

CHAPTER 71

**Act Incorporating The New Brunswick Association of Speech-Language Pathologists and Audiologists**

*Assented to June 27, 1987*

*And*

CHAPTER 82

**An Act Respecting Health Professionals**

*Assented to December 19, 1996*

WHEREAS the New Brunswick Association of Speech-Language Pathologists and Audiologists 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 New Brunswick Association of Speech-Language Pathologists and Audiologists, to incorporate the New Brunswick Association of Speech - Language Pathologists and Audiologists as a body corporate for the purpose of advancing and maintaining the standard of speech-language pathology and audiology in the Province, for governing and regulating speech-language pathology and audiology services provided to the public and providing for the welfare of members of the public and members of the New Brunswick Association of Speech-Language Pathologists and Audiologists;

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

1 This Act may be cited as the “*Speech-Language Pathology and Audiology Act*”.

**PART I**

**INTERPRETATION**

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

"Act" means the *Speech-Language Pathology and Audiology Act*;

"Association" means the New Brunswick Association of Speech-Language Pathologists and Audiologists incorporated by section 3;

"audiology" means the provision or conduct of non-medical assessment and interpretation, evaluation, habilitative, rehabilitative, counselling, guidance and research services relating to auditory function including the planning, direction and conduct of remedial programs designed to restore and improve auditory function and speech reading, the giving of directions for the supply of hearing aids, and the sale of hearing aids;

"audiologist" means a person whose name is entered in the register as an audiologist;

"Court" means a Judge of The Court of Queen's Bench of New Brunswick;

"Executive Council" means the Executive Council of the Association constituted under section 4;

**"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*;**

"incompetence" means acts or omissions on the part of a member, in his practice, that demonstrate a lack of knowledge, skill or judgment, or disregard for the interests of the recipient of his services of such a nature and to such an extent as to render him unfit to carry on the practice of speech-language pathology or audiology or to carry on the practice without conditions, limitations or restrictions;

"member" means a speech-language pathologist or audiologist and any person whose name is entered in the temporary register or in any of the rosters established and maintained pursuant to this Act, the bylaws and rules;

"Minister" means the Minister of Health and Community Services;

"prescribed" means prescribed by bylaws or rules made under this Act by the Executive Council;

**"professional misconduct" includes the acts or omissions specified in this Act as constituting professional misconduct;**

"register" means the register kept pursuant to paragraph 10(1)(a);

"Registrar" means the person holding the office of Registrar under section 9;

"registration" means the entry of the name of a person in the register;

"rosters" means the rosters kept pursuant to paragraph 10(1)(c);

"speech-language pathologist" means a person whose name is entered in the register as a speech-language pathologist;

"speech-language pathology" means the provision or conduct of non-medical assessment, treatment, research, counselling, guidance, testing and evaluation services relating to speech, language and *communication* disorders or conditions *including* the planning, direction and conduct of remedial programs designed to restore and improve communication efficiency;

"temporary register" means the register kept pursuant to paragraph 10(1)(b).

2(2) The words "speech-language pathologist", "speech pathologist", "speech therapist", "speech clinician", "communicologist", "communication disorder specialist", "logopedist", "speech consultant", "duly qualified speech pathologist", "language-speech pathologist", "speech correctionist" 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 speech language pathologist or person entitled to carry on the practice of speech-language pathology or connoting a member of the Association, 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 or the temporary register as a speech-language pathologist.

2(3) The words "audiologist", "audiology clinician", "audiometry clinician", "audiometrist", "audiological technician", "hearing technician", "hearing assistant", "duly qualified audiologist", "certified audiologist", "certified hearing aid audiologist", or any like words, initials or expressions used alone or in combination with other words or expressions connoting a person recognized by law as an audiologist or person entitled to carry on the practice of audiology or connoting a member of the Association, 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 or the temporary register as an audiologist.

3 The New Brunswick Association of Speech-Language Pathologists and Audiologists is hereby constituted a body corporate and politic without share capital under the name "New Brunswick Association of Speech-Language Pathologists and Audiologists" and subject to this Act, has the capacity, rights, powers and privileges of a natural person.

## PART II

### EXECUTIVE COUNCIL OF THE ASSOCIATION

4(1) An Executive Council of the Association consisting of no less than six councillors of whom "**at least one is a speech-language pathologist and at least one is an audiologist**" shall be responsible for the administration of this Act and shall control, govern and manage, or supervise the control, government and management of the business and affairs of the Association and all aspects of the practice of speech-language pathology and audiology.

