



Committee Member Handbook

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Information Sources

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NBAD Documents

For paper copies of *An Act Respecting the New Brunswick Association Dietitians (Dietitians Act)*, Regulations, By-Laws or Code of Ethics, contact the NBAD office. These documents are available online at <http://www.adnb-nbad.com/resources/>

Office of the Integrity Commissioner of New Brunswick

Custodians, which includes health care providers, have the obligations to handle people's personal information and the obligations to handle personal health information in accordance with the following laws and regulations:

Right to Information and Protection of Privacy Act

Personal Health Information Privacy and Access Act

<https://oic-bci.ca/>

Introduction

Upon joining a committee of a regulator, you will want to know what you should do and how to do it. This Handbook explains the “how” part. How do you contribute to the activities of the regulator to have the greatest positive impact on the organization?

Committee members have a “fiduciary” duty towards the regulator and its public interest mandate. A fiduciary duty requires undivided loyalty to the organization and its objects; there can be no conflict of interest. A fiduciary duty also includes such obligations as keeping confidential information private and always acting with integrity.

Thus, it is important for committee members to know how to perform their significant work. In this Handbook we will review the different aspects of how such individuals help a regulator achieve success. Where there is good governance within an organization, every part of the organization works together effectively and with a high degree of trust in each other. Governance concepts should be implicitly applied after an effective orientation to them. Organizations that are forced to spend a lot of time navigating governance disagreements are at risk of becoming dysfunctional.

No two regulator bodies are identical in their governance approaches. Circumstances such as the specific mandate of the regulators, the details of their enabling statute, the nature of the profession being regulated, the history of the organization and even the personalities of those involved all contribute to variations in their governance approaches. However, there are shared themes that are common to effective regulators as well as common governance characteristics of ineffective regulators.

NBAD Mandate

NBAD is the regulatory body for Dietitians and Dietetic Interns in New Brunswick. In order for individuals to refer to themselves as a *Registered Dietitian*, *Registered Dietitian (Candidate)* or *Dietetic Intern*, registration with the NBAD is required by law.

NBAD's mandate is to regulate and maintain excellence in dietetic practice for the protection of the people of New Brunswick. Regulation helps to ensure that the public receives safe, ethical and competent dietetic service.

Regulation of the Profession

While governance is about how Board, committee members and staff perform their functions, the “how” is informed somewhat by “what” the organization does. For most regulators of professions, there are four general ways in which they regulate the profession:

Restrictive Regulation. Regulators typically prevent people from doing certain things. For example, regulators typically only register individuals who are competent and ethical. People who are not registered cannot perform certain activities or cannot use protected titles.

- **Reactive Regulation.** Regulators usually respond to complaints and reports of unprofessional conduct by practitioners. Those concerns are investigated and appropriate action is taken, up to and including the discipline or removal of the practitioner from the profession.
- **Proactive Regulation.** Regulators are increasingly engaging in activities that facilitate high quality practice by practitioners. Such proactive measures can take various forms including communicating with practitioners about emerging or recurring problems, requiring continuing professional development, conducting inspections, answering questions, and encouraging continuous improvement practices.
- **Transparent Regulation.** Regulators communicate frequently with the profession and the public on their activities. In addition, most regulators operate a public register containing relevant information about the registration, complaints and discipline history of practitioners to enable informed public choice of practitioners.

All of this is done in the public interest which, in this context, primarily means doing all it can to ensure that practitioners provide safe, competent and ethical services. The activities and public interest mandate of the regulator affects how Board and committee members perform their tasks. For example, the public interest mandate of the regulator suggests that the Board needs to focus on strategy and policy to ensure that the regulator is focussing its efforts on the right things. In addition, the public interest mandate of the regulator strongly suggests that Board and committee members need to act with the highest degree of ethics and integrity.

As per the [Dietitians Act, section 4\(1\)](#), the objects of the NBAD are:

- (a) to ensure the protection of the public;
- (b) to regulate the practice of dietetics by members and to govern its members in accordance with the Dietitians Act, the regulations and the by-laws;
- (c) to establish, maintain and develop standards of knowledge and skill among its members;
- (d) to establish, maintain and develop standards of qualifications and practice for dietitians;
- (e) to establish, maintain and develop standards of professional ethics among its members;
- (f) to administer the Dietitians Act and perform such duties and exercise such powers as are imposed or conferred on the Association by this or any other Act;
- (g) to further such other objects relating to human health as may be applicable to the practice of dietetics as the Association may consider desirable in order that the public interest may be served and protected.

Board Role

There are many ways to describe the role of the Board of a regulator. One description is that the Board of a regulator primarily ensures that the organization appropriately manages the risk of harm to the public from the actions or omissions of practitioners. A secondary role is to ensure that the organization appropriately manages risk of harm to itself.

The key word here is “ensures”. That word implies that the Board does not, itself, do the protecting. Rather, the Board is overseeing the regulator’s activities so that harm is minimized. The word “ensures” also implies that the Board is ultimately responsible for the success or failure of the regulator in achieving its risk management goals. Another key phrase is “appropriately manages the risk of harm”. This phrase implies that the regulator does not eliminate risk (which would be impossible) but is wise and prudent in reasonably addressing the important risks.

To perform this function, the Board typically does three things:

- Identifies and sets the priorities of the regulator;
- Develops the high-level policies of the regulator; and
- Oversees the performance of the regulator in achieving the goals set out in the first two activities.

