

## CHAPTER 73

### An Act Respecting The New Brunswick Dental Society

*Assented to June 27, 1985*

WHEREAS The New Brunswick Dental Society prays that it be enacted as hereinafter set forth;

AND WHEREAS it is desirable, in the interests of the public and the members of the dental profession, to continue The New Brunswick Dental Society as a body corporate for the purpose of advancing and maintaining the standard of dentistry in the Province, for governing and regulating those offering dental care and for providing for the welfare of members of the public and the profession;

THEREFORE Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

1 This Act be cited as the “*New Brunswick Dental Act, 1985*”.

#### PART I INTERPRETATION

2(1) In this Act, unless the context otherwise requires

“Act” means the *New Brunswick Dental Act, 1985*;

“approved school” means a course of study or school of dental education approved by the Canadian Dental Association or as may be prescribed;

“Board” means the board of directors of the Society constituted under section 4;

“corporations register” means the register kept pursuant to paragraph 11 (1) (d);

“Court” means a Judge of the Court of Queen's Bench of New Brunswick;

“dental assistant” means a dental assistant employed by a dentist or a professional corporation to perform such duties, tasks and functions and subject to such conditions, limitations and restrictions as are prescribed;

“dental education programs” means dental education programs approved by the Board and includes such education programs as may be required as qualifications for the practice of dentistry or the specialties thereof or for registration under this Act;

“dental hygienist” Repealed: [2009, c. 10, s. 83]

“dentist” means a person whose name is entered in the register kept pursuant to paragraph 11(1)(a);

“dentistry” or “dental surgery” or the “practice of dentistry” means any professional service usually performed by a dentist or dental surgeon and includes

(a) the diagnosis or treatment of, and the prescribing, treating and operating for the prevention, alleviation or correction of any injury, disease, pain, deficiency, deformity, defect, lesion, disorder or physical condition of, to, in or from any human tooth, mandible or maxilla or associated structures or tissues, including the prescribing, treating and administering of x-rays, anaesthetics, drugs and medicines in connection therewith;

(b) the making, producing, reproducing, constructing, fitting, furnishing, supplying, altering, or repairing, prescribing or advising the use of any prosthetic denture, bridge, appliance or thing for any of the purposes indicated in paragraph (a) or to replace, improve or supplement any human tooth, or to prevent, alleviate, correct or improve any condition in the human oral cavity, or to be used in, upon or in connection with any human tooth, jaw or associated structure or tissue, or in the treatment of any condition thereof;

(c) the taking or making, or the giving of advice or assistance or the providing of facilities for the taking or making of any impression, bite or cast and design preparatory to, or for the purpose of, or with a view to making, producing, reproducing, constructing, fitting, furnishing, supplying, altering or repairing any such prosthetic denture, bridge, appliance or thing;

(d) any specialty of dentistry;

(e) the dental procedures performed by a dental hygienist or dental assistant;

“educational register” means the register kept pursuant to paragraph 11(1)(b);

“Executive Director” means the person holding the office of Executive Director under section 10;

“health professional” means a person who provides a service related to

(a) the preservation or improvement of the health of individuals, or

(b) the diagnosis, treatment or care of individuals who are injured, sick, disabled or infirm,

and who is regulated under a private Act of the Legislature with respect to the provision of the service and includes a social worker registered under the *New Brunswick Association of Social Workers Act, 1988*; [1996, c. 82, s. 6]

“incapacity” means a physical or mental condition or disorder, suffered by a member, of such nature and extent that it is desirable in the interests of the public or the member that he no

longer be permitted to practise dentistry or that his practice of dentistry be suspended or subjected to conditions, limitations or restrictions;

“incompetence” means acts or omissions on the part of a member, in his professional duties, including the care of a patient, that demonstrate a lack of knowledge, skill or judgment, or disregard for the welfare of a patient or patients of such a nature and to such an extent as to render him unfit or unsafe to practise dentistry or to practise dentistry without conditions, limitations or restrictions;

“licence” means a licence issued pursuant to section 18, the bylaws and the rules;

“member” means a dentist and any person whose name is entered in the educational register or in any of the rosters established and maintained pursuant to this Act, the bylaws and rules;

“Minister” means the Minister of Health;

“patient” means a recipient of dental care services;

“prescribed” means prescribed by bylaws or rules made under or pursuant to this Act by the Board;

“previous act” means the *New Brunswick Dental Act 1976*, chapter 67 of the Acts of New Brunswick 1976;

“professional corporation” means a corporation the name of which is entered in the corporations register;

“professional misconduct” means a serious digression from established or recognized professional standards or rules of practice of the profession and includes the acts or omissions specified in subsections 35.1(1) and 35.2(1); [1996, c. 82, s. 6]

“register” means the register kept pursuant to paragraph 11(1)(a);

“rosters” means the rosters kept pursuant to paragraph 11(1)(c);

“Registrar” means the person holding the office of Registrar under section 10;

“Society” means the New Brunswick Dental Society continued by section 3;

“specialist” means a dentist whose name is entered in the specialists register and who is the holder of a specialists licence issued pursuant to this Act, being a dentist having completed a post graduate university training program approved by the Canadian Dental Association;

“specialists register” means the register kept pursuant to paragraph 11(1)(e);

2(2) The words “dentist,” “duly qualified dentist,” “licensed dentist”, “dental surgeon”, and the initials “D.D.S.” and “D.M.D.” or any like words, initials or expressions used alone or in combination with other words or expressions connoting a person recognized by law as a dentist or person entitled to practise dentistry or any specialty thereof or connoting a member of the dental profession in the Province, when used in any provision of an act of the Legislature or any regulation, rule, order or bylaws made under an act of the Legislature enacted or made before, at or after the commencement of this Act or when used in any public document, shall be read as including a person whose name is entered in the register, the educational register, the corporations register or the specialists register.

3 The New Brunswick Dental Society continued by the previous act is hereby continued as a body corporate and politic without share capital under the name “New Brunswick Dental Society” and subject to this Act, has the capacity, rights, powers and privileges of a natural person.

## **PART II BOARD OF DIRECTORS**

4(1) A Board of directors consisting of not less than nine directors shall control, govern and manage, or supervise the control, government and management of the business and affairs of the Society and all aspects of the practice of dentistry;

4(2) One director, who shall not be a member of the Society, or a former dentist, shall be appointed to represent the public and shall be appointed by the Lieutenant-Governor in Council from a panel of not less than three persons nominated by the Board.

4(3) One director who is a dentist shall be appointed by the Minister.

4(4) Repealed: [2009, c. 10, s. 83]

4(5) One director who is a dental assistant shall be appointed by the Board from a panel of three persons nominated by the New Brunswick Dental Assistants Association.

4(6) The number of directors, their respective terms of office, the manner of their appointment or election and their qualifications shall be established and governed by the bylaws of the Society and such bylaws may provide for alternate directors, for the filling of vacancies and for the appointment of additional directors to represent the public.

