



BILL NO. 24

Government Bill

*2nd Session, 60th General Assembly
Nova Scotia
56 Elizabeth II, 2007*

An Act Respecting Dental Hygienists

CHAPTER 29
ACTS OF 2007

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
DECEMBER 13, 2007**

The Honourable Chris A. d'Entremont
Minister of Health

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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An Act Respecting Dental Hygienists

Be it enacted by the Governor and Assembly as follows:

1 This Act may be cited as the *Dental Hygienists Act*.

2 In this Act,

(a) “accredited dental hygiene program” means either a diploma, baccalaureate or masters-level dental-hygiene program that, at the date of graduation by an applicant for registration, had been accredited by the Commission on Dental Accreditation of Canada or the Commission on Dental Accreditation of the American Dental Association;

(b) “by-law” means a by-law of the College;

(c) “caution”, in the context of the powers of the Investigation Committee, is not a disciplinary finding, and means a determination that a member has breached the standards of professional ethics or practice expected of members in circumstances that do not constitute professional misconduct, conduct unbecoming the profession or incompetence;

(d) “client” means the recipient of dental-hygiene procedures and services;

(e) “College” means the College of Dental Hygienists of Nova Scotia;

(f) “complaint” means any complaint, report or allegation, in writing and signed by a person, regarding the conduct, actions, competence, character, fitness, health or ability of a member, former member, professional corporation or the employees thereof, or any similar complaint, report or allegation initiated by the Registrar or referred pursuant to Section 39;

(g) “conduct unbecoming the profession” means conduct in a member’s personal or private capacity that tends to bring discredit upon the profession of dental hygiene;

(h) “Council” means the Council of the College as constituted under Section 8;

(i) “counsel”, in the context of the powers of the Investigation Committee, is not a disciplinary finding, and means a determination that a member could benefit from professional guidance from the College with regard to the subject-matter of the complaint in circumstances that do not constitute professional misconduct, conduct unbecoming the profession or incompetence;

(j) “Court” means the Supreme Court of Nova Scotia;

(k) “Credentials Committee” means the committee appointed by Council that deals with the registration and licensing of members, applicants for registration and such other matters as provided by the regulations;

(l) “dental corporation” means a corporation engaging in the practice of dentistry under the *Dental Act*;

(m) “dental hygienist” means a person whose name appears in the Register and who is licensed to practise dental hygiene pursuant to this Act;

(n) “dentist” means a person who is licensed to practise dentistry pursuant to the *Dental Act*;

(o) “discipline committee” means the Investigation Committee or the Hearing Committee;

(p) “disciplinary matter” means any matter involving allegations of professional misconduct, conduct unbecoming a dental hygienist, incompetence or incapacity;

(q) “good standing” means that the member holds a current practising licence and is not subject to any disciplinary finding that would prohibit or restrict the practice of dental hygiene;

(r) “Hearing Committee” means the Hearing Committee appointed pursuant to this Act;

(s) “incapacity” means the status whereby a member, at the time of the subject-matter of a complaint suffered from a medical, physical, mental or emotional condition, disorder or addiction that rendered the member unable to practise with reasonable skill or judgement or that may have endangered the health or safety of clients;

(t) “incompetence” means a display of lack of knowledge, skill or judgement in the member’s care of a client or the delivery of dental hygiene services that, having regard to all of the circumstances, rendered the member unsafe to practise at the time of such care of the client or delivery of services or that render the member unsafe to continue in practice without remedial assistance;

(u) “independent practice setting” means a setting where a dental hygienist engages at any time in the self-directed clinical practice of dental hygiene;

(v) “individual scope of practice” means the roles, functions and accountabilities that an individual is educated and authorized to perform;

(w) “Investigation Committee” means the Investigation Committee appointed pursuant to this Act;

(x) “licence” means a valid and subsisting licence issued pursuant to this Act;

(y) “licensing sanction” means

(i) the imposition of conditions or restrictions on a licence by the Investigation Committee or the Hearing Committee or their equivalent in another jurisdiction,

(ii) a consent reprimand ordered by the Investigation Committee or its equivalent in another jurisdiction,

(iii) a reprimand issued by the Hearing Committee or its equivalent in another jurisdiction,

(iv) a suspension of a licence by the Investigation Committee or the Hearing Committee or its equivalent in another jurisdiction, or

(v) a revocation of registration or licence by the Hearing Committee or its equivalent in another jurisdiction;

(z) “member” means a person who is registered in the Register;

(aa) "party" means the College or the person who is the subject of a complaint, as the context requires;

(ab) “permit” means a permit issued to a professional corporation pursuant to this Act;

- (ac) “physician” means a person who is licensed to practise medicine pursuant to the *Medical Act*;
- (ad) “practice of dental hygiene” means those activities set out in Section 22;
- (ae) “practising licence” means a licence issued pursuant to this Act and the regulations that authorizes a dental hygienist to engage in the practice of dental hygiene;
- (af) “profession” means the profession of dental hygiene;
- (ag) “professional corporation” means a company incorporated pursuant to the *Companies Act* and this Act for the purpose of exclusively carrying on the practice of dental hygiene;
- (ah) “professional misconduct” includes such conduct or acts relevant to the practice of dental hygiene that, having regard to all of the circumstances would reasonably be regarded as disgraceful, dishonourable or unprofessional and, without limiting the generality of the foregoing, includes
- (i) failing to maintain the standards of practice for the profession, or
 - (ii) failing to uphold the Code of Ethics adopted by the College;
- (ai) “provisional licence” means a temporary licence that authorizes the holder of the licence to engage in the practice of dental hygiene subject to the conditions, limitations or restrictions set out in Section 18;
- (aj) “Register” means the Register of the College kept pursuant to this Act;
- (ak) “registered” means registered pursuant to this Act;
- (al) “Registrar” means the person holding the office of Registrar pursuant to this Act.

3 The words “dental hygienist” or any like words or expressions implying a person recognized by law as a dental hygienist in the Province, when used in any regulation, rule, order or by-law made pursuant to an Act of the Legislature enacted or made before, at or after the coming into force of this Act, or when used in any public document, includes a person registered in the Register who holds a licence.

COLLEGE OF DENTAL HYGIENISTS OF NOVA SCOTIA

4 The College of Dental Hygienists of Nova Scotia is incorporated as a body corporate, is composed of its members and, subject to this Act, has the capacity and powers of a natural person.

5 (1) In order that the public interest may be served and protected, the objects of the College are to

- (a) regulate the profession of dental hygiene through
 - (i) the registration, licensing and disciplinary processes established pursuant to this Act and the regulations,
 - (ii) establishing, maintaining and developing standards of practice for members,

(iii) establishing, maintaining and developing standards of professional ethics for members, and

(iv) establishing, maintaining and developing standards for the education, knowledge, qualifications, professional responsibility and competence of its members and applicants for membership;

(b) subject to clause (a), advance and promote the profession of dental hygiene;

(c) administer this Act and perform such other duties and exercise such other powers as are imposed or conferred on the College by this Act or the regulations; and

(d) do such other lawful acts and things as are incidental to the attainment of the objects referred to in clauses (a) to (c).

(2) The head office of the College must be in the Province at a location determined from time to time by the Council.

(3) The College has perpetual succession and a common seal, with power to acquire, hold, lease, mortgage and otherwise dispose of real and personal property, and may sue and be sued.

(4) In addition to any other power conferred by this or any other Act, the College may do such things as it considers appropriate to advance the objects of the College and, without limiting the generality of the foregoing, may

(a) purchase, take in, lease, exchange, hire, construct and otherwise acquire and hold, sell, mortgage, hypothecate, lease out or otherwise deal with any real or personal property;

(b) draw, make, accept, endorse, discount and execute any promissory notes, bills of exchange, warrants and other negotiable and transferable instruments;

(c) engage such agents and employees as it, from time to time, deems expedient;

(d) expend the monies of the College in the advancement of its objects and the interests of the profession of dental hygiene in such manner as it deems expedient;

(e) establish and maintain such offices and agencies as it deems expedient;

(f) invest and deal with any moneys and funds of the College that are not immediately required, in such manner as it deems expedient;

(g) improve, manage, develop, exchange, dispose of, turn to account or otherwise deal with the real or personal property of the College;

(h) borrow money for the use of the College on its credit, limit or increase the amount to be borrowed, issue bonds, debentures, debenture stock and other securities on the credit of the College and pledge or sell such securities for such sums or at such prices as may be deemed expedient;

(i) secure the repayment of money borrowed, in such manner and upon such terms and conditions as it considers fit, and, in particular, by the execution and deliv-

ery of mortgages of all or any part of the real or personal property of the College, both present and future; and

(j) do such things as are incidental or necessary to the exercise of the powers referred to in clauses (a) to (i).

6 (1) There shall be an annual meeting of the College at such time and place as determined by the Council.