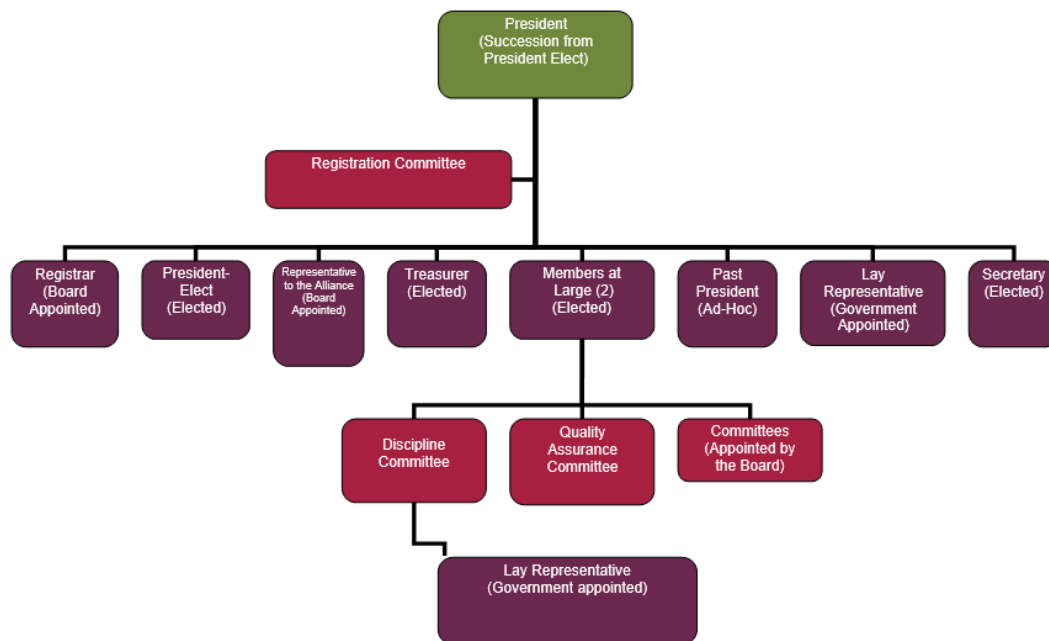
NBAD Organizational Chart

The NBAD Board of Directors and members of committees are all volunteers (exception: Executive Director/Registrar is paid position). Volunteers are Registered Dietitians with the exception of Lay Representatives who are people that are appointed by the Minister of Health of New Brunswick to represent the public.

NBAD Committees

- **Registration Committee:** Reviews applicants that are applying through non-traditional routes for registration and maintains registration process for these routes;
- **Quality Assurance Committee:** Reviews continuing education submitted yearly as a requirement of NBAD membership and maintains the quality assurance process;
- **Discipline Committee:** Investigates complaints against a member of NBAD of professional misconduct, incompetence, or professional secrecy;
- **Steering Committee:** Provides strategic direction on the governance model of NBAD; and

- **Ad Hoc Legislative Committee:** Reviews and updates the current Act, Regulations and By-Laws to reflect the needs of NBAD in the future and produce a final recommended Act / By-laws / Regulations for Board approval.



Board Operations

The Board of Directors sets the strategic direction of NBAD and makes decisions to govern the Association. The NBAD Strategic Plan is posted [online here](#) ("Members" tab on main menu, then "Annual General Meeting" on drop-down list). Members are elected to the [Board of Directors](#) for a two-year term at the Annual General Meeting with the exception of the President-Elect position which is a six-year succession term.

The Executive Director is an ex-officio member of the Board of Directors and manages the day-to-day operations of the Association, sits on all committees and is NBAD's representative at the Alliance of Canadian Dietetic Regulatory Bodies and the New Brunswick Health Professions Regulatory Network (see Appendix A). The Executive Director is also the Registrar.

Executive Director Role

The offices of the NBAD Executive Director (ED) and Registrar are held by the same person appointed by the Board of Directors. The ED/Registrar has specific statutory functions such as processing applicants for registration, receiving complaints, appointing investigators or inspectors and operating the public register. Where the ED/Registrar has statutory functions, the ED/Registrar has exclusive authority to perform them. The Board cannot

interfere in those activities and would only evaluate the ED/Registrar's overall performance in these areas. The type of oversight for these functions would be analogous to the type of oversight by the Board of statutory committee actions.

The ED/Registrar's second role is to run the day-to-day operations of the regulator and support the Board and the committees. This role would include:

- Administering the activities of the regulator such as processing applications for registration, handling complaints, supporting discipline and incapacity proceedings, administering the quality improvement and professional development programs, and maintaining the regulator's website and public register;
- Performing the necessary operational functions of the regulator such as managing its physical premises, communications systems, human resources activities, and bookkeeping and finances;
- Ensuring compliance with the requirements of the enabling statute and other legislation such as employment standards, occupational health and safety, and human rights along with performing risk management of hazard, operational, financial and some strategic risks;
- Supporting the Board and committees including organizing meetings, preparing information briefs and reports, and implementing the strategic plan and policy directions;
- Fostering relationships with the government, professional associations, other regulators, consumer organizations and the public generally and, together with the President, conducting external communications; and
- Performing other functions assigned by the Board such as special projects and initiatives.

The ED/Registrar is required to act within the public interest mandate of the regulator. This can result in the ED/Registrar providing advice to the Board or a committee where the ED/Registrar is concerned that a potential policy or decision does not fully take into account the public interest.