4(7) The powers, duties and operations of the Board are not affected in any way by

(a) the fact that an appointment has not been made pursuant to subsections 4(2), 4(3) or 4(5),

(b) the resignation of a director appointed pursuant to subsections 4(2), 4(3) or 4(5), or

(c) the failure of a director appointed pursuant to subsections 4(2), 4(3) or 4(5) to attend any meeting of the Board or to participate in the manner contemplated by sections 51 and 53. [2009, c. 10, s. 83]

**5(1)** Unless this Act or the bylaws otherwise provide the Board may by resolution make, amend or repeal any bylaws regulating the business or affairs of the Society and the practice of dentistry, and without restricting the generality of the foregoing,

(a) governing and regulating

(i) the admission, suspension, expulsion, removal, discipline and reinstatement of members, the conditions precedent to membership in the Society, and

(ii) the registration, licensing and renewal, suspension, cancellation, and reinstatement of registration and licensing of dentists and professional corporations, including the imposition of limitations, restrictions and conditions on any registration or licence issued pursuant to this Act;

(b) establishing one or more categories of membership and determining the rights, privileges and obligations of the members of each category;

(c) creating and organizing local regions or other sub-sections of the Society and governing the management of such sub-sections;

(d) approving schools of dentistry, and establishing terms and conditions for approval or continued approval of such schools, including basic standards of curricula;

(e) determining the method of setting fees payable to the Society annually or otherwise, and providing for the collection thereof;

(f) providing for the election or appointment, removal and remuneration of and establishing the powers and duties of officers of the Board and officers, officials, employees and agents of the Society;

(g) creating and governing committees for the carrying out of the business and affairs of the Board and the Society and for regulating the practice of dentistry;

(h) delegating to officers, officials, employees or committees any of the duties, powers and privileges of the Board, except the power to make, amend or repeal bylaws and rules and the duties, powers and privileges of the Board in Part VII hereof;

(i) fixing and regulating the quorum, time, place, calling and conduct of annual, special and general meetings of the Society, the Board and committees of the Society or the Board, establishing the method of voting including voting by mail, delegate voting or other means at such meetings and establishing the qualifications of persons entitled to vote thereat;

- (j)* developing, establishing, maintaining and administering standards
  - (i) for continuing dental education and the participation therein of dentists,
  - (ii) for the practice of dentistry,
  - (iii) of professional ethics for dentists, and
  - (iv) of education and experience for the general or specialized practice of dentistry, including standards for specialty courses leading to qualification as a specialist;
- (k)* respecting and governing the management and disposition of trust, charitable or benevolent funds committed to the care of the Society;
- (l)* setting the fiscal year of the Society and determining the place where the head office of the Society shall be located;
- (m)* determining the aspects, subjects or matters of the business and affairs of the Society and the practice of dentistry that may be regulated by rules of the Board;
- (n)* Repealed: [2009, c. 10, s. 83]
- (o)* prescribing, governing and regulating
  - (i) the educational and other qualifications and standards required of dental assistants in the Province;
  - (ii) dental assistants and the duties, tasks, services and functions that may be performed by dental assistants and the conditions under which they may be performed;
  - (iii) if deemed necessary by the Board, methods of and requirements for the registration or licensing of dental assistants and for the suspension, restriction or cancellation of the same including methods for setting fees or dues payable to the Society and providing for the collection thereof; and
  - (iv) the duties, tasks, services and functions that dental assistants are prohibited from performing.
- (p)* defining classes of specialists in the various branches of dentistry and
  - (i) dividing the specialists register into parts representing the classes of specialists as defined by bylaw;
  - (ii) prescribing the qualifications required for registration in the specialists register and for the issuance of a specialist's licence;

(iii) providing for the renewal, cancellation, suspension, revocation and reinstatement of any registration in the specialists register and the imposition of limitations, restrictions and conditions on any specialist's registration or licence;

(iv) providing for the regulation and prohibition of the use of terms, titles or designations indicating specialization in any branch or field of dentistry; and

(v) prescribing the duration of specialists' licences and registrations in the specialists register.

(q) establishing, governing and regulating a Peer Review Committee and providing the Committee with such powers as are necessary or desirable including the powers set out in subsection 37(5), paragraph 37(7)(d) and section 38 to permit it, at the request of the Board, to inquire into and report to and advise the Board in respect of

(i) the assessment and development of educational standards and experience requirements that are conditions precedent to continuing as the holder of a licence issued pursuant to this Act,

(ii) the evaluation of desirable standards of competence of persons holding licences issued pursuant to this Act,

(iii) any other matter that the Committee from time to time considers necessary or appropriate in connection with the exercise of its powers and the performance of its duties in relation to competence in the practice of dentistry,

(iv) the practice of dentistry generally,

(v) the practice of any person holding a licence issued pursuant to this Act.

(r) defining any terms used in this Act;

(s) respecting and governing such other subjects, matters and things as the Board considers appropriate to advance or protect the interests of the public, the Society or the members;

and subject to subsection (2) hereof, such bylaws shall be valid, binding and effective from the date of the Board's resolution enacting the bylaw until the bylaw is amended or repealed by an ordinary resolution at an annual, special or general meeting of the Society, or until it ceases to be effective under subsection (5) hereof, and where a bylaw is amended at such a meeting, it continues in effect in the form in which it is amended.

**5(2)** Bylaws relating to matters described in paragraphs (a), (b), (c), (e), (f), (i), (j), (m), (n), (o), (p) and (q), of subsection (1) shall not be effective or be acted upon until confirmed by an ordinary resolution at an annual, special or general meeting of the Society and where a

bylaw is amended by ordinary resolution at such meeting, it becomes effective in the form in which it is amended.

**5(3)** Any amendment or repeal of a bylaw by the Board shall be made by bylaw.

**5(4)** The Board shall cause the text of any bylaw enacted by it to be sent to all members with the notice of the next annual meeting following such enactment or with the notice of any special or general meeting called for the purpose of considering the same and at such meeting the bylaw may be confirmed, rejected, repealed or amended by an ordinary resolution.

**5(5)** If a bylaw is repealed at a meeting of the Society or if the Board does not send the bylaw to the members as required under subsection (4), the bylaw ceases to be effective and no subsequent Board resolution making that bylaw or any bylaw having substantially the same purpose or effect is effective until it is confirmed in the manner set out in subsection (2).

**6(1)** Unless this Act or the bylaws otherwise provide, the Board may by resolution make any rules not contrary to the bylaws regulating any of the aspects, subjects or matters of the business or affairs of the Society and the practice of dentistry as may be governed by bylaw and any such rule shall be valid, binding and effective from the date of the resolution of the Board until amended or repealed by an ordinary resolution at an annual, or special or general meeting of the Society called for the purpose of considering the same.

**6(2)** Any amendment or repeal of a rule by the Board shall be made by a rule.

**7** No act or thing done in reliance on, or right acquired under or pursuant to, a bylaw or rule that is subsequently repealed or amended shall be prejudicially affected by such repeal or amendment.

**8** Notwithstanding the *Regulations Act*, chapter R-7 of the Revised Statutes, 1973 the Society shall not be required to publish or file its bylaws or rules but all the bylaws and rules of the Society shall be available for inspection by any person at the head office of the Society at all reasonable times during business hours, free of charge.

**9(1)** There shall be an executive committee of the Board, composed of members of the Board, that, between meetings of the Board or at such other times as may be prescribed, may carry out any of the duties and exercise any of the powers and privileges of the Board, except the duties, powers and privileges in Part VII hereof, and the executive committee shall carry out such other duties as may be assigned to it from time to time by the Board, the bylaws or the rules.

**9(2)** The number of members of the executive committee, their respective terms of office, the manner of their appointment or election and their qualifications shall be established and governed by the bylaws of the Society.

**10(1)** The Board shall appoint an Executive Director of the Society who shall hold office during the pleasure of the Board.

