



Summary of Proposed Nursing Act and Bylaws

January 9, 2025

(words that are in bold italics are defined in the Act or Bylaws)

Table of Contents

INTRODUCTION AND OVERVIEW	1
NEXT STEPS.....	2
SUMMARY OF PROPOSED KEY CHANGES:	3
I. Terminology	3
II. Structure of the Act and Bylaws	3
III. Objects of the Regulator	4
IV. Governance.....	5
V. Scope of Practice	5
Scope of Practice of Registered Nurses	5
Scope of Practice of Nurse Practitioners.....	7
Expanded Scope of Practice	8
VI. Registration and Licensing	8
Distinction between Registration and Licensing	8
Licensing Categories	9
Registration Criteria	9
Licensing Criteria	9
Waiver of Criteria.....	10
Registration and Licensing Process	10
VII. Duties of Registrants	11
VIII. Title and Practice Protection	11
IX. Complaints, Reports, Investigations and Hearings.....	11
Appeals	12
Consent Revocation Process.....	12
X. Sexual Abuse	13
XI. Fitness to Practise.....	13
XII. Confidentiality and Privilege	14
XIII. Quality Assurance	15
XIV. Professional Incorporation.....	15
XV. General	15
XVI. Transitional	16
XVII. Consequential Amendments	17
XVIII. Conclusion	17

INTRODUCTION AND OVERVIEW

The current [Nurses Act](#), SNB 1984 c 71 (the “Act” or “**Nurses Act**”) received Royal Assent in June, 1984. In the last 40 years, while some amendments have been made, there has not been a full overhaul of that legislation despite many developments in both the practice of nursing, and in the regulation of health professions across the country. Some of these developments include:

- Governments and members of the public are increasingly requiring regulators to focus on serving and protecting the public interest in the practice of the profession. Governments want regulators to move away from advocacy roles or membership interest roles to ensure patient safety is at the forefront of professional regulation;
- In keeping with a focus on the public interest, there is an increased expectation that regulators will include a larger percentage of members of the public on their Boards and Committees;
- The shortage of primary care providers has reinforced the need for all health professionals to work to their full scope of practice. There is an expectation that legislative and administrative barriers that prevent or impede practice to full scope, should be reduced or eliminated;
- Similarly, the shortage of health care workers in general has led to the regulation of other health care providers who are not presently regulated in New Brunswick. Registered Psychiatric Nurses (RPNs) are one example. It is important that new legislation leaves open the potential to regulate other disciplines within the nursing profession in the future;
- The shortage of health care professionals has highlighted the need for the legislative structure to allow for ease of mobility and simplified, quicker registration processes, and a registration system that will accommodate the potential for multi-jurisdiction registration;
- Since the development of the *Nurses Act*, the New Brunswick government has introduced [A Guide to Private Legislation For Self-regulated Health Professions](#). This guide sets out government’s expectations for new or amended regulatory legislation, and new legislation needs to reflect these expectations;
- Introduction of legislation like the [Fair Registration Practices in Regulated Professions Act](#) in New Brunswick, has added requirements for regulators that must be directly reflected in new legislation;
- Given the increasing mobility facilitated by the *Canada Free Trade Agreement*, regulators are generally striving for consistency with legislation in other jurisdictions across the country wherever possible;
- Many regulators in Canada have adapted their complaints and hearing processes to reflect increasing requirements of procedural fairness, and to include alternative resolution methods that will reduce the need for formal hearings;
- Many regulators have also developed remedial alternatives to the traditional disciplinary stream for addressing matters related to medical and mental health matters;

- Governance practices of regulators have evolved considerably over the past several decades, with a recognized need for a clear division between the roles of those who govern, and those who manage the organization. The legislation should reflect this division to help avoid the role confusion that can occur if the Board becomes involved in matters relating to individual registrants;
- In recognition of the pace of change in health care and in the health professions themselves, governments are increasingly drafting legislation that allows for the evolution of health care and the professions, by using enabling language designed to permit regulators to remain current, relevant, and nimble;
- Many regulators have moved away from Board elections/appointments based on geographical areas, practice domains, or other factors, to avoid the appearance of those Board members “representing” particular constituencies rather than acting in the public interest as a whole.

