9 March 2019

**Shortcomings of the New Brunswick Dental Society (NBDS) Complaint Process**

The New Brunswick Dental Society (NBDS) website address is shown below:

<https://www.nbdental.com/en/e-index.html>

The NBDS Complaint Process is based on the “Discipline” section of the New Brunswick Dental Act of 1985; the Dental Act is found at the link below:

<http://www.nbdental.com/documents/Act%20Respecting%20The%20New%20Brunswick%20Dental%20Society%201985.pdf>

The NBDS Complaint Process is provided at the link below:

<https://www.nbdental.com/en/e-complaint_process.html>

The Table below presents the NBDS Complaint Process in the left column, and corresponding commentary in the right column. The purpose of the commentary is to educate the potential Complainant on the undocumented business processes (shortcomings) within the NBDS Complaint Process which are the result of the antiquated New Brunswick Dental Act of 1985.

|  | **NBDS Complaint Process** | **Commentary on the NBDS Complaint Process** |
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| **1** | **Patient Expectations**  Patients have a right to expect a professional standard of care from their dentists, dental hygienists and dental assistants. If you are dissatisfied with the care you have received or have related concerns, you are well advised to request an explanation from your dentist and attempt to understand all the facts.  If you are not satisfied with the explanation you receive from your dentist, you may lodge a written complaint with the New Brunswick Dental Society. As the body responsible for regulating Dentists and Dental Assistants and protecting the public in matters related to dentistry, the New Brunswick Dental Society will investigate your complaint as required in our legislation and explained below.  Note: The New Brunswick Dental Society does not regulate hygienists and if there are formal complaints against dental hygienists, they can be addressed to the College of Dental Hygiene at 1-506-872-3133.  Further the New Brunswick Dental Society has no jurisdiction to address billing disputes and does not award compensation to patients in the same manner as the courts. Patients are advised to seek legal counsel to assist in determining rights with respect to billing disputes and civil actions. | **Patient Expectations (Commentary)** |
| **2** | **How would I make a Complaint?**  We recommend that you discuss your concerns with the Registrar prior to filing a formal complaint so that you fully understand our processes. Please call (506) 452-8575. In any event, should you wish to proceed with a complaint or legislation requires that a written, signed complaint must be submitted by mail to:  New Brunswick Dental Society  570 Queen Street, Suite 504  P.O. Box 488 Station “A”  Fredericton, NB  E3B 6Z6  Further We Suggest You Include:  • Your name, address and telephone number  • The name and address of the dentist involved  • The issues of your complaint (including dates where possible)  • The name and address of any and all other dentists you consulted  • Any dental records you may have in your possession    Written complaints are acknowledged in writing. | **How would I make a Complaint? (Commentary)**  The current NBDS Registrar is Mr. Daniel Leger, (506) 452-8575.  The Complainant has a significant challenge in writing a complaint which clearly identifies a shortcoming which falls under the jurisdiction of the NBDS. In order to write a complaint which falls under the jurisdiction of the NBDS the Complainant needs to know if the act and/or omission committed by the Defendant dentist contravenes a NBDS by-law, standard of care, dental regulation etc.?  The challenge is NBDS by-laws, standards of care, dental regulations etc. are not available on the NBDS website, and not available in hardcopy to the public (e.g. local library). One can make a request to the NBDS Registrar for a softcopy or hardcopy of the NBDS by-laws, standards of care, dental regulations etc.; however, in the past this request has been denied.  Despite the high probability of denial, the potential Complainant is encouraged to contact the NBDS Registrar and request a copy of all NBDS by-laws, standards of care, dental regulations etc.. The current NBDS Registrar is Mr. Daniel Leger, (506) 452-8575.  A less desirable option to obtain access to NBDS by-laws, standards of care, dental regulations is provided through, Paragraph 8, Page 13 of the New Brunswick Dental Act of 1985 which states the following:  *“Notwithstanding the Regulations Act, chapter R-7 of the Revised Statutes, 1973 the Society shall not be required to publish or file its bylaws or rules but all the bylaws and rules of the Society shall be available for inspection by any person at the head office of the Society at all reasonable times during business hours, free of charge.”*  If one lives in Fredericton or can make their way to Fredericton, one can peruse through the NBDS by-laws, standards of care, dental regulations etc. if the visit is pre-arranged with the Registrar.  A dentist must provide a patient a copy of their dental records upon request by the patient. The patient can pick the records up in person at the dental clinic or have the dental records mailed to the patient’s home address. It should not take more than five working days maximum for the dentist to action a request for the patient’s dental records. If the dentist is not cooperating in good faith, the patient should immediately contact the NBDS Registrar.  If you are considering submitting a complaint, it is recommended that you obtain a full copy of your dental records in order to review the content. It is highly probable that the content of your dental records will be supporting evidence for your complaint. |
| **3** | **How will my Complaint be handled?**  Once a written complaint is received, the Registrar forwards a copy to the dentist who is provided the opportunity to reply. The complaint and any reply from the dentist is forwarded to a local Mediation Panel, composed of three dentists. | **How will my Complaint be handled? (Commentary)**  The Head of the Mediation Panel will contact the Complainant in writing to introduce himself/herself. Further communications between the Head of the Mediation Panel and the Complainant will be by telephone (no E-mail). |
| **4** | **Mediation**  The Mediation Panel has 60 days to consider the complaint and to make a written recommendation to you and the dentist. The panel's role is to suggest a manner to resolve the complaint and its recommendations are non-binding. | **Mediation (Commentary)**  The Head of the Mediation Panel will act as intermediary between the Complainant and the Defendant Dentist, and will attempt to find a mutually agreeable solution for both parties. If there is no mutually agreeable solution, the Head of the Mediation Panel will notify both parties in writing and forward the complaint to the Complaints Committee.  It is recommended that the Complainant make notes/records of the telephone conversations with the Head of the Mediation Panel. If the complaint is subsequently forward to the Complaints Committee, the Complainant’s notes should be forwarded to the Registrar as supplementary information to the original complaint. The rationale for this recommended course of action will be explained later on in the commentary on the NBDS Complaint Process. |
