

5 Stoneycroft Road
Quispamsis, NB E2E 4R1

27th December 2017

Board of Directors
New Brunswick Dental Society
520 King Street, HSBC Place #820
P.O. Box 488 Station "A"
Fredericton, NB E3B 4Z9

New Brunswick Dental Society – Providing for the Welfare of Members of the Public

Dear Board Members,

1. As you are well aware, the New Brunswick Dental Act of 1985 delegates regulation authority for dentistry to the New Brunswick Dental Society (NBDS). The Act states:

“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;”

2. The purpose of this letter is to inform you of my experience with the NBDS which generated a number of observations; these observations reveal NBDS practices that do not provide sufficiently for the welfare of the members of the public. The NBDS practices of concern are as follows:

- a. NBDS Complaints Process Shortcomings;
- b. Lack of Public Access to NBDS Standards of Practice/Guidelines/Practice Advisories;
- c. NBDS Inappropriate Definition of “direct supervision and control”; and
- d. Lack of NBDS Standardized Consent Form.

NBDS Complaint Process Shortcomings

3. I lodged a complaint dated 21 December 2015 against two dentists with the NBDS for professional misconduct. Both dentists were provided the opportunity to respond to my complaint. Complainants are not permitted to review the dentist’s response to the Complaint’s Committee. Complainants can access the dentist’s response after the fact using a lawyer; I exercised this course of action.

4. I observed/experienced the following shortcomings within the NBDS Complaints Process:

- a. mediation process was not documented;
- b. no NBDS regulations concerning the content of dentist responses;
- c. no investigation of the respondent dentists by the Complaints Committee;
- d. no transparency of dentist responses to the complainant;
- e. no rationale was provided by the Complaints Committee for their decision;
- f. lack of independence of the lay person;

Mediation Process Not Documented

5. The mediation process was not documented. Offers or lack of offers made during the mediation process are not documented and forwarded to the Complaint's Committee. The respondent dentists' were free to present mediation offers to the Complaint's Committee that were false.

No NBDS Regulations Concerning the Content of Dentist Response to a Complaint

6. Non-legible material was permitted as part of the dentist's response to the Complaints Committee; the respondent dentist was permitted to falsely inform the Complaint's Committee of the content of the non-legible material.

7. Violation of the complainant's privacy in contravention of PIPEDA is permitted as part of the dentist's response to the Complaint's Committee.

8. Hearsay evidence is permitted as part of the dentist's response to the Complaint's Committee.– An example of hearsay evidence is the use of another dentist's opinion which is not documented: The respondent dentist writes that Dentist "X" is of the opinion that I performed all the procedures properly with due diligence.

No Investigation of the Respondent Dentists by the Complaints Committee

9. Prevarication is to deliberately misstate or create a false impression. Prevarication is permitted as part of the dentist's response to the Complaint's Committee. A few simple questions from the Complaint's Committee to the respondent dentist would have uncovered the prevarication. The Committee conducted no investigation.

No Transparency of the Complaint's Process to the Complainant

10. Complainants are not permitted to review the dentist's response to the Complaint's Committee. Complainants can access the dentist's response after the fact using a lawyer. By then, a decision has already been made and the complainant does not have the opportunity to refute the dentist's claims.

11. In contrast, the Royal College Royal College of Dental Surgeons of Ontario (RCDSO) provides full transparency to both parties, complainant and dentist, at the complaints stage. On an ongoing basis throughout the course of the investigation of complaints, all documents obtained by the College are disclosed to both the complainant and the member. In addition, everything submitted by one party is disclosed to the other party and they are given an opportunity to respond. This comprehensive disclosure to both parties includes a copy of:

- a. letters of complaint and response submitted by the parties;
- b. notes of interviews;
- c. expert reports;
- d. dental records including the records of the member complained of and any other dental/ medical records obtained with the consent of the patient;
- e. financial and insurance records;
- f. all other documents obtained;
- g. the complete record of investigation that will be reviewed by the panel is provided to the parties at the end of the investigation.