4(2) The number of councillors, 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 Association and such bylaws may provide for alternate councillors, for the filling of vacancies and for the appointment of additional councillors.

4(3) One councillor, who shall not be a member of the Association, 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 Executive Council.

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

- (a) the fact that an appointment has not been made pursuant to subsection (3),
- (b) the resignation, death or disqualification of a councillor appointed pursuant to subsection (3), or
- (c) the failure, for any reason, of a councillor appointed pursuant to subsection (3), to attend any meeting of the Board or to participate in the manner contemplated by sections 37 and 39.

5(1) Unless this Act or the bylaws otherwise provide the Executive Council may by resolution make, amend or repeal any bylaws regulating the business or affairs of the Association and the practice of speech-language pathology or audiology by its members 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 and continuing conditions of membership in the Association;

- (ii) the registration and renewal, suspension, "**revocation**" and reinstatement of registration of speech-language pathologists and audiologists, including the imposition of limitations, restrictions and conditions on any registration issued or granted pursuant to this Act; and
  - (iii) the registration or membership of persons having significant experience but not having educational qualifications usually required for registration or membership;
- (b) establishing one or more categories of membership and determining the rights, privileges and obligations of the members of each category;
- (c) approving or accrediting schools, courses of study or educational programs in speech-language pathology and audiology;
- (d) determining the method of setting annual registration or membership fees payable to the Association and providing for the collection thereof;
- (e) providing for the election or appointment, removal and remuneration of and establishing the powers and duties of officers, officials, employees and agents of the Association or the Executive Council;
- (f) creating and governing committees for the carrying out of the business and affairs of the Executive Council and the Association and for regulating and governing the practice of speech-language pathology and audiology carried on by its members;
- (g) delegating to officers, officials, employees or committees, any of the duties, powers and privileges of the Executive Council, except the power to make, amend or repeal bylaws and rules and the duties, powers and privileges of the Executive Council with respect to appeals set out in Part VI hereof;
- (h) fixing and regulating the quorum, time, place, calling, conduct and business of annual, special and general meetings of the Association, the Executive Council and committees of the Association or the Executive Council, establishing the method of voting by any means and establishing the qualifications of persons entitled to vote thereat;
- (i) developing, establishing, maintaining and administering
  - (i) standards for education programs leading to registration and for continuing education and the participation therein of speech-language pathologists and audiologists;
  - (ii) standards for the practice of speech-language pathology and audiology for its members;
  - (iii) Rules of Ethics or Conduct for speech-language pathologists and audiologists;
- (j) respecting and governing the management and disposition of trust, charitable or benevolent funds committed to the care of the Association;
- (k) setting the fiscal year of the Association, determining the place where the head office of the Association shall be located and the place or places, where other offices of the Association shall be located;
- (l) determining the aspects, subjects or matters of the business and affairs of the Association and the practice of speech-language pathology and audiology carried on by its members that may be regulated and governed by rules of the Executive Council;
- (m) authorizing the making of co-operative or affiliation arrangements with any institution organization or professional body in any jurisdiction;

(n) respecting and governing such other subjects, matters and things as the Executive Council considers appropriate to administer this Act or to advance or protect the interests of the public, the Association or the members;

and such bylaws shall be valid, binding and effective from the date they are confirmed by an ordinary resolution at an annual, special or general meeting of the Association and where a bylaw is amended by ordinary resolution at such meeting, it becomes effective in the form in which it is amended.

5(2) Any amendment or repeal of a bylaw by the Executive Council shall be made by bylaw.

5(3) Bylaws relating to matters described in paragraphs (a), (b), (c), (i), (l) and (n) of subsection (1) shall not be effective or be acted upon until ninety days from the date that a copy of such bylaws has been mailed to the Minister.

6(1) Unless this Act or the bylaws otherwise provide, the Executive Council 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 Association and the practice of speech-language pathology and audiology carried on by its members as may be governed by bylaw and any such rule shall be valid, binding and effective from the date of the resolution of the Executive Council until amended or repealed by an ordinary resolution at an annual or special or general meeting of the Association called for the purpose of considering the same.

