

THE NOVA SCOTIA REGISTERED BARBERS' ASSOCIATION

BOARD OF BARBER EXAMINERS OF NOVA SCOTIA

CHAPTER 390 STATUTES OF NOVA SCOTIA 1989

Summary: This regulation establishes the definitions' for Misconduct by a Member of the Association, the penalties, the formation of a Disciplinary Committee and rules for holding and conducting a hearing and the collection of evidence for a hearing .

REGULATION # NSRBA 2017-001

BE IT RESOLVED, by the Council of the Nova Scotia Registered Barbers' Association that the following regulation be enacted and enforce upon ratification:

Each of the following is professional misconduct, and any licensee found guilty of such misconduct under the procedures prescribed in by- law shall be subject to penalties as prescribed in by- law or Regulation except that the charges may be dismissed in the interest of justice:

1. Obtaining the license fraudulently;
2. Practicing the profession fraudulently or beyond its authorized scope;
3. Practicing the profession with negligence on more than one occasion;
4. Practicing the profession with gross negligence on a particular occasion;
5. Practicing the profession with incompetence on more than one occasion;
6. Practicing the profession with gross incompetence;
7. Practicing the profession while impaired by alcohol, drugs, physical disability, or mental disability;
8. Being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, except for a licensee who is maintained on an approved therapeutic regimen which does not impair the ability to practice, or having a psychiatric condition which impairs the licensee's ability to practice;
9. (a) Being convicted of committing an act constituting a crime under:
 - (i) Nova Scotia Law or,
 - (ii) federal law or,

(iii) the law of another jurisdiction and which, if committed within this province, would have constituted a crime under Nova Scotia law;

(b) Having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another jurisdiction where the conduct upon which the finding was based would, if committed in Nova Scotia, constitute professional misconduct under the laws of Nova Scotia;

(c) Having been found guilty in an adjudicatory proceeding of violating a provincial or federal statute or regulation, pursuant to a final decision or determination, and when no appeal is pending, or after resolution of the proceeding by stipulation or agreement, and when the violation would constitute professional misconduct pursuant to this section;

(d) Having his or her license to practice barbering revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another jurisdiction, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in Nova Scotia, constitute professional misconduct under the laws of Nova Scotia;

(e) Having been found by the district medical health officer for the department of health to be in violation of the public health law;

10. Refusing to provide professional service to a person because of such person's race, creed, color or national origin;

11. Permitting, aiding or abetting an unlicensed person to perform activities requiring a license;

12. Practicing the profession while the license is suspended or inactive as defined in the Act, or willfully failing to register or notify the Board of any change of name or mailing address;

13. A willful violation by a licensee of the public health law;

14. A violation of the sanitation by-law; or

15. Failure to comply with an order issued pursuant to a Regulation or by-law as approved by the Association;

16. A willful or grossly negligent failure to comply with substantial provisions of federal, provincial, or local laws, rules, or regulations governing the practice of barbering;

17. Exercising undue influence on the patron, including the promotion of the sale of services, goods, appliances, or products in such manner as to exploit the patron for the financial gain of the licensee or of a third party;
18. Directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other consideration to or from a third party for the referral of a patron or in connection with the performance of professional services;
19. Permitting any person to share in the fees for professional services, other than: a partner, employee, associate in a professional firm or corporation, professional subcontractor or consultant authorized to practice barbering, or a legally authorized trainee practicing under the supervision of a licensee. This prohibition shall include any arrangement or agreement whereby the amount received in payment for furnishing space, facilities, equipment or personnel services used by a licensee constitutes a percentage of, or is otherwise dependent upon, the income or receipts of the licensee from such practice, except as otherwise provided by law with respect to a facility licensed pursuant to the Registered Barbers' Act.
20. Conduct in the practice of barbering which evidences moral unfitness to practice barbering;
21. Willfully making or filing a false report, or failing to file a report required by law or by the department of health or the Council or Board, or willfully impeding or obstructing such filing, or inducing another person to do so;
22. Failing to make available to a patron, upon request, copies of documents in the possession or under the control of the licensee which have been prepared for and paid for by the client;
23. Revealing of personally identifiable facts, data, or information obtained in a professional capacity without the prior consent of the patron or other person, except as authorized or required by law;
24. Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience, or by licensure, to perform them;
25. Performing professional services which have not been duly authorized by the patron;
26. Advertising or soliciting for patronage that is not in the public interest.

