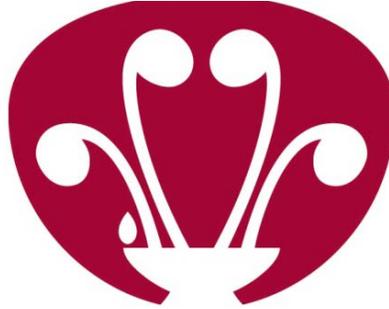




**Nurses Association**  
OF NEW BRUNSWICK

# Professional Conduct Review: Complaints and Discipline Process



## Mission

The Nurses Association of New Brunswick is a professional regulatory organization that exists to protect the public and to support nurses by promoting and maintaining standards for nursing education and practice, and by promoting healthy public policy.

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# Table of Contents

1. Introduction .....	4
2. What is a formal complaint?.....	5
2.1 Mandatory reporting .....	5
2.2 Lodging a formal complaint .....	6
3. NANB Standing Committees .....	6
3.1 Complaints Committee .....	7
3.2 Discipline and Review Committees.....	8
3.2.1 Rights of Nurses and Complainants.....	8
3.2.2 Alternate Complaint Resolution .....	9
3.2.3 Conducting a hearing.....	9
3.2.4 Committee Decisions .....	11
4. Access to Decisions .....	12
5. Appeals.....	13
6. Reinstatement.....	13
7. Conclusion .....	13
Glossary.....	14
Appendix A: Lodging a formal complaint.....	15
Appendix B: Complaints and Discipline Process Chart .....	16
NANB Resources .....	17



## 1. INTRODUCTION

The Nurses Association of New Brunswick (NANB) has the legislated authority through the *Nurses Act* to establish, maintain and promote standards of practice for registered nurses<sup>1</sup> within New Brunswick. NANB is responsible for governing and regulating nurses in a manner that protects the public. Regulation makes the profession, and its members, accountable to the public for the delivery of safe, competent and ethical nursing care.

NANB utilizes a three pronged approach to regulation:

1. Promoting good practice
2. Preventing poor practice
3. Intervening when practice is unacceptable

NANB promotes good practice and prevents poor practice by setting and promoting standards for education and practice and by supporting nurses in meeting those standards. Intervention through the Complaints and Discipline Process is a measure of last resort and is taken when standards are not being met and public safety is compromised. The overwhelming majority of concerns related to the practice of nurses are resolved at the institution or agency level.

NANB's formal process for dealing with **complaints\*** against nurses is referred to as the Complaints and Discipline Process or Professional Conduct Review. The Complaint and Discipline process applies the principles of **natural justice** including the right to be heard and the right to be judged impartially. Only formal complaints are considered and examined by the Complaints, Discipline and Review Committees which are comprised of NANB members and representatives of the public.

This document provides an overview of the Complaints and Discipline process including what constitutes a complaint, how to lodge a complaint, when reporting is mandatory and the roles of the Complaints, Discipline, and Review Committees.

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\* Words or phrases in bold print in the text are found in the glossary.

<sup>1</sup> In this document, the term nurse includes registered nurses, nurse practitioners and former nurses.



## 2. WHAT IS A FORMAL COMPLAINT?

A formal complaint is any written, signed report or **allegation** by a **complainant**, regarding the conduct, competence or health of a nurse. A complainant can be any individual including a nurse's supervisor, a co-worker, another health care professional, or a member of the public such as a patient or family member. Complaints lodged with NANB are usually of a very serious nature such as:

1. **Incapacity**
2. **Incompetence**
3. **Professional misconduct**
4. **Conduct unbecoming a member**
5. Dishonesty

### 2.1 MANDATORY REPORTING

Reporting to NANB about a nurse's conduct is mandatory under the following circumstances:

- the dismissal of a nurse for reasons of incompetence, incapacity or professional misconduct;
- when a nurse resigns or retires from employment, while the employer is in the process of investigating the nurse's practice for reasons of incompetence or incapacity or the employer has established a remediation plan that has not been completed;
- after all appropriate avenues have been exhausted at the organization, any nurse who has reason to believe that another nurse is unable to practise safely to such an extent that the welfare of patients is jeopardized; and
- allegations of sexual abuse of a patient.