(2) An annual report must be distributed at or before the annual meeting for review by the membership, and shall include a report by an auditor approved by the Council.

COUNCIL

7 (1) There shall be a Council of the College to be constituted as provided in Section 8.

(2) The Council shall set fees payable pursuant to this Act by applicants and members and may set different fees for different classes of membership.

(3) The Council shall, subject to this Act, govern, control and administer the affairs of the College and, without limiting the generality of the foregoing, may make by-laws

(a) providing for the management of the College, including the keeping of the Registers to be kept pursuant to this Act;

(b) providing for the holding of annual and special meetings of the College and regular meetings of the Council, quorum requirements and the conduct and content of such meetings;

(c) fixing the time and place for regular meetings of the Council, determining by whom meetings may be called, regulating the conduct of meetings, providing for emergency meetings and regulating the notice required in respect of meetings;

(d) providing for the appointment of such committees as the Council deems expedient;

(e) respecting the composition, powers and duties of such committees as may be appointed by the Council, and providing for the holding and conduct of meetings of such committees;

(f) respecting the powers, duties and qualifications of the Registrar and the officers, agents and employees of the College;

(g) respecting the fees and allowances of members of the Council and committees and providing for the payment of necessary expenses of the Council and committees;

(h) prescribing the seal of the College;

(i) providing for the execution of documents by the College;

(j) respecting the books, records and accounts to be kept by members and professional corporations with respect to their practice, and providing for the production, inspection and examination of such books, records and accounts;

- (k) respecting the approval of forms and providing for their use;
- (l) providing procedures not inconsistent with this Act for the making, amending and revoking of by-laws;
- (m) respecting the information to be included in the Register;
- (n) respecting the process for approving standards of practice and a code of ethical conduct for members;
- (o) governing elections of members of the Council;
- (p) establishing the minimum number of meetings of the Council in each calendar year;
- (q) prescribing the manner in which resolutions are forwarded to the Council;
- (r) prescribing the roles of the Chair and Chair-elect of the Council.

(4) The Council may, with the approval of the Governor in Council and subject to this Act, make regulations

- (a) respecting registration and licensing, including the establishment of different classes of applicants and members and respecting the rights, privileges, qualifications and obligations of the persons in those classes and respecting the conditions for the entry and maintenance of such person's names in those classes;
- (b) respecting the limiting or qualifying of a member's licence including, but not limited to, procedures and interventions;
- (c) respecting the evaluation of, and licensing requirements of, members and applicants for registration who have not practised dental hygiene for such minimum period of time as specified by regulation;
- (d) respecting a quality assurance program, including requirements for members to participate in any such program, and including continuing education requirements or practice-hour requirements of members for registration or licensing;
- (e) respecting practices included or excluded within the meaning of the practice of dental hygiene pursuant to Section 22;
- (f) respecting requirements required to practise in an independent practice setting;
- (g) prescribing the contra-indications to a member performing or continuing to engage in the scaling of teeth and root planing, including curetting of surrounding tissue;
- (h) prescribing requirements for the practice of dental hygiene, which requirements may include the educational and experiential qualifications that must be obtained in order for a member to engage in the scaling of teeth and root planing, including curetting of surrounding tissue, on the member's own initiative;
- (i) respecting the reporting and publication of decisions in disciplinary matters;
- (j) providing that the licence of a member be suspended, without notice or investigation, upon contravention of any regulation or provision of this Act that

requires the member to pay a fee, file a document or do any other specified act, and providing for the re-instatement of a licence so suspended;

(k) respecting the type of professional liability insurance or other form of malpractice insurance coverage a member must hold;

(l) providing that the permit of a professional corporation is suspended without notice or investigation, upon contravention of any regulation that requires the corporation to pay a fee or assessment, file a document or do any other specified act, and providing for the re-instatement of a permit so suspended;

(m) providing for the re-instatement or re-issuance of any licence or permit suspended or revoked pursuant to this Act, and establishing the terms and conditions upon which re-instatement or re-issuance of a licence or permit may be granted;

(n) providing for the creation of a speciality register and matters related to it;

(o) providing criteria for advertising services of dental hygienists and their professional corporations;

(p) providing for the creation and maintenance of a register of professional corporations;

(q) providing for the filing of periodic returns by professional corporations;

(r) respecting the types of names and business names by which the following may be known:

(i) a member as a sole practitioner or member of a dental hygiene practice,

(ii) a professional corporation,

(iii) a partnership with one or more dental hygienists,

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

(v) a partnership of one or more professional corporations and one or more individual dental hygienists;

(s) respecting access to the records of a professional corporation by the Registrar;

(t) respecting the duties of a custodian appointed under Section 30 and the setting of the minimum amount of time required to pass before the College can destroy records;

(u) defining any word or expression used but not defined in this Act;

(v) further defining any word or expression defined in this Act;

(w) respecting and governing such other subjects, matters and things as may be required to give effect to the objects of the College and this Act.

(5) All regulations of the College must be available for inspection by any person, free of charge, at the head office of the College at all reasonable times during business hours.

(6) A certificate purporting to be signed by the Registrar, stating that a certain regulation of the College was, on a specified day or during a specified period, a duly enacted regula-

tion of the College, in full force and effect, constitutes *prima facie* evidence in any court of that fact, without proof that the person who signed it is the Registrar or that it is the Registrar's signature.

(7) No regulation pursuant to clause (4)(e), (f), (g) or (h) shall be forwarded for consideration to the Governor in Council, unless the College has first consulted with the Provincial Dental Board and the Nova Scotia Dental Association, and has provided the feedback from such consultation to the Governor in Council.

(8) A member of the Council, or of a committee of the Council or the College, may participate in any meeting of the Council, or committee of the Council or the College, with the exception of the Hearing Committee when it is conducting a hearing, as the case may be, by telephone or other communications facilities that permit all persons participating in a meeting to communicate with each other, and a member participating in a meeting by such means is deemed to be present at the meeting.

(9) A meeting of the Council or of a committee of the Council, with the exception of the Hearing Committee when it is conducting a hearing or of the College, may be held by conference telephone call or other communications facilities that permit all persons participating in the meeting to communicate with each other, and all members participating in the meeting by such means are deemed to have been present at the meeting.

(10) Where ten per cent or more of the membership of the College request in writing, whether by petition or otherwise, that a special general meeting be held, the Council shall hold such meeting within fifteen working days of determining that ten per cent or more of the members have requested such a meeting.

8 (1) The Council consists of

- (a) not less than nine and not more than thirteen members of the College, elected in the manner provided by this Act and the by-laws; and
- (b) three persons appointed by the Governor in Council, who are not
 - (i) now or formerly dental hygienists,
 - (ii) the immediate past Chair of the College, or
 - (iii) persons regulated by the *Dental Act*.

(2) Members of the Council shall be elected or appointed to office for a term of two years.

(3) Notwithstanding subsection (2), the terms of office of members of the Council upon the first election or appointment of members of the Council following the coming into force of this Act must be staggered as follows:

- (a) four members of the College shall serve for a term of three years, as determined by the Council following such election;
- (b) of the three persons appointed by the Governor in Council, one shall serve for a term of two years and two for a term of three years, as determined by the Governor in Council; and

(c) the remaining members of the College shall serve for a term of two years.

(4) Notwithstanding subsections (2) and (3), persons appointed by the Governor in Council hold office until such time as they are re-appointed, or until their successors are appointed, even if such appointment or re-appointment does not occur until after their specified term of office has expired.

(5) Notwithstanding subsection (1), on the coming into force of this Act, the persons who serve on the Board of Directors of the Nova Scotia Dental Hygienists' Association constitute the Council, until the election or appointment of members pursuant to subsection (3).

(6) Upon the coming into force of this Act, all assets and liabilities of the Nova Scotia Dental Hygienists' Association are transferred to the College and the Nova Scotia Dental Hygienists' Association is dissolved.

(7) Elections required by this Section must be held no later than six months after the coming into force of this Act.

(8) Only members who are licensed and in good standing with the College are eligible to be nominated as and vote for a candidate for membership on the Council.

(9) Notwithstanding subsection (8), for the purpose of the first election under this Act, persons who are licensed dental hygienists in good standing under the *Dental Act* immediately before the coming into force of this Act are eligible to be nominated as and vote for a candidate for membership on the Council.

9 (1) In this Section, “consecutive” means that twelve months or less occurred between the end of one term and the commencement of the next.

(2) Elected or appointed members of the Council shall not be members of the Council for more than six consecutive years.

10 (1) The Registrar

(a) in case of failure in an election to elect the required number of duly qualified members of the Council; or

(b) in case of a vacancy occurring from the death or resignation of a member of the Council, or from any other cause,

shall cause an election to be held within sixty days for the purpose of filling the vacancy.

(2) Notwithstanding subsection (1), where a vacancy occurs for any reason within six months before the date of an election of members of the Council, the vacancy must be filled at such election.