6(2) Any amendment or repeal of a rule by the Executive Council 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 The *Regulations Act*, Chapter R-7 of the Revised Statutes, 1973 does not apply to the Association or any bylaw, rule or resolution made by the Association or the Executive Council but all the bylaws and rules of the Association or the Executive Council shall be available for inspection by any person at the head office of the Association at all reasonable times during business hours, free of charge.

9 The Executive Council shall appoint a Registrar who must be a speech-language pathologist or audiologist and who shall hold office during the pleasure of the Executive Council.

### **PART III**

#### **REGISTRATION AND MEMBERSHIP**

10(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 speech-language pathologist or audiologist pursuant to this Act, the bylaws and the rules;

(b) a temporary register in which shall be entered the name and address of every person who is permitted to use the designation speech-language pathologist or audiologist and to carry on the practice of speech-language pathology or audiology, as the case may be, in the Province under such circumstances, conditions, limitations and restrictions and for such temporary and limited periods of time as are set out in the bylaws and rules; and

(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 or the temporary register.

10(2) The register shall be divided into parts, being

(a) a part in which shall be entered the names of persons qualified pursuant to the bylaws and rules for registration as a speech-language pathologist;

(b) a part in which shall be entered the names of persons qualified pursuant to the bylaws and rules for registration as an audiologist; and

(c) such other parts as may be prescribed in which shall be entered the names of persons qualified pursuant to the bylaws and rules for such classifications and levels of registration or membership as may be prescribed.

11(1) Any person whose name is entered in the register as a speech-language pathologist, subject to any conditions, limitations or restrictions set out in his certificate, the bylaws or rules, shall be entitled to hold himself out as a speech-language pathologist and is entitled to carry on the practice of speech-language pathology in the Province.

11(2) Any person whose name is entered in the register as an audiologist subject to any conditions, limitations or restrictions set out in his certificate, the bylaws or rules, shall be entitled to hold himself out as an audiologist and is entitled to carry on the practice of audiology in the Province.

11(3) Any person whose name is entered in the temporary register as a speech-language pathologist shall be entitled to the privileges and rights in subsection (1) in the Province for such limited period of time, in such circumstances and subject to such conditions, limitations and restrictions as may be prescribed.

11(4) Any person whose name is entered in the temporary register as an audiologist shall be entitled to the privileges and rights in subsection (2) in the Province for such limited period of time, in such circumstances and subject to such conditions, limitations and restrictions as may be prescribed.

11(5) Any person who is enrolled as a student in an approved school, course of study or educational program in speech-language pathology or audiology 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(1) The Registrar shall remove or cause the removal of the name of any person from the register, the temporary register or one or more of the rosters, who fails to meet or maintain the qualifications and standards for entry in such register or rosters.

12(2) The registration of a speech-language pathologist or audiologist shall terminate and cease to have effect when his name is removed from the register.

13 Every person other than an individual who engages a person as a speech-language pathologist or audiologist and every agency or registry that procures employment or work for a person as a speech-language pathologist or audiologist shall ensure at the time of engagement or employment that the person is the holder of a current certificate of registration issued pursuant to this Act and the bylaws.

14(1) The Registrar shall issue or cause to be issued annually or at such other times as may be set out in the rules a certificate of registration or a validation seal to be affixed to a previously issued certificate to persons whose names are entered in the register or temporary register, and each such certificate or validation seal shall remain the property of the Association, shall state the date on which it expires and any conditions, limitations or restrictions imposed on the registration of the person in respect of whom the certificate or validation seal is issued.

14(2) No person shall be entitled to have his name entered in the register or to receive a certificate or validation seal unless such person

(a) has paid all applicable prescribed fees; and

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

14(3) Any person whose registration has been subjected to conditions, limited, restricted, revoked or suspended shall without demand forthwith deliver his certificate and validation seals to the Registrar.

15 A statement certified under the hand of the Registrar respecting the records of the Association or the registration 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 of any such person or lack thereof and any condition, limitation or restriction in respect of the registration of any such person.

#### **PART IV**

#### **OFFENCES AND ENFORCEMENT**

16 Except as provided in this Act, the bylaws or rules, no person other than a person whose name is entered in the register, or the temporary register, shall

(a) publicly or privately, whether or not for hire, gain or hope of reward hold himself out in any way as being a speech-language pathologist or audiologist;

(b) assume or use any title, name, designation, initials or description, including those referred to in this Act, that does or could lead the public to believe he is a member of the Association, a speech-language pathologist or an audiologist;

(c) practice speech-language pathology; or

(d) practice audiology.