Failure to report the above circumstances is considered to be professional misconduct in and of itself.

Other complaints pertaining to the conduct, competence or health of a nurse may be lodged at the discretion of the complainant.



## 2.2 LODGING A FORMAL COMPLAINT

Lodging a complaint with NANB is a measure of last resort, once all other avenues have been exhausted. In general, every attempt should be made to deal with the problem at the agency or institutional level, prior to lodging a complaint. In many cases, complaints lodged by employers relate to problems originally identified by co-workers or patients.

A formal, written complaint should include the following information (see Appendix A):

1. The identity of the nurse complained against;
2. The place where the incident(s) took place;
3. The date(s) on which the matters arose;
4. The particulars of the facts upon which the complaint is based, with as much specificity as possible; and
5. The names of potential witnesses and a summary of what information they may have that would be relevant to the investigation of the complaint.

## 3. NANB STANDING COMMITTEES

NANB has three standing committees which implement the Complaints and Discipline process. The Complaints Committee is made up of nine nurse members and four public members. A panel of the Committee consisting of two nurse members and one public member considers the complaint.

The Discipline and Review Committees are made up of 16 nurse members and six public members. A panel of either committee consists of three nurse members and one public member.

Committee members represent different areas of practice, years of experience, geographical areas and both official languages. All NANB members are eligible to be members of NANB Standing Committees with the exception of those on the Board of Directors and NANB staff. The Complaints and Discipline Process is facilitated under the direction of the NANB Regulatory Consultant: Professional Conduct Review.



### 3.1 COMPLAINTS COMMITTEE

The Complaints and Discipline process is activated as soon as a formal complaint is received by NANB. A preliminary investigation is initiated which consists of the collection of relevant written documentation related to the complaint. This is the screening phase and is the first step of the complaints and discipline process.

After receipt of a complaint, the nurse is promptly notified and provided with a copy of the actual complaint and any supporting documentation that was submitted. NANB has a policy of full disclosure which means that all documentation submitted to the committee is always provided to the nurse in question. The nurse is informed about the Complaints and Discipline Process, and is encouraged to submit any information pertinent to the matters relating to the complaint.

At the same time, the letter of complaint is acknowledged and the complainant is asked to provide any additional documentation. The nurse's employer(s) is notified that a complaint has been received and is requested to submit any information relevant to the complaint or to the nurse's practice.

Once all of the material has been received, a meeting of the Complaints Committee is arranged. The nurse is given at least 14 days written notice of the meeting, and an opportunity to respond in writing to any of the material submitted. Because of the full disclosure policy, all documentation submitted is shared with the nurse and the complainant. This is done to ensure the process is fair, and that the nurse has a full opportunity to respond to the allegations.

The documents received are presented to a three-member panel of the Complaints Committee. The panel is made up of two nurse members, one of whom is the chairperson, and a member of the public. A process that includes both registered nurse and public participation is deemed to be the most appropriate method of dealing with questions about professional conduct.

Both the nurse and the complainant have the right to be represented by legal counsel at their own expense. Since this is the screening portion of the process, legal counsel's involvement at this stage is limited and usually consists of assisting in the preparation of written documentation for submission to the Complaints Committee. The Complaints Committee legal counsel assists with questions related to the Committee's role and legal authority and provides legal guidance to ensure that the rules of natural justice are respected throughout the Complaints and Discipline Process.

The Complaints Committee considers written evidence only, so neither the nurse, the complainant, nor their legal counsel attends the meeting. The Committee's review of the documents is a preliminary step intended to screen out complaints that are frivolous, or do not



fall under the jurisdictions of the discipline process. It is not the mandate of this Committee to decide if the complaint is true or not. It decides whether the complaint should be dismissed, or whether the matter should be referred to the Discipline or Review Committee for further consideration.

If the Committee believes the matter warrants further consideration and investigation, health related complaints are referred to the Review Committee, while all other complaints go to the Discipline Committee.

The Complaints Committee has the authority to suspend the nurse's registration in the event that it determines that public safety could be jeopardized if the nurse continues to practise pending the outcome of a hearing before the Discipline or Review Committee.

