third party (a person or facility other than the PCC).

A case management conference might assist in determining what motions, if any, are required in advance of the hearing.

C. EXPERT WITNESSES

The PCC and the defence may choose to call an expert witness to provide opinion evidence.

An "expert witness" is someone qualified to give expert opinion evidence about matters outside the general scope of knowledge of the panel members.

Although panel members may possess professional expertise, they cannot use that expertise in the place of evidence, and so expert evidence may be required. For example, the DC often hears expert evidence about what the standards of practice of the profession are, and whether those standards were breached in a particular case.

Before such a witness can give expert opinion evidence, they must be qualified and accepted by the panel as an expert.

As stated above, the Saskatchewan Court of King's Bench Rules of Court are typically adhered to for appropriate procedure relating to expert evidence where applicable.

Rule 5-37 outlines the **duty of an expert** witness to assist the decision-maker by: providing opinion evidence that is objective and non-partisan, providing opinion evidence related only to matters within their area of expertise, and to provide any additional assistance that the DC may reasonably require to determine a matter in issue.

Rule 5-39 outlines the **requirements for the content of an expert report** and requires that it contain at minimum: the expert's name; the expert's address; the expert's qualifications; the information and assumptions on which the expert's opinion is based; a summary of the expert's opinion; and a Statement of Expertise which outlines the areas of expertise in which the expert is proposed to offer an opinion.

Rule 5-44 explains the rules relating to presenting the expert report as evidence at the hearing without calling the expert as a witness.

Rule 5-45 explains the rules around requiring the expert's attendance at trial if the expert's report has been submitted ("tendered") into evidence.

Notice of Expert Evidence:

Notice of the intention to have an expert witness at the discipline hearing is to be given to the opposing legal on an agreed upon deadline, unless the DC Chair determines otherwise.

The notice must include the identity of the expert and a copy of the expert's written report or, if there is no written

report, a written summary of the evidence.

“Rebuttal” Expert Reports:

If the party in receipt of an expert report seeks to have their own expert provide a rebuttal report, that report must be served on an agreed upon deadline before the discipline hearing, unless the DC Chair determines otherwise.

Objections to the Expert’s Report or Qualifications:

As per Part 5 Division 3 rule 5-41 of the King’s Bench Rules, any objection to the expert’s qualifications or the admissibility of the expert’s report that the party receiving the report intends to raise at the hearing, and the reasons for the objection, must be provided to the other party on an agreed upon deadline, unless otherwise ordered or required by the DC.

D. SUBPOENA TO A WITNESS

The PCC or the defence has the right to subpoena witnesses to testify on their behalf or to provide evidence relevant to the case, as per section 33(8) of the Act.

A subpoena is a legal document that requires the witness to attend the disciplinary hearing to give relevant evidence.

If the parties choose to call any witness to testify on their behalf at the hearing that has not agreed to testify voluntarily, they can apply to the local registrar of the Court of King’s Bench at any judicial centre for a subpoena to be issued.

The following link provides the Court of King’s Bench locations and contact information:

<https://sasklawcourts.ca/kings-bench/court-locations/>.

The following link is a resource to assist with the subpoena process and form required:

https://sasklawcourts.ca/wp-content/uploads/2024/05/KB_CRIM_PD4_May2024.pdf.

It is crucial to identify and request subpoenas for necessary witnesses as far in advance of the discipline hearing as possible to ensure enough time to locate and serve the subpoena on the witness, and to further ensure the witness has enough time to arrange their schedules to make themselves available for the hearing date.

It is the responsibility of each party to ensure the subpoena is served on the witness in advance of the hearing.

13. THE HEARING

The specific purpose of the hearing is to determine whether the allegations of professional misconduct and/or incompetence made against the registrant by the PCC are proven based on the evidence.

Where the registrant whose conduct is the subject of the hearing fails to attend the hearing, the discipline committee, on proof of service of the notice through personal service or by registered mail, in accordance with section 52(1) of the Act, may proceed with the hearing in the member’s absence, as per section 33(10) of the Act.

The CDSS conducts hearings in-person or virtually.

The person who made the complaint pursuant to section 29 of the Act is entitled to attend the hearing, as per section 33(15)(b) of the Act.