It is sometimes said that the ED/Registrar is the sole employee of the Board. This expression means that the Board works through the ED/Registrar and does not involve itself in the management and direction of other staff. It is the ED/Registrar that assigns responsibilities to staff and reviews their performance.

That expression does not necessarily mean that the ED/Registrar should be treated as an employee. A key component to the successful governance of the organization is that there be a shared view of the relationship between the Board and the ED/Registrar. For example, a common perspective is that the ED/Registrar and the Board are partners working together to fulfill the regulator's mandate. However, another perspective is that the

ED/Registrar is the servant of the Board, performing assigned tasks as directed. One can imagine the issues that can arise if some components of the organization took the partnership approach and others followed the servant model. The approach taken, even if it is consistently shared, also has a significant impact on what type of person will accept, or remain as the ED/Registrar of the organization.

Role of Executive Director Scenario

Ernie Eager proposes the requirement for practitioners to have \$2,000,000 in professional liability insurance be replaced with a requirement that practitioners disclose to clients during the initial retainer process what amount of insurance, if any, the practitioner carried. Ernie argues that the cost of carrying such insurance is excessive and ultimately results in higher fees being charged to clients. No one at the Board seems engaged in the issue and it looks like the proposal will pass. The Executive Director speaks to the matter reminding the Board that, before the professional liability insurance requirement was enacted, a number of clients were left without financial recourse when mistakes were made. At that time the regulator faced pressure from clients, the media and government to do something. Ernie objects to the Executive Director speaking on the issue because the Executive Director is not a member of the Board and is there to implement whatever decision the Board makes.

This scenario illustrates the public interest duty of the Executive Director and how different views of the role of the Executive Director can have a material impact on the decisions (and repercussions) for the regulator. Most regulators do value the ED/Registrar providing relevant background information to the Board or Committees so that decisions made are fully informed.

NBAD Act and Regulations

[An Act Respecting the New Brunswick Association of Dietitians](#) and the [NBAD Regulations](#) provide direction specific to committees:

- **Registration Committee:** Regulation I – Admission Standards and Regulation IX – Registration Committee
- **Quality Assurance Committee:** Regulation II – Quality Assurance (Continuing Education)
- **Discipline Committee:** Dietitians Act, sections 25.1 to 30 – Discipline, sections 31(1) to 31(7) – Appeals and sections 31.1 to 31.5 – Investigations. Regulation IV – Breaches of Code of Ethics, Regulation V – Conflict of Interest, Regulation VI – Discipline and Regulation VII – Reporting of Disciplinary Decisions.

NBAD Policies and Procedures

NBAD Policies and Procedures Manual can be found online on the NBAD website. Go to www.adnb-nbad.com, click "Board/Committee Login". Once logged in, click "NBAD Policies" from the drop-down menu under "Board/Committee" on the main menu.

Username: member

Password: board20x

Each committee has policies and procedures that are relevant to their mandate:

- **Registration Committee:** Policy 2.2.3 Registration Committee TOR and policies under Section 6. Membership Process
- **Quality Assurance Committee:** Policy 2.2.2 Quality Assurance Committee TOR and policies under Section 8. Quality Assurance Program
- **Discipline Committee:** Policy 2.2.1 Discipline Committee TOR

Committee Meetings

Documents for each NBAD Committee can be found online on the NBAD website. Go to www.adnb-nbad.com, click "Board/Committee Login". Once logged in, click the respective committee from the drop-down menu under "Board/Committee" on the main menu. Whereas this private section of the website is shared amongst the NBAD Committees and Board of Directors, documents will be password protected. The Executive Director will provide you with the password used for your Committee.

Agenda

Meeting agenda is ideally circulated two weeks prior to a meeting. The Committee Chair prepares the meeting agenda (ED/Registrar provides Chair any new agenda items).

Minutes

Minutes are a legal recording of the meetings. The minutes are approved at the next convened meeting of the Committee and must be approved by Committee Members who were present at that particular meeting.

Rules of Order

Meeting follow [Bourinot's Rules of Order](#).

Meeting Attendance

Participation at meetings is important and Committee Chairs will select meeting dates that works bests with Committee members' schedules. However, it is understandable that a member may not be able to attend a meeting. A member should notify the Committee Chair if they cannot attend a meeting. If a member is frequently absent, they will be approached regarding their participation and desire to serve on the committee.

Meeting Preparation

- Review the agenda to determine how you should prepare for the discussions;
- Review any circulated material prior to meeting;
- Review policies related to agenda items prior to meeting; and
- Follow-through on action items and provide updates at meetings.

Meeting Expenses

Expenses for approved business of NBAD Committees are covered by NBAD (mileage, food, hotel accommodations). All expenses must be sent to the ED/Registrar within 60 days or by March 31, whichever comes first. Consult Policy 5.3.1 *Expense Policy* for more information.

Legal Consideration

NBAD consults with their appointed legal counsel, Cox & Palmer in Saint John, as required. The ED/Registrar communicates with the legal counsel and communicates information to Committees.

Liability Insurance

NBAD provides liability insurance for its Board of Directors and members of Committees. The current liability insurance policy can be found online on the NBAD website. Go to www.adnb-nbad.com, click "Board/Committee Login". Once logged in, click "Liability Insurance" from the drop-down menu under "Board/Committee" on the main menu.