(3) Where an election is held pursuant to subsection (1) to fill a vacant Council position, the term of office for the vacant Council position is the remainder of the unexpired term of such position.

11 An elected member of the Council ceases to hold office if

- (a) the member resigns by notice in writing delivered to the Registrar;
- (b) the member ceases to be a member in good standing of the College, as defined in the regulations; or
- (c) the member is absent from three consecutive meetings of the Council, unless excused by the Council.

12 (1) The Council shall elect annually from its members a Chair, a Vice-chair and two members at large, who constitute the Executive Committee.

- (2) The Executive Committee
 - (a) may exercise all of the powers; and
 - (b) shall perform all the duties,

of the Council with respect to any matters that the Council may delegate to it or that, in the reasonable opinion of the Executive Committee, require urgent and immediate attention.

(3) The exercise of such powers or performance of such duties not specifically delegated by the Council to the Executive Committee must be reported to the Council at its next scheduled meeting.

(4) The Council shall appoint a Registrar, who holds office during the pleasure of the Council, at such salary or other remuneration, and upon such terms and conditions of employment, as the Council determines.

(5) The Council may appoint an Acting Registrar who shall exercise the powers and duties of the Registrar in the event of the death, incapacity or unavailability of the Registrar.

(6) The Council may appoint such other officers, agents or employees, upon such terms and conditions as the Council considers appropriate, to assist in the carrying out of the duties pursuant to this Act.

13 (1) The Council may appoint annually such committees of the Council, or the College, as the Council considers appropriate in carrying out duties pursuant to this Act.

(2) The Council shall appoint a Credentials Committee, consisting of such number of members as determined by Council.

(3) The Credentials Committee shall carry out such functions as are prescribed by this Act, the regulations and the by-laws.

REGISTRATION

14 (1) The Council shall keep a Register in which the names of those persons who qualify for registration pursuant to this Act and the regulations are recorded.

- (2) The Register must include the information required by the by-laws.

(3) The name of every person who, at the coming into force of this Act, is a registered dental hygienist pursuant to the *Dental Act*, must be entered in the Register, but must continue under any stipulations or limitations attached to the person's previous registration.

15 The Registrar shall enter in the Register the name, address and qualifications of any person who

- (a) satisfies the Registrar that the person possesses the qualifications required in the regulations for registration in the Register; and
- (b) complies with this Act and the regulations and any conditions imposed by the Registrar.

16 (1) Where the Registrar is not satisfied with the evidence presented by a person applying for registration, the Registrar may or, where the applicant so requests in writing, shall refer the matter to the Credentials Committee.

(2) Upon a referral pursuant to subsection (1), the Credentials Committee, following consultation with the Registrar, shall consider the eligibility of the applicant and may make such inquiries or demand such further information as the Committee sees fit, and the Committee shall consider the application in accordance with this Act.

(3) Where the person requests the opportunity to appear before the Credentials Committee, this request must be granted.

(4) Where the Credentials Committee considers a matter pursuant to subsection (1), the Committee may determine that the application for registration be approved, or determine that the application for registration be refused.

(5) The decision of the Credentials Committee is final.

LICENSING

17 (1) The Registrar shall issue a practising licence to every person who, immediately before the coming into force of this Act, is a registered dental hygienist pursuant to the *Dental Act* and is in possession of a valid annual licence.

(2) Every licence issued pursuant to subsection (1) is subject to any conditions or limitations attached to the registration or licence pursuant to the *Dental Act*.

(3) The Registrar shall issue a licence to an applicant for an initial licence or a renewal of licence if

- (a) the applicant's name is recorded in the Register;
- (b) the applicant satisfies the Registrar that the person possesses the qualifications required in the regulations for licensing; and
- (c) the applicant complies with this Act and the regulations and any conditions imposed by the Registrar.

(4) Where the Registrar is not satisfied with the evidence presented by a person applying for a licence or the renewal of a licence, the Registrar may or, where the applicant so requests in writing, shall refer the matter to the Credentials Committee.

(5) Upon a referral pursuant to subsection (4), the Credentials Committee, following consultation with the Registrar, shall consider the eligibility of the applicant and may make such inquiries or demand such further information as the Committee sees fit, and the Committee shall consider the application in accordance with this Act.

(6) Where the person requests the opportunity to appear before the Credentials Committee, this request must be granted.

(7) Where the Credentials Committee considers a matter pursuant to subsection (5), and where the Credentials Committee refuses the licence of the applicant, the applicant may request the opportunity to appear before the next scheduled meeting of the Council, with or without legal counsel, at which meeting the Council shall consider the application in accordance with this Act.

(8) No member of the Council who considered the application pursuant to subsection (5) shall participate in the Council's consideration of the application.

(9) After hearing the applicant and the Registrar, the Council may

(a) direct the Registrar to issue to the applicant a practising licence or a provisional licence;

(b) direct the Registrar to issue to the applicant a practising licence or a provisional licence subject to such conditions, limitations or restrictions as the Council considers appropriate;

(c) adjourn further consideration of the application pending completion by the applicant of such training, upgrading, clinical examinations or other examinations as the Council may designate; or

(d) direct the Registrar to refuse the application.

18 (1) Where

(a) a person is temporarily unable to provide written confirmation of a requirement for registration or licensing but such confirmation will be available within a reasonable period of time in the opinion of the Registrar, and the Registrar is able to verify the information through some other acceptable means;

(b) a person is registered or licensed to practise dental hygiene in another jurisdiction and plans to engage in the practice of dental hygiene in the Province for a limited period of time; or

(c) for such other reasons as the Registrar deems appropriate,

the Registrar, upon payment of the fee determined by Council, may approve, with or without limitations, or refuse an application for a provisional licence.

(2) A provisional licence issued pursuant to subsection (1) must

(a) be issued for a specified period of time, not to exceed six months in total; and

(b) set out any restriction on the practice of dental hygiene that applies to the provisional-licence holder.

(3) The College shall maintain a Record of Provisional Licences.

19 Every member shall pay to the Registrar, or such person as the Registrar designates,

(a) at the time that the member is registered, such fees as are approved by Council; and

(b) on or before a date or dates established by the Council in each year thereafter, the annual licensing fees approved by Council.

20 The Registrar shall, at all reasonable times, make available for inspection by any persons a record showing

(a) the names of those persons who are registered in the Register and who hold a practising licence;

(b) any conditions or restrictions on a person's licence imposed pursuant to this Act, if the Registrar determines it is in the public interest to have such conditions or restrictions available to the public; and

(c) any licensing sanctions imposed on a member that are not otherwise subject to a publication ban.

21 (1) The Registrar shall cause the removal of the name of a person from the Register

(a) at the request of the member, upon surrendering any licence held by the member;

(b) if the member's name has been incorrectly entered;

(c) if notification is received of the member's death;

(d) if the registration of the member has been revoked.

(2) Where a member ceases to be a member for any reason or a person ceases to be registered or licensed for any reason, such person remains subject to the jurisdiction of the College in respect of any disciplinary matter arising out of the person's conduct while a member or while registered.

SCOPE OF PRACTICE

22 (1) The practice of dental hygiene means the application of professional dental hygiene knowledge for the purpose of providing therapeutic, preventative and maintenance services and programs for the promotion of optimal oral health and, without limiting the generality of the foregoing,

(a) includes assessment for dental hygiene services, the planning of dental hygiene interventions to prevent oral disease and the evaluation of the progress and

results of dental hygiene interventions and services, oral health practices and behaviours;

- (b) includes such practices as prescribed in this Act or the regulations; and
- (c) excludes such practices as prescribed in this Act or the regulations.

(2) Where appropriate in the practice of dental hygiene, a dental hygienist collaborates with other health professionals for the provision of oral health services, health education and health promotion in order to integrate preventive oral health care into general preventative care.

(3) As part of the practice of dental hygiene, a dental hygienist may act as a researcher, clinician, consultant, administrator, manager, educator or health promoter.

23 (1) A dental hygienist may engage in the practice of dental hygiene subject to the conditions, limitations or restrictions imposed on the member's licence and in accordance with the regulations, and may perform the practice of dental hygiene

- (a) on the member's own initiative, if the practice does not involve the scaling of teeth and root planing, including curetting of surrounding tissue;
- (b) on the member's own initiative if the practice does involve the scaling of teeth and root planing, including curetting of surrounding tissue, if none of the contraindications prescribed in the regulations to performing the procedure are present and if the member ceases the procedure when any of the prescribed contraindications to continuing the procedure are present; or
- (c) if the procedure is ordered by a dentist licensed by the Provincial Dental Board of Nova Scotia.

(2) A dental hygienist shall only engage in the practice of dental hygiene to the extent that the practice is within the member's individual scope of practice.