In light of such developments, NANB has decided to move forward with the preparation of new legislation to regulate the nursing profession in New Brunswick. To this end, a legislative drafting team, consisting of NANB staff and external legal counsel has been meeting regularly and working diligently over the course of the past two years to prepare new legislation. In addition, a sub-committee of the Board has met with the drafting team to provide input as the legislation was being developed, and the Board as a whole has had the opportunity for input into the concepts for inclusion in new legislation, and has now approved the draft legislation to go out for broader consultation.

NEXT STEPS

This Summary is now being circulated to facilitate the reader’s review of the proposed new Act and Bylaws. Because this document IS a Summary, it does not address every aspect of the proposed legislation, but is designed to provide an overview of the key concepts. More detail can be found in the draft Act and Bylaws, which is available on the [NANB website](#).

NANB intends to work closely with registrants, the Government of New Brunswick, and all relevant partners to gain their feedback, following which the plan is to advance the passage of new legislation at the earliest time permitted by the legislative agenda.

We look forward to your [feedback](#).

SUMMARY OF PROPOSED KEY CHANGES:

I. Terminology

To assist in underscoring the distinction between a regulatory body and a membership/advocacy body and to align with naming conventions for most health profession regulators across the country, it is proposed that the New Brunswick Nurses Association be renamed the *College of Nursing of New Brunswick* (CNNB).

To further reinforce this change, it is proposed that the term “member” be changed to “**registrant**”.

It is also proposed that the name of the legislation be changed from the *Nurses Act* to the *Nursing Act*, to reflect that the Act applies to more than nurses. For example, if a member of the public engages in nursing without being registered and licensed by the College, the Act provides a mechanism to seek court intervention.

II. Structure of the Act and Bylaws

Direction was originally given to the drafting team to use the legislative model developed in Nova Scotia through the passage of the *Nursing Act*, SNS 2019 c 8, since that legislation was developed relatively recently, and the two provinces are close in location to each other.

While the Nova Scotia model was used as the initial template, the drafting team ensured proper attention to New Brunswick specific needs, requirements, and considerations including language, geography, and the province’s current professional landscape.

The structure of the *Nursing Act* in Nova Scotia includes placement of the key regulatory matters and governance matters in the Act, with supplemental details in the bylaws. There is limited regulation making authority in the Nova Scotia legislation.

In the proposed New Brunswick legislation, the key regulatory pieces are found in the Act, and to enable flexibility for the future, there is extensive bylaw making authority to expand on the matters in the Act. In addition, policies can be developed to expand on the matters outlined in the Act and the Bylaws.

The key governance documents will be:

- The Act, approved by government, which sets out the principal regulatory authority, with the ability to make bylaws on the matters enumerated in the Act;
- The Bylaws, approved by the Board and which can be amended, repealed, and replaced by the Board following consultation with the registrants;
- Specific Bylaws requiring approval by the Minister (those addressing scopes of practice and the addition of new categories of registrants who have not been previously regulated);
- Standards of practice, standards of nursing education, code of ethics, and entry-level competencies documents approved by the Board;

- Policies and guidelines developed by the Chief Executive Officer (CEO) or the Board, depending on the nature of the content.

The breakdown between the Act and the Bylaws is intended to ensure that the key regulatory and governance matters remain subject to government approval, but the areas that need to evolve with the changes in the profession and changes in regulatory processes, are left to the bylaws which can be more readily changed. For example, all internal affairs of the regulator involving the appointment of Board members, the holding of meetings and similar administrative matters are set out in the bylaws, while key governance matters such as the minimum and maximum number of Board members, and scopes of practice are principally set out in the Act.

III. Objects of the Regulator

An *Objects* clause is the section of the legislation that sets out the organization's purposes. It provides a high-level summary of what the organization is empowered by government to do. If there is any doubt about the meaning of other provisions in the legislation, the *Objects* clause is often used as a reference/interpretive tool to determine the legislative intent of other sections.

Currently, the *Nurses Act* contains various recitals that set out the purpose of NANB. These recitals refer to NANB's role in advancing and maintaining the standard of nursing in the province, for governing and regulating those offering nursing care and for providing for the welfare of members of the public and the profession.