Code of Conduct

Committee Members must agree to and sign the Committee Members Code of Conduct (Appendix B).

Fiduciary Obligations

Committee members have a duty of undivided loyalty to NBAD, to its mandate and the mandate of any committee on which they sit. This fiduciary duty includes an obligation to deal appropriately with any conflicts of interest that arise, to keep all information obtained in the course of their duty confidential and private unless an exception applies, to avoid engaging in any conduct that would bring disrepute to the organization, and to perform their duties with diligence and respect. We will examine each of these key duties.

Committee members generally have immunity from a lawsuit for damages (i.e., to pay money) so long as they acted in good faith. Bad faith is difficult to establish. Even a significant mistake, made honestly, is generally protected. However, a deliberate breach of a fiduciary duty by a committee member might, in some circumstances, amount to bad faith. Take the following example:

Fiduciary Obligations Scenario

Two instructors at a school that educates practitioners for entry into the profession, Joy and Ivy, sit on the Board. The Board is considering creating a provincial entry-to-practice examination that must be passed for applicants for registration. Joy's niece is completing first year at the school and will likely have to sit the examination. It does not occur to Joy that this could be a conflict of interest, so she does not declare any when discussing and voting against the proposal. Ivy works closely with the Dean of the school. The Dean is concerned that the examination will cause significant additional expense to the school to adapt its curriculum to cover all of the competencies that will be tested by the exam. The Dean conspires with Ivy to quietly lobby other Board members to oppose the proposal in return for the school's influential endorsement of them for the next election to the Board. The Dean and Ivy agree not to lobby Joy because Joy would likely react negatively to such an approach. If everything is revealed, will Joy and Ivy enjoy the immunity protection?

Joy may well have a conflict of interest. While Joy likely could be criticized for not disclosing the possible impact on Joy's niece, there is no evidence of bad faith. Joy likely would be protected by the immunity provision. Ivy, on the other hand, deliberately circumvented the conflict of interest rules for ulterior purposes unrelated to the public interest. Ivy likely would not be protected by the immunity provision.

Another general example of the duty of undivided loyalty is that committee members should freely contribute to and respect the intellectual property of the regulator. For example, if a committee member made a major contribution to a record keeping tool for NBAD, they should not expect to control how NBAD uses the tool, nor should the committee member use the tool for personal benefit. For example, the committee member would not "withdraw permission" for NBAD to use the tool in a way that the committee member does not approve. Similarly, the committee member would not use the tool for a privately offered record keeping course.

Conflict of Interest

One of the most fundamental fiduciary duties is that committee members cannot act when in a conflict of interest. A conflict of interest arises when a committee member has a competing consideration that could reasonably affect their ability to make a decision based solely on the public interest mandate of NBAD.

Acting in a conflict of interest harms the reputation of both NBAD and the individual, can nullify the decision made and, where done in bad faith, can bring legal liability to both NBAD and the individual.

Conflicts of interest can take many forms, including financial, personal relationships, affiliations with other organizations and employment. Some examples include the following:

- Holding a leadership position with an organization, such as a professional association (e.g., Dietitians of Canada), that has a mandate inconsistent with the public interest mandate of NBAD;
- Participating in a decision (e.g., approving a contract) where the committee member or someone close to them has a financial interest;
- Applying for an employment position with NBAD while still being a committee member;
- Participating in a decision, such as making a regulation or policy, that has a larger than usual impact upon one's own practice of the profession;
- Receiving gifts or hospitality (beyond the trivial such as refreshments during a meeting) because of your status as a committee member or from someone who is affected by the decisions made by NBAD;
- Using one's position with NBAD for personal advantage, such as referring to one's position in the signature block used in one's own practice;
- Running for public office where one's position with NBAD is used to promote the candidacy or where statements made in the campaign can affect one's role with NBAD;
- Assisting individuals or even one's employers in their dealings with NBAD; and
- Failing to provide relevant and important information to NBAD, such as where one learns of allegations of serious misconduct even though the information was learned outside of one's duties for NBAD.

Of course, whether there is a conflict of interest depends on the circumstances. Take the example of a client disclosing to a committee member, in the course of the committee member's practice of the profession, information about the misconduct of another practitioner. The duty of confidentiality to the client may prevent the committee member from reporting the misconduct to the regulator unless a legal mandatory reporting obligation exists. Similarly, noting one's position on the committee in one's CV as a community involvement in a manner that is not promotional would likely be acceptable. Including reference to one's position on a NBAD committee in an advertisement is unacceptable.

Because of this ambiguity, committee members should respond appropriately to any circumstance that might conceivably involve a conflict of interest. One such approach is to follow the three "D's":

- **Discuss** any potential concerns with the appropriate person (e.g., the President, the chair of the committee, the staff person supporting the committee, the

ED/Registrar). Talking through the concern may either provide reassurance that there is no concern or confirm that something more should be done. For example, if a committee member, upon reading a meeting package, is concerned that they might have a conflict of interest, that concern should be addressed prior to the upcoming meeting.

- **Disclose** the potential concern to the Board or relevant committee. The Board or committee can give more definitive guidance as to whether the concern is a problem or not. In a situation where the concern obviously constitutes a conflict of interest, disclosure is preparatory to the third step.
- **Declare** the conflict of interest where one appears to exist. This formal step should be recorded in the minutes. The committee member would then leave the room (even if the meeting is public) and make no effort to influence the discussion or decision on the issue.