## 3.2 DISCIPLINE AND REVIEW COMMITTEES

If the Complaints Committee determines that a complaint requires further consideration and investigation, it refers the complaint to the Discipline or Review Committee where it is dealt with in one of two manners:

- 1) Alternate Complaint Resolution; or
- 2) A hearing in front of a panel of the Discipline or Review Committee.

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### 3.2.1 RIGHTS OF NURSES AND COMPLAINANTS

Certain rights are guaranteed under the *Nurses Act*. Both the nurse against whom a complaint has been lodged and the complainant have the right to:

1. Receive at least 30 days-notice of the Discipline or Review Committee hearing;
2. Receive copies of all documents submitted to the Committee;
3. Present evidence in either English or French;
4. Be represented by legal counsel at their own expense;
5. Examine, cross-examine and re-examine witnesses;
6. Receive prompt notice of the decision of the Committee; and
7. Appeal the decision of the Committee



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### 3.2.2 ALTERNATE COMPLAINT RESOLUTION

The Alternate Complaint Resolution (ACR) is a process that allows the nurse, the complainant and the NANB Registrar to work together to develop an acceptable resolution that addresses the issues raised in the complaint. A proposal to resolve a complaint using the ACR process may be considered by the Discipline or Review Committee provided it:

- is submitted in writing to the other parties;
- includes an admission or admissions by the nurse to one or more of the allegations set out in the complaint and arising from the documents submitted in respect of the complaint; and
- contains the nurse's consent to a specified resolution.

The proposal is forwarded to the Discipline or Review Committee for consideration and determination of whether to accept, reject or amend the proposal. If the Committee amends the proposal, the parties will be asked to agree on the amendments. If the Committee rejects the initial proposal or any subsequent amended proposal, a hearing will be held before the Committee to deal with the complaint.

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### 3.2.3 CONDUCTING A HEARING

When a complaint is referred to the Discipline or Review Committee by the Complaints Committee a meeting of the Committee is scheduled. Additional preparation is undertaken at this stage and often consists of obtaining further documents and arranging for witnesses to appear at the hearing.

A four member panel of the Discipline or Review Committee meets to hear the complaint (three nurse members and one member of the public). To the extent possible, the panel members are chosen from outside the immediate geographic area where the nurse works and includes one or more nurse members with a background similar to that of the member (for example, area of practice, years of experience, and so forth).

Both the nurse in question and the complainant attend the hearing. Other persons usually in attendance include the court reporter, the NANB Regulatory Consultant: Professional Conduct Review and legal counsel if they are involved. Witnesses are called into the hearing one at a time to give their testimony. The court reporter attends the hearing to keep record of the evidence presented. The proceedings are recorded so an official transcript can be produced if required.



NANB hearings are generally conducted in private due to the fact that confidential or sensitive medical or personal information is often disclosed regarding both the nurse and patients.

Either the nurse or the complainant may request the permission of the Committee to have someone else with them at the hearing. The Committee considers such requests on an individual basis taking into account such factors as:

1. Will confidential patient information be revealed during the hearing?;
2. Will information concerning the nurse's medical or psychiatric history be revealed?;
3. Will sensitive information about the nurse's personal or family history be revealed?

It is the duty of the nurse to attend the hearing. The Committee may proceed with the hearing in the event of non-attendance as though the nurse was present, provided that it can be shown that the notice of meeting was mailed to the nurse.

The exact sequence of events or procedure followed during the hearing depends on a number of factors, most notably, whether or not legal counsel is involved. However, the principles followed by the Committee are constant across all hearings. Although there is greater latitude in the kind of evidence that is admissible at a professional conduct hearing as opposed to a court of law, the rules of natural justice are applicable just the same.

The chairperson of the Discipline or Review Committee presides over the hearing. The testimony of all witnesses is taken under oath or solemn affirmation, and the Committee usually starts by hearing the complainant's evidence. The last word or opportunity to question any witness goes to the nurse or her legal counsel. The Committee members are completely impartial and ensure that:

1. The hearing is fair;
2. The facts are determined;
3. Both the nurse and the complainant have an opportunity to present evidence; and
4. The public is protected.

