

Discipline Regulations

made under Sections 33 and 45 of the

Dental Act

S.N.S. 1992, c. 3

O.I.C. 2002-6, N.S. Reg. 3/2002

as amended by O.I.C. 2007-581, N.S. Reg. 423/2007

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Discipline Regulations
made under Sections 33 and 45 of the
Dental Act
S.N.S. 1992, c. 3
O.I.C. 2002-6 (January 11, 2002), N.S. Reg. 3/2002
as amended by O.I.C. 2007-581 (November 6, 2007), N.S. Reg. 423/2007

Citation

1 These regulations may be cited as the *Discipline Regulations*.

Definitions

2 In these regulations,

- (a) “Act” means the *Dental Act*;
- (b) “Board” means the Provincial Dental Board of Nova Scotia;
- (c) “licensee” means a dentist, dental hygienist or dental assistant against whom a complaint has been made;
- (d) “Registrar” means the Registrar of the Board.

Offences

3 The offences under these regulations include

- (a) unprofessional conduct;
- (b) infamous conduct;
- (c) breach of, or failure to observe, the Advertising Standards;
- (d) breach of, or failure to observe, the Code of Ethics.

4 (1) “Unprofessional conduct” by a dentist is defined to include any of the following:

- (a) the contravention or violation of any provision of the Act or regulations made pursuant to the Act;
- (b) failure to abide by the terms, conditions or limitations of any licence issued under the Act;
- (c) failure to diagnose and treat one or more patients with a standard of skill, knowledge or judgement that is reasonable in the practice of dentistry in Nova Scotia;
- (d) conduct that is detrimental to the best interests of one or more patients;
- (e) over-treatment;
- (f) charging fees for services that are not performed;

- (g) failure to maintain adequate patient records;
 - (h) improper use of the authority to prescribe, sell or dispense a drug, or falsifying a record in respect of a prescription or the sale of a drug;
 - (i) engaging in dentistry while the ability to do so is impaired by alcohol or a drug;
 - (j) engaging in dentistry while the ability to do so is impaired by an infirmity or reasons of health;
 - (k) failure to comply with a decision of the Complaints Committee or Discipline Committee.
- (2) “Unprofessional conduct” by a dental hygienist has the same meaning as in the *Dental Hygienists Regulations*.
- (3) “Unprofessional conduct” by a dental assistant has the same meaning as in the *Dental Assistants Regulations*.
- (4) “Infamous conduct” by a dentist, dental hygienist, or dental assistant is defined to include any of the following:
- (a) conduct or behavior while engaged in dentistry that is unbecoming a dentist, dental hygienist, or dental assistant;
 - (b) the conviction of any offence related to dentistry;
 - (c) conduct or behavior that is likely to bring dentistry or the dentist, dental hygienist, or dental assistant into disrepute whether or not such conduct or behavior is in the course of or related to dentistry.
- (5) “Advertising Standards” means the advertising standards in the *Advertising Standards Regulations*.
- (6) “Code of Ethics” for dentists means the Code of Ethics for dentists pursuant to Regulation No. 3 - Code of Ethics.
- (7) “Code of Ethics” for dental hygienists means the Code of Ethics for dental hygienists pursuant to the *Dental Hygienists Regulations*.
- (8) “Code of Ethics” for dental assistants means the Code of Ethics for dental assistants pursuant to the *Dental Assistants Regulations*.

Complaint

- 5** (1) Any person may file a complaint in writing with the Registrar concerning a dentist, dental hygienist, or dental assistant.

- (2) The Registrar shall conduct an investigation upon receipt of a complaint under subsection (1) or when the Registrar has reason to believe that an offence may have been committed under these regulations, the Act, or other regulations under the Act.
- (3) Following an investigation pursuant to subsection (2), the Registrar shall refer the matter to the Complaints Committee.