There is nothing wrong with having a conflict of interest. Often the conflict arises simply through a confluence of circumstances beyond the committee member's control (e.g., someone the committee member knows is tendering for a contract with NBAD). However, failing to respond appropriately to the conflict of interest and acting while in a conflict of interest is a serious matter.

Conflict of Interest Scenario

Ernie Eager is assigned to a panel of the discipline committee hearing an allegation against a practitioner related to sexual harassment of a colleague. After making a finding against the practitioner, the practitioner files letters of good character from multiple colleagues. Ernie recognizes one of the letter writers as a close friend. Ernie had no idea that the friend knew the practitioner. What should Ernie do?

Ernie should first discuss the situation with the independent legal counsel supporting the discipline panel. That would prevent Ernie from tainting the other panel members, for example, by commenting on the credibility of the letter writer. Approaching the President or Executive Director in this case is likely not appropriate since the regulator is one of the parties at the hearing presenting the case. Independent legal counsel will almost certainly advise Ernie to disclose the connection to the letter writer to both parties at the hearing itself. Independent legal counsel can assist Ernie in wording the disclosure so that it does not taint the rest of the panel. After hearing the submissions of the parties, Ernie will decide whether he should declare an appearance of bias. An appearance of bias is another name for conflicts of interest that is commonly used in adjudicative settings like discipline hearings. If Ernie declares a conflict, he will leave the room and have no part in the decision on sanction. The appearance of bias likely does not affect the finding of professional misconduct itself because that finding was made before Ernie was aware of the connection.

Confidentiality

Committee members are required to keep all information obtained through NBAD confidential unless an exception applies. This duty is not limited to personal information. For example, policy proposals in early development are to be kept confidential until they are ready to be made public. Similarly, financial, human resources and other operational information must be kept confidential until made public through official channels. This approach greatly reduces the burden on committee members to figure out whether any one piece of information should be kept “confidential”. The rule is less difficult to apply: do not disclose any information unless an exception applies.

There are a number of reasons for this rule including:

- For most regulators, it is a statutory requirement enforced by a significant penalty (e.g., a large fine);
- Much of the information is highly sensitive, especially personal information about practitioners;
- Disclosure through proper channels of communication helps ensure that the information is presented accurately and consistently;
- Disclosure through proper channels helps avoid attempts to inappropriately influence committee members as they release the information privately;
- Disclosure through proper channels helps avoid the perception of special treatment if some people receive the information before others; and
- Disclosure through proper channels helps reduce any temptation by committee members to misuse the information (e.g., for their personal benefit).

The duty of confidentiality applies to disclosure within the organization, not just disclosure to persons external to NBAD. For example, a committee member disclosing information to a Board member for no regulatory reason is not only inappropriate, it could even taint the Board member in their future activities (e.g., if they sit on a discipline panel dealing with the matter). The “need-to-know” rule applies.

Of course, there are exceptions to the duty of confidentiality. There is an almost universal exception permitting disclosure where necessary to perform regulatory functions. For example, in order to investigate a complaint, the regulator has to interview witnesses and obtain relevant documents. Doing so invariably discloses the existence of the investigation into the practitioner. A second, almost universal, exception is where the information has already been made public by the regulator. The last phrase is important. For example, if a committee member learns that a practitioner is facing criminal charges, those charges are a matter of public record. However, until the charges are made public by the regulator, say at a discipline hearing, the fact that the regulator is aware of them is not public and the committee member cannot disclose knowing of their existence. Typically, the disclosure of information by the regulator is done by the staff of the regulator so as to prevent

inadvertent inappropriate disclosure by Board or committee members who may not be as familiar with the rules.

It is sometimes challenging for new committee members to appreciate the relationship between the high duty of confidentiality on their part and the increasing expectation of transparency by NBAD. Transparency involves the systemic disclosure of information by NBAD in order to further the public interest and to demonstrate that the Association is acting effectively within its mandate. The information selected for disclosure under transparency principles is carefully and consistently chosen because it allows the public to make informed choices (e.g., the discipline history of practitioners) and to observe key regulatory activities in action (e.g., public discipline hearings; published reasons for decision). Inconsistent or unilateral disclosure of regulatory information by individual committee members does not well serve the transparency goals of NBAD.

Where a committee member accidentally discloses confidential information, it is important that the Association's privacy officer (the ED/Registrar) is informed immediately. That permits NBAD to take prompt measures to reduce the risk of dissemination of the information and to warn (and apologize to) affected individuals so that they can prepare themselves for any repercussions. A committee member keeping the "slip" secret aggravates the harm that can result. Undoubtedly there will be a review of the circumstances of the confidentiality breach with a resultant revision of policies and procedures.

NBAD requests that committee members sign an acknowledgement and undertaking reinforcing their confidentiality obligations (see Appendix B).

Confidentiality Scenario

Ernie Eager frequently engages in banter with colleague practitioners. One such exchange involves sharing the most embarrassing situation in which they have found themselves. Ernie shares an anonymous story about a young practitioner who was video-conferencing with a client from his parent's home when his mother walked up behind him and kissed him on top of his head. Ernie intimated that this incident was part of a much longer complaint Ernie reviewed for the regulator. Unbeknownst to Ernie, one of the attendees knew of this incident, including the name of the practitioner. As a result, Ernie's colleagues have just learned that the now identified practitioner is the subject of a complaint. Ernie asks the colleagues to keep the information confidential, but fails to notify the privacy officer for the regulator. The disclosure gets back to the practitioner under investigation who raises an "abuse of process" defence to the complaint and insists that Ernie should be charged with the provincial offence for breaching confidentiality. Ernie is removed from the complaints committee panel dealing with the complaint.