In the proposed *Objects* clauses set out below, the emphasis is placed on the public interest, and moves away from language that suggests the regulator has a professional advocacy mandate. This is the approach consistently taken across the country in recent years.

The proposed objects are as follows:

The objects of the College are to serve and protect the public interest by:

- (a) regulating the ***practice of nursing*** and the ***nursing profession***,
- (b) governing its ***registrants***,
- (c) advancing and promoting the ethical and professional standards of the nursing profession, and
- (d) administering the Act and the bylaws.

The remaining language of this section sets out more specific functions the College must perform, such as establishing a code of ethics, standards of practice, entry level competencies, administering various regulatory processes, and establishing or adopting programs to support and sustain inter-professional collaboration, the ability of registrants to respond to changes in their practice environments, advances in technologies, and other emerging issues.

IV. Governance

The current Act requires the Board to have no more than 25 directors, with a minimum of 3 public representatives, with one public representative appointed by the Minister and two by the Lieutenant-Governor in Council. The Bylaws then stipulate that the Board shall consist of 12 persons: the President and President-Elect, 3 members of the public, and 7 directors elected by region.

Under the proposed Act and Bylaws, the initial Board that will take office when the new Act comes into force will be the Board of the NANB in place at that time. The next Board will be established within one year of the Act coming into force. This provides a period of time to develop new bylaws containing the details of the new Board's composition.

The Act sets the following parameters:

- The Board will have a minimum number of 7 and maximum number of 13 Board members;
- **Public Directors** (non-nurses) will comprise between 33% and 49% of the Board;
- At least one of the public directors must be appointed by the Minister from a list of names proposed by the College;
- Registrant members will be appointed in the manner set out in the bylaws that will be developed.

The Board is given the authority to govern the affairs of the College, including the setting of fees and the passing of bylaws. There is no provision for the holding of an Annual General Meeting, which is consistent with the move away from being a membership body to being a public interest regulator.

V. Scope of Practice

The current Act defines "nursing" as "the practice of nursing and includes the nursing assessment and treatment to human response to actual or potential health problems and the nursing supervision thereof".

The current Act has a more detailed definition of the "*practice of a nurse practitioner*" that references the ability to diagnose, order, and interpret approved screening and diagnostic tests, prescribe approved drugs, and order the application of approved forms of energy.

The proposed wording in the new legislation for both the "practice of registered nurses" and the "practice of nurse practitioners" is more detailed, and is designed to provide greater clarity respecting scope. The scope of practice statements across Canada were reviewed and the proposals below reflect a comprehensive statement of both current and anticipated scopes of practice for both RNs and NPs. The proposed scopes are set out in full below:

Scope of Practice of Registered Nurses

The scope of practice of registered nurses is the application of skill, judgment, and evidence-based knowledge of nursing theory and health and human sciences, in the provision of nursing

services to **clients** ranging from stable or predictable to unstable or unpredictable, including but not limited to:

- (a) assessing the client to establish the client's state of health and wellness,
- (b) identifying responses to potential or actual health needs based on the assessment and analysis of relevant data and information,
- (c) planning, developing, and implementing the nursing component of the client's plan of care,
- (d) coordinating client care in collaboration with other health care providers and community resources,
- (e) monitoring, evaluating, and adjusting the plan of care based on client responses,
- (f) evaluating the client's outcomes,
- (g) such other nursing roles, functions and accountabilities that support client safety and quality care, in order to:
 - (i) promote, maintain and restore health,
 - (ii) prevent or alleviate illness, disease, suffering, and injuries,
 - (iii) manage acute illness and conditions,
 - (iv) manage chronic disease and conditions, and
 - (v) provide guidance, counselling, and teaching,
- (h) such other roles, functions and accountabilities that support the practice of registered nurses including:
 - (i) research,
 - (ii) education,
 - (iii) consultation,
 - (iv) management,
 - (v) administration,
 - (vi) policy development, and
 - (vii) regulation; and
- (i) such other services and activities as set out in the Bylaws.