**10(2)** The Board shall appoint a Registrar who shall hold office during the pleasure of the Board. [1996, c. 82, s. 6]

**10(3)** The Executive Director shall at all times be subject to the directions of the Board.

**10(4)** The offices of Registrar and Executive Director may both be held by one person at the same time.

### **PART III REGISTRATION AND MEMBERSHIP**

**11(1)** The Registrar shall keep or cause to be kept:

*(a)* a register in which shall be entered the name and address of every person who has met the qualifications for registration as a dentist pursuant to this Act, the bylaws and the rules and is thereby entitled to receive a licence to practice dentistry and to engage in the practice of dentistry in the Province;

*(b)* an educational register in which shall be entered the name and address of every person who is permitted to receive a licence to practise dentistry in the Province under such circumstances and for such temporary and limited periods of time as are set out in the bylaws and rules;

*(c)* rosters of members in which shall be entered the name and address of every person who is entitled to membership in any category of membership established by the bylaws, other than persons whose names are entered in the register, educational register, corporations register or specialists register;

*(d)* a corporations register in which shall be entered the name and address of every professional corporation permitted to carry on the practice of dentistry pursuant to the Act, the bylaws or the rules, and the names and addresses of the officers and directors of such corporations;

*(e)* a specialists register in which shall be entered the name, address, qualifications and specialty of every dentist who is entitled to be registered in the specialists register pursuant to the Act, the bylaws or the rules;

**11(2)** The register, educational register, specialists register and corporations register shall be open for inspection by any person at the head office of the Society at all reasonable times during regular business hours, free of charge, but any officer or employee of the Society may refuse any person access to or the privilege of inspecting the said registers if there is cause to believe that such person is seeking access or inspection primarily for commercial purposes or purposes unrelated to the practice of dentistry by a particular dentist.

**12(1)** Any person whose name is entered in the register, subject to any conditions, limitations or restrictions set out in his licence, shall be entitled to engage in the practice of

dentistry in the Province, to demand and recover in any court of law with full costs of suit, reasonable charges for professional and other services rendered by him or on his behalf by another person and his charges for medicines, materials, appliances or things rendered or supplied to any person and, subject to any conditions, limitations or restrictions set out in the bylaws or rules, is entitled to hold himself out as a dentist and use the designation “dentist,” “dental surgeon” or “D.D.S.” or “D.M.D.” or any other words, letters or figures indicating that he is a dentist and is entitled to practise dentistry.

**12(2)** Any person whose name is entered in the educational register shall be entitled to engage in the practice of dentistry in the Province for such limited period of time and subject to such conditions, limitations and restrictions as may be prescribed.

**12(3)** A corporation that has its name entered in the corporations register, subject to any conditions, limitations or restrictions as may be prescribed or set out in its licence, shall be entitled to practise dentistry and to demand and recover in any court of law with full costs of suit, reasonable charges for services performed or rendered on its behalf and in its name by a dentist or other person, and its charges for medicines, materials, appliances or things rendered or supplied to any person.

**12(4)** Any person who is enrolled as a dental student at an approved school or in a dental education program may perform the tasks, duties and functions constituting part of his course of study, subject to such conditions, limitations and restrictions as may be prescribed.

**12(5)** Any dentist whose name is entered in the specialists register shall be entitled to practise dentistry, to enjoy the rights and privileges set out in subsection (1) and to practise the dental specialty or specialties for which he is registered and no other specialties, subject to any conditions, limitations or restrictions as may be prescribed or set out in his licence and to use such names, designations and titles in connection with his practice as may be prescribed.

**13** No person shall act as a dental assistant or hold himself out as a dental assistant or perform the prescribed duties, tasks, services or functions of a dental assistant, except in accordance with the Act, bylaws and rules. [2009, c. 10, s. 83]

**14** No dentist shall practise as a specialist or hold himself out as a specialist except in accordance with the Act, bylaws and rules.

**15** The Registrar shall remove or cause the removal of the name of any person from the register, educational register, one or more of the rosters, the corporations register or specialists register who fails to meet or maintain the qualifications and standards for entry in such register or rosters.

**16** Any person who was entitled to practise dentistry or entitled to use any designation indicating he was a member of a dental association or society pursuant to the laws governing or concerning the practice of dentistry in any other jurisdiction and who has been suspended from or otherwise restricted in or disqualified from practising dentistry or using any such designation in another jurisdiction by reason of incapacity, professional misconduct,

dishonesty or incompetence shall not be entitled to apply for registration or to be registered pursuant to the provisions of this Act until such time as the suspension, restriction or disqualification has been removed in the other jurisdiction.

**17(1)** Every person, other than a patient or a member of the patient's immediate family or any person acting on behalf of a patient without expectation or hope of monetary compensation, who engages- a person as a dentist and every agency or registry that procures employment or work for a person as a dentist

(a) shall ensure at the time of engagement and at least once each year thereafter if such engagement is continuing, that the person is the holder of a current licence under this Act and is not engaged to perform duties and functions contrary to any conditions, limitations or restrictions imposed on the person's registration or licence or contrary to any conditions, limitations or restrictions imposed on the registration or licence of any professional corporation on behalf of which that person performs services; and

(b) where a person's engagement as a dentist is terminated because of incompetence or incapacity, shall forthwith report the matter to the Society and provide a copy of the report to the person whose engagement is terminated.

**17(2)** No person making a report pursuant to paragraph (b) of this section shall be subject to liability as a result of making such a report unless it is proved that the report was made maliciously.

**18(1)** The Registrar shall issue or cause to be issued annually or otherwise a licence to practise to persons whose names are entered in the register, educational register, corporations register or specialists register and each such licence shall state the date on which it expires and any conditions, limitations or restrictions imposed on the registration or licence of the person in respect of whom the licence is issued.

**18(2)** No person shall be entitled to receive a licence or to practise dentistry unless such person

(a) has paid all applicable prescribed fees, and

(b) has satisfied the requirements for registration and licensing as may be prescribed.

**18(3)** Any person whose registration or right to practise dentistry or licence has been subjected to conditions, limited, restricted, revoked or suspended shall without demand forthwith deliver his licence to the Registrar.

**19** A statement certified under the hand of the Registrar respecting the records of the Society or the registration or licence of any person is admissible in evidence in any proceeding as *prima facie* proof of the facts set out in such certificate relating to the registration or non-registration or licensing of any such person and any condition, limitation or restriction in respect of the registration or licence of any such person.

**PART IV**  
**PROFESSIONAL CORPORATIONS**

**20(1)** No corporation shall be entitled to have its name entered in a register or roster other than the corporations register.

**20(2)** No professional corporation shall be entitled to vote at any meeting of the Society.

**20(3)** All the provisions of this Act, the bylaws and rules applicable to a member apply with all necessary modifications to a professional corporation unless otherwise expressly provided.

**20(4)** The Board may make bylaws

(a) prescribing the types of names, designations or titles by which

(i) a professional corporation,

(ii) a partnership of two or more professional corporations, or

(iii) a partnership of one or more professional corporations and one or more individual practitioners

may be known.

(b) regulating the practice of dentistry by professional corporations and requiring the filing of such reports, information and returns as the Board may deem necessary.

**21(1)** The articles of incorporation, articles of continuance or other constating documents of each professional corporation shall permit and shall not prevent the corporation from

(a) engaging in every phase and aspect of rendering the same dental services to the public that a dentist is authorized to render;

(b) having the capacity and exercising the rights, powers and privileges of a natural person as may be necessary or incidental or ancillary to the rendering of dental services including without restricting the foregoing, the power

(i) to purchase, lease or otherwise acquire and to own, mortgage, pledge, sell, assign, transfer or otherwise dispose of, and to invest in, deal in or with, real or personal property;

(ii) to contract debts and borrow money, issue and sell or pledge bonds, debentures, notes and other evidences of indebtedness and execute such mortgages, transfers of corporate property and other instruments to secure the payment of corporate indebtedness as required; and

(iii) to enter into partnership, consolidate or merge with or purchase the assets of another corporation or individual rendering the same type of professional services.