Complaints Committee

- 6** (1) The Complaints Committee shall be composed of 10 members, none of whom shall be a member of the Discipline Committee, as follows:
- (a) 4 licensed dentists, each having at least 5 years experience as a dentist;
 - (b) 2 licensed dental hygienists, each having at least 5 years experience as a dental hygienist;
 - (c) 2 licensed dental assistants, each having at least 5 years experience as a dental assistant; and
 - (d) 2 members of the general public who are not licensed dentists, licensed dental hygienists or licensed dental assistants.
- (2) The term of a member of the Complaints Committee shall not exceed 3 years and the terms of the initial appointments shall be of varying lengths to permit continuity of membership on the Committee.
- (3) The Board may reappoint a member of the Complaints Committee for further terms.
- (4) The Board may, in its discretion, appoint alternates to the members of the Complaints Committee.
- (5) The Board shall appoint one of the dentists on the Complaints Committee to be the Chair of the Complaints Committee.
- (6) The Chair shall be entitled to vote on all matters before the Complaints Committee and in the event of a tied vote, the Chair shall have an additional casting vote.
- (7) Upon receipt of a complaint, the Chair of the Complaints Committee, shall appoint a panel to consider the complaint, in accordance with the following:
- (a) if the complaint is against a dentist, the panel shall consist of the Chair, 2 dentists and 1 member described in clause (1)(d);
 - (b) if the complaint is against a dental hygienist, the panel shall consist of the Chair, 1 dentist, 1 dental hygienist, and 1 member described in clause (1)(d); and
 - (c) if the complaint is against a dental assistant, the panel shall consist of the Chair, 1 dentist, 1 dental assistant, and 1 member described in clause (1)(d).

- (8) In the absence of the Chair, the other members of the panel present may appoint one of the dentists who is present to act as Chair of the meeting.
- (9) The Complaints Committee may convene and conduct a meeting by telephone conference call.
- (10) The quorum for a meeting of a panel of the Complaints Committee is 3 members.

Counsel for the licensee

- 7 A licensee may be represented by counsel in all matters and proceedings before the Complaints Committee and the Discipline Committee.

Procedure of Complaints Committee

- 8 The Complaints Committee shall provide a copy of the complaint against a licensee to the licensee prior to making its decision.
- 9
 - (1) If requested by a licensee against whom a complaint has been made, the Complaints Committee shall meet with the licensee prior to taking any action.
 - (2) With the consent of the licensee, a meeting requested pursuant to subsection (1) may be held by telephone conference call.
 - (3) If a licensee has been served with notice of a meeting referred to in subsection (1) but fails to appear at the meeting, the meeting may proceed in absence of the licensee and the Complaints Committee may proceed to make its decision.
- 10 The decision of the majority of members of a panel of the Complaints Committee is deemed to be a decision of the Complaints Committee.

Disposition by Complaints Committee

- 11
 - (1) The Complaints Committee may
 - (a) dismiss the complaint;
 - (b) refer the complaint, in whole or in part, to the Discipline Committee; or
 - (c) take one or more of the following actions:
 - (i) counsel the licensee;
 - (ii) issue a written caution to the licensee;
 - (iii) issue a written reprimand to the licensee.
 - (2) In determining the action to be taken, the Complaints Committee may consider any evidence relevant to the complaint, including but not limited to evidence relating to the licensee's character, as well as evidence regarding any previous discipline findings against the licensee.

- (3) The action of the Committee shall not be recorded on the register containing the name of the licensee.
 - (4) The Complaints Committee's decision shall be reported in a publication of the Board, either on a named or unnamed basis, as the Committee considers appropriate.
- 12** (1) Within 30 days of a meeting of the Complaints Committee, the Complaints Committee shall file its written decision with the Registrar, including
- (a) its findings of fact;
 - (b) its conclusions respecting the disposition of the complaint; and
 - (c) any sanctions imposed.
- (2) Within 7 days after the decision referred to in subsection (1) is filed, the Registrar shall serve a copy of the decision on the licensee and the complainant.
- 13** (1) If the matter is referred to the Discipline Committee pursuant to clause 11(1)(b), the Chair of the Complaints Committee shall instruct the Registrar to
- (a) draft a notice of charge in accordance with Section 16; and
 - (b) request that the Chair of the Discipline Committee fix a date for a hearing.
- (2) The date fixed pursuant to subsection (1) shall be at least 30 days after service on the licensee of a copy of the decision pursuant to subsection 12(2).