(a) Advertising or soliciting not in the public interest shall include, but not be limited to, advertising or soliciting that:

- (i) is false, fraudulent, deceptive, misleading, sensational, or flamboyant;
- (ii) represents intimidation or undue pressure;
- (iii) uses testimonials;
- (iv) guarantees any service;

(v) makes any claim relating to professional services or products or the costs or price therefore which cannot be substantiated by the licensee, who shall have the burden of proof;

(vi) makes claims of professional superiority which cannot be substantiated by the licensee, who shall have the burden of proof; or

(vii) offers bonuses or inducements in any form other than a discount or reduction in an established fee or price for a professional service or product.

(b) The following shall be deemed appropriate means of informing the public of the availability of professional services:

(i) informational advertising not contrary to the foregoing prohibitions; and

(ii) the advertising in a newspaper, periodical or professional directory or on radio or television of fixed prices, or a stated range of prices, for specified routine professional services, provided that if there is an additional charge for related services which are an integral part of the overall service being provided by the licensee, the advertisement shall so state, and provided further that the advertisement indicates the period of time for which the advertised prices shall be in effect.

(c)(i) All licensees placing advertisements shall maintain, or cause to be maintained, an exact copy of each advertisement, transcript, tape or video tape thereof as appropriate for the medium used, for a period of one year after its last appearance. This copy shall be made available for inspection upon demand of the Board;

(ii) A licensee shall not compensate or give anything of value to representatives of the press, radio, television or other communications media in anticipation of or in return for professional publicity in a news item;

(d) No demonstrations, dramatizations or other portrayals of professional practice shall be permitted in advertising on radio or television;

27. Failing to respond within thirty days to written communications from the Board and to make available any relevant records with respect to an inquiry or complaint about the licensee's professional misconduct. The period of thirty days shall commence on the date when such communication was delivered personally to the licensee. If the communication is sent from the Board by registered or certified mail, with return receipt requested, to the address appearing in the last registration, the period of thirty days shall commence on the date of delivery to the licensee, as indicated by the return receipt;

28. Violating any term of probation or condition or limitation imposed on the licensee pursuant order of the Disciplinary Committee;

29. Willfully harassing, abusing, or intimidating a member either physically or verbally;

30. Failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensee;

31. Guaranteeing that satisfaction or a cure will result from the performance of professional services;
32. Claiming or using any secret or special method of treatment which the licensee refused to divulge to the Board;

By Order and direction of the Council, there is hereby established the following Committees under the authority of the Act:

1. **Disciplinary Committee** – whose duties it shall be to hear complaints made against a member of the Association and make recommendations and impose disciplinary actions for a member found guilty of an offence under the Act or By-Laws.
2. **Inspection and Investigation Committee** – whose duties it shall be to inspect all premises that are licensed or registered under this act and investigate complaints against licensee's and issue violations for failure to maintain the minimum standards under this act.
3. The Standing Committees shall be appointed by the Council within (30) thirty days of the Annual Meeting and shall be composed of not less than (3) three members and not more than (7) seven, one of whom shall be a member of the Council.
4. The Vice President shall be a member and the chairman of the Disciplinary Committee, and the Registrar shall be the secretary to the committee.
5. The committee members shall hold office until the next Annual Meeting or their successors are duly appointed.

By Order and direction of the Council, there is hereby established the following Rules for the Inspection & Investigation Committee:

1. The Council shall appoint Inspectors who shall be authorized under Sections 6(1)(h) of the Act and shall be permitted to perform the following duties:
2. An Inspector appointed hereunder shall be authorized without advance notice to enter and inspect any premises that advertises itself as a barber shop or School of Barbering to ascertain that it is in compliance with the Act and By-Laws.
3. An Inspector appointed hereunder shall be authorized to issue on the prescribed form a notice of inspection and certificate of inspection.
4. An Inspector appointed hereunder shall be authorized to issue a Ticket of Violation with or without penalty on the prescribed form.

5. An Inspector appointed hereunder shall be authorized to issue a Notice to Cease Operations for a specific period pending further review, on the prescribed form.

6. An Inspector appointed hereunder shall be issued with a badge and identification card bearing his photo and shall produce the same upon entering an establishment for the purpose of inspection.

7. The Council shall by regulation set the fees payable to any inspector appointed hereunder, and the prescribed forms to be used by such inspectors and the procedures for such inspections to methods for the filing of reports and evidence of violations and misconduct and establish the qualification of such inspector.