Committee members must treat all information learned through NBAD with exacting discretion.

Conduct Unbecoming

Committee members representing a public interest regulator must demonstrate a high level of integrity. Appropriate conduct must be exhibited both while performing duties on behalf of NBAD and while engaging in personal activities. Unbecoming conduct can indicate that the committee member is unsuitable to hold their position with NBAD.

For example, claiming even a small false expense could undermine the ability of committee member to hold practitioners to account for false billings. Similarly, even a small request that reeks of entitlement, such as asking a staff member to pick up a committee member's dry cleaning, damages the credibility of the organization.

Comments on social media can also render a committee member unfit to remain in office. An example might be a posting a sexist, ageist or racist comment. Another illustration could be making a comment that is insensitive towards a vulnerable group, particularly a group served by practitioners. While committee members are entitled to have their own personal views on societal issues, some opinions are irreconcilable with the values of NBAD.

Criminal or regulatory charges or findings can result in a committee member being unable to continue with their duties. If the concerns are unproved, the committee member might still be asked to take a leave of absence from their duties, or even to resign their position if the allegations are serious or have been screened to some extent. The presumption of innocence that exists in the criminal process may not be an adequate response where the reputation of the organization is at stake. For example, it may be incompatible for a regulator whose practitioners serve vulnerable populations to have a committee member charged with intimate partner violence and that fact published by the media.

Similarly, where a professional member of a committee is the subject of a complaint or investigation by NBAD itself, serious perception issues can arise. Just like for the case of criminal charges, the committee member may be requested to take a leave of absence if the concerns are serious or have been screened. It is very important that there be no perception of the committee member receiving special treatment or interfering in any way with the investigation. A finding of professional misconduct will generally result in the committee member being removed from their position.

Conduct Unbecoming Scenario

A staff member reports to the Executive Director that Ernie Eager makes her feel uncomfortable. For example, Ernie has commented on her "outfits" a lot. Ernie has also mentioned that he has an open marriage. At the last committee meeting Ernie suggested that they have dinner together to discuss a complicated new case.

What is the Executive Director likely to do?

This scenario illustrates a hugely awkward governance situation. The Executive Director has an obligation to protect the staff member from harassment. However, Ernie Eager is a member of the Board (i.e., the Executive Director's "boss"). Given the power dynamic, it is probable that an external expert would be retained to conduct the investigation and make a report with recommendations. During the investigation the staff member and Ernie likely could not be scheduled to work together. One of them, likely Ernie, would have to be reassigned. The overall outcome depends on the findings of the investigation and could range from no action, to remedial action (e.g., Ernie taking gender and boundary sensitivity training), to censure or even removal.

Diligence

The duty of diligence is intended to ensure that the Association is effective in achieving its mandate. The work of NBAD is so important that it cannot afford to have even one Board or committee member who signs up simply to pad their résumé. Diligence requires preparation for all meetings and other activities, ongoing knowledge and skill development, and follow-through on action items.

An early indication of diligence for a new committee member is full participation in the orientation opportunities provided by NBAD, such as reading this Handbook.

Meeting preparation is another hallmark of diligence. Reviewing materials is necessary to being able to contribute knowledgeably at the meeting and to identify any possible conflicts of interest that should be discussed, disclosed or declared. If the materials appear to be missing important information, committee members should inquire as to whether its absence is intentional for some reason. Conscientious committee members identify the key issues to be determined and the considerations relevant to making that decision.

Attending all meetings of the committee is another aspect of diligence. Where it is not possible to attend a meeting, the committee member should give as much advance notice as possible so that any alternative arrangements can be made. And while there is a cultural overlay to punctuality, diligent committee members make it a priority, especially if the meeting is held in a city where traffic can be unpredictable.

At the meetings themselves committee members should actively participate. It is important for the committee that all reasonable perspectives are articulated. Passionate committee members should not dominate the discussion.

Where a vote is taken (and it may not be where action items are determined through consensus), abstention by the committee member constitutes a process failure. Rare exceptions may exist for a brand new committee member at their first or second meeting as they are still learning. However, in other circumstances, not voting indicates that a failure has occurred. Perhaps the organization failed to provide sufficient information for the committee member to feel informed enough to vote. Perhaps the committee member failed to prepare adequately. Perhaps the committee member failed to recognize the importance of voting. Perhaps the committee member is worried about the fallout in the profession from a vote on a difficult issue. Perhaps the committee member believes they have a conflict, however, abstaining from a vote is not an appropriate method of dealing with a conflict of interest; the conflict must be declared and the individual should leave the room.

Diligence also includes promptly following up on expected contributions outside of meetings. This can include drafting reasons for decision, reviewing draft minutes, completing agreed upon surveys or meeting feedback forms, or conducting any requested research or inquiries.

Diligence Scenario

There is little doubt that Ernie Eager has brought a tremendous amount of zeal to his orientation. However, during his first meeting he realizes that he does not understand the financial statements. They have never been a big part of his professional life. At first Ernie is hesitant to reveal this gap in his knowledge. However, his keenness takes priority and he asks the President if he could receive some education in interpreting financial statements.