**21(2)** The legal and beneficial ownership of a majority of the issued shares of a professional corporation shall be vested in one or more members and shall entitle such member or members to elect all of the directors of the professional corporation.

**21(3)** No member who is a shareholder of a professional corporation shall enter into a voting trust agreement, proxy or any other type of agreement vesting in a person who is not a member, the authority to exercise the voting rights attached to any or all of his shares, and every shareholder who does so commits an offence.

**21(4)** The practice of dentistry on behalf of a professional corporation shall be carried on by dentists or persons whose names are entered in the educational register.

**21(5)** For the purposes of subsection (4), the practice of a dentist or person whose name is entered in the educational register shall be deemed not to be carried on by clerks, secretaries, dental hygienists, dental assistants and other persons employed by the corporation to perform services that are not usually and ordinarily considered by law, custom or practice to be services that may be performed only by a dentist.

**21(6)** A licence issued to a professional corporation may be revoked, or its renewal withheld, by the Registrar where any of the conditions specified in subsections (1), (2), (3) and (4) no longer exist.

**21(7)** Where a professional corporation ceases to fulfill any condition specified in subsection (2) or (4) by reason only of

- (a) the death of a member of the Society,
- (b) the striking off or other removal, from the register, educational register or any roster, of the name of a member, or
- (c) the suspension or revocation of the licence of a member,

the professional corporation has one hundred and eighty days from the date of the death, striking off, removal, suspension or revocation, as the case may be, in which to fulfil the condition, failing which the Registrar shall revoke the licence of the professional corporation.

**21(8)** A corporation to which a licence is issued may practise dentistry in its own name, subject to any conditions, restrictions or limitations as may be prescribed or as set out in its licence.

**21(9)** The name of each professional corporation shall contain the words “Professional Corporation” or “Corporation professionnelle”.

**22(1)** The relationship of a member to a professional corporation, whether as a shareholder, director, officer or employee, does not affect, modify or diminish the application to him of the provisions of this Act, the bylaws or the rules.

**22(2)** The liability for professional services rendered by any person carrying on the practice of dentistry is not affected by the fact that the practice of dentistry is carried on by such person as an employee of and on behalf of a professional corporation.

**23(1)** Nothing contained in this Act shall affect, modify or limit any law applicable to the confidential or ethical relationships between a dentist and a patient.

**23(2)** The relationship between a professional corporation carrying on the practice of dentistry and a person receiving the professional services of the corporation is subject to all applicable laws relating to the confidential and ethical relationship between a dentist and his patient.

**23(3)** All rights and obligations pertaining to communications made to, or information received by, a dentist apply to the shareholders, directors, officers and employees of a professional corporation.

## **PART V**

### **OFFENCES AND ENFORCEMENT**

**24(1)** Any person authorized to practise dentistry or hold himself out as a dentist or specialist pursuant to the provisions of this Act who practises dentistry in violation of any condition, limitation or restriction imposed upon his registration or licence or who fails to inform his employer of any such condition, limitation or restriction commits an offence.

**24(2)** Any professional corporation that breaches or permits the breach of any condition, limitation or restriction imposed upon its registration or licence commits an offence and its directors and shareholders are deemed to have committed the same offence.

**25** Except as provided in this Act, the bylaws or rules, no person other than a person whose name is entered in the register, educational register, corporations register or specialists register, shall

(a) publicly or privately, whether or not for hire, gain or hope of reward, practise or offer to practise dentistry;

(b) hold himself out in any way as being entitled to practise dentistry; or

(c) assume any title or description, including those referred to in this Act, that does or could lead the public to believe he is entitled to practise dentistry.

**26** No person shall trade or carry on business within New Brunswick under any name or title containing the words “Professional Corporation” or “Corporation professionnelle” or the abbreviations “P.C.” or “C.P.” unless that person is duly incorporated as a corporation and the

corporation holds a licence issued hereunder, or unless otherwise expressly authorized by statute, and every person so trading or carrying on business commits an offence.

**27** Any person who knowingly furnishes false, or misleading information in or in respect of any application made under this Act, the bylaws or rules or in any statement or return required to be furnished under this Act, the bylaws or rules, commits an offence.

**28** A person who violates any provision of this Act commits an offence and is liable on summary conviction to a fine not less than \$2,000.00 for a first offence; to a fine not less than \$5,000.00 for a second offence; to a fine not less than \$10,000.00 for a third offence or to imprisonment for a term not exceeding six months, or both.

**29** Where a dentist, member, or former member of the Society, a professional corporation, an applicant for registration or a dental assistant does or attempts to do anything contrary to the provisions of this Act or any bylaw or rule made under the authority of this Act, the doing of such thing may be restrained by an injunction of the Court of Queen's Bench of New Brunswick at the instance of the Board acting in the name of the Society. [2009, c. 10, s. 83]

**30** Where any person other than a person described in section 29 does or attempts to do anything contrary to sections 17, 25 or 26 of this Act the doing of such thing may be restrained by an injunction of the Court of Queen's Bench of New Brunswick at the instance of the Board acting in the name of the Society.

### EXEMPTIONS

**31** Nothing in this Act applies to or prevents

(a) the practice of medicine by a person authorized to practise medicine under the provisions of the *Medical Act*;

(b) the practice of nursing by a person authorized to practise nursing under the provisions of the *Nurses Act*;

(c) the practice of denture technology with respect to complete upper and lower prosthetic dentures by a person who is licensed under the *Denturist Act*;

(d) the carrying on of the business of a dental technician by a person registered under *The Dental Technicians Act, 1957*;

(d.1) the practice of dental hygiene by a dental hygienist as defined in the *New Brunswick Dental Hygienists Act*; [2009, c. 10, s. 83]

(e) the caring for persons who are members of the family of the person rendering such care;

(f) the furnishing of emergency dental care or assistance in the case of an emergency, if such aid or assistance is given without hire, gain or hope of reward and no dentist is available to provide such care or assistance;

(g) the provision of dental consulting services, by a person entitled to practise dentistry in another jurisdiction, to a dentist in New Brunswick if that person does not represent himself as being entitled to practise dentistry in New Brunswick.

**32** No prosecution by the Society or any other person for an offence under this Act shall be commenced after the expiration of one year from the date of the last act that is part of the alleged offence.

**33** Where a violation of any provision of this Act continues for more than one day, the offender is guilty of a separate offence for each day that the violation continues.

## **PART VI DISCIPLINE**

**34** In this Part “complaint” means any complaint, report or allegation in writing and signed by the complainant regarding the conduct, actions, competence, character, fitness, health or ability of a member and “member” includes dentist, former dentist, member, former member and professional corporation.

**35(1)** Subject to subsection (3), the Board shall upon receiving a complaint cause an investigation to be carried out by a Local Mediation Panel, and if it is not resolved by the Local Mediation Panel, may cause an investigation to be carried out by the Complaints Committee, if the complaint in substance alleges that a member

(a) has been guilty of:

(i) professional misconduct;

(ii) conduct unbecoming a member including any conduct that might adversely affect the standing or good name of the profession or the Society;

(iii) incompetence;

(iv) dishonesty;

(v) conduct demonstrating that the member is incapable or unfit to practise dentistry;

(vi) any conduct in breach of the provisions of this Act, the bylaws or the rules; or

(vii) any habit rendering him unfit, incapable or unsafe to practise dentistry; or

(b) is suffering from any ailment or condition rendering him unfit, incapable or unsafe to practise dentistry;

**35(2)** All complaints against a member received by the Society or the Board shall be delivered by the Registrar forthwith to the Chairman of the Local Mediation Panel for the region or subsection in which the member practises and a copy of the same shall immediately be forwarded to the member.