Scope of Practice of Nurse Practitioners

The scope of practice of nurse practitioners is, in addition to the scope of practice of registered nurses, the application of advanced nursing knowledge, skill, and judgment in the provision of nursing services, including but not limited to:

- (a) making a diagnosis identifying a disease, disorder, or condition,
- (b) communicating the diagnosis to the client and other healthcare professionals as appropriate,
- (c) performing procedures for the clinical management and prevention of disease, injuries, disorders, or conditions,
- (d) prescribing, authorizing, ordering, administering, and dispensing drugs and medications,
- (e) initiating, ordering and prescribing consultations, referrals, medical devices, and treatments including applications of forms of energy, and other non-pharmacological interventions,
- (f) ordering, receiving, and interpreting screening and diagnostic tests,
- (g) selecting, recommending, prescribing or reordering blood, blood products, and related paraphernalia,
- (h) admitting and discharging clients from hospitals, institutions, facilities and programs, and
- (i) such other roles, functions and accountabilities that support the practice of registered nurses including:
 - (i) research,
 - (ii) education,
 - (iii) consultation,
 - (iv) management,
 - (v) administration,
 - (vi) policy development, and
 - (vii) regulation; and
- (j) such other services and activities as set out in the bylaws.

The drafting team believes these scope statements reflect the best approaches to allow nurses to practice in the areas where they have been educated and trained.

In addition to the revisions to the scope of practice for nurse practitioners as set out above, other revisions contemplate the removal of many of the current legislative restrictions on a nurse practitioner's practice. The current Act requires the appointment of a Nurse Practitioner Therapeutics Committee which makes recommendations to the Board about specific screening and diagnostic tests, drugs, and forms of energy that may be ordered by a nurse practitioner (NP).

In addition, NPs are required to annually file a statement from their employer verifying they have reasonable access to a medical practitioner for consultation, referral, or transfer of any patient.

The proposed legislation makes it clear that every registrant is required to practice within their individual scope of practice, meaning within those aspects of the scope of practice for NPs for which the NP is licensed, educated, and competent to perform, and is authorized to perform within the NP's employment or practice setting. Accordingly, the parameters around a NP's practice will be established first by the NP's assessment of their own competence based on their education and experience, and further by any parameters placed upon them by employers. In addition, NPs will be required to practice according to Standards of Practice set by the College. However, they will not be required to file annual statements respecting access to medical practitioners.

The proposed legislation is a far less prescriptive approach that is consistent with the approach taken by many other nursing regulatory bodies, and consistent with the evolution of the NP profession within Canada.

Expanded Scope of Practice

A new concept is included in the draft legislation which addresses the ability of Registered Nurses (and potentially other designations that may be regulated in the future, such as RPNs), to work within an **expanded scope of practice** by engaging in the scope of another designation regulated under the Act. An example is Registered Nurse (RN) prescribing, which falls within the broad scope of practice of the nursing profession, but currently is performed only by NPs. If the Board approves RN prescribing as an expanded scope for RNs, the Board would then approve the specific education and other requirements that an RN would need to complete prior to being eligible to do that. The CEO would be required to maintain a publicly available list of the RNs who are authorized to engage in the expanded scope of RN prescribing.

VI. Registration and Licensing

Distinction between Registration and Licensing

The new Act creates a distinction between **registration** and **licensing** processes. Registration is the activity that occurs when an applicant applies to become a registrant for the first time. It is at the registration stage, for example, where an applicant must provide proof of graduation from an **approved nursing education program**, and meet other first-time requirements to become a registrant.

Once registered, a registrant then must annually meet the criteria for one of the categories of license, and must renew their license each year in order to continue in practice. There is no need to produce proof of graduation from an approved school, for example, during the annual renewal process, but there is a need to determine that a registrant meets the ongoing requirements for licensure, such as proof of continuing competence.

As a result, the criteria for registration and licensing differ.

Licensing Categories

To simplify the registration and licensing processes, only four categories of license have been created:

- (i) Registered Nurse License;
- (ii) Nurse Practitioner License;
- (iii) Graduate Nurse License; and
- (iv) Graduate Nurse Practitioner License.

A person who has met the criteria for registration has their name placed on the Register, and a person who meets the criteria for a particular category of license, is issued that license. If conditions or restrictions are needed on any category of license, they may be added by consent or imposed unless challenged.