PROHIBITIONS

24 (1) No person shall

- (a) engage in the practice of dental hygiene;
- (b) publicly or privately, for hire, gain or reward, practise or offer to practise dental hygiene;
- (c) hold himself or herself out in any way to be entitled to practise dental hygiene; or
- (d) assume any title or description implying or designed to lead the public to believe the person is entitled to practise dental hygiene,

unless that person

- (e) holds a current practising licence and that person's name is entered in the Register;
- (f) holds a provisional licence;

(g) is a student enrolled in an accredited dental hygiene program and is authorized by the administrators of the program to engage in the practice of dental hygiene as part of the program; or

(h) is permitted to engage in the practice of dental hygiene as otherwise provided in this Act or the regulations.

(2) No person shall take or use the designation “dental hygienist”, “registered dental hygienist”, “D.H.”, “R.D.H.”, or any derivation or any abbreviation thereof, in the Province, either alone or in combination with other words, letters or description to infer that the person is entitled to practise as a dental hygienist, unless the person is entitled to engage in the practice of dental hygiene pursuant to clause (1)(e) or (h).

(3) No person, except a licensed dentist or dental corporation pursuant to the *Dental Act* or a person or professional corporation authorized to engage in the practice of dental hygiene pursuant to this Act, is entitled to receive a fee, reward, payment or remuneration of any kind for services rendered to any person, as would constitute the practice of dental hygiene.

25 (1) A person licensed pursuant to this Act who practises dental hygiene in violation of any condition or limitation contained in the person's licence is guilty of an offence.

(2) A person who practises dental hygiene

(a) while the person's licence is suspended or revoked;

(b) without a licence;

(c) in violation of any restrictions placed on the person's licence; or

(d) without otherwise being authorized to practise dental hygiene pursuant to this Act or the regulations,

is guilty of an offence.

26 (1) A member of the College who holds a licence, or who is applying for a licence with the College, shall immediately advise the Registrar in the event that such person ceases to be a member in good standing of another jurisdiction in which the person is practising, or has been subjected to any restriction on a licence in another jurisdiction or has been found guilty of any disciplinary matter in another jurisdiction.

(2) A member who fails to notify the Registrar pursuant to subsection (1) is guilty of an offence.

27 A person who knowingly furnishes false information in an application pursuant to this Act, or in any statement or return required to be furnished pursuant to this Act or the regulations, is guilty of an offence.

28 (1) In a prosecution for an offence contrary to this Act or the regulations, the onus of proof that a person accused of an offence has the right to practise dental hygiene, or that a person comes within any of the exemptions provided by this Act, is on the person accused.

(2) Where a violation of this Act or the regulations by a person who does not have the right to practise dental hygiene continues for more than one day, the offender is guilty of a separate offence for each day that the violation continues.

(3) For the purpose of this Act, proof of the performance of one act in the practice of dental hygiene on one occasion is sufficient to establish that a person has engaged in the practice of dental hygiene.

29 (1) A person who violates this Act or the regulations is guilty of an offence and liable on summary conviction to a fine of not more than two thousand dollars or to imprisonment for a term of not more than six months, or to both.

(2) The *Summary Proceedings Act* applies in addition to any penalty otherwise provided for in this Act or the regulations.

(3) All fines and penalties payable under this Act, as a result of a prosecution by or on behalf of the College, belong to the College.

(4) Any information to be laid pursuant to this Act may be laid by the Registrar or any member of the College authorized by the Council.

CLIENT RECORDS

30 (1) In this Section, “client records” includes all documents, charts, radiographs, photographic film or any other form of record relating to the clients of a member except that

(a) where the member is in an employment relationship with a dentist or dental corporation, the employer is deemed to own the client records unless otherwise varied by agreement between the parties; and

(b) where the member is in a contractual relationship with a dentist or dental corporation to provide dental hygiene services to clients of the dentist or dental corporation, the client records of those clients of the dentist or dental corporation are owned by the dentist or dental corporation unless otherwise varied by agreement between the parties.

(2) Where

(a) a member

(i) dies, disappears, is imprisoned, leaves the Province or surrenders the member's licence,

(ii) is struck off the Register or is the subject of suspension of licence,

(iii) has been found to be an incapacitated or incompetent member, or

(iv) the Registrar has reasonable grounds to believe that the member has neglected the practice of dental hygiene; and

(b) adequate provision has not been made for the protection of the member's clients' interests,

the College may, with or without notice as the Court directs, request the Court to appoint a custodian to take possession of the client records owned by the member.

(3) A custodian appointed pursuant to subsection (2) shall

(a) hold and protect all client records taken into custody; and

(b) distribute copies of the client records, as may be appropriate, to the dentists or dental hygienists of the clients concerned, and to the duly appointed representatives of the clients, or the clients themselves, subject to such fees as the Court may direct or the regulations may prescribe.

(4) In an order made pursuant to subsection (2), or in a subsequent order made on the application of the College or the custodian, with or without notice as the Court directs, the Court may

(a) authorize the custodian to employ professional assistance to carry out the custodian's duties;

(b) direct any sheriff to seize, remove and place in the possession of the custodian client records;

(c) where there are reasonable grounds to believe that any client records may be found in any premises, safety deposit box or other receptacle, direct the sheriff to enter the premises or open the safety deposit box or other receptacle;

(d) direct the owner of any premises, or person in possession of any premises, or any bank or other depository of client records to deal with, hold, deliver or dispose of such client records as the Court directs;

(e) give directions to the custodian as to the disposition of client records;

(f) make provision for the remuneration, disbursements and indemnification of the custodian in the course of the custodian's duties;

(g) make provision for the discharge of a custodian either before or after completion of the responsibilities imposed upon the custodian by any order made pursuant to this Section; and

(h) give such further directions as the Court considers are required in the circumstances.

(5) Unless the Court otherwise directs, it is sufficient for the custodian to give notice to clients, dental hygienists or the general public that the custodian has possession of the client records of a member.

(6) Subject to any order of the Court or where one year has passed from the date of the Court order appointing the custodian, whichever is earlier, the custodian shall report to the Council, which may discharge the custodian or make any order it deems appropriate regarding any client records remaining in the hands of the custodian, and the custodian's compliance with the order of the Council discharges the custodian in respect of those client records affected.

(7) Unless otherwise ordered pursuant to subsection (6), upon discharge of a custodian pursuant to subsections (6) or (9), the College may take into permanent custody client records and assume the responsibilities of a custodian as provided in subsection (3).

(8) The College may destroy records after the passage of a minimum period of time as ordered by the Court, or as set by regulation.

(9) The Court may, upon the application of the College, made either *ex parte* or on such notice as the Court directs, remove a custodian from office and, where the Court deems it expedient, appoint another custodian in the custodian's place, and may include in such order such further directions as are required in the circumstances.

(10) A member in respect of whom an order has been made pursuant to this Section may, after giving notice to the College and to the custodian, apply to the Court to vary or set aside an order made pursuant to this Section and to direct the custodian to place all or part of the client records back into the possession of the member, upon such terms as may be just.

(11) The Court may give directions as to service of any notice required or order made pursuant to this Section.

(12) No action for damages lies against the College, the Council or any committee, member, officer or employee of the College for anything done or omitted to be done in good faith pursuant to this Section, or against a custodian or any other person acting in good faith pursuant to this Section or an order issued pursuant to this Section.

(13) This Section applies to former members of the College.

INJUNCTION

31 (1) Where a member whose licence to practise has been suspended, restricted or revoked pursuant to this Act or the regulations, does or attempts to do anything contrary to this Act or the regulations or contrary to the imposed restrictions, the doing of such thing may be restrained by an injunction of the Court at the instance of the Council.

(2) Where a person, other than a member, does or attempts to do anything contrary to this Act, the doing of such thing may be restrained by an injunction of the Court at the instance of the Council.

DISCIPLINE

- 32 (1)** Complaints may be initiated by
- (a) any body corporate or association;
 - (b) the Registrar;
 - (c) a member; or
 - (d) any other person.

(2) Where the College and the complainant agree, a complaint may be withdrawn.

33 The College or a discipline committee may employ, at the expense of the College, such legal or other assistance as it considers necessary for the purpose of carrying out its functions pursuant to this Act or the regulations.

34 Every person involved in the administration of this Act, and any member of the Council, or a committee of the Council or the College, shall maintain confidentiality with respect to all health information that comes to that person's knowledge regarding clients, except

- (a) in connection with the administration of this Act, and the regulations or proceedings thereunder;
- (b) to one's own legal counsel;
- (c) as otherwise required by law; or
- (d) with the consent of the person to whom the information relates.

35 A person or the Investigation Committee investigating a disciplinary matter concerning a member may investigate any other disciplinary matter concerning the member that arises in the course of the investigation.

36 (1) Where a discipline committee

- (a) learns that a licensing sanction has been issued against a member by another licensing or regulatory authority;
- (b) has provided the member with such notice as it may prescribe, of a hearing, together with a copy of the relevant decision of the other licensing or regulatory authority; and
- (c) has heard such evidence as is offered by the member, if any, at the hearing as to why the member should not be subject to disciplinary action,

the discipline committee may take any of the actions contemplated by subsection 60(4).