Appeal to Discipline Committee

- 14** Within 30 days of being served with a copy of the decision pursuant to subsection 12(2), the licensee may file with the Registrar a notice of appeal, appealing the decision of the Complaints Committee to the Discipline Committee and stating the grounds of appeal.
- 15** (1) If the matter is to proceed to the Discipline Committee as a result of a notice of appeal pursuant to Section 14, the Chair of the Discipline Committee shall set a date for a hearing.
- (2) The date set by the Chair pursuant to subsection (1) shall be at least 30 days after receipt by the Registrar of the notice of appeal.

Notice of charge

- 16** (1) A notice of charge for a hearing before the Discipline Committee shall be in writing and shall contain the following:
- (a) a statement of the charge or charges, including the provision or provisions of the Act or regulations under which the licensee is charged;
 - (b) the date, time and place that the matter will be considered at a hearing of the Discipline Committee;

- (c) the possible sanctions that may be imposed if the charge or charges are sustained;
 - (d) a statement that the licensee has the right to be represented by counsel; and
 - (e) a statement that the Discipline Committee may proceed in the absence of the licensee.
- (2) The Registrar shall serve a notice of charge on a licensee at least 21 days before a hearing.

Service of notice

- 17 (1)** Service of a notice referred to in Section 9 or subsection 12(2), 16(2) or 28(2) shall be by personal service but, if personal service is not practicable, the Registrar may serve the licensee by registered mail.
- (2) Service by registered mail may be addressed to the licensee's last address as shown on the applicable register, or the licensee's more recent address if known to the Registrar, and shall be deemed to be served on the 3rd day after posting.

Settlement agreements

- 17A (1)** The Board may enter into a settlement agreement with a licensee who is the subject of a complaint at any time after the Complaints Committee has referred the complaint to the Discipline Committee under clause 11(1)(b) but before the beginning of a hearing referred to in Section 13.
- (2) The Complaints Committee retains jurisdiction over a complaint until the beginning of a hearing by the Discipline Committee or approval of a settlement agreement by the Discipline Committee.
- (3) A proposed settlement agreement shall be in writing and shall include all of the following:
- (a) an admission or admissions by the licensee to 1 or more of the allegations set out in the notice of charge;
 - (b) the licensee's consent to a specified disposition, conditional upon the recommendation of the settlement agreement by the Complaints Committee and the approval of the settlement agreement by the Discipline Committee.
- (4) A settlement agreement may include any sanction that could be imposed by the Discipline Committee under Section 29.
- (5) The Complaints Committee may recommend acceptance of a proposed settlement agreement if it is satisfied of all of the following:
- (a) that the public interest is protected;

- (b) that the licensee's conduct or the cause of the conduct complained of can be, or has been, successfully remedied or treated and the licensee is likely to successfully pursue any remediation or treatment required;
 - (c) that settlement is in the interest of the public and the profession.
- (6) If the Complaints Committee recommends that the proposed settlement agreement be accepted, it shall endorse the proposed settlement agreement and forward the agreement to the Discipline Committee.
- (7) If the Complaints Committee does not recommend that the proposed settlement agreement be accepted, it shall refer the complaint to the Discipline Committee for a hearing.
- (8) If the Discipline Committee accepts the proposed settlement agreement, it shall draft an order incorporating the settlement agreement, which disposes of the complaint.
- (9) If the Discipline Committee does not accept the proposed settlement agreement,
 - (a) it shall advise the Registrar of its decision and proceed no further with the hearing of the complaint; and
 - (b) a new hearing panel shall be appointed to hear the complaint.
- (10) If a complaint is referred to a hearing before the Discipline Committee following unsuccessful settlement negotiations, the hearing shall proceed without reference to any proposed settlement agreement or any admissions contained in the agreement.
- (11) A member of the Discipline Committee who reviews a proposed settlement agreement may not sit on the hearing panel that hears the same complaint.
- (12) An alleged breach by a licensee of any term, condition or undertaking of a settlement agreement shall be referred to the Discipline Committee and may form the subject of a hearing before the Discipline Committee.