The President has the CEO set up a couple of training sessions for Ernie.

Diligence is an indispensable attribute for committee members. Fortunately, it is one that most committee members bring with them.

Respect

Doing the work of a regulator is a team activity. There are certain “soft skills” that are vital to being an effective committee member, and the ability to respect others within the organization is probably the most critical one of them.

Courtesy and civility are the main components of respect towards one’s regulatory colleagues. This includes paying attention during the meeting, avoiding side conversations and turning mobile devices off. Active listening techniques (e.g., head nodding, eye contact) can add a lot to the discussion.

Tone is everything. Committee members can (and sometimes should) disagree with each other. Committee members should call out comments that are inconsistent with the mandate of the regulator or where inadequate information has been provided. However, this should be done with humility, sensitivity and, perhaps even on occasion, humour.

Another crucial element of respect is for a committee member to bring an open mind to the meeting. Tentative views on issues are to be expected. However, committee members should enter the meeting with the possibility that their views could change depending on the points made by their colleagues. Indicating how one will vote on an issue before the meeting is disrespectful to both the process and one's colleagues.

Another form of respect, discussed in more detail elsewhere, is the principle of supporting the final decision once it has been made. This is called "speaking with one voice".

Respect Scenario

Ernie Eager proposes on the morning of the meeting to add a late item to the Board meeting agenda. The agenda is already full and Micaela, another Board member, is concerned that the issue is a distraction. Micaela, who sits on the same committees as Ernie, is reluctant to vote against adding it to the agenda as she knows that would be disappointing to Ernie. Should Micaela abstain so as to show respect to Ernie?

Respect does not mean agreement. If Micaela believes the added agenda item would distract from other higher priority items, she should vote against the motion. However, Micaela can do so in a manner that shows respect to Ernie. For example, she could speak to the item during the discussion of the motion (or even privately with Ernie afterwards) indicating admiration for Ernie's fervour but indicating that the planned and prepared agenda items require the Board's full attention and energy.

Committee Role

Regulators usually have two types of committees: those that serve the Board and those that make regulatory decision.

Committees that serve the Board perform functions on behalf of the Board and usually consist of mostly Board members. An example would be a Finance and Audit Committee. Typically, they do "leg work" that would take up too much Board time for the entire Board to do. They generally do not make decisions. Rather, they gather information, report a summary of that information to the Board, and sometimes make recommendations to the Board. While the Board does not want to repeat the "committee work" that has been done, the committee is

accountable solely to the Board, and the Board is free to accept or reject the recommendations of the committee.

Committees that make regulatory decisions are quite different in nature. Typically, they are created by legislation and have a legal function to perform. Examples are committees that deal with registration, complaints, discipline and incapacity matters. Frequently those committees have non-Board members on them. In fact, the trend in recent years is to have fewer, or even no, Board members on those committees. The decisions are highly legal in nature and they are typically reviewed by tribunals and Courts external to the regulator. The Board has no authority to review individual decisions by the committee. At most the Board reviews the overall performance of the committee in various categories such as the number of cases dealt with over the period, the number of cases falling within each category, the number of appeals, the number of successful appeals, budget compliance and the average backlog of cases.

Committees often make policies affecting the processes and procedures of their own committee. Those policies should not usurp the role of the Board to make organization-wide or significant high-level decisions. Nor should the policies interfere with operational matters handled at the staff level. An example of an appropriate policy for a committee to make would be to craft a decision tree of the principles to apply when making a decision. For example, many complaints committees have a flow chart that guide the considerations (e.g., nature and seriousness of the complaint, apparent motivation of the practitioner, remedial steps already undertaken by the practitioner) that goes into determining how to dispose of a complaint.

Committee Role Quiz

There is a sense at all levels of the regulator that false billing is becoming a significant problem. There has been some media coverage suggesting that the penalties for such misconduct at discipline have been too light. Who has the authority to make policies to foster more severe sanctions at discipline for false billing?

This quiz illustrates the difficult task of identifying who has the authority to make different kinds of policies. The answer depends on the details of the nature of the policy.

Committee Role Quiz – Proposed Answer

Every component of the regulator can make some part of the policy.

- *The Board could enact a policy stating that false billing is serious misconduct warranting serious consequences. The policy could articulate the types of harm that results from such conduct. The policy could be directed to the profession and the rest of the organization.*

- *The CEO could develop a policy for staff instructing prosecuting counsel to seek the highest defensible sanction for a discipline finding of false billing.*
- *The discipline committee could conceivably develop a sanctioning guide for various types of findings to promote consistency and to recognize aggravating and mitigating factors. However, any such policy would have to emphasize that panels in individual cases are not fettered by the sanctioning guide.*

Committee Accountability Quiz

The Complaints Committee of a regulator rendered a highly controversial decision taking no action on a complaint that a practitioner had assaulted the practitioner's spouse. The spouse ended up in the hospital for a week with serious injuries. The Complaints Committee reasoning was that the conduct was not work related. There are numerous articles in the media about the case and the Minister has called the CEO expressing grave concerns with the decision. At the subsequent Board meeting, which of the following options is most appropriate?