(2) Notwithstanding anything contained in this Act, where a person has pleaded guilty to, been convicted or found to be guilty by a court in or out of Canada, of any offence that is inconsistent with the proper professional behavior of a dental hygienist, including a conviction under the *Criminal Code* (Canada) or the *Controlled Drug and Substances Act* (Canada) for which a pardon has not been granted, a discipline committee may, by such notice as it prescribes, require the member to attend a hearing to establish why the member should not be subject to disciplinary action.

(3) For the purpose of subsection (2), a certificate of conviction of a member is conclusive evidence that a person has committed the offence stated therein, unless it is shown by the member that the conviction has been quashed or set aside.

(4) When a discipline committee is conducting a hearing pursuant to this Section, it may, if it deems proper, take any of the actions contemplated by clause 60(2)(b) or subsection 60(4).

INVESTIGATION COMMITTEE

37 (1) The Council shall appoint an Investigation Committee composed of such number of members and lay representatives as determined by the Council.

(2) The Council shall appoint a Chair and a Vice-chair of the Investigation Committee.

(3) The Vice-chair shall act as Chair in the absence of the Chair.

(4) Whenever for any reason neither the Chair nor the Vice-chair are available for a meeting, the Council may, for the purpose of such meeting, appoint a member of the Investigation Committee as Chair of the Committee.

(5) The Chair of the Investigation Committee shall appoint a panel of three persons from the Committee, one of whom is a lay representative, to act as the Investigation Committee for a particular complaint.

(6) The Chair of the Investigation Committee may sit on the panel and, in that case, shall act as the chair of the panel.

(7) Where the Chair of the Investigation Committee is not appointed to the panel, the Chair of the Committee shall appoint a chair for such panel.

(8) Any two persons from the panel appointed pursuant to subsection (5), regardless of whether such persons are members or lay representatives, constitute a quorum of the Investigation Committee.

(9) Failure of one or more Investigation Committee members to receive any notice of a meeting does not invalidate the proceedings at the meeting, and nothing precludes the members from waiving notice of meetings.

(10) All Investigation Committee decisions require the vote of a majority of the panel of the Committee appointed pursuant to subsection (5).

(11) Where a proceeding has commenced before the Investigation Committee and the term of office of any person sitting on the Committee has expired, such person may remain part of the Committee until the proceeding has concluded.

38 The Investigation Committee shall

(a) investigate complaints regarding a disciplinary matter concerning any member of the College;

(b) investigate any matter referred to the Investigation Committee by the Registrar; and

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

39 The Registrar may refer a matter to the Investigation Committee, notwithstanding that a written complaint has not been filed with the Registrar.

40 When conducting an investigation, the Investigation Committee may appoint a person or persons to conduct the investigation, or may conduct the investigation itself.

41 (1) Upon receipt of a written complaint, and upon giving to the member a copy of the complaint, the Investigation Committee may require the member to

(a) submit to physical or mental examinations by such qualified persons as the Committee designates;

(b) submit to an inspection or audit of the practice of the member by such qualified persons as the Committee designates;

(c) submit to such examinations as the Committee directs, to determine whether the member is competent to practise dental hygiene; and

(d) produce books, records and accounts kept with respect to the member's practice.

(2) Where the member fails to comply with subsection (1), the Investigation Committee may suspend or restrict the registration or licence of the member until the member complies.

(3) Where the Investigation Committee has, pursuant to subsection (1)(a), (b) or (c), required a member to submit to physical or mental examinations or submit to inspection or audit of the practice by a qualified person designated by the Committee, the Committee shall deliver to the member any report it receives from the designated qualified person.

(4) The members of the Investigation Committee have all the powers, privileges and immunities of a Commissioner appointed pursuant to the *Public Inquiries Act*.

42 The Investigation Committee, or person appointed to conduct an investigation, may

(a) employ such experts as the Committee or person deems necessary;

(b) require the member, or any other member of the College who may have information relevant to the investigation, to attend before the Committee, or the person conducting the investigation, to be interviewed;

(c) investigate any other matter, that arises in the course of the investigation, relevant to the conduct, capacity or fitness of a member to practise dental hygiene.

43 (1) The Investigation Committee may

(a) dismiss the complaint;

(b) attempt to resolve the complaint informally; or

(c) with the consent of both parties, refer the matter, in whole or in part, to mediation.

(2) In the event the complaint is not resolved pursuant to subsection (1), the Investigation Committee shall allow the complainant, the member or other persons as determined by the Committee, a reasonable opportunity to appear before the Committee and to submit representations or explanations, and then may

(a) dismiss the complaint;

(b) attempt to resolve the complaint informally;

- (c) with the consent of both parties, refer the matter, in whole or in part, to mediation;
- (d) refer the matter, in whole or in part, to the Hearing Committee;
- (e) counsel the member;
- (f) caution the member;
- (g) counsel and caution the member;
- (h) reprimand the member with the member's consent; or
- (i) with the consent of the member, require the member to undergo such treatment or education as the Committee considers appropriate.

(3) When making findings pursuant to subsections (1) or (2), the Investigation Committee may make any combination of the dispositions that are set out in those subsections, or the Committee may make such other dispositions as it considers appropriate, in accordance with the objects of this Act.

(4) The member, the complainant and such others as determined by the Investigation Committee, shall be advised in writing of the disposition by the Committee.

(5) The Investigation Committee retains jurisdiction over a matter until the commencement of a hearing by the Hearing Committee or the resolution of the matter through a settlement agreement.

44 (1) Notwithstanding anything contained in this Act, where the Investigation Committee

(a) receives information that indicates that a member may be guilty of a disciplinary matter; and

(b) concludes that it is in the public interest to suspend from practice or restrict the practice of the member,

the Committee may, without a hearing,

(c) immediately suspend the registration or licence of the member on a temporary basis; or

(d) immediately impose restrictions on the registration or licence of the member on a temporary basis.

(2) The member shall forthwith receive notice in writing, with reasons, of a decision made pursuant to subsection (1).

(3) Subject to a determination pursuant to subsection (5), a decision pursuant to subsection (1) continues in force until final resolution by a discipline committee, which must occur without undue delay.

(4) The member who receives written notice pursuant to subsection (2) may request, in writing, an opportunity to meet with the Investigation Committee.

(5) Where a request is received pursuant to subsection (4), the Investigation Committee shall

(a) provide an opportunity for the member to meet with the Committee within ten days of the written request; and

(b) after meeting with the member, may confirm, vary or revoke the decision imposed pursuant to subsection (1).

45 Notwithstanding anything contained in this Act, where a decision is made pursuant to Section 44(1), subject to any disposition made pursuant to Section 44(5), the Hearing Committee shall be appointed pursuant to Section 48(1) to proceed with a hearing to determine whether the member is guilty of charges relating to a disciplinary matter.

46 Notwithstanding that a member or members of the Investigation Committee or the Hearing Committee have ceased to hold office by reason of the lapse of their appointments, such member or members are seized with the jurisdiction to complete any matter the committees have commenced and, for this purpose, such member or members continue to have the same powers, privileges, immunities and duties as are provided by this Act and the regulations.

SETTLEMENT AGREEMENT

47 (1) After the Investigation Committee refers a matter to the Hearing Committee, the member complained of may, at any time prior to the commencement of the hearing, tender to the Investigation Committee a proposed settlement agreement, in writing, consented to by legal counsel for the College, that includes an admission of a disciplinary matter or violations, and the member's consent to a specified disposition, conditional upon the acceptance of the agreement by the Hearing Committee.

(2) The Investigation Committee may, in its discretion, recommend or refuse to recommend acceptance of the proposed settlement agreement by the Hearing Committee.

(3) Where the Investigation Committee recommends the acceptance of the proposed settlement agreement, it shall instruct legal counsel for the College to advise the Hearing Committee hearing the complaint of its recommendation.

(4) Where the Investigation Committee refuses to recommend the proposed settlement agreement, the hearing shall proceed without reference to the proposed settlement agreement.

(5) Where the Hearing Committee appointed to hear the complaint accepts the recommendation of the Investigation Committee, it shall confirm such acceptance by written decision that incorporates the settlement agreement.

(6) Where the Hearing Committee appointed to hear the complaint rejects the recommendation of the Investigation Committee

(a) it shall advise the Registrar of its decision;

(b) it shall proceed no further with the hearing of the complaint;

(c) a new Hearing Committee shall be appointed to hear the complaint and no member of the hearing or Investigation Committee that considered the proposed settlement agreement may be a member of the new Hearing Committee; and

(d) the Investigation Committee retains jurisdiction over a complaint until the commencement of the hearing by the Hearing Committee, either original or new.

HEARING COMMITTEE

48 (1) The Council shall appoint a Hearing Committee comprised of such members and lay representatives as determined by the Council.