The hearing is open to the public and members of the media, as per section 33(14) of the Act. Those who register in advance will be admitted.

The DC may exclude members of the public and the person who made the complaint from any part of the hearing when the committee is of the opinion that evidence brought in the presence of the person or persons to be excluded will unduly violate the privacy of a person other than the member whose conduct is the subject of the hearing, as per section 33(15) of the Act.

All attendees are subject to the CDSS Rules for Observing a Discipline Hearing Panel.

The hearing is a formal process.

It is suggested to dress in business attire.

The hearing will start promptly at the time indicated and is expected to proceed without disruptions.

All attendees are expected to present themselves professionally and attendees are to refrain from eating and drinking during the proceedings.

Those observing the hearing (non-participants including members of the public and media) who sign out of the hearing will not be allowed back in until there is a break in the proceeding.
No recordings of the hearing will be permitted by members of the public.

A. IF THE HEARING IS IN-PERSON:

The parties should arrive early to familiarize themselves with the facilities and to ensure that they are ready to begin at the time indicated.

Typically, the DC panel and the DC's legal counsel will sit at tables at the front of the room facing towards the parties. Two tables will be facing towards the panel, spaced apart. The defence will be at one table, and the PCC's legal counsel will be at the other table who may be accompanied by an assistant or investigator. Behind the parties will be the gallery for members of the public and media who want to observe the proceedings.

Once all participants are seated and ready to proceed, the discipline panel will enter the room. The parties are expected to stand when the panel enters and exits the room.

The panel member sitting in the middle of the panel's table is the Chair of the panel who directs the proceeding. Do not speak until requested by the Chair or the panel to do so.

The registrant should only speak to the panel in the hearing room, in the presence of the PCC's legal counsel. Do not attempt to have any contact with the panel members outside of the hearing room.

B. IF THE HEARING IS VIRTUAL:

The parties will be provided with a link well in advance and have an opportunity for at least one practice session. This will provide an opportunity to work with the Discipline Hearing Facilitator and IT to assist with any issues that may need to be resolved in advance.

On the day of the hearing, plan to join the link 15 minutes early to ensure there is time to alleviate any last-minute unexpected issues.

The Discipline Hearing Facilitator will move the parties to a breakout room until the panel is ready to start the hearing.

Those observing the hearing (non-participants including members of the public and media) will only have access to audio. It is required that cell phones and computer notifications are muted or turned off.

The hearing, whether in person or virtual, is recorded by a **court reporter**.

The transcripts are available upon request for a fee.

It can take several weeks to obtain the transcripts, even on an expedited basis. Therefore, parties should be prepared to take notes of the hearing for their own personal use. Notes are often very useful when the time comes to make submissions.

The court transcriptionist may make an audio recording of the hearing to assist with the preparation of the transcript. This recording is not part of the formal record and is not made available to the DC or to any of the parties. Audio recording of the hearing by any other person, including the parties to the proceeding, is prohibited.

14. ORDER OF EVIDENCE PRESENTATION AND ARGUMENT

The discipline hearing typically follows a structured order of evidence presentation. This may include opening statements by both parties, examination and cross-examination of witnesses, presentation of documentary evidence, and closing arguments. More specifically, the process will likely proceed as outlined below.

A. READING OF ALLEGATIONS AND RESPONSE

First, the PCC's legal counsel will formally present the allegations of professional incompetence and or professional misconduct set out in the Notice of Hearing.

The DC panel understands that the Notice of Hearing contains allegations, not facts.

The Notice of Hearing is not evidence of professional incompetence or professional misconduct on the registrant's part; it is only evidence that these allegations have been made against the registrant.

Once the allegations have been read, the registrant will be asked how they elect to respond to the allegations. The registrant has two options:

- i. to admit an allegation; or,
- ii. to deny an allegation.

To deny any allegation, this is the discipline proceeding equivalent to a plea of "not guilty" and the hearing will proceed on the basis that the denied allegations are contested and must be proven by the PCC.

To admit to any allegation, this is the discipline proceeding equivalent of a plea of "guilty."

The balance of this informational document assumes a denial of some or all of the allegations, which means that the hearing will be contested.