**35(3)** The Board may at any time refer a complaint directly to the Complaints Committee either before, after or during consideration of a complaint by a Local Mediation Panel.

**35(4)** Each year the Board shall appoint a dentist who is neither a director of the Society nor a member of the Discipline Committee, in each local region or subsection of the Society established under the bylaws to be the Chairman of the Local Mediation Panel for that region or subsection.

**35(5)** Upon receipt of a complaint the Chairman of a Local Mediation Panel shall from among the dentists residing in the region or subsection select two dentists who are neither directors of the Society nor members of the Discipline Committee who shall serve as the Local Mediation Panel for that complaint and the Chairman may appoint himself as a member of any Local Mediation Panel.

**35(6)** Each Local Mediation Panel shall

(a) in an informal manner consider and investigate all complaints delivered to it and in each case shall communicate with the complainant and the member against whom the complaint has been made;

(b) within 60 days of receiving a complaint, make recommendations to the complainant and the member against whom the complaint has been made as to how the complaint may be resolved; and

(c) if it at any time considers the subject matter complained of to be of sufficient importance, immediately refer the complaint to the Complaints Committee;

**35(7)** If the recommendations of the Local Mediation Panel are not accepted by either the complainant or the member against whom the complaint was made either of them may, subject to paragraph (8), refer the complaint to the Complaints Committee within 30 days of the making of the recommendations.

**35(8)** No complaint that in substance concerns the amount of the fees or charges of a member shall be referred to or considered by the Complaints Committee but nothing herein shall prevent any person from commencing civil proceedings with respect to fees or charges of a member.

**35(9)** The Board may make bylaws and rules governing and regulating the procedures, functions and operations of Local Mediation Panels.

**35.1(1)** A member who sexually abuses a patient commits an act of professional misconduct.

**35.1(2)** Sexual abuse of a patient by a member means

- (a) sexual intercourse or other forms of physical sexual relations between the member and the patient,
- (b) touching, of a sexual nature, of the patient by the member, or
- (c) behaviour or remarks of a sexual nature by the member towards the patient.

**35.1(3)** For the purposes of subsection (2), “sexual nature” does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.

**35.2(1)** A member who, in the course of practising the profession, has reasonable grounds to believe that another health professional has sexually abused a patient or client and who fails to file a report in writing in accordance with subsection (4) with the governing body of the health professional within twenty-one days after the circumstances occur that give rise to the reasonable grounds for the belief commits an act of professional misconduct.

**35.2(2)** A member is not required to file a report pursuant to subsection (1) if the member does not know the name of the health professional who would be the subject of the report.

**35.2(3)** If the reasonable grounds for filing a report pursuant to subsection (1) have been obtained from one of the member's patients, the member shall use his or her best efforts to advise the patient that the member is filing the report before doing so.

**35.2(4)** A report filed pursuant to subsection (1) shall contain the following information:

- (a) the name of the member filing the report;
- (b) the name of the health professional who is the subject of the report;
- (c) the information the member has of the alleged sexual abuse; and
- (d) subject to subsection (5), if the grounds of the member filing the report are related to a particular patient or client of the health professional who is the subject of the report, the name of the patient or client.

**35.2(5)** The name of a patient or client who may have been sexually abused shall not be included in a report unless the patient or client or, if the patient or client is incapable, the patient's or client's representative, consents in writing to the inclusion of the patient's or client's name.

**35.2(6)** Subsections 35.1(2) and (3) apply with the necessary modifications to sexual abuse of a patient or client by another health professional.

**35.2(7)** No member filing a report pursuant to subsection (1) shall be subject to any liability as a result thereof unless it is proved that the report was made maliciously. [1996, c. 82, s. 6]

**36(1)** The Board shall maintain a standing committee known as the Complaints Committee, which in this section is referred to as the “Committee.”

**36(2)** The Committee shall be composed of dentists and at least one person who is not a member and none of the Committee members shall be a director of the Society or a member of the Discipline Committee.

**36(3)** The quorum, number of Committee members, their terms of office, qualifications and the manner of their appointment shall be established and governed by the bylaws and the bylaws may regulate the procedures, functions and operations of the Committee and may permit the establishment of panels of the Committee to act for and to carry out and exercise all the duties and powers of the Committee provided that each panel shall include at least one person who is not a member.

**36(4)** The Board shall appoint one of the members of the Committee who shall be a dentist to be the Chairman of the Committee.

**36(5)** The Committee shall

(a) consider and investigate all complaints delivered to it; and

(b) perform such other duties as may be assigned to it by the Board, the bylaws or the rules.

**36(6)** The Committee shall consider only written evidence and in this section the term evidence includes any documents which may be presented to the Committee.

**36(7)** The Committee may engage such persons as it deems necessary including legal counsel to assist it in the consideration and investigation of complaints and shall determine its own rules of procedure.

**36(8)** Any member against whom a complaint has been made shall be entitled to the following:

(a) prompt notice that a complaint has been received by the Committee or that the Board has caused an investigation to be commenced by the Committee and a copy of the complaint;

(b) copies of all reports, documents and evidence presented to the Committee in writing concerning the complaint, other than privileged documents; and

(c) at least fourteen days' notice of the first meeting of the Committee called to consider the complaint, which notice shall be accompanied by copies of all reports, documents and

evidence in writing concerning the complaint, other than privileged documents, then in the possession of the Committee, and the opportunity after such notice to submit to the Committee in writing any explanation, evidence, documents or representation the member may wish to make concerning the complaint or investigation.

**36(9)** After reviewing all the evidence presented to it, the Committee shall determine whether the complaint warrants further consideration and may

- (a) dismiss the complaint; or
- (b) refer the complaint to the Discipline Committee; and
- (c) if a referral is made under paragraph (b) the Committee may suspend the registration and licence of the member pending completion of the proceedings before the Discipline Committee if the Committee is of the opinion in its absolute discretion that a danger to the public could result from not suspending the member's registration and licence.

**37(1)** The Board shall maintain a standing committee known as the Discipline Committee, which in this section shall be referred to as the "Committee."

**37(2)** The Committee shall be composed of dentists and at least one person who is not a member and none of the Committee members shall be a director of the Society.

**37(3)** The quorum, number of Committee members, their terms of office, qualifications and the manner of their appointment shall be established and governed by the bylaws and the bylaws may regulate the procedures, functions and operations of the Committee and may permit the establishment of panels of the Committee to act for and to carry out and exercise all the duties and powers of the Committee provided that each panel shall include at least one person who is not a member.

**37(4)** The Board shall appoint one of the members of the Committee who shall be a dentist to be the Chairman of the Committee.

**37(5)** The Committee and the Board when acting pursuant to Part VII, shall conduct its proceedings in accordance with its own rules of procedure and may do all things and engage such persons including legal counsel it deems necessary to provide for the hearing and consideration of any complaint or appeal and in no case is the Committee or the Board bound to follow the technical rules of evidence or procedure applicable in judicial proceedings. [1996, c. 82, s. 6]

**37(6)** The Committee shall

- (a) conduct a hearing with respect to the complaints referred to it by the Complaints Committee, and [1996, c. 82, s. 6]
- (b) perform such other duties as may be assigned to it by the Board.