(2) The Council shall appoint a Chair and a Vice-chair of the Hearing Committee.

(3) The Vice-chair shall act as chair in the absence of the Chair.

(4) Whenever for any reason neither the Chair nor the Vice-chair are available for a meeting or hearing, the Council may, for purposes of such meeting or hearing, appoint a member of the Hearing Committee as chair of the Committee.

(5) The Chair of the Hearing Committee shall appoint a panel of five persons from the Committee, at least one of whom is a lay representative, to act as the Hearing Committee for purposes of the discipline process.

(6) The Chair of the Hearing Committee may sit on the panel and, in that case, shall act as the chair of the panel.

(7) Where the Chair of the Hearing Committee is not appointed to the panel, the Chair of the Committee shall appoint a chair of such panel.

(8) Any three persons from the panel appointed pursuant to subsection (5) constitutes a quorum of the Hearing Committee, as long as at least two of those persons are members and not lay representatives.

(9) No person on the Hearing Committee may concurrently serve on the Investigation Committee.

(10) Failure of one or more Hearing Committee members to receive any notice of a meeting does not invalidate the proceedings at the meeting, and nothing precludes Committee members from waiving notice of meetings.

(11) All Hearing Committee decisions require the vote of a majority of the panel of the Committee appointed pursuant to subsection (5), or the quorum of such panel in the event the full panel is not sitting.

(12) Where a proceeding is commenced before the Hearing Committee and the term of office of any person sitting on the Committee has expired, such person may remain part of the Committee until the proceeding is concluded.

49 Subject to the regulations, the Hearing Committee shall do all things necessary to provide for a fair hearing.

50 In a matter over which the Hearing Committee has jurisdiction, the Committee and each member of the Committee has all the powers, privileges and immunities of a Commissioner appointed pursuant to the *Public Inquiries Act*.

51 Upon the application of

- (a) any party to the hearing or their counsel;
- (b) the Chair of the Hearing Committee; or
- (c) legal counsel for the Hearing Committee,

the Registrar may sign and issue a subpoena to a witness, for the purpose of procuring the attendance and evidence of such witness before the Committee and, in the event the Registrar refuses to sign and issue the subpoena, the person requesting the subpoena may appear before the Committee to determine whether the subpoena should be issued.

52 It is the duty of the member who is charged in a disciplinary matter to appear and participate at the hearing, but in the event of non-attendance by such member, the Hearing Committee, upon proof by affidavit, statutory declaration or other evidence acceptable to the Committee of service of the notice, may proceed with the hearing and, without further notice to such member, render its decision and take such other action as it is authorized to take pursuant to this Act.

53 (1) Unless the member has agreed to a shorter notice period, a notice of hearing must be served upon the member whose disciplinary matter is being heard at least thirty days before the holding of the hearing.

(2) A notice of a hearing must state the particulars of the charges and the time and place of the hearing, and must be signed by the Registrar.

(3) The Council shall provide notice of such hearing to members and the public in such manner as determined by Council.

54 (1) The following evidence is not admissible before the Hearing Committee unless the opposing party has been given, at least ten days before the hearing:

- (a) in the case of written or documentary evidence, an opportunity to examine the evidence;
- (b) in the case of evidence of an expert, a copy of the expert's written report or, where there is no written report, a written summary of the evidence; or
- (c) in the case of evidence of a witness, the identity of the witness.

(2) Notwithstanding subsection (1), the Hearing Committee may, in its discretion, allow the introduction of evidence that would be otherwise inadmissible under subsection (1), and may make directions it considers necessary to ensure that a party is not unduly prejudiced by failure to disclose in a timely manner.

55 No member of the Hearing Committee holding a hearing shall communicate outside the hearing in relation to the subject-matter of the hearing with a party or the party's representative, unless the other party has been given notice of the subject-matter of the communication and an opportunity to be present during the communication, except for communications that have as their sole purpose administrative arrangements.

56 (1) Subject to subsection (2), a hearing before the Hearing Committee must be open to the public.

(2) The Hearing Committee may make an order that the public, in whole or in part, be excluded from a hearing or any part of it, if the Committee is reasonably satisfied that

(a) financial or personal or other matters may be disclosed at the hearing of such a nature that the desirability of avoiding public disclosure of those matters in the interest of any person affected, or in the public interest, outweighs the desirability of adhering to the principle that hearings be open to the public; or

(b) the safety of a person may be jeopardized.

(3) Where it reasonably deems necessary, the Hearing Committee may make orders to prevent the public disclosure of matters disclosed at a hearing, including orders prohibiting publication or broadcasting of those matters.

(4) No order may be made under subsection (3) that prevents the publication of anything that is contained in the Register.

(5) The Hearing Committee may make an order that the public be excluded from that part of a hearing dealing with a motion for an order pursuant to subsection (2).

(6) The Hearing Committee may make any order necessary to prevent the public disclosure of matters disclosed in the motion described in subsection (5), including prohibiting the publication or broadcasting of those matters.

(7) Subject to any orders pursuant to this Section, the Hearing Committee shall state, at the hearing, its reasons for any order made pursuant to this Section.

57 Where the Hearing Committee makes an order pursuant to subsection 56(2), wholly or partly, because of the desirability of avoiding disclosure of matters in the interest of a person affected,

(a) the Committee shall allow the parties and their legal or personal representatives; and

(b) the Committee may allow such other persons as it considers appropriate, to attend the hearing.

58 The Hearing Committee shall, on the request of a witness, other than the member complained of, whose testimony relates to allegations of misconduct of a sexual nature by a member, make an order that no person shall publish the identity of the witness or any information that could disclose the identity of the witness.

- 59 (1)** The Hearing Committee holding a hearing shall ensure that
- (a) the oral evidence is recorded;
 - (b) copies of the transcript of the hearing are available to a party at the party's request and expense, and to other persons as the Committee considers appropriate;
 - (c) copies of the transcript of any part of the hearing that is not closed nor the subject of an order prohibiting publication are available to any person at that person's expense.

(2) Where a transcript of a part of a hearing that is the subject of an order for a closed hearing or an order prohibiting publication is filed with the Court in respect of proceedings, only the Court, the parties to the proceedings and the complainant may examine it unless the Court or the Hearing Committee orders otherwise.

60 (1) At a hearing of the Hearing Committee, a member is entitled to all the rights of natural justice and procedural fairness, including the right to be represented by legal counsel, to know all the evidence considered by the Committee, to present evidence and to cross-examine witnesses.

- (2)** The Hearing Committee
- (a) shall hear each case in such manner as it deems reasonable;
 - (b) may require the member to
 - (i) submit to physical or mental examinations by such qualified persons as the Committee designates,
 - (ii) submit to an inspection or audit of the member's practice by such qualified persons as the Committee designates,
 - (iii) undergo such examinations or assessments as the Committee directs to determine whether the member is competent to practise dental hygiene, and
 - (iv) produce records and accounts kept with respect to the members' practice of dental hygiene; and
 - (c) where the member fails to comply with clause (b), may suspend the registration or licence of the member until the member complies.

(3) Where the Hearing Committee has, pursuant to subclause (2)(b)(i), (ii) or (iii), required a member to submit to physical or mental examinations or submit to inspection or audit of the practice by a qualified person designated by the Committee, the Committee shall deliver to the member any report it receives from the designated qualified person.

- (4)** The Hearing Committee shall determine whether the member is guilty of charges relating to a disciplinary matter, and
- (a) where there is a guilty finding, may determine that
 - (i) the registration or licence of the member be revoked and that member's name be stricken from the Register in which it is entered,

- (ii) the licence of the member be suspended
 - (A) for a fixed period, or
 - (B) for an indefinite period, until the occurrence of some specified future event or until compliance with conditions prescribed by the Committee,
- (iii) conditions, limitations or restrictions be imposed on the licence of the member,
- (iv) the member undergo such treatment or education as the Committee considers appropriate,
- (v) the member pay such fine as the Committee considers appropriate, to a maximum of fifteen thousand dollars, to be paid towards such charitable purpose related to public oral health care as is determined by the Committee;
- (vi) the member be reprimanded,
- (vii) such other disposition as it considers appropriate be imposed; or
- (b) where there is a not guilty finding, the Committee shall dismiss the charges,

and shall file its decision, including reasons, at the offices of the College.

(5) When making dispositions pursuant to clause (4)(a), the Hearing Committee may impose one or more of the penalties that are set out in that clause, or the Committee may make such other dispositions as it considers appropriate, in accordance with the objects of this Act.

(6) Upon completion of the hearing, the Hearing Committee shall, subject to any publication ban, make its written decision available to members of the public.

(7) The Registrar shall provide the member, the complainant and such other persons as the Registrar considers appropriate with a copy of the decision of the Hearing Committee except that, where there are references identifying clients or other persons other than the complainant, those references as well as other personal information about those persons may be deleted if, in the Hearing Committee's opinion, it is reasonably appropriate.