It is the Committee's role to conduct a hearing in a manner that enables presentation of evidence by both parties. The Committee accomplishes this by asking questions of the complainant, the witnesses and the nurse about the events, incidents or problems leading to the complaint. Both the complainant and the nurse have the opportunity to present evidence, or their side of the story, and to fully examine all witnesses and evidence.

Once all the evidence is presented, the hearing concludes and the Committee deliberates. The Committee assesses credibility of witnesses, weighs the evidence, determines the facts and considers the nursing standards appropriate to the situation. The Committee considers



the nature of evidence in determining the weight to be given to it. If direct eyewitness evidence of an event is available, and if the Committee finds the witness credible, that evidence, in most cases, will be given more weight by the Committee than contradictory evidence which is based on hearsay. For example, assuming two witnesses are equally credible; the evidence of a witness who observed an event will usually be given far more weight than the evidence of a witness who heard of an event.

In weighing the evidence, the Committee considers other factors relating to the reliability of the evidence, including:

1. Whether the witness's recollection is vague or clear;
2. Is the recollection of recent or long past events;
3. Was corroborating evidence presented; and
4. Does documentation made at the time of the events confirm the witnesses' recollection?

Based on the weight of credible evidence that has been presented, the Committee decides if the facts establish the allegations in the complaint.

How much evidence is enough to prove a complaint depends partly on the seriousness of the matter? While the standard of proof may increase proportionally with the seriousness of the complaint, it does not reach the criminal standard of proof which is beyond a reasonable doubt. If the evidence is not sufficient to establish the allegations, the complaint is dismissed. If the Committee decides that the facts prove the allegations, it then considers what the appropriate orders or remedies are to be made concerning the nurse.

The Discipline and Review Committees also have the authority to attempt to resolve informally any complaint deemed appropriate by the Committee. This may include the use of submissions, consent orders, agreed statements of fact and establishing the facts.

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### 3.2.4 COMMITTEE DECISIONS

The decisions of the Discipline or Review Committee contain two main sections:

1. The findings, and
2. The order

The findings are the committee's factual conclusions based on the evidence. The order sets out the remedy or penalty. Discipline and Review Committee members take their responsibility very seriously. No decision is ever made lightly; members are well aware that

their decisions affect both the nurse's livelihood and also public safety. The Committee's approach is remedial, rather than punitive, to the extent possible while ensuring public safety. The orders that can be made are outlined in the *Nurses Act* and may include, but are not limited to the following:

1. Dismissal of the complaint;
2. Issuance of a reprimand;
3. Placing conditions on the nurse's registration;
4. Suspending registration;
5. Revoking registration;
6. Imposing a fine;
7. Assessing a portion of the costs of the hearing to be paid by the nurse;
8. Publishing the decision; and
9. Specifying the period of time before which the nurse may not apply for reinstatement.

## 4. ACCESS TO DECISIONS

The decision of the Complaints, Discipline or Review Committees is provided promptly to the nurse, the complainant and the nurse's employer(s).

When a suspension of registration is ordered by the Complaints Committee, New Brunswick nursing employers, Canadian nursing regulatory bodies and other relevant jurisdictions are notified. A written notice of the suspension containing the nurse's registration number is also published in *INFO Nursing* and on the NANB website.

In accordance with the *Nurses Act*, the Registrar gives public notice of all suspensions and revocations as ordered by a Discipline or Review Committee. A written notice containing the nurse's name, registration number and decision is sent to all nursing employers in the province, Canadian nursing regulatory bodies and other relevant jurisdictions. This notice is also published in *INFO Nursing*, on the NANB website and is made available to the public, upon request, for a period of five years or indefinitely in the case of sexual abuse.

It should be noted that while NANB is required to give public notice of all suspensions and revocations, the Discipline or Review Committee has the authority to order that public notice be given of any decision and/or that the findings, remedy and nature of the complaint be entered into NANB records and made available to the public upon request for a period of five years or for such longer period they may prescribe.



