



## POLICY

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### Role of Legal Counsel, Investigation of Unprofessional Conduct or Lack of Skill and Knowledge

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| <b>STATUS:</b>              | APPROVED       |
| <b>Approved by Council:</b> | 26 March, 2015 |
| <b>Amended:</b>             | June 2017      |
| <b>To be reviewed:</b>      | March 2022     |

*This document is a policy of the College of Physicians and Surgeons of Saskatchewan and reflects the position of the College.*

1. When information is provided to the College of Physicians and Surgeons that alleges unbecoming, unprofessional or discreditable conduct by a physician, or which alleges lack of competence by a physician, or which, in the opinion of the Registrar's office indicates that either may exist, the Registrar's office will conduct such investigation as it thinks appropriate to provide information to the Executive Committee.
2. The Registrar's office will, after completion of such investigation as it thinks appropriate, provide a package of information to the Executive Committee to be considered at a meeting of the Executive Committee.
3. The Executive Committee will make a determination whether a preliminary inquiry committee or a competency committee should be appointed. In making such a decision, the Executive Committee will consider the following factors, and may consider other factors:
  - a) whether it is in the public interest to appoint a preliminary inquiry committee or a competency committee;
  - b) whether the test established in section 45 of **The Medical Profession Act, 1981** is met (reasonable grounds to believe that a person registered to practice may not have adequate skill and knowledge to practise);
  - c) Whether the test established in section 47 of **The Medical Profession Act, 1981** is met (reasonable grounds to believe that a person registered to practice may be guilty of unbecoming, improper, unprofessional or discreditable conduct).
4. If the Executive Committee determines that it is appropriate that Council decide whether a preliminary inquiry committee or a competency committee should be appointed, the Executive Committee may refer the matter to Council. When Council is making such a decision it may consider the factors set out in paragraph 3.

5. The Executive Committee or the Council may consider an alternative disposition in addition to, or in substitution for, the appointment of a preliminary inquiry committee. It may do so, among other ways, by:
  - a) agreeing that if the concerns are resolved through mediation, no further investigation will be done with respect to the issues that were the subject of mediation;
  - b) agreeing that if the physician successfully completes a program that is defined by the Executive Committee or the Council, no further investigation will be done with respect to the issues that were considered by the Executive Committee or the Council;
  - c) agreeing that a charge will be laid, or a preliminary inquiry committee appointed, but no further proceedings will be taken if the physician successfully completes a program that is defined by the Executive Committee or the Council;
  - d) agreeing that, if a physician restricts his/her practice in a manner defined by the Council or the Executive Committee, no further investigation will be done with respect to the identified concerns; or
  - e) agreeing that, if a physician resigns as a member of the College of Physicians and Surgeons, no further investigation will be done with respect to the identified concerns.
6. An alternative disposition may be considered at any time in a disciplinary investigation. The alternative disposition may be considered among other times:
  - a) after the receipt of information that relates to a physician's conduct or competence;
  - b) at the time that the Council or the Executive Committee is considering whether a preliminary inquiry committee or a competency committee should be appointed;
  - c) after receipt of a report of a preliminary inquiry committee; or
  - d) after charges are laid.
7. Preliminary inquiry committees and competency committees shall be appointed by the Executive Committee or the Council;
8. The discipline committee shall be appointed by the Council;
9. The individuals who shall comprise a discipline hearing committee for a particular hearing shall be appointed by the chair of the discipline committee, or in the absence of the chair, by a deputy chair of the discipline committee. Legal counsel shall not have any input into the determination which specific person(s) should be appointed to a discipline hearing committee, unless that input is provided with the knowledge of legal counsel for the physician charged, and legal counsel for the physician charged is provided an equal opportunity for input into the determination who should be appointed to the discipline hearing committee;
10. Neither the Council nor the Executive Committee, nor any member of the Council or the Executive Committee, has any authority to provide direction to or instruct legal counsel with respect to any discipline or competence matter;
11. Nothing in the preceding paragraph shall prevent the Executive Committee or the Council from requesting assistance or information from the Registrar or legal counsel to assist it in making, or in implementing a decision at the investigatory stage of a discipline or competence matter. The Executive Committee or the Council may, for example, request that the Registrar or legal counsel obtain additional information to assist it to make a decision, or may request legal counsel to draft appropriate wording for a charge that the Council or Executive Committee intends to place before the discipline committee;

12. The Executive Committee and the Council are independent bodies, performing a quasi-judicial function when making decisions that affect the rights of a physician under investigation, such as when dealing with possible suspensions of a physician from practice and in imposing penalties following a finding of unprofessional conduct. At all times when fulfilling a quasi-judicial function, members of the Executive Committee and the Council shall maintain their independence from legal counsel for the College;
13. When performing a quasi-judicial function, the Council or the Executive Committee can retain independent counsel to advise it with respect to the proceedings before them, or in relation to the decision to be made;
14. In any disciplinary or competency matter, where legal counsel (either in-house or external) is appointed, the Registrar will provide instructions to legal counsel;
15. While the Registrar, and counsel retained by the Registrar in connection with a disciplinary or competency matter, should consider the perspective of a complainant, neither the Registrar nor legal counsel represents the complainant, and are not required to follow the wishes of the complainant;
16. In connection with any appeal from a decision of the Executive Committee, the Council, or a discipline hearing committee, and in connection with any application for judicial review or other court application relating to a disciplinary or competency investigation of the College, the Registrar shall instruct legal counsel. For greater clarity, legal counsel does not represent, and does not take instruction from, the Executive Committee, the Council, or a discipline hearing committee;
17. If, in relation to a matter that is the subject of an appeal, an application for judicial review, or other court application, the Executive Committee, the Council, or a discipline hearing committee seeks to be represented, it may do so by instructing legal counsel who shall not be legal counsel instructed by the Registrar to act on its behalf.