



## **Interim Practice Directive 9: Consent Resolutions**

### **1. Purpose**

This practice directive explains how the parties seek to resolve a citation by consent resolution, including:

- before the consent resolution deadline (CRD) in the citation, by filing a consent resolution package and asking the Director of Discipline (Director) to approve the proposed orders and cancel the citation; and
- after the CRD, by bringing a proposed consent resolution through a pre-hearing application or during the hearing process.

This practice directive does not apply to:

- combined consent resolutions where the regulatory college (College) files a request for citation at the same time it requests approval of a consent resolution (see Practice Directive 8: Combined Request for a Section 139 Consent Resolution and a Request for a Citation); or
- consent resolutions in sexual abuse cases where the Director has not yet issued a citation (see Practice Directive 10: Approval of Orders Resolving Sexual Abuse Cases).

### **2. Authority**

The Health Professions Discipline Tribunal (Discipline Tribunal) operates under the Health Professions and Occupations Act (HPOA). When this practice directive mentions a section number, it refers to a section in the HPOA, unless it says otherwise.

### **3. Scope and application**

Use this practice directive if the Director issues a citation and:

- the College files a request for approval of a consent resolution before the CRD in the citation; or
- after the CRD, the parties seek to resolve the citation by consent resolution through a pre-hearing application or during the hearing.



Use Practice Directive 8: Combined Request for a Section 139 Consent Resolution and a Request for a Citation if the College files a request for approval of a consent resolution together with a request for citation, before the Director issues the citation.

#### **4. Definitions**

In this practice directive:

- **Parties** mean the regulatory college (College) and the respondent.
- **Consent resolution** means an agreement between the parties that proposes how to resolve a discipline case, including the orders the parties ask the Director or a discipline panel to make.
- **Consent resolution package** means the documents required by section 139(1)(a) (a copy of the proposed orders and the reasons for them), and any additional documents the Director requests to assess the consent resolution.
- **Consent resolution deadline (CRD)** means the date in the citation after which the parties may no longer make a consent resolution proposal (section 164(1)(c)).
- **Person with an interest** has the meaning set out in Practice Directive 5: Persons with an Interest.
- **Resolution management conference (RMC)** means a conference the Director convenes (or the Discipline Tribunal convenes on the Director's behalf) to manage steps needed to finalize or assess a consent resolution.

#### **5. Requests to change the consent resolution deadline**

##### **5.1 Changing the consent resolution deadline before the deadline**

Before the CRD, a party may ask the Director to change the CRD.

The Director may change the CRD if the Director considers the change likely to assist the parties in resolving the case.

#### **6. Filing a consent resolution request before the consent resolution deadline**

To request approval of a consent resolution, the College must file the consent resolution package with the Discipline Tribunal.

Unless the Director directs otherwise, the consent resolution package must include:

- **Proposed Orders:** the proposed orders resolving the case;



- **Consent:** a statement from the respondent indicating their consent to the proposed orders;
- **Reasons:** an analysis of the factors that the Director must consider under section 265 (mandatory factors), section 267 (2), and any relevant factors under sections 266 (discretionary factors) and 267 (3); and

A party must not re-file documents already filed in the case unless the Director directs otherwise. Refer to the existing documents by title and filing date.

### **7. How the Director decides a request before the consent resolution deadline**

To decide the request, the Director may:

- request additional submissions or records from a party or a person with interest;
- convene a resolution management conference (RMC).

### **8. Resolution management conferences**

The Director may convene an RMC to:

- clarify the proposed orders or the reasons for them;
- confirm the factual basis for the proposed orders;
- identify additional information required; and
- set steps and timelines needed to decide the request before the CRD.

If a party does not attend an RMC, the Director may proceed in that party's absence and decide the request based on the record available.

### **9. Director decision**

After considering the consent resolution package and any submissions received, the Director may:

- approve the consent resolution and cancel the citation (section 139(3)); or
- not approve the consent resolution (section 139(4)).

If the Director approves the consent resolution, the College issues the approved orders. If the Director does not approve the consent resolution, the case continues from the stage the case management process had reached when the proposal was filed.



## **10. Resolving a case after the consent resolution deadline**

After the CRD, the parties may no longer use section 139 to ask the Director to approve a consent resolution and cancel the citation.

If the parties reach a proposed consent resolution after the CRD and before the first hearing day, they must bring it by pre-hearing application under Practice Directive 14: Hearing Management Conferences and Pre-hearing Applications.

If the parties reach a proposed consent resolution during the hearing, the discipline panel directs the process.

If the parties propose a consent resolution after the CRD, the discipline panel must decide whether the evidence proves lack of competence or misconduct, and then decide what orders (if any) to make.

Unless the hearing chair or discipline panel directs otherwise, the parties must provide:

- an agreed statement of facts and any admissions relied on;
- the proposed orders; and
- written submissions supporting the proposed orders.

## **11. Factors considered in a proposed consent resolution**

When assessing whether proposed orders under a consent resolution are appropriate, the HPOA sets out factors the decision maker must and may consider (sections 265 to 267).

The decision maker must consider the nature, scope, and gravity of the conduct. This may include:

- the HPOA's guiding principles for public protection and confidence (section 72(1));
- whether there was harm, significant risk of harm, or other adverse effects, and the respondent's intention;
- any advantage gained by the respondent;
- whether the conduct was repeated or formed a pattern;
- the respondent's disciplinary record and any patterns relevant to the conduct;
- the need to maintain public confidence in the integrity of the profession or occupation; and
- any prescribed factors set out in a relevant regulation.



The decision maker may also consider:

- rehabilitation or remediation, including acknowledgement and voluntary steps taken;
- other aggravating or mitigating circumstances; and
- the respondent's conduct during the investigation.

If the respondent is a licensee, the decision maker must also consider:

- disciplinary action taken in similar cases; and
- whether the proposed orders provide specific and general deterrence.

If the respondent is a licensee, the decision maker may also consider the additional factors in section 267.