12. Both parties are given the ongoing opportunity to comment on all documents during the course of the investigation.

No rationale was provided by the Complaints Committee for their Decision

13. The Complaints Committee decision was provided on 7 April 2016. There was no rationale for the decision provided by the Complaints Committee. In my case, the exact wording was “Having considered the materials before the Committee, including the Complaint and representations from the Respondent, the Complaints Committee recommends that this complaint be dismissed.”

14. After receiving the decision by the Complaints Committee, a search of the internet revealed the New Brunswick Dental Act of 1985; the Act is not on the NBDS website. Upon reading the Act, a search of the internet for NBDS by-laws revealed NBDS By-Law No. 17 Dental Assistants, which was found at the New Brunswick Dental Assistants’ Association website; no NBDS by-laws are provided on the NBDS website. I am assuming the NBDS By-laws No. 1-16 exist, and some of these by-laws are used as a reference in some manner by the Complaints Committee. Due to the lack of transparency, one is unable to determine whether or not the NBDS is failing to abide by their own bylaws.

15. I was offered the opportunity to appeal the Complaints Committee decision to the Board of Directors of the New Brunswick Dental Society within thirty days of the date on which notice of the said decision is mailed. It is difficult to contemplate an appeal within the thirty day window when there is no transparency. What would I have appealed?

Lack of Independence of the Lay Person

16. The lay person assigned to the Complaints Committee is selected by the NBDS; the selected lay person is not independent.

Lack of Public Access to NBDS Standards of Practice/Guidelines/Practice Advisories

17. At the NBDS website there are no NBDS standards of practice/guidelines/practice advisories; this circumstance does not sufficiently provide for the welfare of the public.

18. If the NBDS does not publicly provide standards of practice/guidelines/practice advisories (e.g. education, hands-on training, certification requirements, treatment procedures etc.) for the conduct of dental treatments, then in New Brunswick, how does a patient know if their dentist is competent to perform a complex dental procedure?

19. Other dental associations provide more information to the public so that patients can make informed decisions about what is routine dental work and what work should be performed by a specialist. For example, The Guidelines of the Royal College of Dental Surgeons of Ontario (RCDSO) contain practice parameters and standards which should be considered by all Ontario dentists in the care of their patients. It is important to note that these Guidelines may be used by the College or other bodies in determining whether appropriate standards of practice and professional responsibilities have been maintained.

20. Some examples of RCDSO guidelines are:

- a. Educational Requirements & Professional Responsibilities for Implant Dentistry;

- b. Dental Recordkeeping; and
- c. Diagnosis & Management of Temporomandibular Disorders & Related Musculoskeletal Disorders.

NBDS Inappropriate Definition of “Direct Supervision and Control”

21. Upon review of By-Law No. 17 Dental Assistants, I realized its definition of “Direct supervision and control” was a contributing factor of my original complaint.

22. NBDS By-Law No. 17 Dental Assistants’ definition of “Direct supervision and control” when used in this by-law shall mean that a dentist is present in the office or premises where the dental assistant is carrying out the duties, tasks and functions. In contrast, for the intra oral services permitted under the RCDSO Standards of Practice: The dentist assigning the duties is responsible for the performance of the assigned procedure. The assigning dentist must be present in the office suite while the service is being performed and ensure prior to the patient’s discharge that the procedure was performed safely and competently.

23. In New Brunswick a dentist claims direct supervision and control of a dental assistant but is not required to see the patient before or after the treatment. Clearly is it not in the best interests of a patient if the dentist never checks the work of the dental assistant.

No NBDS Standardized Dental Consent Forms

24. A patient’s consent is only considered “informed” if the patient has been sufficiently educated by his or her dental practitioner to enable him or her to make a reasoned choice whether to proceed with a particular dental procedure or treatment. In order for the patient to make a reasoned choice the dentist should include the prognosis, alternative goals and means of treatment, success and failure rates, benefits and material risks of the treatment, possible alternative treatments and consequences, and the risks of refusing the treatment.