**37(7)** The Committee shall

(a) consider the complaint, hear the evidence, ascertain the facts and make a decision with respect to the merits of each complaint in such manner as it deems fit;

(b) if the Committee in its absolute discretion at any time after the receipt of a complaint deems it necessary or advisable, without hearing require the member in respect of whom a complaint is made to submit to physical or mental health examinations by such qualified person or persons as the Committee may designate and if the member fails to submit to any such examination the Committee may without further notice suspend the member's registration and licence until he does so;

(c) if the Committee in its absolute discretion at any time after the receipt of a complaint deems it necessary or advisable, without hearing require the member in respect of whom a complaint is made to undergo such clinical or other examinations as the Committee may designate in order to determine whether the member has adequate skill and knowledge to practise dentistry and if the member fails to undergo any such examination the Committee may without further notice suspend the member's registration and licence until he does so;

(d) if the Committee in its absolute discretion at any time after the receipt of a complaint deems it necessary or advisable, without hearing require any member to produce records and documents in his possession or custody or under his control or in the possession or custody or control of any corporation of which he is a director, officer or shareholder, and if the member fails to produce such records and documents the Committee may suspend the member's registration and licence until he does, unless the member is prohibited by law from producing such records and documents; and

(e) if the Committee in its absolute discretion at any time after the receipt of a complaint deems it necessary or advisable, without hearing require any professional corporation to submit to an audit or other examination of its business, books and records by such person or persons as the Committee may designate and if the professional corporation fails to submit to such audit or examination the Committee may without further notice suspend the professional corporation's registration and licence until it does so.

**37(8)** After reviewing all of the evidence presented to it the Committee may as part of its decision

(a) order that the member's registration, licence or membership be suspended for a specific period of time during which the member shall have his name removed from the register, educational register, corporations register or specialists register or any roster in which his name may be entered and shall be prohibited from practising dentistry;

(b) order that the member's registration, licence or membership be suspended pending the satisfaction and completion of such conditions as may be ordered by the Committee;

(c) order that the member's registration, licence or membership be revoked and the member's name be removed from the register, educational register, corporations register, specialists register or any roster in which his name may be entered;

(c.1) where an order is made under paragraph (c), specify a period of time before which the member may not apply for reinstatement; [1996, c. 82, s. 6]

(d) order that the member's practice be restricted pending compliance with stipulated conditions in which case the Committee shall notify the member's employer, if any, of such decision;

(e) order that conditions or limitations be imposed on the member's registration, licence or membership and so inform the member's employer, if any;

(f) issue a reprimand;

(g) dismiss the complaint;

(h) impose such fine as the Committee considers appropriate, not exceeding \$5,000, to be paid by the member to the Society for the use of the Society;

(i) order that the imposition of any penalty be suspended or postponed for such period of time and upon such terms and conditions as the Committee deems appropriate;

(j) make any one or more of the orders it may make under paragraphs (a) to (i) against any professional corporation of which the member is a director, officer or shareholder;

(k) attempt to resolve informally any complaint if the Committee deems it appropriate;  
or

(l) make such other order as it deems just, including without limitation, an order combining two or more of the orders set out in paragraphs (a) to (j).

**37(8.1)** Where a Committee makes an order under subsection (8), the Committee may, by order, do one or more of the following:

(a) direct the Registrar to give public notice of any order or decision by the Committee that the Registrar is not otherwise required to give under this Act; or

(b) direct the Registrar to enter into the records of the Society the result of the proceeding before the Committee and to make the result available to the public. [1996, c. 82, s. 6]

**38(1)** Upon the application of

(a) any party to a hearing by the Discipline Committee or the Board,

- (b) the Chairman of the Discipline Committee or a member of the Board, or
- (c) counsel for the Society, the Discipline Committee or the Board,

and on payment of any fees prescribed, the Registrar may sign and issue writs of *subpoena ad testificandum* or *subpoena duces tecum* in prescribed form for the purpose of procuring and compelling the attendance and evidence of witnesses and the production of things relating to matters in question before the Discipline Committee or the Board.

**38(2)** The proceedings and penalties in the case of disobedience to any writ of subpoena issued hereunder shall be the same as in the case of disobedience of a Summons to Witness in civil cases in The Court of Queen's Bench of New Brunswick.

**38(3)** The testimony of witnesses shall be taken under oath or solemn affirmation which any member of the Discipline Committee or the Board is authorized to administer.

**39** The Discipline Committee may without hearing order the suspension of the registration, licence or membership of a member if the Committee has reasonable and probable grounds for believing that the member in question has been convicted of any criminal offence of such kind or type that the Committee is of the opinion that the continued registration or membership of the member in question would immediately affect the good name of the Society or the profession of dentistry or would constitute a danger to the public and upon ordering the suspension the Discipline Committee shall immediately cause an investigation to be commenced. [1996, c. 82, s. 6]

**40(1)** In all proceedings before the Discipline Committee or the Board acting pursuant to Part VII, the member against whom a complaint has been made and the complainant

- (a) may present evidence or make representations in either English or French,
- (b) may be represented by legal counsel, at their expense,
- (c) shall be entitled to a full right to examine, cross-examine and re-examine witnesses in accordance with the rules of procedure established by the Committee or the Board, as the case may be,
- (d) shall be entitled to receive copies of all documents presented to the Committee or the Board in connection with the complaint unless such documents are privileged by law,
- (e) shall be entitled to at least fourteen days' written notice of the date of the first hearing of the Committee or the Board, and
- (f) shall receive prompt notice of and a copy of the decision rendered. [1996, c. 82, s. 6]

**40(2)** Any member whose registration, licence or membership is revoked, suspended, subjected to conditions, limited or restricted shall forthwith return his licence or certificate of membership to the Registrar.

40(3) Section 32 does not apply to any discipline proceeding under Part VI of this Act.

## PART VI.1

### INVESTIGATIONS

40.1 In this Part, “member” means member as defined in section 34.

40.2(1) The Registrar may appoint one or more investigators to investigate whether the acts or conduct of a member constitutes an act or conduct described in paragraph 35(1)(a) or whether the member is suffering from an ailment or condition rendering the member unfit, incapable or unsafe to practise dentistry, if the Complaints Committee has received a complaint about the member and has requested the appointment.

40.2(2) An employee of the Society may be appointed an investigator under subsection (1).

40.3(1) An investigator appointed by the Registrar may at any reasonable time, and upon producing proof of his or her appointment, enter and inspect the business premises of a member and examine anything found there that the investigator has reason to believe will provide evidence in respect of the matter being investigated.

40.3(2) Subsection (1) applies notwithstanding any provision in any Act relating to the confidentiality of health records.

40.3(3) No person shall, without reasonable excuse, obstruct or cause to be obstructed an investigator while the investigator is performing his or her duties under this Act.

40.3(4) No person shall withhold, conceal or destroy, or cause to be withheld, concealed or destroyed, anything that is relevant to an investigation under this Act.

40.4(1) Upon the *ex parte* application of an investigator, a judge of The Court of Queen's Bench of New Brunswick who is satisfied on information by oath or solemn affirmation that the investigator has been properly appointed and that there are reasonable grounds for believing that

(a) the acts or conduct of the member being investigated constitutes an act or conduct described in paragraph 35(1)(a) or the member is suffering from an ailment or condition rendering the member unfit, incapable or unsafe to practise dentistry, and

(b) there is in a building, receptacle or place anything that will provide evidence in respect of the matter being investigated,

may issue a warrant authorizing the investigator to enter the building, receptacle or place and search for and examine or remove anything described in the warrant.

**40.4(2)** An investigator entering and searching a place under the authority of a warrant issued under subsection (1) may be assisted by other persons and may enter a place by force.

**40.4(3)** An investigator entering and searching a place under the authority of a warrant issued under subsection (1) shall produce his or her identification and a copy of the warrant, upon request, to any person at that place.