Section 17A added: O.I.C. 2007-581, N.S. Reg. 423/2007.

Discipline Committee

18 (1) The Discipline Committee shall be composed of 16 members, as follows:

- (a) 7 licensed dentists, each having at least 5 years experience as a dentist;
- (b) 3 licensed dental hygienists, each having at least 5 years experience as a dental hygienist;
- (c) 3 licensed dental assistants, each having at least 5 years experience as a dental assistant; and
- (d) 3 members of the general public who are not licensed dentists, licensed dental hygienists or licensed dental assistants.

- (2) The term of a member of the Discipline Committee shall not exceed 3 years and the terms of the initial appointments shall be of varying lengths to permit continuity of membership on the Committee.
- (3) The Board may reappoint a member of the Discipline Committee for further terms.
- (4) The Board may, in its discretion, appoint alternates to the members of the Discipline Committee.
- (5) The Board shall appoint one of the dentists to be Chair of the Discipline Committee.
- (6) The Chair shall be entitled to vote on all matters before the Discipline Committee and in the event of a tied vote, the Chair shall have an additional casting vote.
- (7) The Chair of the Discipline Committee shall appoint a panel for a hearing in accordance with the following:
 - (a) if the charge or charges are against a dentist, the panel shall consist of the Chair, 3 dentists, and 1 member described in clause (1)(d);
 - (b) if the charge or charges are against a dental hygienist, the panel shall consist of the Chair, 2 dental hygienists, 1 dentist, and 1 member described in clause (1)(d); and
 - (c) if the charge or charges are against a dental assistant, the panel shall consist of the Chair, 2 dental assistants, 1 dentist, and 1 member described in clause (1)(d).
- (8) A hearing date may only be changed by order of the Chair of the Discipline Committee.
- (9) In the absence of the Chair, the other members present may appoint one of the dentists who is present to act as Chair for the hearing.
- (10) The quorum for a meeting or hearing of the Discipline Committee is 3 members.

Counsel for Registrar

- 19 (1) The Registrar may employ counsel to prepare and present a case before the Discipline Committee in a hearing.
- (2) Counsel for the Registrar shall at all times act fairly and proceed in a manner so that all of the relevant facts, both in favour of and averse to the licensee, are presented to the Discipline Committee at a hearing.

Counsel for the Discipline Committee

- 20 (1) The Discipline Committee may employ legal counsel to advise it in the conduct of a hearing.

- (2) Any legal advice given by the counsel employed pursuant to subsection (1) shall be made known to all parties.
- (3) Counsel employed pursuant to subsection (1) shall not participate in the deliberations of the Discipline Committee respecting its decision.