17 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.

18 A person who violates any provision of this Act commits an offence and is liable on summary conviction to a fine not less than

(a) \$500 for a first offence;

(b) \$1000 for a second offence; or

(c) \$2000 for a third offence

or to imprisonment for a term not exceeding six months, or both.

19 Where a member or former member or an applicant for registration 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 Executive Council acting in the name of the Association.

20 Where any person other than a person described in section 19 does or attempts to do anything contrary to the provisions of this Act, the doing of such thing may be restrained by an injunction of The Court or Queen's Bench of New Brunswick at the instance of the Executive Council acting in the name of the Association.

21(1) No prosecution by the Association 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.

21(2) The Executive Council may institute and carry on or authorize any person to institute and carry on the prosecution of an offence under this Act.

## EXEMPTIONS

22 Nothing in this Act applies to or prevents

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

(b) the practice of dentistry by a person authorized to carry on such practice under the provisions of the *New Brunswick Dental Act, 1985*;

(c) the practice of nursing by a person authorized to carry on such practice under the provisions of the *Nurses Act*;

(d) the practice of occupational therapy by a person who is authorized to carry on such practice under the provisions of the *Occupational Therapy Act*;

(e) the practice of psychology by a person who is licensed under *The College of Psychologists Act*;

{f} the practice of physiotherapy by a person registered under the *Physiotherapy Act, 1985*;

(g) the carrying out of specific tasks constituting part of the practice of speech-language pathology or audiology by persons authorized under the bylaws of the Association and under the supervision and control of a speech-language pathologist or audiologist as the case may be;

(h) the carrying on of any occupation, calling or profession by a person authorized to carry on such occupation, calling or profession by any public or private act of the Legislature; or

(i) the sale of hearing aids and the provision of services incidental thereto by any person.

## PART V

### DISCIPLINE

23 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 former member and any person whose name is or was entered in any register or roster of the Association.

**24(1) The Executive Council shall refer every complaint received to 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 Association;

(iii) incompetence or negligence;



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

(v) dishonesty; or

(vi) any habit rendering him unfit or incapable of carrying on the practice of speech-language pathology or audiology; or

(b) is suffering from any ailment or condition rendering him unfit or incapable of carrying on the practice of speech-language pathology or audiology.

24(2) All complaints against a member received by the Association or the Executive Council shall be delivered forthwith by the Registrar to the Chairman of the "**Complaints**" Committee and a copy of the same shall immediately be forwarded to the member.

**24.1(1) A member who sexually abuses a patient commits an act of professional misconduct.**

**24.1(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.

**24.1(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.**

**24.2(1) A member who, in the course of practicing 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.**

**24.2(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.**

**24.2(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.**

**24.2(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) 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, subject to subsection (5).

**24.2(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.**

**24.2(6) Subsections 24.1(2) and (3) apply with the necessary modifications to sexual abuse of a patient or client by another health professional.**

**24.2(7) No action or other proceeding shall be instituted against a member for filing a report in good faith pursuant to subsection (1).**

**24.3 The Executive Council shall establish a Complaints Committee, which Committee shall be composed of one person who is a member appointed by the Executive Council and who shall serve for such term as is determined by the Executive Council.**

**24.4 (1) The Complaints Committee, upon being referred a complaint, shall consider and investigate the complaint.**

**24.4(2) The Complaints Committee may engage such persons as it considers proper to assist it in the consideration and investigation of complaints and may determine its rules of procedure.**

**24.5 Where the Complaints Committee investigates a complaint, the Committee shall notify the member of the investigation, giving reasonable particulars of the matter to be investigated and shall advise the member that the member may make a written submission to the Committee with respect to the matter within thirty days after receiving the notice.**

**24.6(1) Where the Complaints Committee refers a complaint to the Discipline Committee and where the Complaints Committee considers the action necessary to protect the public pending the conduct and completion of disciplinary proceedings before the Discipline Committee in respect of a member, the Complaints Committee may, subject to subsection (2), make an interim order**

**(a) directing the Registrar to impose specified terms, conditions and limitations upon the member's registration, or**

**(b) directing the Registrar to suspend the member's registration.**

**24.6(2) No order shall be made by the Complaints Committee under subsection (1) unless the member has been given**

**(a) notice of the Complaints Committee's intention to make the order, and**

**(b) at least ten days to make representation to the Complaints Committee in respect of the matter after receiving the notice.**