**40.4(4)** A person conducting an entry or search under the authority of a warrant issued under subsection (1) who finds anything not described in the warrant that the person believes on reasonable grounds will provide evidence in respect of the matter being investigated may seize and remove that thing.

**40.5(1)** An investigator may copy, at the expense of the Society, a document that the investigator may examine under subsection 40.3(1) or under the authority of a warrant issued under subsection 40.4(1).

**40.5(2)** An investigator may remove a document referred to in subsection (1) if it is not practicable to copy it in the place where it is examined or a copy is not sufficient for the purposes of the investigation and may remove any object that is relevant to the investigation, and shall provide the person in whose possession it was with a receipt for the document or object.

**40.5(3)** An investigator, where a copy can be made, shall return a document removed under subsection (2) as soon as possible after the copy has been made.

**40.5(4)** A copy of a document certified by an investigator to be a true copy shall be received in evidence in any proceeding to the same extent and shall have the same evidentiary value as the document itself.

**40.5(5)** In this section, “document” means a record of information in any form and includes any part of it.

**40.6** An investigator shall report the results of an investigation to the Registrar in writing and the Registrar shall forward a copy of the report to the Complaints Committee. [1996, c. 82, s. 6]

## **PART VII APPEALS**

**41(1)** If,

(a) a complainant is dissatisfied with a decision of the Complaints Committee or the Discipline Committee, or

(b) a member against whom a complaint has been made is dissatisfied with a decision of the Discipline Committee, or

(c) an applicant for registration or a licence is dissatisfied with a decision of the Registrar with respect to his application, or

(d) an applicant for reinstatement of his registration or licence is dissatisfied with a decision made by the body empowered by bylaw to make such decision with respect to his application

such person may, by serving a written notice of appeal on the Registrar within 30 days of the date on which notice of the said decision is mailed to the last known address of such person, appeal the decision to the Board.

**41(2)** Any notice of appeal given under the provisions of this section shall set forth the grounds of appeal and shall state the relief sought.

**42(1)** In any appeal under this Act the Registrar shall obtain a transcript or such other record as exists of the evidence presented to the decision-making body being appealed from and shall prepare and present to the Board a record on appeal consisting of the transcript or such other record as exists, all exhibits and the order or other document evidencing the decision being appealed.

**42(2)** The Registrar shall provide the appellant and any other person entitled by the bylaws to participate in the appeal with a copy of the record on appeal.

**43** On appeal the Board may

(a) adjourn the proceedings or reserve the determination of the matters before it for a future meeting of the Board; and

(b) upon granting special leave, and only where it is shown that such evidence was not previously available, receive further evidence in the same manner and subject to the same rules and procedures as apply to the Discipline Committee.

**44** After reviewing the record on appeal and hearing the evidence or argument presented the Board may

(a) draw inferences of fact and make any finding, decision, determination or order that in its opinion ought to have been made;

(b) vary the decision appealed from;

(c) refer the matter back to the person or body from whom the appeal is taken for further consideration and decision;

(d) confirm the decision appealed from; or

(e) make such decision or order as it may deem appropriate.

**45(1)** Any party to an appeal to the Board may appeal from the decision or order of the Board on any ground of appeal that involves a question of law alone to the Court within thirty days of the date on which notice of the Board's decision or order is mailed to the last known address of such party, or within such further time not exceeding ninety days as may be allowed by the Court.

**45(2)** The notice of appeal shall set forth the grounds of appeal and the relief sought and shall be served upon the Registrar, the Clerk of the Court of Queen's Bench of New Brunswick for the judicial district in which the deliberations of the Board were held and upon any other party to the proceedings before the Board.

**46** The record on appeal to the Court shall be the record on appeal presented to the Board, a transcript of any new testimony presented to the Board, any other new evidence or exhibits presented to the Board and a copy of the decision or order of the Board.

**47(1)** The Court may make any order that the Board may make under section 44 and may make such order as to costs as may be just.

**47(2)** The Rules of Court governing civil appeals to the Court of Appeal of New Brunswick which are not inconsistent with this Act shall apply *mutatis mutandis* to appeals to the Court under this Part and the Society shall have standing to appear and participate in any appeals to the Court.

**47(3)** Notwithstanding that an appeal to the Board or to the Court may have been instituted in respect of a decision or order, that decision or order shall continue to be valid and binding and no stay of proceedings may be granted prior to the hearing of the appeal.

## **PART VIII GENERAL**

**48(1)** The Complaints Committee, the Discipline Committee, the Board or, on appeal, the Court, may order that the costs of any investigation, proceeding, hearing or appeal pursuant to this Act be paid, in whole or in part

(a) by the member against whom the complaint was made, except where the complaint is completely dismissed without any other decision or order adverse to that member; or

(b) by the complainant or person at whose request the complaint was made or an investigation was commenced where the Committee, Board or Court is of the opinion that the complaint or investigation was unwarranted; and

may make it a condition of the registration and licence of any member or professional corporation that such costs be paid forthwith.

**48(2)** The costs including disbursements payable under subsection (1) may be taxed by the registrar of the Court of Queen's Bench of New Brunswick as between solicitor and client on filing with the registrar the order as to costs and on payment of any required fees, and judgment may be entered for such taxed costs in form A of this Act with necessary modifications.

**48(3)** Before hearing an appeal the Board or the Court may order that security for costs be paid to the Society by the appellant in such amount and upon such terms as the Board or the Court may deem just.

**49(1)** A dentist who has reason to believe that another dentist is unable to function safely to such a degree or extent that it is in the interest of the public that the other dentist no longer be permitted to practise dentistry or that his practice be subjected to conditions, limited or restricted shall disclose in writing to the Registrar the name of that other dentist, together with the particulars of the grounds for such belief, and any failure by a dentist to comply with this subsection shall be deemed to be professional misconduct; provided that this subsection does not apply to any information obtained by a dentist that is confidential by reason of the fact that the other dentist is a patient unless there is an imminent danger to the health or safety of a patient or the public.

**49(2)** No person disclosing information under subsection (1) shall be subject to any liability as a result thereof unless it is proved that the disclosure was made maliciously.

**50** The Society may act as trustee or custodian of any funds or property that may be committed for any purpose to the care or management of the Society.

**51** The Board and any committee of the Board or of the Society may conduct meetings by telephone or other communication facilities in the manner and on the terms and conditions established by the bylaws or rules and persons participating in a meeting by such means shall be deemed to be present in person at that meeting.

**52** No action shall be brought against a dentist or former dentist or professional corporation for negligence, malpractice or breach of contract or otherwise by reason of professional services requested, given or rendered, except within

(a) two years from the day when, in the matter complained of, such professional services terminated;

(b) one year after the person commencing the action knew or ought to have known the facts upon which he alleges negligence, malpractice or breach of contract; or

(c) where the person entitled to bring an action is, at the time the cause of action arises, an infant, a mental incompetent, or a person of unsound mind, one year from the date when such person becomes of full age, or of sound mind, or as the case may be,

whichever is longer.

**53** A resolution, report, recommendation, decision, finding or order of the Board or any committee of the Board or of the Society in writing signed by all directors or persons entitled to vote on such resolution, report, recommendation, decision, finding or order, or signed counterparts thereof, is as valid as if passed, enacted, determined or made at a meeting of the Board or such committee.