| **5** | **Complaints**  If either you or the dentist disagrees with the Mediation Panel's recommendations, the complaint will be forwarded to Complaints Committee for further investigation. The Mediation Panel may also forward the complaint to the Complaints Committee at any time in its discretion.  The Complaints Committee consists of two dentists and a member of the public. This Committee will only consider written evidence but may request additional information in writing from you to assist it in its deliberations. The Committee makes a recommendation to either refer the matter to the Discipline Committee, or to dismiss the complaint. | **Complaints (Commentary)**  The Chairman of the Complaints Committee will inform the Complainant in writing that complaint has been received and invite the Complainant to send further information for the Complaints Committee consideration.  The Complaints Committee will invite the Defendant dentist to provide a written response to the complaint and supplemental complaint information. The Complaints Committee will review the complaint/supplemental information and the Defendant dentist’s response and render a decision.  If the Complaints Committee rules against the Complainant, the Complainant will receive a one page letter stating “**Having considered the materials before the Committee, including the Complaint and representations from the Respondent, the Complaints Committee recommends that this complaint be dismissed.**” There will be no rationale included in the letter to substantiate the reason for the Complaints Committee decision.  The probability of a Complainant receiving a positive decision from the Complaints Committee is extremely low due to following shortcomings within the NBDS Complaint Process:  a. mediation process is not documented;  b. no NBDS regulation concerning the content of Defendant dentist responses;  c. no investigation of the veracity of the response from the Defendant dentist by the Complaints Committee;  d. no transparency of Defendant dentist’s response to the complaint;  e. no rational is provided by the Complaints Committee for their decision;  f. lack of independence of the lay person.  **Mediation Process Not Documented**  The mediation process is not documented. Offers or lack of offers made during the mediation process by either party is not documented and forwarded to the Complaints Committee. The Defendant dentist in his response to Complaints Committee is free to present mediation offers made by himself or the Plaintiff that are false.  **No NBDS Regulations Concerning the Content of Defendant Dentist Response to a Complaint**  Non-legible material is permitted as part of the Defendant dentist’s response to the Complaints Committee; the Defendant dentist is permitted to falsely inform the Complaints Committee of the content of the non-legible material.  Violation of the complainant’s privacy in contravention of PIPEDA is permitted as part of the Defendant dentist’s response to the Complaints Committee.  Hearsay evidence is permitted as part of the Defendant dentist’s response to the Complaints 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.  The Defendant dentist is permitted to question the motivations and character of the Complainant in their response to the Complaints Committee.  **No Investigation of the Respondent Dentists by the Complaints Committee**  The Complaints Committee conducts no investigation; they accept the Defendant dentist’s response as fact.  **No Transparency of the Complaint Process to the Complainant**  The Complainant is not permitted to review the Defendant dentist’s response to the Complaints Committee. Complainants can only access the Defendant dentist’s response to the complaint after a Complaints Committee decision is made. Access requires the Complainant hiring a lawyer to obtain the Defendant dentist’s response. As the Complaints Committee decision has already been made, Complainant does not have the opportunity to refute the Defendant dentist’s response.  In contrast to the NBDS, 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.  **No rational is provided by the Complaints Committee for their Decision**  There will be no rationale provided by the Complaints Committee to substantiate a negative decision for the Complainant. Due to the lack of transparency, one is unable to determine whether or not the NBDS is failing to abide by their own bylaws.  **Lack of Independence of the Lay Person**  The lay person assigned to the Complaints Committee is selected by the NBDS; the selected lay person is not independent.  **Public Records**  There are no public records of the NBDS ever disciplining a dentist for professional misconduct. |
| **6** | **Appeal of Complaints Committee Decision**  If dissatisfied with the decision of the Complaints Committee, you have 30 days to appeal any its decision to the Board of Directors of the New Brunswick Dental Society. | **Appeal of Complaints Committee Decision (Commentary)**  The NBDS Registrar will offer the Complainant 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. The Board of Directors will order security for costs to be paid to the Society prior to the appeal. The Complainant will need to pay $4,000-$6,000 to cover the Board’s expenses which are non-refundable. It is difficult to contemplate an appeal within the thirty day window when there is no transparency to the Complaints process. What aspect of the Complaints Committee decision would the Complainant appeal? |
| **7** | **Discipline Committee**  The Discipline Committee is composed of 2 dentists and a public member. These are individuals not otherwise involved in the Society process or the Board. The hearings themselves are conducted much like a trial, with evidence taken under oath, full disclosure of documents and full cross-examination of witnesses.  The Committee may determine matters of professional misconduct or incompetence and determine penalties or other measures which may include one or more of the following: revocation of license, suspension of license, fine, or reprimand. Various conditions may also be imposed. Both you and the dentist have the right to appeal any decision of the Discipline Committee to the Board of Directors within 30 days.  For greater clarity the Discipline Committee has no authority to award damages to you, for example pain and suffering, and is only concerned with determining if your complaint constitutes professional misconduct or incompetence and how that will be remedied. Awards of damages are within the jurisdiction of the Courts. | **Discipline Committee (Commentary)**  There are no public records of the NBDS ever disciplining a dentist. |