Registration Criteria

In order to be registered, in addition to paying the fee and completing the required application form, an applicant must provide satisfactory proof of:

- (a) successful completion of an **approved nursing education program** (which is a program approved by the Board following a recommendation for approval from the Nursing Education Advisory Committee), or successful completion of another education program in nursing in another jurisdiction that together with the completion of a **competence assessment** and **bridging education** provides the applicant with comparable competencies for the **designation** for which registration is sought;
- (b) language proficiency in English or French;
- (c) completion of examinations approved by the Board;
- (d) character and **competence**, and **fitness to practice**;
- (e) no disciplinary record that will preclude registration;
- (f) identity; and
- (g) such other criteria as set out in the bylaws. (This allows for flexibility to add criteria in the future).

Licensing Criteria

To qualify for a registered nurse license or a nurse practitioner license, an applicant must pay the required fee and submit a completed application form. In addition to confirming ongoing good character, competence and fitness to practice, as well as no disciplinary record that precludes licensing, an applicant must provide proof of:

- (a) professional liability insurance as approved by the Board;
- (b) completion of **continuing competence** requirements;
- (c) meeting the **currency of practice requirements** set out in the bylaws.

The currency of practice requirements have been made far less prescriptive to align with other jurisdictions.

To qualify for a Graduate Nurse or Graduate Nurse Practitioner licence, a registrant must meet the criteria for a Registered Nurse or Nurse Practitioner licence, except that the applicant has not completed the required registration examinations.

Waiver of Criteria

It is recognized that unexpected circumstances may arise when an applicant may not be able to provide the required proof of having met particular criteria. For example, a labour mobility applicant may have had different criteria for registration in another province in Canada, but be required under the *Canada Free Trade Act* to be registered in New Brunswick. As a result, the Act requires the waiving of criteria where it is required by law to do so, and also where there is an inter-jurisdictional agreement that requires registration and licensing in New Brunswick.

In addition, there can be other circumstances where an applicant may not be able to meet the registration and licensing requirements, but where there is a public interest in registering or licensing. An example that comes to mind is events surrounding the pandemic, where a retired nurse may not have had the required number of hours in recent years to be considered current in practice, but where there is a need for that nurse to work in a particular practice setting where the decision maker is satisfied the nurse is competent and safe to do so in a restricted role. As a result, there is a permissive provision that enables the waiving of specific criteria, where doing so is consistent with the objects of the College.

Registration and Licensing Process

The framework of the registration and licensing process is to enable the CEO, through their staff delegates, to grant the application when satisfied all criteria have been met, to impose conditions or restrictions where appropriate, and to deny the application when satisfied all criteria have not been met. The CEO may also refer the application to the **Registration and Licensing Committee** if uncertain as to whether an applicant meets the criteria (the Registration and Licensing Committee is comprised of registrants and public representatives).

If an applicant is dissatisfied with the CEO's decision to deny registration, licensing or to impose conditions or restrictions, the applicant has a right of review by the **Registration and Licensing Review Tribunal** (again, a body comprised of both registrants and public representatives). The Board has no role in the registration and licensing process.

VII. Duties of Registrants

Key professional duties and obligations of registrants are pulled together in one central place in the Act. Such duties include a duty to cooperate with the College, to maintain current contact information, to comply with the Act and Bylaws, and to practice only within the registrant's individual scope of practice.

VIII. Title and Practice Protection

The proposed legislation provides both title protection (i.e., restricting the persons authorized to use certain titles) and practice protection (i.e., restricting the ability to engage in the practice of nursing only to those authorized by the Act).

Only those registered under the Act in the appropriate category of license may use the relevant protected titles of "registered nurse", "RN", "R.N.", "nurse practitioner", "NP", "N.P.", "Graduate Nurse", "GN", "G.N.", "Graduate Nurse Practitioner", "GNP", "G.N.P." or any derivation or abbreviation of these titles.

In addition, unless otherwise authorized under the Act or the bylaws (and no such authorization presently exists), no person other than a registrant who holds a current license under the Act, is authorized to use the title "nurse" or any derivation or abbreviation thereof, or to imply the person is entitled to engage in the practice of nursing. There is a separate provision authorizing Licensed Practical Nurses (LPNs) to call themselves "Licensed Practical Nurses".