8. The fine that may be imposed by an Inspector authorized under this regulation are for the following violations and such fine shall be \$250.00 per violation:

- Failure to register a barber shop
- Failure to have a valid Barber Registration
- Apprentice not supervised
- Failure to maintain premises in a sanitary condition
- Failure to use an approved neck strip
- Failure to sanitize instruments/utensils after use
- Failure to provide an approved sterilizer
- Use of powder puff / wet duster
- Failure to follow rules for proper sanitation
- Any other violation of the By-laws or the Act

By Order and direction of the Council, there is hereby established a Disciplinary Committee that shall be constituted as follows:

Composition and Authority of the Disciplinary Committee shall be as follows: -

1 The Disciplinary Committee shall be composed of 5 members of the Association who shall be appointed by the Council and the Vice President who shall be the chairperson;

2 The Disciplinary Committee shall hold a hearing respecting the allegations of professional misconduct, incompetence or incapacity of a member that have been referred to it by the Inspection & Investigation Committee;

3 The Disciplinary Committee shall commence a hearing within thirty (30) days after the date on which the complaint is referred to it for hearing;

4 Members of the Disciplinary Committee holding a hearing shall not have taken part in any investigation of the subject hearing, and shall not communicate directly or indirectly in relation with the subject matter of the hearing with any person or with any party or representative of the party, except upon notice to and opportunity for all parties to participate, but the Committee may seek legal advice;

5 The Disciplinary Committee shall not less than 14 days before the date set for the hearing, serve the member against whom the complaint is made, the complaint if any, a Summons of Hearing in the form prescribed by regulation of the Council setting out the date, time and place of hearing;

6 The Summons shall describe the subject matter of the hearing and advise the member that the Disciplinary Committee may proceed with the hearing in the absence of the member;

7 The Disciplinary Committee, on proof of service of the Summons on the member against whom the complaint is made, may

(a) proceed with the hearing in the absence of the member; and

(b) without further notice to the member, take any action that is authorized to be taken under the Act or by-laws.

8 Sanctions by Disciplinary Committee: -

8.1 On the completion of a hearing the Disciplinary Committee may;

(a) dismiss the complaint, or if found guilty;

(b) reprimand the member;

- (c) impose of fine to a maximum of one thousand dollars to be paid by the member to the Association for the Associations use;
- (d) impose terms, conditions and limitations on the members right to practice for a specified period of time or until the terms, conditions or limitations are satisfied, including the requirement to successfully complete courses of study;
- (e) suspend the member from the practice of barbering for a fixed period of time;
- (f) cancel and revoke the right of the member to practice barbering in the province;
- (g) direct the Registrar to give public notice of any order by the Committee against the member regarding suspension or cancellation of a members registration and right to practice;
- (h) order that the member pay the Association the costs of any investigation or procedures by the Inspection & Investigation Committee and the Disciplinary Committee, including legal costs and expenses, or
- (i) make such other order as the Committee considers appropriate, including retaining jurisdiction over the matter to assure that its direction is enforced.

9 The Disciplinary Committee may order the Association to pay all or part of the member's legal costs if in its opinion the hearing was unwarranted.

10 The Disciplinary Committee shall give its decision in writing stating the grounds for its findings and the penalty imposed, if any, along with a statement of the rights of the parties to appeal the decision to the Council of the Association.

11 The Disciplinary Committee shall immediately notify the Registrar of its decision on the prescribed form.

12 The Council shall by regulation set the conditions of the hearing procedure, attendance of witnesses, method of appeal and investigations.

Disciplinary Committee for the hearing procedure, attendance of witnesses, method of appeal and investigations.

13. Hearing Procedure:

- (a) In a hearing before the Disciplinary Committee (hereinafter referred to as the Committee), the Association and the member against whom a complaint is made are parties to the hearing and may be represented by council.

- (b) A member against whom a complaint is made shall be given, before the hearing, a reasonable amount of time to examine any written or documentary evidence that will be produced, or any report the contents of which will be given in evidence at the hearing.
- (c) A party intending to use expert evidence at a hearing shall give the other party at least 10 days notice before the hearing, the identity of the expert and a copy of the experts report or, if there is no written report, a written summary of the evidence to be given by the expert.
- (d) Hearings of the Committee shall be held in private unless and until the member whose conduct is being investigated requests otherwise by notice delivered to the Registrar at least 5 days before the hearing.
- (e) Oral evidence shall be recorded by electronic means, including digital video, and if a party requests a copy of the transcript it shall be furnished at that party's expense.