**54** Neither the Society, nor the Board, nor any of the committees of the Board or of the Society, nor any member, officer or employee of any of the foregoing bodies or appointee of the Registrar shall be liable for any loss or damage of any kind suffered or incurred by any person as a result of anything done or not done, any proceedings taken, or any order made or enforced by it or them in good faith in the administration of or pursuant to this Act, the previous Act, the bylaws or rules. [1996, c. 82, s. 6]

**55** Where a member of the Society, without the expectation of monetary compensation, voluntarily renders emergency dental treatment to a person outside of a hospital or dentist's office, or in any other place not having proper and necessary facilities, that member shall not be liable for the death or injury of such person or for damages alleged to have been sustained by such person by reason of an act or omission in the rendering of such emergency dental treatment unless it is established that such injury or death was caused by acts or omissions on the part of such member, that, if they were the acts or omissions of a person of ordinary experience, learning and skill, would constitute negligence.

**56** Whenever notice is required or permitted to be made or given pursuant to the Act, the bylaws or rules any such notice shall be deemed to have been received seven days after the mailing by ordinary mail of any such notice to the last known address of the person to whom it is directed.

**56.1** The Registrar shall give public notice of the suspension or revocation of a member's registration, licence or membership as a result of proceedings before the Discipline Committee.

**56.2(1)** The Registrar shall forthwith enter into the records of the Society

(a) the result of every proceeding before the Discipline Committee that

- (i) resulted in the suspension or revocation of a registration, licence or membership, or
- (ii) resulted in a direction under paragraph 37(8.1)(b), and

(b) where the findings or decision of the Discipline Committee that resulted in the suspension or revocation of a registration, licence or membership or the direction are appealed, a notation that they are under appeal.

**56.2(2)** Where an appeal of the findings or decision of the Discipline Committee is finally disposed of, the notation referred to in paragraph (1)(b) shall be removed and the records adjusted accordingly.

**56.2(3)** For the purpose of paragraph (1)(a), “result”, when used in reference to a proceeding before the Discipline Committee, means the committee's findings and the penalty imposed and in the case of a finding of professional misconduct, a brief description of the nature of the professional misconduct.

**56.2(4)** The Registrar shall provide, either verbally or by permitting access to the records, the information contained in the records referred to in subsection (1) to any person who inquires about a member or former member

(a) for an indefinite period if the member or former member was found to have sexually abused a patient, and

(b) for a period of five years, or for such longer period as may be prescribed, following the conclusion of the proceedings referred to in subsection (1) in all other cases.

**56.2(5)** The Registrar, upon payment of a reasonable fee, shall provide a copy of the information contained in the records referred to in subsection (1) that pertain to a member or former member to a person who requests a copy.

**56.2(6)** Notwithstanding subsection (5), the Registrar may provide, at the Society's expense, a written statement of the information contained in the records in place of a copy.

**56.3** The Registrar shall submit a written report annually to the Board containing a summary of the complaints received during the preceding year by source and type of complaint and the disposition of such complaints.

**56.4(1)** The Society shall undertake measures for prevention of the sexual abuse of patients by its members.

**56.4(2)** Such measures referred to in subsection (1) shall include

(a) education of members about sexual abuse,

(b) guidelines for the conduct of members with patients,

(c) providing information to the public respecting such guidelines, and

(d) informing the public as to the complaint procedures under this Act.

**56.4(3)** Measures referred to in subsection (2) may, where appropriate, be taken jointly with other organizations or associations of health professionals.

**56.5(1)** The Society shall report to the Minister of Health and Community Services within two years after the commencement of this section, and within thirty days at any time thereafter on the request of the Minister, respecting the measures the Society is taking and has taken to prevent and deal with the sexual abuse of patients by its members.

**56.5(2)** The Society shall report annually to the Minister of Health and Community Services respecting any complaints received during the calendar year respecting sexual abuse of patients by members or former members of the Society.

**56.5(3)** A report under subsection (2) shall be made within two months after the end of each calendar year and shall contain the following information:

(a) the number of complaints received during the calendar year for which the report is made and the date each complaint was received;

(b) with respect to each complaint received during the calendar year for which the report is made

(i) a description of the complaint in general non-identifying terms,

(ii) the decision of the Complaints Committee with respect to the complaint and the date of the decision,

(iii) if complaints are referred to the Discipline Committee, the decision of the committee and the penalty imposed, if any, and the date of the decision, and

(iv) whether an appeal was made from the decision of the Discipline Committee or order of the Board and the date and outcome of the appeal; and

(c) with respect to each complaint reported in a previous calendar year, a report on the status of the complaint in accordance with paragraph (b) if the proceedings initiated as a result of the complaint were not finally determined in the calendar year in which the complaint was first received. [1996, c. 82, s. 6]

## **PART IX TRANSITIONAL**

**57** The name and address of every person who at the coming into force of this Act is a registered and licensed member of the Society pursuant to the previous Act and the bylaws made thereunder shall be entered in the register.

**58** *The New Brunswick Dental Act 1976, chapter 67 of the Acts of New Brunswick 1976, is repealed.*

**59(1)** Nothing in this Act shall affect the powers and duties, tenure of office or terms of remuneration of any director or officer of the Society or any committee appointed before the commencement of this Act, or anything done or suffered, or any right, title or interest acquired before the commencement of this Act, or any legal proceedings or remedy in respect of any such thing, right, title or interest.

**59(2)** Until repealed, altered or amended pursuant to this Act, any bylaw, regulation or rule made or fees prescribed under any enactment repealed by this Act and in force at the commencement of this Act shall notwithstanding any conflict with this Act continue in force and have effect as if made under this Act.

**60(1)** *Paragraph 39(3)(d) of the Pharmacy Act, chapter 100 of the Acts of New Brunswick, 1983, is amended by striking out the words “New Brunswick Dental Association” where they appear therein and by substituting therefore the words “New Brunswick Dental Society”.*

**60(2)** *Subsections 8(1) and 8(2) of The Dental Technicians Act, 1957, chapter 71 of the Acts of New Brunswick, 1957, are amended by striking out the words “Council of the New Brunswick Dental Society” where they appear therein and substituting the words “Board of Directors of the New Brunswick Dental Society”.*

**60(3)** *Paragraph 14(2)(a) and section 15 of The Dental Technicians Act, 1957, chapter 71 of the Acts of New Brunswick, 1957, are amended by striking out the words “New Brunswick Dental Act, 1953” where they appear therein and substituting therefore the words “New Brunswick Dental Act, 1985”.*

**60(4)** *Section 2 of the Denturist Act, chapter 60 of the Acts of New Brunswick, 1976, is amended by striking out the words “New Brunswick Dental Act, 1953” where they appear in the definition “dental surgeon” and substituting therefore the words “New Brunswick Dental Act, 1985”.*

**60(5)** *Subsection 5(2) of the Denturist Act, chapter 60 of the Acts of New Brunswick, 1976, is amended by striking out the words “section 23 of the New Brunswick Dental Act, 1953” where they appear therein and substituting therefore the words “section 25 of the New Brunswick Dental Act, 1985”.*

**60(6)** *Subsection 7(2) of the Denturist Act, chapter 60 of the Acts of New Brunswick, 1976, is amended by striking out the words “New Brunswick Dental Act, 1953, or any regulation” where they appear therein and substituting therefore the words “New Brunswick Dental Act, 1985 or any rule”.*

**60(7)** *Subsections 19(1) and 19(2) of the Denturist Act, chapter 60 of the Acts of New Brunswick, 1976, is amended by striking out the words “New Brunswick Dental Act, 1953” where they appear therein and substituting therefore the words “New Brunswick Dental Act, 1985”.*

**60(8)** *Section 42 and paragraph 51(i) of The Medical Act, chapter 87 of the Acts of New Brunswick, 1981, are amended by striking out the words “New Brunswick Dental Act 1976” where they appear therein and substituting therefore the words “New Brunswick Dental Act, 1985”.*