With respect to practice protection, the Act provides that no person shall engage in the practice of nursing unless the person is a registrant and holds a current license or is exempt or otherwise authorized to engage in practice in accordance with the Act or the Bylaws.

IX. Complaints, Reports, Investigations and Hearings

The new Act revises the processes respecting complaints, investigations and hearings so that they align with processes in place with many regulators across the country, are consistent with best practices, and are designed to offer many opportunities for resolution short of formal hearings and to be procedurally fair to all involved.

Key changes include:

- The ability of the CEO (through College staff), to informally resolve or dismiss complaints that meet specified criteria, without referral to a Committee;
- Where a complaint is dismissed by the CEO, a complainant has a right of review by the Complaints Investigation Committee. If the dismissal is overturned, the matter is referred to a differently constituted panel of the Complaints Investigation Committee;
- The removal of the Board from the complaints and hearing processes, leaving authority instead in the hands of the staff or Committees trained for these processes;
- Reducing the committees involved to two: the Complaints Investigation Committee, which deals with matters after referral from the CEO; and the Professional Conduct Tribunal, which deals with matters that have been referred to a formal hearing;

- The current Review Committee will no longer exist, as matters of incapacity will be dealt with through a separate Fitness to Practice process (described in Part XI of this Summary);
- Providing the Complaints Investigation Committee with more options for resolution, including the ability to issue reprimands and to impose conditions and restrictions but only with the consent of the registrant who is the subject of the complaint;
- Providing investigators with the authority to enter the place of practice of a registrant if there is relevant evidence at such place, and to obtain warrants to attend at other places where there are reasonable grounds to believe that evidence can be found there;
- If a matter is referred to hearing, a process is set out for negotiating a Settlement Agreement, if the parties can agree on facts, admissions of breaches, and the outcome;
- Expanding the sanctions available if adverse findings are made, including the ability to fine a registrant if the matter involved misconduct or conduct unbecoming the profession;

Providing for information that must be published if a licensing sanction has been issued against a registrant;

- Prohibiting applications for a reinstatement of license following revocation by the Professional Conduct Tribunal for a period of at least five years in the case of findings of sexual abuse, and for a period of at least two years for all other findings;
- Clarifying that the College has jurisdiction over the following matters:
 - ***professional misconduct***
 - ***conduct unbecoming***
 - ***incompetence***
 - ***incapacity***

Appeals

Following the completion of the sanction stage of the hearing, either party may appeal any aspect of the order of the Professional Conduct Tribunal to the New Brunswick Court of Appeal, but only on errors of law (which recognizes the expertise of the Professional Conduct Tribunal).

Consent Revocation Process

In rare cases, a registrant may recognize at an early stage of the process that the matter is likely to end with revocation. For example, the Act requires mandatory revocation of registration if certain findings of sexual abuse are made by the Professional Conduct Tribunal. If a registrant is prepared to admit the allegations and acknowledge that revocation is the appropriate disposition, they can avoid the costs of a hearing by agreeing to revocation prior to hearing. The consent of the CEO (who would first consider all relevant factors) is required before this process can be used.

This provides an appropriate method of resolution without the necessity and cost of a formal hearing, but with the same outcome as if revocation was ordered at a hearing.

X. Sexual Abuse

In 1996 the New Brunswick government enacted *An Act Respecting Health Professionals*, SNB 1996, c. 82 that created various amendments to the *Nurses Act* respecting matters of sexual abuse.

There have been many developments in the law, both legislative and through judge-made law, since those 1996 amendments were made.

The proposed Act recognizes these developments by introducing some additional sections specific to sexual abuse. For example, the new legislation distinguishes between **sexual abuse** (which involves sexual acts such as intercourse, touching of a sexual nature or behaviour or remarks of a sexual nature as between a nurse and a client,) and **sexual misconduct**, which is conduct of a sexual nature relevant to a nurse's suitability to practice, toward any person other than a client, which the registrant knows or ought reasonably to know would be:

- objectionable
- unwelcome
- cause offence or humiliation to the person,
- adversely affect the person's health and well-being, or
- be otherwise detrimental to the public interest

Similar to other provinces with similar legislation, there is an exclusion from the definitions of sexual abuse and sexual misconduct for touching, behaviour or remarks of a clinical nature appropriate to the service provided. There is a further exemption for **spouses** of registrants.