**24.6(3) Where the Complaints Committee takes action under subsection (1), the Complaints Committee shall notify the member of its decision in writing.**

**24.6(4) An order under subsection (1) continues in force until the matter is disposed of by the Discipline Committee, unless the order is stayed pursuant to an application under subsection (5).**

**24.6(5) A member against whom action is taken under subsection (1) may apply to The Court of Queen's Bench of New Brunswick for an order staying the action of the Complaints Committee.**

**24.6(6) If an order is made under subsection ( 1 ) by the Complaints Committee in relation to a complaint referred to the Discipline Committee, the Association and the Discipline Committee shall act expeditiously in relation to the complaint.**

**24.7(1) After considering the submission of the member and considering or making a reasonable attempt to consider all documents and information it considers relevant to the matter, the Complaints Committee may**

**(a) dismiss the complaint, or**

**(b) refer the complaint to the Discipline Committee.**

**24.7(2) The Complaints Committee shall prepare its decision in writing and shall send a copy to the member and the complainant by registered or certified mail.**

25(1) The Executive Council shall maintain a standing committee known as the Discipline Committee, which in this section shall be referred to as the "Committee."

25(2) The Committee shall be composed of speech-language pathologists and audiologists and at least one person who is not a member and none of the Committee members shall be a councillor of the Association.

25(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 powers, 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.

25(4) The Executive Council shall appoint one of the members of the Committee to be the Chairman of the Committee.

25(5) The Committee and the Executive Council when acting pursuant to Part VI, 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 of any complaint that has been referred to it or of any appeal that has been made to it"** and in no case is the Committee or the Executive Council bound to follow the technical rules of evidence or procedure applicable in judicial proceedings.

25(6) The Committee shall

**(a) hold a hearing with respect to the complaints that have been referred to it from the Complaints Committee, and**

**(b) perform such other duties as may be assigned to it by the Executive Council.**

25(7) The Committee shall consider the complaint, hear the evidence, ascertain the facts and make a decision with respect to the merits of each complaint as to whether the member is guilty of a matter described in paragraph 24(1 )(a) or is suffering from an ailment or condition described in paragraph 24(1)(b), in such manner as it deems fit.

25(8) After reviewing all of the evidence presented to it the Committee may as part of its decision with respect to the merits of any complaint

**(a) order that the member's registration or membership be suspended for a specific period of time during which the member shall have his name removed from the register, the temporary register or any roster in which his name may be entered;**

- (b) order that the member's registration 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 or membership be revoked and the member's name be removed from the register, the temporary register or any roster in which his name may be entered;
  - (c.1) **where a registration or membership is revoked, order that the member not be permitted to apply for reinstatement until after a period of time specified by the Committee;**
- (d) order that conditions or limitations be imposed on the member's registration, membership or practice and so inform the member's employer, if any;
- (e) issue a reprimand;
- (f) dismiss the complaint;
- (g) impose such fine as the Committee considers appropriate not exceeding \$1000 to be paid by the member to the Association for the use of the Association and such fine may be recovered by the Association by civil action for debt;
- (h) 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;
- (i) attempt to resolve informally any complaint if the Committee deems it appropriate; or
- (j) 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 (h).

**25(8.1) Where the Discipline Committee takes any action under subsection (8), it may, by order, do one or more of the following:**

- (a) **direct the Registrar to give public notice of any decision of the Committee that the Registrar is not otherwise required to give under this Act; or**
- (b) **direct the Registrar to enter the result of the proceeding before the Committee in the records of the Association and to make the result available to the public.**

25(9) Notwithstanding any other provision in this Act, if at any time a member admits any allegation in a complaint alleging a matter set out in subsection 24(1), and the member waives in writing the right to any other or further hearing or proceedings pursuant to this Part, the Committee may

- (a) agree to cancel all hearings or proceedings and to accept the member's resignation on such terms and conditions as the Committee may specify; or
- (b) make any order, finding or decision that may be made pursuant **“this section or section 35”**.

26(1) Upon the application of

- (a) any party to a hearing by the Discipline Committee or the Executive Council,
- (b) the Chairman of the Discipline Committee or a member of the Executive Council, or
- (c) counsel for the Association, the Discipline Committee or the Executive Council,

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 Executive Council.