(8) The decision of the Hearing Committee has effect immediately upon service on the member, or from such time as the decision may direct.

(9) The Hearing Committee shall release documents and things put into evidence at a hearing to the person who produced them, on request, within a reasonable time after the matter in issue has been finally determined.

61 (1) In this Section, “costs of the proceedings” includes

- (a) direct expenses incurred by the College, the Council, the Investigation Committee or the Hearing Committee, arising from the complaint; and
- (b) solicitor-client costs and disbursements of the College relating to the investigation, prosecution and hearing of the complaint.

(2) When the Hearing Committee finds a member guilty of charges relating to a disciplinary matter, it may order that the member pay the costs of the proceedings, in whole or in part.

(3) Where a member is ordered to pay costs pursuant to subsection (1), the Hearing Committee may make it a condition of the registration or licence of the member that such costs be paid forthwith, or at such time and on such terms as the Committee determines.

62 (1) A member complained against may appeal on any point of law from the findings of the Hearing Committee to the Nova Scotia Court of Appeal.

(2) The notice of appeal must be served upon the Registrar and the complainant.

(3) The record on appeal from the findings of the Hearing Committee consists of a copy of the transcript of the proceedings, the decision of the committee and the evidence before the Committee, certified by the Chair of the Committee.

(4) The *Civil Procedure Rules* governing appeals from the Supreme Court of Nova Scotia to the Nova Scotia Court of Appeal, that are not inconsistent with this Act, apply *mutatis mutandis* to appeals to the Nova Scotia Court of Appeal pursuant to this Section.

(5) Where a matter is appealed to the Nova Scotia Court of Appeal pursuant to this Section, either the Hearing Committee or the Court of Appeal has jurisdiction to, pending a decision by the Court of Appeal, grant a stay of any order made pursuant to this Act if, in its discretion, it deems it fit.

63 (1) A person whose licence has been revoked by a resolution of the Hearing Committee, may apply to the Council for

(a) the entering of the person's name, address and qualifications on the Register; and

(b) the issuance of a licence.

(2) An application pursuant to subsection (1) may not be made earlier than

(a) two years after the revocation; or

(b) twelve months after the previous application.

(3) Upon

(a) being satisfied that the interest of the public will be reasonably protected and the integrity of the profession of dental hygiene will be reasonably preserved;

(b) being satisfied as to the intention of such person to practise dental hygiene in the Province;

(c) being satisfied as to the activities of such person since the time of the resolution of the Hearing Committee;

(d) such person producing a letter of good standing from all jurisdictions in which the person had practised dental hygiene, since the date of the resolution of the Hearing Committee; and

(e) such person undergoing such clinical or other examinations as the Credentials Committee may designate,

the Council may direct the Registrar to

(f) enter the name, address and qualifications of such person in the Register upon such terms and conditions as the Council may direct; and

(g) issue a licence to such person, upon such terms and conditions as the Council may direct.

EVIDENCE

64 A certificate purporting to be signed by the Registrar stating that any person named in the certificate was or was not, on a specified day or during a specified period, registered and licensed, is *prima facie* evidence in any court of that fact without proof that the person signing it is the Registrar or of the Registrar's signature.

65 The presence of the name of any person in a document purporting for any year to be an annual list published by the Registrar is *prima facie* evidence in any court of the fact that a person whose name so appears is or was registered and licensed at the time of publication of such annual list.

NOTICES

66 Service of any notice, order, resolution or other document pursuant to this Act or the regulations may be made

(a) by personal service;

(b) upon a member by registered letter addressed to such person at the member's address as set forth in the Register; or

(c) upon any other person by registered letter.

67 Where service is made by registered letter, service is deemed to be made five business days after the notice, order, resolution or other document is posted, and proof that the notice, order, resolution or other document was addressed and posted in accordance with Section 66 is proof of service upon receipt of proof of delivery.

68 Service of any document on the College may be made by service on the Registrar.

LIMITATIONS OF ACTIONS

69 (1) No action for damages lies against the College, the Council, the Registrar, an officer, agent or employee of the College or Council, a member of a committee or sub-committee of the College or the Council, or a member of the College

(a) for any act or failure to act, or any proceeding initiated or taken, in good faith under this Act, or in carrying out their duties or obligations as an officer, agent, employee or member under this Act; or

(b) for any decision, order or resolution made or enforced in good faith under this Act.

(2) No action lies against any person for the disclosure of any information or any document or anything therein pursuant to this Act unless the disclosure is made with malice.

(3) Without limiting the generality of subsection (2), no action for damages lies against a member or other person for disclosing any books, records, papers and other documents in their possession or control when done pursuant to this Act.

(4) No member of the College, or any officer, agent or employee of the College is personally liable for any of the debts or liabilities of the College unless such person expressly agrees to be so liable.

INCORPORATION

70 Subject to this Act and the regulations, a professional corporation may engage in the practice of dental hygiene and dental hygienists may be employed by a professional corporation for the purpose of engaging in the practice of dental hygiene.

71 (1) A majority of the issued voting shares of a professional corporation, which shares represent a majority of the voting control of the corporation, must be legally and beneficially owned by one or more dental hygienists who hold a current licence.

(2) Subject to subsection (1), the spouse or child of a dental hygienist or approved health professional or any other person may own, beneficially or legally, shares of a professional corporation.

(3) Notwithstanding subsection (1), issued shares may be legally and beneficially owned by a corporation of which

(a) all of the issued voting shares are legally and beneficially owned by one or more members who each hold a licence to practise, or by a trust of which all of the trustees and beneficiaries each hold a licence to practise; and

(b) a majority of the officers and directors of each hold a licence to practise.

72 (1) A majority of the directors of a professional corporation must be dental hygienists.

(2) The president of a professional corporation must be a dental hygienist.

73 A professional corporation shall not engage in the practice of dental hygiene unless the professional corporation is issued a permit under this Act and is in compliance with this Act and the regulations.

74 (1) Notwithstanding anything contained in this Act, a professional corporation to which a permit is issued pursuant to this Section may practise dental hygiene in its own name.

(2) Notwithstanding subsection (1), no professional corporation may be registered as a dental hygienist under this Act.

(3) The Registrar shall issue a permit to any professional corporation that fulfils the following conditions:

- (a) files all required applications in the form approved by the Council;
- (b) pays all fees prescribed by the by-laws;
- (c) satisfies the Registrar that it is a professional corporation limited by shares that is in good standing with the Registrar of Joint Stock Companies under the *Companies Act* and the *Corporations Registration Act* and that it is a private company as defined by the *Securities Act*;
- (d) satisfies the Registrar that the name of the professional corporation is not objectionable and is in accordance with the regulations;
- (e) satisfies the Registrar that the requirements of Sections 71 and 72 have been met;
- (f) satisfies the Registrar that the professional corporation holds such liability insurance as may be required by the Council;
- (g) satisfies the Registrar that the persons who will carry on the practice of dental hygiene for or on behalf of the professional corporation are dental hygienists; and
- (h) satisfies the Registrar that the professional corporation is in compliance with this Act and the regulations.

(4) A permit issued pursuant to subsection (3), or any renewal of a permit pursuant to subsection (5), expires on December 31st of the year for which it was issued or renewed.

(5) The Registrar may renew a permit upon the application and payment of such fee as may be required by the regulations if the Registrar determines that the requirements of subsection (3) are satisfied by the professional corporation.

(6) A permit issued pursuant to subsection (3), or renewed pursuant to subsection (5), may be suspended or revoked at any time by the Registrar if a professional corporation fails to satisfy any of the requirements prescribed in subsection (3).

(7) The Council may, in its discretion, review a decision of the Registrar to suspend or revoke a permit pursuant to subsection (6).

(8) For the purpose of this Act, the practice of dental hygiene must not be carried on by or be deemed to be carried on by clerks, secretaries and other persons employed by the professional corporation to perform services that are not usually and ordinarily considered by law, custom and practice to be services that may be performed only by a dental hygienist.

75 (1) Where a professional corporation practises dental hygiene only through the services of one dental hygienist and that dental hygienist dies, retires, becomes incompetent or is no longer licensed under this Act, or is suspended under this Act, the permit of such professional

corporation is deemed to be immediately revoked and such professional corporation shall cease to practise dental hygiene.

(2) Where a professional corporation practises dental hygiene through the services of more than one dental hygienist and such professional corporation ceases to fulfil any requirement prescribed in subsection 74(3) by reason of

- (a) the death of a dental hygienist;
- (b) the incompetency of a dental hygienist;
- (c) the revocation of the licence of a dental hygienist pursuant to this Act;
- (d) the suspension of the licence of a dental hygienist pursuant to this Act; or
- (e) the retirement from practice by a dental hygienist,

such professional corporation shall forthwith notify the Registrar and shall fulfil the requirements in question within one hundred and twenty days from the date of death, incompetency, revocation, retirement or other removal or the suspension, as the case may be, of the dental hygienist, failing which the permit is deemed to be revoked and such professional corporation shall cease to practise dental hygiene effective upon the expiration of the one hundred and twenty-day period.