B. ORDERS EXCLUDING WITNESSES

In most cases, contested hearings will begin with the panel making an order excluding witnesses. This means that witnesses must stay out of the hearing room until they are called to testify.

This order does not apply to the registrant, and the registrant has the right to be present throughout the entire hearing even if they intend to testify.

The order excluding witnesses often does not apply to expert witnesses.

C. OPENING STATEMENTS

After hearing the registrant's response to the allegations, the panel will call upon the parties to make opening statements.

The PCC's legal counsel has the right to present their opening statement first. The defence will then have the right to present an opening statement on their own behalf.

The defence may present immediately after the PCC's legal counsel opening statement and prior to the hearing of the PCC's evidence.

Or the defence may choose to delay their opening statement until after the hearing of the PCC's evidence, such that the defence's opening statement will be presented just prior to the hearing of the defence's own evidence.

The PCC's opening statement summarizes for the panel what the PCC expects to be able to prove on the evidence. **The opening statement itself is not evidence.**

The defence's opening statement usually sets out the basis of the defence's position and summarizes the evidence that the registrant intends to present in support of that position. **The opening statement itself is not evidence.**

The purpose of the opening statements is to assist the DC panel in understanding the parties' respective positions and the evidence supporting those positions.

The defence is not obliged to make an opening statement and the decision to not make an opening statement will not be held against the registrant in any way.

D. ORAL EVIDENCE (TESTIMONY)

- i. Examination, Cross-examination, and Re-examination of Evidence and Witnesses, as per section 33(7)(a) of the Act

Following the opening statement(s), the PCC's legal counsel will call evidence through witnesses.

Documents may be identified by witnesses and presented into evidence through those witnesses.

The testimony of witnesses is to be under oath or affirmation administered by the chairperson of the DC, as

per section 33(6) of the Act.

After the PCC's legal counsel has finished examining each witness, the defence has the right to cross-examine each of the witnesses by asking questions on all relevant matters that they believe will assist in the defence.

The defence is not required to cross-examine any witness, but a cross-examination is usually necessary to argue to the panel that the evidence of any particular witness should not be believed, in whole or in part.

When the defence is done cross-examination, the PCC's legal counsel has the right to ask questions in re-examination. These questions should only be directed to evidence of new matters that were not addressed during the initial questions but which arose strictly during the cross-examination and not previously dealt with by the PCC's legal counsel.

Members of the panel also have the right to ask questions of the witnesses to obtain clarification of points brought up in the evidence.

ii. Evidence in Defence, as per section 33(7)(b) of the Act

Once the PCC's legal counsel has finished calling all witnesses, the defence has the right to call any relevant witnesses to support their own defence.

The registrant whose conduct is the subject of the hearing also has the right to testify in their own defence.

The testimony of witnesses, including the registrant, is to be under oath or affirmation administered by the chairperson of the DC, as per section 33(6) of the Act.

If the registrant does elect to testify in their own defence without legal counsel, the registrant should simply tell the factual story and not pose questions to themselves.

After the defence has finished examining each witness, including the registrant, the PCC's legal counsel has the right to cross-examine each of the witnesses on all relevant matters.

When the PCC is done cross-examination, the defence has the right to ask questions in re-examination.

These questions should only be directed to evidence of new matters that were not addressed during the initial questions but arose strictly during the cross-examination and not previously dealt with by the defence.

Members of the panel also have the right to ask questions of the witnesses to obtain clarification of points brought up in the evidence.

In making the decision about whether to testify (and what matters to testify about), the defence should bear in mind that **the submissions are not evidence**. In other words, if the defence wants the panel to accept their version of the events, the defence cannot rely solely on their submissions to the panel – and the panel cannot rely on those submissions in its decision. Contested matters of fact must usually be resolved through testimony, which includes the other side's right to cross-examine. The registrant will have the opportunity to call such other witnesses as they believe will assist in their defence. The order in which the defence calls witnesses is a tactical decision that must be determined (whether the registrant testifies).

iii. Objections to Questions

The PCC legal counsel and the defence have the right to object to any question asked by the opposing party if the question is considered improper. Some examples of grounds for objection might be:

- a. the question seeks irrelevant information;
- b. the question is being asked by the legal counsel of its own witness in a leading fashion - the question is phrased not in an open-ended way but in a way that suggests the answer; and,
- c. the question seeks hearsay information - information that the witness does not know first-hand but has been told by someone else.