26(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.

26(3) The testimony of witnesses shall be taken under oath or solemn affirmation which any member of the Discipline Committee or the Executive Council is authorized to administer.

26(4) The burden of proof in all proceedings before the Discipline Committee or the Executive Council acting pursuant to Part VI shall be the balance of probabilities.

**27(1) In all proceedings before the Discipline Committee or the Executive Council acting pursuant to Part VI, 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, subject to paragraph 30(b), 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 Executive Council, as the case may be,**

**(d) shall be entitled to receive copies of all documents presented to the Committee or the Executive Council 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 Executive Council, and**

**(f) shall receive prompt notice of and a copy of the decision rendered.**

**27.1(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 24(1)(a) or whether the member is suffering from an ailment or condition rendering the member unfit or incapable of carrying on the practice of speech-language pathology or audiology, if the Complaints Committee has received a complaint about the member and has requested the appointment.**

**27.1(2) An employee of the Association may be appointed an investigator under subsection (1).**

**27.2(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.**

**27.2(2) Subsection (1) applies notwithstanding any provision in any Act relating to the confidentiality of health records.**

**27.2(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.**

**27.2(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.**

**27.3(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 would constitute an act or conduct described in paragraph 24(1)(a) or that the member is suffering from an ailment or condition rendering the member unfit or incapable of carrying on the practice of speech-language pathology or audiology, 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.

**27.3(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.**

**27.3(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.**

**27.3(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.**

**27.4(1) An investigator may copy, at the expense of the Association, a document that the investigator may examine under subsection 27.2(1) or under the authority of a warrant issued under subsection 27.3(1).**

**27.4(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.**

**27.4(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.**

**27.4(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.**

**27.4(5) In this section, "document" means a record of information in any form and includes any part of it.**

**27.5 An investigator shall report the results of the investigation to the Registrar in writing and the Registrar shall forward a copy of the report to the Complaints Committee.**

## **PART VI**

### **APPEALS**

**28(1) If,**

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

**(b) an applicant for registration is dissatisfied with a decision made by the person or 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 thirty 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 Executive Council.

28(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.

29(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 committee, person or body from whom the appeal is taken and shall prepare and present to the Executive Council 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.

29(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 upon payment by the appellant or such other person of the costs and disbursements of producing such copy.

30 On appeal the Executive Council may

- (a) adjourn the proceedings or reserve the determination of the matters before it; and
- (b) upon granting special leave, and only where it is shown that such evidence was not previously available, receive further evidence.

31 After reviewing the record on appeal and hearing the evidence or argument presented the Executive Council 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 Discipline Committee or the person or body from whom the appeal is taken as the case may be for further consideration and decision;
- (d) confirm the decision appealed from;
- (e) make such decision or order as it may deem appropriate.

32(1) Any party to an appeal to the Executive Council may appeal from the decision or order of the Executive Council by a written notice of appeal 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 Executive Council's decision or order is mailed to the last known address of such party, or within such further time not exceeding sixty days as may be allowed by the Court.

32(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 the Queen's Bench of New Brunswick for the judicial district in which the deliberations of the Executive Council were held and upon any other party to the proceedings before the Executive Council.

33 The record on appeal to the Court shall be the record on appeal presented to the Executive Council, a transcript of any new testimony, evidence or exhibits presented to the Executive Council and a copy of the decision or order of the Executive Council.

34(1) The Court may make any order or decision that the Executive Council may make and may make such order as to costs as may be just.

34(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 *mutates mutandis* to appeals to the Court under this Part and the Association shall have standing to appear and participate in any appeals to the Court.

## PART VII

### GENERAL

35(1) The Discipline Committee or the Executive Council may order that the costs of any investigation, proceeding, hearing or appeal pursuant to any provision of this Act or the bylaws and rules be paid to any one or more of the Association or the parties, 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, finding 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 or Executive Council is of the opinion that the complaint or investigation was unwarranted; and

may make it a condition of the registration of any member that such costs be paid forthwith.

35(2) The costs 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 rendered for such taxed costs in Form A of this Act with necessary modifications.

35(3) Before hearing an appeal the Executive Council may order that security for costs be paid to the Association by the appellant in such amount and upon such terms as the Executive Council may deem just.