## 5. APPEALS

Should the complainant be dissatisfied with the decision of the Complaints Committee, or either the nurse or the complainant be dissatisfied with the decision of the Discipline or Review Committee, they may appeal the decision within 30 days. There are two levels of appeal under the *Nurses Act*.

- The first level of appeal is to the Board of Directors; and
- The second level of appeal is to the New Brunswick Court of Queen's Bench.

Any appeal must state the grounds of the appeal and the relief sought.

## 6. REINSTATEMENT

Should a nurse's registration be revoked or suspended, the nurse can apply for reinstatement of registration one year after the decision unless otherwise ordered by the Discipline or Review Committee. A reinstatement hearing is conducted by a new panel of the Discipline or Review Committee.

The application for reinstatement must be in writing, signed by the nurse and include the following:

1. The reason for the application;
2. What the nurse is asking the Committee to do; and
3. The remedial or corrective measures taken by the nurse (e.g. courses taken, treatment or counselling received).

In considering an application for reinstatement, the onus of proof of restored professional conduct and/ or competence rests with the member.

## 7. CONCLUSION

The Complaints and Discipline Process under the *Nurses Act* exists to protect the public by providing a mechanism through which serious concerns about the professional conduct of nurses can be addressed. The process ensures that all complaints are screened and, if warranted, referred to the Discipline or Review Committee for further investigation and decision, and that nurses are given the opportunity, in accordance with the principles of natural justice, to fully respond to the allegations related to their nursing practice.



## GLOSSARY

**Complaint:** any complaint, report or allegation in writing and signed by the complainant regarding conduct, actions, competence, character, fitness, health or ability of a member and “member” includes nurse, former nurse, member and former member.

**Allegation:** a statement or assertion or accusation that is not yet supported by evidence, not yet proven to be fact.

**Natural Justice:** a body of common law principles applying fairness in procedural matters. The first two fundamental principles are that a person’s whose interests may be affected by a decision should firstly be given notice of the allegations made against them and secondly, an opportunity to be heard. The third fundamental principle of natural justice is that the decision maker should be disinterested and impartial.

**Complainant:** the person who signs a written complaint.

**Incapacity:** means a physical or mental condition or disorder, suffered by a member, of such nature and extent that it is desirable in the interests of the public or the member that she no longer be permitted to practise nursing or that her practice be restricted.

**Incompetence:** means acts or omissions on the part of a member, in her professional duties, including the care of a patient, that demonstrate a lack of knowledge, skill or judgement, or disregard for the welfare of a patient or patients of a nature and to an extent as to render her unfit or unsafe to practise nursing or to practise nursing without conditions, limitations or restrictions.

**Professional misconduct:** means a digression from established or recognized professional standards or rules of practice of the profession.

**Conduct unbecoming a member:** any conduct that might adversely affect the standing or good name of the practice of nursing or the Association.

**Sexual abuse:** Sexual intercourse or other forms of physical sexual relations between a member and a patient, touching of a sexual nature, or behavior or remarks of a sexual nature. “Sexual nature” does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.



## APPENDIX A: LODGING A FORMAL COMPLAINT

When submitting a written complaint please:

1. Address your letter to the NANB Regulatory Consultant: Professional Conduct Review
2. State that you wish to lodge a complaint and provide:
  - The name(s) and registration number(if known) of the nurse(s) complained against;
  - The place where the incident or incidents took place;
  - The date or dates the incident or incidents occurred;
  - The particulars of the facts upon which the complaint is based, with as much specificity as possible; and
  - The names of possible witnesses and a summary of what information they may have that would be relevant to the investigation of the complaint. This may include signed and dated statements from these individuals.
3. Sign the letter and include your contact information.
4. Letters of complaint should be marked “CONFIDENTIAL” and addressed to :

Regulatory Consultant: Professional Conduct Review  
NANB  
165 Regent Street  
Fredericton, N.B.  
E3B 7B4