There may be other valid grounds for objecting to questions.

If a party has an objection to any question asked by the opposing legal counsel, they should simply rise and politely state an objection before the witness answers the question.

The objection should be directed to the Chair of the panel, not directly to the opposing legal counsel or to the witness.

Once an objection has been indicated, the panel may ask the witness to be excused while the objection is discussed.

If there is an objection to a question, the panel requires a reason for the objection.

The opposing legal counsel has the right to respond following the statement of objection and the objecting legal counsel will also have the right to reply.

The panel may then solicit the views of the DC's legal counsel.

The panel will make the decision as to whether the question is proper or not.

If the panel decides the question is not proper, the witness will not be permitted to answer the question.

E. DOCUMENTARY EVIDENCE (EXHIBITS)

The parties may also choose to present as evidence, by way of exhibits, any documents that are relevant and important to the issues that the DC panel must determine.

The parties can present the evidence through testimony of witnesses called or on cross-examination of the witnesses.

Generally speaking, a document may only be submitted into evidence and marked as an exhibit through a witness if that witness created, sent, or received that document or has otherwise had first-hand contact with it, and can therefore identify it.

Objections to the introduction of any documentary evidence are made the same way as objections to questions. Simply stand and state the objection.

If the PCC or defence is submitting a document as an exhibit, there must be enough copies for each member of the panel, the court reporter, the PCC's legal counsel, the DC's legal counsel, and the defence.

The original document (if available) will be formally marked as an exhibit.

During a virtual hearing, the exhibits shall be prepared and filed in advance of the hearing.

If there are multiple documents, a "book of exhibits" should be created which will be provided to each member of the panel, the court reporter, the PCC's legal counsel, the DC's legal counsel, and the defence in advance so that it can be viewed by all involved during the hearing process.

It may be the case that there are many documents that both the PCC and the defence agree are relevant and should be tendered as evidence before the DC. If this is the case, a 'joint exhibit book' can be created and filed in advance which will include all agreed upon exhibits by both the PCC and the defence.

F. EVIDENCE OF REPLY, AS PER SECTION 33(7)(A) OF THE ACT

After the defence have presented all of the evidence through witnesses that they intend to present, the PCC has the right to call witnesses in reply. The right to call witnesses in reply is a limited right and is restricted to witnesses that will be providing evidence that arises out of the evidence that was presented by the defence and which could not have been anticipated.

G. CLOSING SUBMISSIONS

After all evidence has been presented, both the PCC and the defence have the right to make closing submissions.

Closing submissions may be written, oral or both. This will be a matter to be determined by the DC following the conclusion of the evidentiary portion of the hearing, depending on the complexity of the matter and other factors.

Where the parties make oral submissions, the PCC will present first, followed by the defence. The PCC will have a limited right to reply to the closing submissions of the defence.

Where the DC requires written submissions, the deadline for those submissions will be set by the DC following adjournment of the evidentiary portion of the hearing.

The DC may elect to delay closing submissions until after the official transcripts are available.

The submission of written closing submissions should include a copy for all panel members, the DC legal counsel, and the opposing legal counsel.

As with the opening statement, **the closing statement is not evidence**. Rather, the closing submissions should be based on the oral and documentary evidence given before the panel. The legal counsels can ask the panel to make any factual inferences or conclusions that can be appropriately drawn from the evidence. This is an opportunity to make a closing argument based on the evidence the panel heard. **New evidence cannot be provided during the closing submissions.**

Previous decisions from the courts, other regulatory bodies, and by the DC may be presented at the time of the closing submissions. Closing submissions should explain how these previous decisions may assist the panel with making a determination on whether the professional misconduct or professional incompetence alleged in the Formal Complaint has been proven based on the evidence heard at the hearing.

The question of a possible penalty is not addressed in this part of the hearing.

H. DELIBERATIONS

Following the parties' Closing Submissions, the panel will retire to deliberate in private and determine a decision.

During this part of the hearing, the only decision for the panel to make is whether the allegations in the Formal Complaint have been established on a balance of probabilities.