25. It is understood that informed consent is not required for standard, straightforward dental procedures and treatment. However, informed consent is required for complex dental procedures and treatment. The RCDSO guideline titled Educational Requirements & Professional Responsibilities for Implant Dentistry provides definitions and examples of complex dental treatments, and the minimum corresponding dental education and experience required to conduct those treatments.

26. Dental consent forms in New Brunswick are deficient in the following areas:

- a. the NBDS has no standard for consent forms; the content of consent forms is left to the discretion of the dentist;
- b. consent forms are generic (one size fits all); these forms do not accurately describe the dental procedure and treatment to be performed;
- c. the consent form does not indicate if the proposed complex dental treatment was reviewed and confirmed by a specialist; and
- d. the consent form does not state the education and experience of the dentist who is to perform the complex dental procedure and treatment;

27. Consent forms provided by dentists who conduct “complex” procedures/treatments do not accurately quantify the risk to the patient; the dentist may not even have the minimum level of education and experience to conduct the complex dental procedure/treatment.

28. Below is an excerpt from a consent form used in New Brunswick which is supposed to inform the patient of the risk of their procedure:

“I have further been informed of the possible risks and complications involved with surgery, drugs, and anesthesia. Such complications include pain, swelling, infection and discoloration. Numbness of the lip, tongue, chin, cheek, or teeth may occur. The exact duration may not be determinable and may be irreversible. Also possible is inflammation of a vein, injury to teeth present, bone fractures, sinus penetration, delayed healing, allergic reactions to drugs or medications used, etc.”

Clearly the consent form excerpt above is for the protection of the dentist, not the protection of the patient.

29. Dental consent forms do not provide the comparative risk of the complex dental procedure and treatment undertaken by the general dentist providing the treatment versus a specialist. Physicians provide levels of risk when they present treatment options; the risk is based on the complexity of the case and competency of the physician.

Actions to Strengthen NBDS Ability to Provide for the Welfare of the Public

30. To fulfill its mandate of providing for the welfare of the public I recommend that the NBDS undertake the following actions:

- a. place the New Brunswick Dental Act of 1985 on the NBDS website;
- b. place all NBDS By-Laws on the NBDS website;
- c. modify the NBDS Complaints process to address the shortcomings described in this letter and publish the revised NBDS Complaints process on the NBDS website;
- d. adopt RCDSO standards of practice/guidelines/practice advisories and publish them on the website;
- e. develop definitions for “Straightforward” and “Complex” dental procedures and incorporate these definitions within NBDS standards of practice/guidelines/practice advisories which should be published on the website
- f. modify NBDS By-Law No. 17 Dental Assistants definition of “Direct supervision and control” to reflect the definition used by the RCDSO; and
- g. develop one or more standardized dental consent forms to address the dental consent form shortcomings described in this letter; the dental consent form should be for the protection of both the patient and the dentist.

Thank you for considering my recommendations. I look forward to your response.

Yours truly,

 Dec 27th, 2017
Bernice Miller
(506) 847-3589
johnmiller@nb.sympatico.ca

New Brunswick Dental Society Board of Directors

Chairman - Dr. Daniel Violette

President - Dr. Bob Hatheway

President Elect - Dr. Suzanne Drapeau-McNally

Vice-President - Dr. Joy Carmichael

Past President - Dr. Kirk Preston

Moncton Rep. - Dr. Kevin Ingham

Saint John Rep. - Dr. Joanah Campbell

Fredericton Rep. - Dr Matthew Moore

Upper Saint John Valley Rep. - Dr. Sebastien Dion

North Shore Rep. - Dr. Geraldine Breau

Assistants Rep. – Ms. Ronda Marr

Lay Representative – Ms. Andrea Stierle-MacNeill

Minister's Representative - Dr. Amber Andrews

CC:

Hon. Benoît Bourque

Minister of Health

HSBC Place

Floor: 5

P. O. Box 5100

Fredericton, NB

E3B 5G8

Mr. Blaine Higgs

Old Education Building, East Block

P. O. Box 6000

Fredericton, NB

E3B 5H1