The proposed Act continues to include the duty to report to the governing body of a regulator when a registrant has reasonable grounds to believe that another health professional, including a nurse, has sexually abused a client.

There is mandatory revocation of registration if a Professional Conduct Tribunal finds that a nurse engaged in the most serious identified acts of sexual abuse. For any other form of sexual abuse, there is a requirement for a mandatory period of license suspension, the length of which will be determined by the Tribunal making the decision.

Requirements for mandatory sanctions are in place in other jurisdictions in Canada, including Ontario and Alberta. They are designed to reflect changing societal norms that require the strong denunciation of such forms of sexual abuse.

XI. Fitness to Practice

NANB currently utilizes a Review Committee to address cases of **fitness** and **incapacity**. While the Committee is known internally as the Fitness to Practice Committee, its functions in the Act are comparable to those of the current Discipline Committee.

With the rise in recognition of mental health issues and other forms of incapacity, including addictions, many jurisdictions have adopted alternative methods to address such matters that take a remedial, rather than a disciplinary approach. Public protection is still the key objective, but in many cases, it is possible to achieve public protection while at the same time addressing the underlying health condition in a non-disciplinary manner.

Under the proposed legislation, there is no separate committee established to address incapacity. However, at any stage after receiving a report or complaint where incapacity is suspected, if the CEO or the relevant Committee or Tribunal has reasonable and probable grounds to believe a registrant has an incapacity, the matter may be referred to the **fitness to practice process** described in both the Act and the Bylaws.

The CEO would first obtain evidence to determine if there is an incapacity and where it does exist, the CEO must then determine if the objects of the College will be better served by using an alternative process rather than the traditional investigatory and hearing processes.

In making such determination, the CEO shall take into account the entire context of the matter, including specific matters set out in Article 39 of the Bylaws.

If the CEO determines the matter is appropriate for the fitness to practice process, the CEO then determines if the registrant wishes to resign, should cease practice while pursuing remediation or should continue in practice under conditions.

The registrant has a right to apply to the CEO to vary or terminate conditions/restrictions or an order to cease practice.

If a registrant disagrees with any decision of the CEO throughout the process, or if the CEO believes the registrant has breached any conditions or restrictions, or poses a risk to any person, the workplace, the public or the reputation of the profession that can not be addressed through the fitness to practice process, then the CEO must return the matter to the Committee that initially referred the matter for consideration, or the CEO may also initiate a complaint if the matter warrants it.

The Fitness to Practice process is one further way of addressing matters of risk, that does not necessitate a formal public hearing, and thereby reduces financial and other costs to both the regulator and to the registrant. The key advantages to the registrant are that the matter may be concluded without a licensing sanction, and without publication of the details of the matter.

XII. Confidentiality and Privilege

The current *Nursing Act* contains no provision respecting the need to maintain the confidentiality of information and documents obtained through NANB's regulatory processes. It is important that those who are involved in the regulator's processes have the confidence that information respecting their involvement will remain confidential unless the matters require publication – such as following a hearing, or where conditions or restrictions are placed on their licences, or where other regulators require information.

The proposed legislation provides that each **College representative** shall maintain the confidentiality of any information, communications, documents, things, or decisions that are acquired, prepared, produced, or rendered in the course of their duties. It further states that College **representatives** shall not disclose, produce or publish any such information, communications, documents, things or decisions except under conditions set out in the Act.

In addition to these requirements for confidentiality, another provision prohibits **College representatives** from testifying in **legal proceedings**, and renders inadmissible in a **legal proceeding** any information, communications, documents, or things acquired, prepared, or

produced as a result of any regulatory process and also renders inadmissible any order or decision made as a result of any regulatory process.

These provisions create a form of statutory privilege over materials used in the College's regulatory processes and are designed to protect such materials to be used only for the purpose for which they were collected or produced. For example, if the College retains an expert to provide opinion evidence at a hearing, that expert should not be expected to have their report later produced in any civil lawsuit that arises from the same circumstances. The College obtains the cooperation of participants through an understanding that material gathered for a College process is to be used solely for that purpose.