36 For the purposes of this Act, "costs" includes

(a) all legal and other costs, expenses and disbursements incurred by the Association, the Discipline Committee, "**the Complaints Committee**", the Registrar or the Executive Council in relation to an investigation, proceeding, hearing or appeal;

(b) honoraria and expenses paid to members of the Discipline Committee, "**the Complaints Committee**", the Registrar or members of the Executive Council in relation to an investigation, proceeding, hearing or appeal; and

(c) the legal costs, expenses and disbursements incurred by any party to an investigation, proceeding, hearing or appeal.

37 The Executive Council and any committee of the Executive Council or of the Association 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.

38 No action shall be brought against a member or former member for negligence or breach of contract or otherwise by reason of services requested, given or rendered, except within

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



(b) two years after the person commencing the action knew or ought to have known the facts upon which he alleges negligence 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.

39 A resolution, report, recommendation, decision, finding or order of the Executive Council or any committee of the Executive Council or of the Association in writing signed by all councillors 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 Executive Council or such committee.

40 None of the Association, the Executive Council, any of the committees of the Executive Council or of the Association, or any member, officer or employee of any of the foregoing bodies 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 bylaws or rules.

41 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 five days after the mailing by ordinary mail of any such notice to the last known address of the person to whom it is directed.

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

**41.2(1) The Registrar shall forthwith enter into the records of the Association**

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

**(i) resulted in the suspension or revocation of a registration, or**

**(ii) resulted in a direction under paragraph 25(8.1)(b), and**

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

**41.2(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.**

**41.2(3) For the purpose of paragraph (1)(a), "result", when used in reference to a proceeding before the Discipline Committee, means the Committee's finding and the penalty imposed and in the case of a finding of professional misconduct, a brief description of the nature of the professional misconduct.**

**41.2(4) The Registrar shall provide 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 such longer period as may be prescribed, following the conclusion of the proceedings referred to in subsection (1) in all other cases.**

**41.2(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.**

**41.2(6) Notwithstanding subsection (5), the Registrar may provide, at the Association's expense, a written statement of the information contained in the records in place of a copy.**

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

**41.4(1) The Association shall undertake measures for prevention of the sexual abuse of patients by its members.**

**41.4(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.**

**41.4(3) Measures referred to in subsection (2) may, where appropriate, be taken jointly with other organizations or associations of health professionals.**

**41.5(1) The Association 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 it is taking and has taken to prevent and deal with the sexual abuse of patients by members of the Association.**

**41.5(2) The Association shall report annually to the Minister of Health and Community Services respecting any complaints received during the calendar year concerning sexual abuse of patients by members or former members of the Association.**

**41.5(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, including any penalty imposed, and the date of the decision, and**
  - (iv) whether an appeal was made from the decision of the Discipline Committee or from the decision of the Executive Council 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.

**41.6 Any complaint received by the Executive Council before the commencement of this section shall be dealt with in accordance with this Act as it existed immediately before the commencement of this section.**

## **PART VIII**

### **TRANSITIONAL**

42 The name and address of every person who at the coming into force of this Act is a member recorded in the membership records of the New Brunswick Association of Speech-Language Pathologists and Audiologists, an **unincorporated** association, pursuant to the bylaws and constitution thereof, shall be entered in the register in such part as may be designated by the Executive Council.

43 Until repealed, altered or amended pursuant to this Act, any bylaw, constitutional provision, rule made or fees prescribed by the New Brunswick Association of Speech-Language Pathologists and Audiologists, an **unincorporated** association, shall, notwithstanding any conflict with this Act, be deemed to be bylaws of the Association and shall continue in force and have effect as if made under this Act.

### **FORM A IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK JUDGMENT**

(The Discipline Committee or the Executive Council as the case may be} having on the day of \_\_\_\_\_ A.D. 19 \_\_, ordered that A.B. pay the costs of \_\_\_\_\_ on an investigation, proceeding, hearing or appeal of a complaint made by C. D. (or that C.D. pay the costs of \_\_\_\_\_ on an investigation, proceeding, hearing or appeal of a complaint made by the said C.D.); and

The costs including disbursements of {A.B. or C.D. or \_\_\_\_\_ as the case may be}, having been taxed by the Registrar of the Court of Queen's Bench of New Brunswick on the \_\_\_\_\_ day of \_\_\_\_\_, **A.D. 19 \_\_**;

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_

Registrar,  
The Court of Queen's  
Bench of  
New Brunswick