(3) Where the permit of a professional corporation is deemed to be revoked under this Section and thereafter the professional corporation is able to demonstrate that it is in compliance with subsection 74(3), the professional corporation may apply to the Registrar to have its permit re-instated and the Registrar may, in the Registrar's discretion, re-instate the permit subject to such conditions as the Registrar may direct.

76 Where the shares of a professional corporation engaged in the practice of dental hygiene are transferred or where there is a change in the shareholders, directors or officers of the professional corporation, or any change in the location where the professional corporation carries on business, the professional corporation shall, within fifteen calendar days, notify the Registrar of such change.

77 The relationship of a dental hygienist to a professional corporation whether as a shareholder, director, officer or employee, does not affect, modify or diminish the application of this Act and the regulations to the dental hygienist.

78 (1) All persons who carry on the practice of dental hygiene by, through or on behalf of a professional corporation are liable in respect of acts or omissions done or omitted to be done by them in the course of the practice of dental hygiene to the same extent and in the same manner as if such practice were carried on by them as an individual or a partnership, as the case may be, carrying on the practice of dental hygiene.

(2) No owner of voting shares of a professional corporation shall pledge, hypothecate, enter into a voting trust, proxy or any other type of agreement vesting in any other person who is not a dental hygienist the authority to exercise the voting rights attached to any or all of the owner's shares.

79 (1) Nothing contained in this Act affects, modifies or limits any law applicable to the confidential or ethical relationships between a dental hygienist and a client.

(2) The relationship between a professional corporation and a client of the professional corporation is subject to all applicable laws relating to the confidential and ethical relationships between a dental hygienist and a client.

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

80 All shareholders, directors, officers and employees of a professional corporation are compellable witnesses in any proceedings under this Act.

81 A certificate purporting to be signed by the Registrar stating that a named professional corporation was or was not, on a specified day or during a specified period, a professional corporation entitled to practise dental hygiene according to the records of the Registrar, is admissible in evidence as *prima facie* proof of the facts stated therein without proof of the Registrar's appointment or signature.

82 Where a professional corporation commits an offence contrary to this Act or the regulations, every person who, at the time of the commission of the offence, was a director or officer of the corporation is guilty of the same offence and subject to the same penalties unless the act or omission constituting the offence took place without the person's knowledge or consent or the person exercised all due diligence to prevent the commission of the offence.

83 (1) Every person who contravenes Sections 71 to 82 or the associated regulations is guilty of an offence and liable on summary conviction for a first offence to a fine not exceeding five hundred dollars and for a second or any subsequent offence to a fine not exceeding one thousand dollars.

(2) Where a professional corporation is convicted of an offence contrary to Sections 71 to 82 or the associated regulations, the permit of the corporation is suspended in default of paying any fine ordered to be paid until such time as the fine is paid.

(3) Where a professional corporation is convicted of a second or subsequent offence, the permit of the corporation may be revoked.

GENERAL

84 All regulations made pursuant to this Act are regulations within the meaning of the *Regulations Act*.

85 (1) Subject to Section 86, a complaint made against a dental hygienist pursuant to the *Dental Act* prior to the coming into force of this Act must continue to be processed in accordance with this Act as nearly as circumstances permit.

(2) Nothing in subsection (1) precludes a complaint made pursuant to the *Dental Act* being investigated by the Investigation Committee appointed pursuant to this Act and, in such case, a discipline committee appointed pursuant to the *Dental Act* ceases to have any jurisdiction respecting that complaint.

86 (1) Upon the coming into force of this Act, any matter pending before a discipline committee appointed pursuant to the *Dental Act* must, where not set down for a hearing to commence within sixty days of the coming into force of this Act, be transferred to a discipline committee appointed pursuant to this Act for hearing and determination, but otherwise must be heard and determined by a discipline committee appointed pursuant to the *Dental Act*.

(2) Notwithstanding subsection (1), the parties may agree that a matter pending be transferred to a discipline committee appointed pursuant to this Act.

(3) A discipline committee appointed pursuant to the *Dental Act* is continued until all matters pending before it at the coming into force of this Act, and not transferred to a discipline committee appointed pursuant to this Act, have been finally decided.

87 Every member engaged in the practice of dental hygiene shall practise in accordance with this Act, the regulations, the by-laws and the standards of practice and the code of ethics approved pursuant to the by-laws.

88 Nothing in this Act prohibits the practice of dental hygiene by a dentist or dental corporation pursuant to the *Dental Act*.

89 Nothing in this Act prevents a dental assistant licensed pursuant to the *Dental Act* from engaging in the practice of a dental assistant prescribed in the regulations made pursuant to the *Dental Act*.

CONSEQUENTIAL AMENDMENTS

90 Clauses 2(i), (j) and (l) of Chapter 3 of the Acts of 1992, the *Dental Act*, are repealed.

91 Clause 3(2)(a) of Chapter 3 is repealed and the following clause substituted:

(a) the practice of dental hygiene performed by a licensed dental hygienist or a professional corporation pursuant to the *Dental Hygienists Act*;

92 Subsection 13(2) of Chapter 3 is amended by

- (a) striking out clauses (c) and (d); and
- (b) striking out “(c), (d),” in the third line of clause (g).

93 Subsection 16(2) of Chapter 3 is amended by striking out “Nine” in the first line and substituting “Seven”.

94 (1) Subsection 17(1) of Chapter 3, as amended by Chapter 37 of the Acts of 2000, is further amended by

- (a) striking out “, dental hygiene” in the second line of clauses (b) and (c) and the third line of clause (d);
- (b) striking out “, Hygienists’ Register” in the fourth line of clause (g);

(c) striking out “and Fitness” in the second and third lines of clause (h);
and

(d) striking out “, dental hygienists” in the second and third lines of
clause (i).

(2) Clause 17(2)(a) of Chapter 3 is repealed.

95 Section 18 of Chapter 3 is amended by striking out “, licensed dental hygienist”
in the third line.

96 Clause 20(h) of Chapter 3, as amended by Chapter 37 of the Acts of 2000, is fur-
ther amended by striking out “, dental hygienists” in the first and second lines.

97 Clause 21(1)(b) of Chapter 3 is repealed.

98 Section 22 of Chapter 3 is amended by striking out “, dental hygienist” in the
first line.

99 Subsection 24(1) of Chapter 3 is amended by

(a) striking out “, dental hygienist” in the first line; and

(b) striking out “, dental hygiene” in the third line.

100 Section 26 of Chapter 3 is repealed.

101 Section 29 of Chapter 3 is amended by striking out “, dental hygiene” in the
fourth line.

102 Subsection 31(1) of Chapter 3 is amended by striking out “any” in the third line
and substituting “either”.

103 (1) Clause 33(1)(a) of Chapter 3, as enacted by Chapter 37 of the Acts of 2000,
is amended by striking out “, dental hygienists” in the third line.

(2) Subsection 33(2) of Chapter 3, as enacted by Chapter 37 of the Acts of
2000, is amended by

(a) striking out “, dental hygienists” in the third line of clause (a); and

(b) striking out “, dental hygienist” in the third line of clause (c).

104 Section 34 of Chapter 3, as enacted by Chapter 37 of the Acts of 2000, is
amended by striking out “, dental hygienist” in the fourth and in the seventh lines of subsec-
tion (1), in the fourth line of subsection (2), in the second and third lines of subsection (3)
and in the seventh line of subsection (4).

105 Section 37 of Chapter 3 is amended by striking out “, dental hygienist” in the second line.

106 Subsection 38(1) of Chapter 3, as enacted by Chapter 37 of the Acts of 2000, is amended by striking out “, dental hygienist” in the first line.

107 (1) Subsection 41(1) of Chapter 3 is amended by striking out “, dental hygienist” in the first and second and in the fifth lines.

(2) Subsection 41(2) of Chapter 3 is amended by striking out “, dental hygiene” in the third line.

108 Section 42 of Chapter 3 is amended by striking out “, dental hygienist” in the third line of subsection (1) and the third line of subsection (3).

109 (1) Subsection 45(1) of Chapter 3, as amended by Chapter 37 of the Acts of 2000, is further amended by

(a) striking out “, dental hygiene” in the third line of clause (a), the fourth line of clause (c) and the third line of clause (d);

(b) striking out “dental hygiene and” in the fourth line of clause (g);

(c) striking out “dental hygienists and” in the second and in the sixth lines of clause (g); and

(d) striking out “, dental hygienists” in the third line of clause (h), the second and third lines of clause (i) and the second line of clause (j).

(2) Subsection 45(2) of Chapter 3 is amended by striking out “, the Hygienists Association” in the second and third lines.

110 Subsection 52(4) of Chapter 3 is amended by striking out “, dental hygienist” in the second line.

111 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.
