



Registered Nurses
Association of the
Northwest Territories and
Nunavut

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BYLAW 25

Establishment of Appeals Committee and Appeal Procedure from Decisions of a Board of Inquiry

Date Revised: September 01, 2020

Approved by BOD: September 16, 2020

Ratified by Membership:

SECTION 1 DEFINITIONS

In this Bylaw,

- a. "Act" means the *Nursing Profession Act*, S.N.W.T. 2003, chapter 15, as amended;
- b. "Appeals Committee" means the Professional Conduct Appeals Committee established under section 2 of this Bylaw;
- c. "Association" means Registered Nurses Association of the Northwest Territories and Nunavut as defined in section 1 of the Act;
- d. "Board of Directors" means the "Board of Directors" as defined in section 1 of the Act;
- e. "Board of Inquiry" means the three members of the Professional Conduct Committee designated by the Board of Directors under section 41 (1) (a)(i) of the Act as a Board of Inquiry and which heard and decided a complaint about a nurse under Part 7 of the Act;
- f. "Chairperson" means the "Chairperson" as defined in section 30 (1) of the Act;
- g. "complainant" means the "complainant" as defined in section 30 (1) of the Act;
- h. "Executive Director" means the "Executive Director" as defined in section 1 of the Act;
- i. "member of the public" means
 - a. "member of the public" as defined in section 1 of the Act if the appeal to the Appeals Committee is in respect of the conduct of a nurse in the Northwest Territories; and,
 - b. "member of the public" as defined in section 30 (2) of the Act if the appeal to the Appeals Committee is in respect of the conduct of a nurse in Nunavut.
- j. "nurse" means "nurse" as defined in section 30 (1) of the Act;
- k. "Panel" means the panel of the Appeals Committee designated by the Chairperson under section 5.
- l. "Professional Conduct Committee" means the "Professional Conduct Committee" as defined in section 1 of the Act;

SECTION 2 APPEALS COMMITTEE

- (1) The Association shall establish a committee known as "the Professional Conduct Appeals Committee".



- (2) All members of the Professional Conduct Committee other than the member of the public appointed to the Professional Conduct Committee under section 31 (1) (a) of the Act shall be members of the Appeals Committee.
- (3) The Chairperson of the Professional Conduct Committee is also Chairperson of the Appeals Committee.
- (4) The Chairperson shall not be a member of a Panel designated by the Chairperson under section 5.

SECTION 3 NOTICE OF APPEAL

- (1) The following persons may commence an appeal of a decision or order of the Board of Inquiry made under subsection 47 (2) or section 48 of the Act:
 - a. the complainant; or,
 - b. the nurse who is subject to the decision or order of the Board of Inquiry.
- (2) The persons having rights of appeal under subsection (1) have thirty days from the date the Board of Inquiry's decision or order was served on them to commence the appeal.
- (3) Persons having a right of appeal under subsection (1) may only commence an appeal by giving a written notice of appeal to the Executive Director.
- (4) The notice of appeal under subsection (3) must
 - a. identify the appealed decision or order, and
 - b. state the reasons for the appeal.

SECTION 4 PARTIES

The parties to the appeal are

- a. the persons described in Section 3 (1); and
- b. the Association

SECTION 5 PANELS OF THE APPEALS COMMITTEE

- (1) The Chairperson shall designate a panel of three members of the Appeals Committee to hear and decide
 - a. the appeal from the decision or order of the Board of Inquiry; and,
 - b. all applications relating to the appeal from the decision or order of the Board of Inquiry.
- (2) The Panel will include one person who is a member of the public.



- (3) Members of the Board of Inquiry hearing and deciding the complaint which is the subject of the appeal shall not be members of the Panel hearing and deciding the appeal.

SECTION 6 STAY PENDING APPEAL

A decision or order of the Board of Inquiry remains in effect pending an appeal to the Appeals Committee unless the Panel on written application stays the decision or order pending the appeal.

SECTION 7 SECURITY FOR COSTS

Where a complainant other than the Executive Director appeals a decision or order to the Appeals Committee, the Panel may, on application by the nurse who is subject to the decision or order under appeal, require the complainant to provide a sum, not exceeding \$5,000, to be held by the Association as security for costs pending the outcome of the appeal.