Procedure and evidence in Discipline Committee hearing

- 21 If a licensee has been served in accordance with subsection 16(2) but does not appear at the hearing, the hearing may proceed in the absence of the licensee.
- 22 A hearing by the Discipline Committee shall be open to the public
 - (a) unless the Discipline Committee, the Registrar, and the licensee all agree to a closed hearing; or
 - (b) unless the Discipline Committee, in its discretion, determines that, to ensure a full and complete hearing or in the public interest, the hearing should not be open to the public.
- 23 In a hearing by the Discipline Committee,
 - (a) the Discipline Committee may
 - (i) admit any evidence relevant to the complaint,
 - (ii) request evidence respecting any matter at issue from any person whom they judge to be competent to give evidence,
 - (iii) summon and enforce the attendance of witnesses,
 - (iv) require witnesses to give oral or written evidence on oath and produce documents and things that the Discipline Committee considers necessary to the proper conduct of the hearing;
 - (b) the licensee or licensee's counsel shall have full opportunity to present evidence in defence of the licensee;
 - (c) the licensee or licensee's counsel may cross-examine a witness who gives evidence against the licensee;
 - (d) counsel to the Registrar may cross-examine a witness who gives evidence for the licensee; and
 - (e) the licensee or licensee's counsel and counsel to the Registrar shall have access to all evidence admitted at the hearing; and
 - (f) each party shall have full opportunity to reply to the submissions of the other.
- 24 The Registrar shall ensure that an accurate record is taken of a hearing of the Discipline Committee.

- 25 The Chair of the Discipline Committee may from time to time adjourn a hearing.
- 26 The burden of proof applicable to a hearing by the Discipline Committee shall be proof on a balance of probabilities.
- 27 A decision of the majority of the members of a panel of the Discipline Committee is deemed to be a decision of the Discipline Committee.

Decision of the Discipline Committee

- 28 (1) Within 30 days of a hearing, the Discipline Committee shall file its written decision with the Registrar, including
- (a) its findings of fact;
 - (b) its conclusions respecting the disposition of the charge or charges; and
 - (c) any sanctions imposed.
- (2) Within 7 days after the decision referred to in subsection (1) being filed, the Registrar shall serve a copy of the decision on the licensee and the complainant.

Sanctions and publication of decision of the Discipline Committee

- 29 (1) The sanctions that may be imposed by the Discipline Committee in a decision resulting from a hearing are
- (a) cancellation of a licence or certificate of registration;
 - (b) suspension of a licence for a specified period of time;
 - (c) cancellation or suspension of a licence or cancellation of a certificate of registration to occur at a specified date in the future unless the licensee meets specified conditions before the specified date;
 - (d) cancellation or suspension of a licence or cancellation of a certificate of registration subject to restoration if the licensee meets specified conditions in the future;
 - (e) suspension of a licence subject to a reduction in the term of the suspension if the licensee meets specified conditions;
 - (f) restrictions on a licence for a specified or unspecified period of time, which may be removed if the licensee meets specified conditions;
 - (g) entering a reprimand on the written record pertaining to the licensee kept by the Registrar;
 - (h) monitoring of the licensee's practice for a specified period of time by the Registrar or an agent appointed by the Registrar;

- (i) payment by the licensee of all or part of the costs of the disciplinary proceeding, including
 - (i) per day fees for members of the Discipline Committee,
 - (ii) counsel fees,
 - (iii) reporter fees,
 - (iv) facility charges, and other charges associated with the hearing.
 - (2) The conditions referred to in clauses (1)(c), (d), (e) and (f) may include, among other things,
 - (a) the completion of a course or program of education or training prescribed by the Discipline Committee; or
 - (b) the successful completion of an examination, to test the skill, knowledge or judgement of the licensee.
 - (3) In determining the sanctions to impose pursuant to subsection (1), the Discipline Committee may consider evidence relating to the licensee's character, as well as evidence regarding any previous discipline findings against the licensee.
- 30** (1) The Discipline Committee's decision shall be reported in a publication of the Board, either on a named or unnamed basis, as the Committee considers appropriate.
- (2) The Discipline Committee may, in its discretion, order that a notice of suspension or revocation of licence be printed in a newspaper distributed in the area in which the licensee to whom the notice pertains engages in the practice of dentistry, dental hygiene, or dental assisting.
- 31** The effective date of any sanctions imposed pursuant to Section 29 and the date for any publication made pursuant to Section 30 shall not be earlier than the expiry of the time period allowed for appeals in Section 38 of the Act, unless the licensee waives the appeal period and agrees to implementation of the sanctions or publication at an earlier date.