INTERIM MEASURES FOR PUBLIC PROTECTION

Nova Scotia College of MIRTP

POLICY NUMBER: PC-009-02

DATE APPROVED: September 9, 2023

DATE TO BE REVIEWED: September 9, 2026

DISTRIBUTION: NSCMIRTP

COMMITTEE: Committee

DATE(S) REVIEWED (REVISED):

ISSUING AUTHORITY: NSCMIRTP Board

APPROVAL:

POLICY STATEMENT

Pursuant to section 51 of the Act, an Investigative Panel, where it is reasonably necessary to protect the public interest, may, at its discretion, direct the Registrar to:

a. suspend a licence;
b. impose restrictions or conditions on a respondent's licence; or
c. suspend the ability of a person to obtain a licence, when they do not currently hold a licence

pending or following the completion of an investigation and lasting until the suspension, restrictions or conditions are lifted, superseded or annulled by an Investigative Panel or Hearing Panel, as the case may be.

Interim measures are extraordinary remedies that should be used sparingly. The imposition of interim measures is reserved for cases involving the most serious of allegations.

PROCEDURE

Triage by the Registrar

1. (a) Upon receipt of a complaint, the Registrar (or delegate) shall consider whether it is in the public interest for an Investigative Panel to impose interim measures. In the event the Registrar believes that interim measures are necessary, the Registrar shall immediately notify the Chair of the Investigative Committee.
   (b) If information is obtained by any individual (including the investigator) in the course of the professional conduct process which suggests that interim measures may be necessary to protect the public, that individual shall immediately notify the Registrar (or delegate).
   (c) The Registrar has no authority to impose interim measures. The Registrar's role is to immediately advise the Chair of the Investigative Committee upon receipt of information which the Registrar believes warrants interim measures.

Interim Measures by the Investigative Panel

2. Upon receiving a referral by the Registrar (or delegate) to consider interim measures, the Chair of the Investigative Committee will immediately appoint an Investigative Panel to consider the matter. The Investigative Panel shall consist of 2 registrants and 1 public member. One of the appointed registrants must be of the same discipline as the respondent. Investigative Committee members who have considered previous complaints against the respondent should not be members of the Investigative Panel. The Chair of the Investigative Committee will appoint a chair of the Investigation Panel. The Panel Chair will arrange for an immediate meeting of the Panel, which may be virtual.

3. The Investigative Panel does not need to provide notice to the respondent in advance of imposing interim measures, however, the Investigative Panel may provide notice and invite the respondent to make submissions to the Panel regarding the possible imposition of interim measures if the time required for such notice does not compromise the public interest.
4. In advance of the meeting, the Registrar or delegate will provide the Investigative Panel, with the letter of complaint and any other relevant information obtained to date (including, if applicable,the respondent's professional conduct history). If the respondent is participating in the Panel meeting, the respondent will be provided with the same information provided to the Panel.
5. In deciding as to whether and what, if any, interim action is necessary to protect the public, the Investigative Panel 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.

   In making this determination, the Investigative Panel may consider the factors set out in the Investigation Panel Interim Measure guidelines provided in Appendix A, and/or the advice of legal counsel.

   The Investigative Panel shall also consider whether notification of the Panel's decision should be provided to the public, other affected individuals, employers, or other regulatory bodies.
6. As soon as possible following the Investigative Panel's decision to impose interim measures, the Panel shall prepare a written decision with reasons.
7. The Registrar will ensure that a copy of the decision is provided to the respondent and complainant without delay, and that any other notification directed by the Investigative Panel is completed.
8. (a) Within 30 days of receiving a copy of the Investigative Panel's decision, the respondent may submit a written request to meet with the Panel.
   (b) If such a request is received, the respondent will be provided with all of the information upon which the Investigative Panel made its decision (if not already in the respondent's possession), prior to the respondent's meeting with the Panel.
   (c) The meeting of the Investigative Panel will be set within 10 days of the receipt of the request. At the meeting (which may be held virtually), the respondent will be given a reasonable opportunity to make a response and submissions to the Panel, and may be represented by legal counsel or a union representative, at the respondent's expense.
   (d) After considering the respondent's submissions, the Investigative Panel will deliberate. The Panel may:
      - confirm;
      - vary; or
      - terminate,

      the suspension or imposition of restrictions or conditions.

      As soon as practical following the meeting, the Investigative Panel shall issue a further written decision with reasons, which shall be provided to the respondent and complainant.
   (e) In the event that the original decision is varied or terminated, the Registrar (or delegate) will ensure that any notification required by the amended outcome is completed

APPENDIX A

Investigation Committee Interim Measure Guidelines

Based on Scott v. College of Massage Therapists of British Columbia, 2016 BCCA 180

Step 1: Is there a prima facie case for the allegation?

Is there sufficient information, if believed, that reasonably establishes an immediate risk to patients, colleagues or other members of public? The Committee need not hear from the respondent.

DEFINITION: Prima facie is a legal claim that has sufficient evidence to proceed to trial or judgment. In Latin, prima facie means "at first sight" or "at first view".

There is a *prima facie* case

Step 2: Is the allegation manifestly unfounded or manifestly exaggerated?

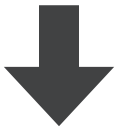
- Although the public interest is paramount, the risk of harm must be real and not speculative. Mere allegations without any evidence to substantiate them are insufficient.
- The allegation should be made or confirmed in writing. The Committee must consider the source of the allegation and its potential seriousness. An allegation that is trivial or clearly misconceived should not be given weight.
- If the allegation is in dispute, do not conduct a "mini-trial" to assess whether the substantive allegation is well-founded or whether the complainant's or respondent's version of events is preferable. The Committee does not make findings of fact, nor engage in deciding the merits of the allegations – those are functions of the Hearing Committee
- The final question for the Hearing Committee is: "Did the registrant do it?", while the question before this Committee is: "Is action necessary to protect the public in the interim?"
- However, the Committee should provisionally assess the facts to determine whether the complaint is **manifestly unfounded or manifestly exaggerated.**
    - Consider: reliability of evidence; internal and external consistency; plausibility of complaint; motivation of complainant.

Step 3: Is interim action in the public interest?

- Considering the information before the Committee, **is the immediate risk of harm such that an interim order is necessary to protect patients, colleagues or other members of the public** during the interim period (i.e., during the investigation and prior to a hearing)?
    - Interim action is an **extraordinary** measure to protect the public and should be invoked sparingly in light of the consequences to the respondent

- Consider the following factors:
    - For an order to be necessary for the protection of the public, the Committee must be satisfied that there is a **real risk to patients, colleagues, or other members of the public** if an order is not made (it is not enough for the Committee to consider that an order is merely "desirable").
    - The Committee should consider the **seriousness of the risk** to members of the public if the respondent were allowed to continue practicing without restriction. This includes consideration of:
        - the seriousness of the allegation;
        - the nature of the evidence; and,
        - the likelihood of the alleged conduct being repeated if an interim order were not imposed.

Interim action is in the public interest



Step 4: What kind of interim action is necessary?

- If the Committee decides that an interim order is necessary, it should not automatically impose an interim suspension, but should **first consider whether interim conditions or restrictions would be sufficient and proportionate.**
- The Committee **should also take into account the impact which an order may have on the respondent.** The Committee must balance the need for an interim order against the consequences for the respondent and satisfy itself that the consequences of the order are not disproportionate to the potential risk to the public. An order will impact on the member's right to practice and may also impact the member's finances and reputation.