SECTION 8 RECORD BEFORE APPEALS COMMITTEE

- (1) On request by a party to an appeal under section 4 (1)(a) and on payment by the party of any disbursements and expenses in connection with the production of the material requested, the Chairperson must provide that party with copies of part or all, as requested, of the record of the proceeding before the Board of Inquiry.
- (2) An appeal to the Appeals Committee shall be based on the record of the hearing before the Board of Inquiry and on the decision or order of the Board of Inquiry.
- (3) After hearing an application for leave to introduce new evidence the Panel may in exceptional circumstances hear or receive the new evidence.
- (4) The Panel must be satisfied either sub-paragraphs a (i) or (ii) and both sub-paragraphs b and c below have been established before it hears or receives new evidence under subsection (3):
 - a. Either
 - i. The new evidence was not available for the hearing before the Board of Inquiry despite reasonable efforts by the person requesting it be heard by the Panel; or,
 - ii. The person requesting it be heard by the Panel was not aware of the new evidence at the time of the hearing before the Board of Inquiry and would



not have been aware of it if the person had made reasonable efforts to locate it;

- b. There is a substantial likelihood the hearing or receipt of the new evidence by the Panel will cause it to come to a different conclusion than the Board of Inquiry did on one of the issues before the Panel on the appeal; and,
 - c. The hearing or receipt of the new evidence by the Panel will not cause undue prejudice to the other parties to the appeal.
- (5) If the Panel hears or receives new evidence under subsection (3), the new evidence forms part of the record of the appeal before the Appeals Committee.
- (6) A digital audio recording of the Appeal proceedings will be made and form part of the record of the Appeal hearing.
- (7) The nurse who is subject to the decision or order of the Board of Inquiry may, upon paying the reasonable costs of transcribing, copying and delivering the record of the Appeal proceedings, obtain a copy of it.

SECTION 9 POWERS OF PANEL

The Panel on hearing an appeal from a decision or an order of a Board of Inquiry, may

- (i) Make any finding of fact that, in its opinion, should have been made by the Board of Inquiry;
- (ii) Make an order that affirms, reverses or modifies the decision or order of the Board of Inquiry
- (iii) Refer the matter, or any issue, back to the Board of Inquiry for further consideration; or
- (iv) Provide any direction that it considers appropriate

Section 10 DECISION

- (1) The Panel shall issue its decision in writing within thirty days of the conclusion of the hearing of the appeal.
- (2) The Appeals Committee shall serve the Panel's decision on the parties by registered mail.



Section 11 COSTS

- (1) Subject to section 58 (3) of the Act and subsection (2) the Panel, on hearing an appeal from a decision or an order of a Board of Inquiry may make any order as to costs that it considers appropriate.
- (2) If the Panel is of the opinion that an appeal of the decision or order of the Board of Inquiry brought by a complainant is frivolous or vexatious, the Panel shall order that the complainant pay the costs of the nurse.
- (3) At the conclusion of an appeal to the Appeals Committee, the Association shall return to the complainant any amount provided as security for costs that is not required for payment of costs ordered under section 5.

SECTION 12 CONSEQUENTIAL AMENDMENTS TO BYLAW 5

The following amendments shall be made to Bylaw 5:

- (1) Section 3 shall be amended by removing “RNANT/NU”.
- (2) Section 4 shall be amended by removing “complaint” before “must” and substituting “complainant”.
- (3) Section 6 (1) shall be amended by
 - a. removing subparagraph (b);
 - b. adding as subparagraph (b) “one or more members of the public who are residents of the Northwest Territories”; and,
 - c. removing subparagraph (c); and
 - d. adding as subparagraph (c) “one or more members of the public who are residents of the Northwest Territories or Nunavut”.
- (4) Section 6 (3) shall be amended by adding “on the Committee” after “practitioners”;
- (5) Section 6 (7) shall be amended by
 - a. removing “conflict or perceived conflict of interest” and substituting “potential ground for an allegation of bias”;
 - b. removing “the review of conduct in which the member has been designated a role” and substituting “their involvement in the review of a complaint about a nurse”.
- (6) Section 8 (1) shall be amended by removing “appoint” and substituting “designate”
- (7) Section 8 (2) shall be amended by removing “member of the Committee as described in section 6 (1)(b) or (c) from the territory in which the conduct under review took place” and substituting “a public member”.
- (8) Section 12 shall be removed.



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- (9) Section 14 shall be amended by
- a. removing section 14; and,
 - b. adding the following as section 14:

“The Executive Director will notify the bodies regulating the practice of nursing in other Canadian jurisdictions of any limitations on a nurse’s practice imposed by

- a. the Professional Conduct Committee under section 36 of the Act and Bylaw 6;
- b. a Board of Inquiry;
- c. the Appeals Committee;
- d. the Supreme Court; or,
- e. the settlement of a complaint by alternate dispute resolution under section 37 of the Act.”