XIII. Quality Assurance

The future development of a formalized Quality Assurance Program is contemplated in the proposed legislation, beyond the current requirements, such as participation in a continuing competence program, maintaining currency of practice, developing a learning plan, etc. A formal Quality Assurance Program often involves a risk-based selection of registrants who are required to participate in a third-party review process, which may include direct observation of practice, peer review, chart reviews and other forms of formalized assessment of the quality of the registrant's practice by a committee appointed for this purpose.

It is not intended that such a formalized process will be in place at the time the Act comes into force, but the language of the Act will enable the creation of such a program in the future when the Board believes it is appropriate to do so.

XIV. Professional Incorporation

The proposed legislation would not prohibit a registrant from practicing through a corporate entity, but also contains no requirements for such corporate entities. Bylaws could be made in the future respecting the specific requirements for incorporation. In the meantime, the legislation clarifies that incorporation will not remove any personal liability from the registrant for their own actions, whether performed as an individual or through the structure of a corporate entity.

XV. General

This is the miscellaneous section of the Act that covers a variety of matters including:

- Creating a duty for an **employer** to annually ensure a registrant has a current license;
- Creating a duty for an **employer** to report registrants if there are reasonable grounds to believe a registrant has:
 - (a) has committed an act of physical abuse, emotional abuse or financial abuse against a client in the practice of nursing or in the carrying out of business, professional, or other activities related to the practice of nursing;
 - (b) has engaged in criminal conduct;
 - (c) is **incapacitated**;

- (d) has engaged in any act of professional misconduct, incompetence or conduct unbecoming the profession, including sexual abuse or sexual misconduct, or
 - (e) is or has been engaging in conduct that poses a danger to client safety.
- Creating a duty for an employer to report to the CEO where, for reasons of professional misconduct, conduct unbecoming the profession, incompetence or incapacity
 - (a) a registrant's engagement, employment or contract is suspended, terminated or limited through restrictions, conditions or agreements; or
 - (b) the person resigns or departs the position;
 - Creating authority for the College to act as the custodian of records or property that may be committed to the care of the College;
 - Providing the authority to enforce decisions of committees or Tribunals through the Court of King's Bench;
 - Establishing immunity for the College, the Board, and all College representatives for any act, failure to act or disclosure under the Act or the Bylaws, if done in good faith;
 - Providing the authority for the CEO to suspend a registrant's license for failure to pay a fee, file a document or meet other administrative requirements of the Act or Bylaws until they comply. Such suspension is not considered a **licensing sanction**;
 - Providing the authority to issue a fine to a registrant for practicing without a license;
 - Stating that in the event of conflict between *An Act Respecting Health Professionals* and this Act, the provisions of the latter prevail. This ensures that the more current approach to addressing sexual misconduct and sexual abuse will be used.

XVI. Transitional

This Part of the Act describes the transition from all of the processes and approvals currently in place at NANB to the new regulator under the new legislation when the new Act comes into force. This includes, for example, the status of ongoing lawsuits, processes initiated under the current NANB legislation such as investigations and hearings, registration appeals, etc.

This Part preserves all Standards of Practice, Codes of Ethics, Entry Level Competencies, education programs, examinations, continuing competence programs and currency of practice requirements in place at the time of the coming into force of the new Act until such time as changes are made under the new Act.

It further specifies the transition from categories of licenses under the current *Nurses Act* to those that will be deemed to be in place at the time the new Act comes into force.

XVII. Consequential Amendments

There are several statutes in New Brunswick that mention the current *Nurses Act*. To the extent the name of the Act will change, so too must the references to the legislation in these other statutes.

In addition, because there is a specific regulation that limits hospital discharge authority to persons names in the General Regulations under the *Hospitals Act*, that regulation needs to be amended to reference the ability of Nurse Practitioners to have discharge authority.

XVIII. Conclusion

The proposed legislation presents a generational opportunity to set the regulatory framework for the nursing profession in New Brunswick in alignment with best practices across the country.

As the draft works its way through the consultation process it is hoped that all who review it will give careful consideration to the concepts that are included and will provide relevant feedback.

We look forward to your input.