- Setting up a task force to review the broader issue of the scope of the complaints process and recommending any appropriate changes to it.*
- Removing the members of the Complaints Committee and appointing new members who have a track record of expertise in intimate partner violence.*
- Directing the Complaints Committee to reconsider its decision.*

The task force option is the most suitable because it is consistent with the Board's strategic planning and high-level policy role. Removing and replacing the members of the committee is probably not appropriate because it interferes with the independent decision-making role of the committee. It could even create an appearance of institutional bias despite the noble motivation. Unless the enabling statute permits it (which would be highly unusual), the Board does not have the legal authority to direct a decision-making committee in an individual case.

Another possible option not listed in the scenario is for the regulator to initiate a judicial review or appeal of the committee's decision. Depending on the scheme of the enabling legislation, this option might be exercised by the CEO, or failing that, the Executive Committee (committee made up of a portion of the Board whose primary purposes are to make urgent decisions that cannot await a full Board meeting), rather than the Board itself. Initiating an appeal or judicial review of the decision has the benefit of not directly interfering in the operation of the committee, like options ii and iii do. Rather, the regulator would be acting as a party to the discipline hearing. Those previously involved in the matter, such as members of the complaints committee that referred the matter to discipline, may need to disqualify themselves from this discussion.

Committee Chair Role

The role of the chair of a committee is analogous to the role of the President to the Board. The chair leads by example, supports committee members, facilitates the activities of the committee and provides a link between the committee members and the staff supporting the committee. The chair is also the spokesperson for the committee, for example, when it reports to the Board.

When facilitating a meeting, the chair should encourage participation by all committee members, keep the discussion on topic and focussed on the public interest, ensure that the tone and manner of discussion is constructive, and prevent any one committee member from dominating the discussion. The chair needs to ensure that the issues under discussion are clearly identified, that the relevant considerations are covered in the discussion, that the decision is unambiguous, and that the responsibility for implementing the decision is clearly assigned.

Conclusion

Good governance for a regulator requires a shared understanding of how things should be done so as to achieve the mandate of the regulator in the most effective manner possible. Good governance requires that all Board and committee members appreciate the mandate of the organization, bring the strategic planning, policy making and oversight skills to the table, honour their fiduciary duties and agree upon the roles and responsibilities of the various individuals and components within the organization. Such a consensus enables Board and committee members to focus on the substance of their regulation of the profession in the public interest.

Adapted from Richard Steinecke, Steinecke Maciura LeBlanc (July 2020), Governance for Regulators: A Handbook for Board and Committee Members.

Appendix A

Alliance and PDEP

Alliance of Canadian Dietetic Regulatory Bodies (Alliance)

The Alliance includes representatives from all 10 provincial dietetic regulatory bodies and addresses common dietetic regulatory issues on a national level to advance dietetic regulation in Canada. The Alliance develops principles and frameworks to support consistent standards of public protection and dietetic practice in Canada.

The Alliance objectives are:

- Develop common frameworks to establish standards for entry to practice, continuing competency, professional practice and conduct;
- Share tools and resources to carry out regulatory responsibilities;
- Facilitate labour mobility for dietitians;
- Communicate with external groups on matters related to the regulation of dietitians in Canada;
- Administer the Canadian Dietetic Registration Examination (CDRE)

Partnership for Dietetic Education and Practice (PDEP)

In 2008, the Alliance of Canadian Dietetic Regulatory Bodies, Dietitians of Canada, and dietetic educators from academic and practicum programs across Canada have come together as PDEP to advance excellence in dietetic education and practice. PDEP works in those areas where the goals and achievements of the professional association, regulatory bodies, and educators depend on each other's work.

The Partnership undertakes projects in areas of common interest to benefit the safety and quality of dietetic services and the advancement of the dietetic profession in Canada.

PDEP Functions:

- To inform future joint initiatives by creating a common vision for education and practice.
- To develop, monitor and maintain the currency of the integrated competencies.
- To implement the Accreditation Standards through collaborative structures and processes.
- To oversee the Dietetics Education Accreditation Program in Canada.

Appendix B

**Code of Conduct and Confidentiality Agreement for
Committee Members**

Conflict of Interest

Representatives of the New Brunswick Association of Dietitians (the association), including member of its various committees, acknowledge their position of trust with the public and the dietetic profession of New Brunswick. This relationship of confidence and trust requires declaration of conflicts of interest which may be perceived by others as improper and which may undermine the work of the Association.

Therefore, if a person working on behalf of the Association is aware of a real or perceived conflict of interest, which could alter a person's commitment to the mission and goals of the committee or NBAD, that person shall:

1. disclose the potential conflict of interest; and
2. be prepared to remove herself from participation in the relevant Committee and /or decision

Confidentiality

In the course of conducting the business of the New Brunswick Association of Dietitians, committee members may come in contact with confidential information.

Confidential information shall not be used or disclosed to anyone other than persons who are authorized to receive such information. This responsibility continues after the service to the Association has concluded.

Questions as to whether certain information is confidential should be directed to the appropriate persons at the New Brunswick Association of Dietitians.

Confidential information obtained as a result of serving on a Committee of the Association shall not be collected, used, and/or disclosed by an individual(s) for the purpose of furthering any private interest, including for profit, or as a means of making personal gains.

Committee members shall ensure that confidential information is stored in a secure manner.

Upon completion or termination of service to the Association, all confidential documentation shall be shredded, either on site, or sent to the association for shredding.

Breach of confidentiality is a serious matter and will have consequences.

I acknowledge that I have read, understand, and agree to the Code of Conduct for and Confidentiality Agreement for Committee members.

Name: _____ Membership #: _____

Signature: _____ Date: _____

Witness: _____ Date: _____