14. Conduct of Hearing:

- (a) The parties shall be allowed to call evidence and to cross-examine witnesses.
- (b) The Committee is not bound by the rules of evidence which apply in judicial procedures.
- (c) The Committee may adjourn the hearing from time to time at the request of the parties upon reasonable grounds being shown.
- (d) The burden of proof is the same as in civil cases.
- (e) The member against whom the complaint is made is a compellable witness.
- (f) A witness shall not be excused from answering any question on the ground that the answer;-
 - (i) tends to incriminate,
 - (ii) might subject the witness to punishment under the Act (Registered Barbers' Act),
 - (iii) might tend to establish liability in a civil proceeding or liability to prosecution.

15. Attendance of Witness:

- (a) The Committee, or someone designated by it to act on its behalf, may summons in a form prescribed by by-law on the written request of any party to the proceedings, require the attendance before it of any person whose evidence may be material to the subject matter of the hearing and may order any person to produce such records, reports or other documents as appears necessary for the purpose of the hearing.
- (b) A person served with a summons shall attend and answer all questions concerning matters being inquired into at the hearing and shall produce to the Committee all records, reports or other documents that are under the person's custody or control.

(c) The testimony of a witness may be taken under oath or affirmation administered by the chairperson of the Committee or any person designated to do so on the chairperson's behalf.

(d) If a person on whom a summons has been served, either personally or by leaving a copy of the summons with some adult person at the persons last or most usual place of residence or business, fails to appear before the Committee or upon appearing refuses to be sworn or refuses without sufficient cause to answer any question relevant to the hearing, may by application to the Provincial Court, cause the person to be cited for contempt under the provisions of the Rules of Court in the same manner and to the same extent as if the alleged contempt took place in proceedings before the Court.

(e) If the person referred to in paragraph (d) is a member, refusal to attend and give evidence at the hearing is professional misconduct and such conduct shall be punishable in accordance with the Act.

(f) A person, other than the member whose conduct is the subject of the hearing, who is served with a summons under this regulation shall be tendered the same fees as are payable to a witness in an action in The Superior Court of Nova Scotia at the same time the summons is served in the form of a cheque payable to the witness. Such fee shall be paid by the party who has requested the attendance of the witness.

16. Appeal of Committee Decision:

(a) A party to proceedings before the Committee may appeal within 30 days from the date of decision or order of the Committee to the Council of the Association by way of Notice of Appeal on the prescribed form, in accordance with the Rules of Court.

(b) When requested by a party intending to appeal, and on payment of any reasonable expenses relating to the request, the Registrar shall provide the party with a copy of the record of the proceedings, including the documents received in evidence and the decision or order being appealed.

(c) An appeal under this regulation shall be based on the record of the proceedings before the Committee and its decision, and may be on questions of law or fact, or both.

(d) On an appeal from the decision of the Committee the Council may;-

- (i) affirm, vary or reverse the decision of the Committee,
- (ii) exercise all powers of the Committee,
- (iii) substitute its decision for that of the Committee,
- (iv) refer the matter back to the Committee for rehearing in whole or in part, in accordance with such directions as the Council considers proper, or
- (v) make any order it considers appropriate including costs.

17(1) Investigation:

(a) In the absence of a complaint, the Council may carry out an investigation if it has reason to believe that the conduct or actions of a member may constitute professional misconduct, incompetence or incapacity, or may direct that the Inspection & Investigation Committee carry out such investigation.

(b) The Council may appoint one or more investigators to assist in an investigation under paragraph (a), or to assist the Inspection & Investigation Committee in any investigation it is required to conduct under the Act, by-laws or this regulation.

17(2) Responsibilities of Member:

(a) A member who is being investigated under the Act shall cooperate with the Council, the Inspection & Investigation Committee and the investigator, and shall produce all documents and disclose to the Council, the Inspection & Investigation Committee and the investigator, all information that may be relevant to the investigation.

(b) No member shall obstruct, or cause to be obstructed, an investigator while the investigator is performing duties under the Act, by-laws or this regulation.

(c) No member shall withhold, conceal or destroy, or cause to withhold, conceal or destroy, anything that is relevant to an investigation under the Act, by-laws or this regulation.

(d) A member who violates paragraph (a), (b) or (c) commits an act of professional misconduct and such conduct shall be punishable in accordance with the Act.

STATUTORY AUTHORITY: c.390 RSNS 1989, section 6(1)(g)

EFFECTIVE DATE: 2017- -

AMENDED:

IT WAS RESOLVED AND HEREBY ENACTED:

Dated in the Province of Nova Scotia on the 8 day of February, 2017.

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Secretary-Treasurer