The DC legal counsel will provide legal advice to the panel and assist in drafting the written decision of the panel.

If the panel finds that one or more of the allegations in the Formal Complaint have been proven by the PCC in accordance with this standard of proof, the panel will make a finding that the registrant is guilty and another hearing date will be set, this is called the Penalty Hearing. At this time, the panel will hear evidence, if any, and submissions on the question of the appropriate penalty.

In the event that the panel finds that none of the allegations against the registrant have been proven, the matter will be at an end.

The panel will give its decision of incompetence or misconduct in writing. In both cases, the registrant will receive a written decision with written reasons.

15. THE PENALTY HEARING

If the DC finds that any of the allegations in the Formal Complaint have been proven on a balance of probabilities, the penalty hearing phase of the proceeding will be scheduled.

Notice of the penalty hearing shall be sent by email to the registrant's email address as last shown on the registry or by registered mail to the registrant's address as last shown in the registry, at the discretion of the Registrar.

The panel may make one or more of the orders authorized by Section 34 of *The Dental Disciplines Act, 1997*.

During the penalty phase of the hearing, the parties may call oral evidence and/or submit documentary evidence relevant to the issue of the appropriate penalty order.

This is not the time to call evidence or make submissions about the fairness or correctness of the panel's decision regarding professional incompetence and/or professional misconduct. The only issue is what penalty order the panel should make considering its findings regarding professional incompetence and/or professional misconduct.

If evidence is called, the order of proceedings is the same as it is during the hearing.

First, the PCC calls its witnesses, and the defence are entitled to cross-examine.

Then, the defence may call witnesses (including the registrant) and the PCC may cross-examine.

The PCC then has an opportunity to call reply evidence.

Often, penalty hearings do not involve any new evidence or the parties agree to only make written submissions to the panel and forgo an in-person hearing.

Submissions proceed in the same manner as opening and closing statements: the PCC submits first, and the defence submits second. Again, the PCC's legal counsel has a right to reply to the defence's submissions regarding penalty.

Previous decisions from the courts and the DC may be presented in this portion of the hearing.

These previous decisions are often helpful during submissions as to the appropriate penalty and whether the proposed penalty is within the range of penalties ordered in the past in similar circumstances.

Once all submissions have been heard, including written submissions, the panel will adjourn to make their decision of disciplinary orders. The registrant will receive their decision in writing.

Where the registrant whose conduct is the subject of the hearing fails to attend the hearing, the discipline committee

may proceed with the hearing in the member's absence.

16. DISCIPLINARY ORDERS

Pursuant to section 34 of the Dental Disciplines Act –

- (1) Where a discipline committee finds a member guilty of professional misconduct or professional incompetence, it may make one or more of the following orders:
 - (a) an order that the member be expelled from the association and that the member's name be struck from the register;
 - (b) an order that the member be suspended from the association for a specified period;
 - (c) an order that the member be suspended pending the satisfaction and completion of any conditions specified in the order;
 - (d) an order that the member may continue to practise only under conditions specified in the order, which may include, but are not restricted to, an order that the member:
 - (i) not do specified types of work;
 - (ii) successfully complete specified classes or courses of instruction;
 - (iii) obtain medical treatment, counselling or both;
 - (e) an order reprimanding the member;
 - (f) any other order that the discipline committee considers just.
- (2) In addition to an order made pursuant to subsection (1), the discipline committee may order:
 - (a) that the member pay to the association within a fixed period:
 - (i) a fine in a specified amount not exceeding \$5,000; and
 - (ii) the costs of the investigation and hearing into the member's conduct and related costs, including the expenses of the professional conduct committee and the discipline committee and costs of legal services and witnesses; and
 - (b) where a member fails to make payment in accordance with an order pursuant to clause (a), that the member be suspended from the association.
- (3) In addition to an order made pursuant to subsection (1), the discipline committee may order the member to provide restitution for the cost of a faulty dental prosthesis, periodontal or orthodontal dental appliance, in the case of:
 - (a) a dental technician;
 - (b) a dentist; or
 - (c) a denturist.
- (4) The registrar shall send a copy of an order made pursuant to this section to the member whose conduct is the subject of the order and to the person, if any, who made the complaint.
- (5) Where a member is expelled or suspended, the registrar shall strike the name of the member from the register or indicate the suspension on the register, as the case may be.
- (6) Where a member is found guilty of professional misconduct or professional incompetence, the council may inform that member's employer of the order made against the member.
- (7) If a member is suspended or expelled from an association, that member's rights and privileges as a member are removed for the period during which the member is suspended or expelled.

Pursuant to section 35 of the Dental Disciplines Act –

- (1) The discipline committee may, by order, impose any penalty described in section 34 that to it seems just where:
 - (a) the member has been convicted of an offence pursuant to the Criminal Code, the Cannabis Act (Canada), the Controlled Drugs and Substances Act (Canada) or the Food and Drugs Act (Canada);
 - (b) a report of the professional conduct committee is made to the discipline committee respecting the conviction mentioned in clause (a);
 - (c) the discipline committee has given the member mentioned in clause (a) an opportunity to be heard; and
 - (d) the discipline committee finds that the conduct of the member giving rise to the conviction

mentioned in clause (a) constitutes professional misconduct.

17. COSTS OF DISCIPLINE PROCEEDINGS

For the purpose of clause 34(2)(a)(ii) of the Act, the following are defined to be costs of and incidental to the investigation and hearing:

- a. the travel, accommodation and meal expenses of the members of the DC for the hearing, as well as the per diem allowances payable by the College to such members for such hearing;
 - b. the fees and expenses of the lawyer or lawyers retained by the College in connection with the investigation and/or hearing;
 - c. the cost of the facility rental and audio, visual, and technological rental and support;
 - d. the cost of reporting services and expenses;
 - e. expert fees both for the preparation of written opinions and attending to give evidence with travel, accommodation and meal expenses incurred by such expert witnesses for the purpose of giving evidence;
 - f. payments made to witnesses in connection with a hearing before the DC, including witness fees, travel, accommodation, and meal expenses;
 - g. the fees and expenses of a hearing administrator;
 - h. costs of photocopying done by the College in connection with the investigation and/or hearing calculated at a rate of \$.25 per page;
 - i. any other expenses incurred by the College incidental to the investigation and hearing
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18. DISCIPLINE COMMITTEE DECISION AND ORDERS

The DC will attempt to provide their written decision with reasons within approximately 6 weeks of the close of the hearing, but there is no strict timeline.

A written decision of incompetence/misconduct and any disciplinary orders of the DC are provided to the College for distribution and publication as follows:

- a. the Registrar will send a copy of the order to the registrant and to the complainant.
 - b. the decision and orders will be posted on the CDSS website and on the public registry.
 - c. the order may also be provided to other relevant individuals and organizations as determined by the DC.
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19. PUBLICATION AND DISCLOSURE OF IDENTITY

The full text of the decision will be included on the public registry and CDSS website.

The registrant's name will be disclosed in the order unless the DC orders that the registrant's name be redacted to protect the health or security of the registrant or some other person.

The DC will provide reasons for this limitation in their decision.

20. REVIEW BY COURT

Once the decision of the DC has been determined, the registrant who was subject to the complaint has the right to appeal the decision or any of the orders in the decision, as per section 38 of the Act. The registrant may appeal the decision or order(s) to the Court of King's Bench within 30 days of the decision date. The registrant may elect to be represented by legal counsel during the appeal process. Any associated costs would be the responsibility of the registrant.

21. EFFECT OF APPEAL

The initiation of an appeal process does not stop the DC order(s). However, as per section 39 of the Act, the registrant may apply to the court for a stay of the decision and/or order(s) pending the outcome of the appeal.

22. COURT OF APPEAL

As per section 40 of the Act, a decision of the Court of King's Bench can be appealed to the Court of Appeal only on a question of law. The registrant is responsible for all costs associated with an appeal to the court.

ACKNOWLEDGMENTS

The College acknowledges that this manual has been adapted, in many parts with no changes, from the respective statements of College of Registered Nurses of Saskatchewan, College of Licensed Practical Nurses of Saskatchewan, and the College of Physicians and Surgeons of Saskatchewan. The College recognizes, with thanks, the contributions of these organizations to the development of this standard.