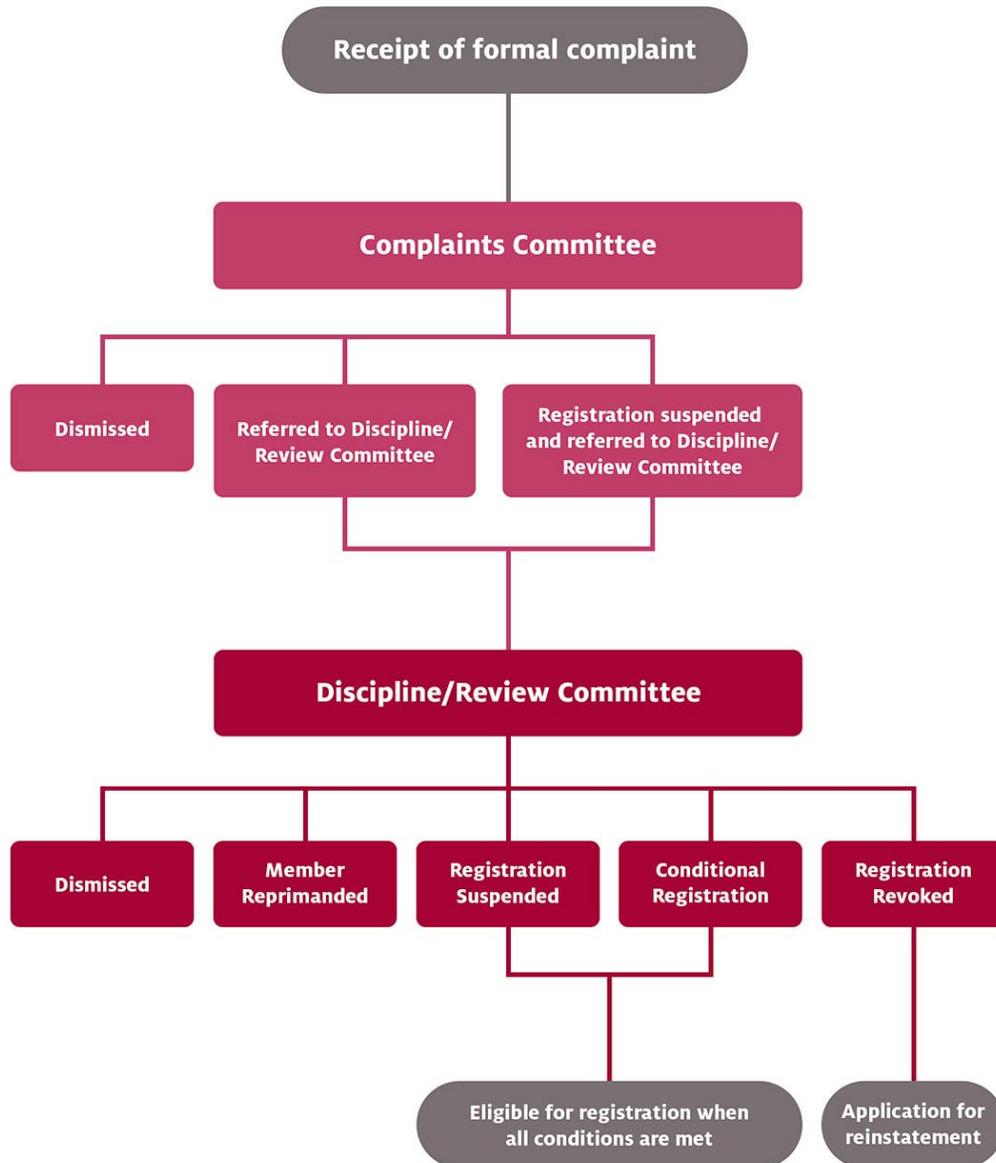
For further information contact:

Regulatory Consultant: Professional Conduct Review

Tel. 506-458-8731 / 1-800-442-4417



## APPENDIX B: COMPLAINTS AND DISCIPLINE PROCESS CHART



## NANB RESOURCES

### *Nurses Act*

<http://www.nanb.nb.ca/PDF/legislation/NursesAct%20E-F%202008.pdf>

### *By-Laws*

[http://www.nanb.nb.ca/downloads/Bylaws%20-%20July%202013 \(1\).pdf](http://www.nanb.nb.ca/downloads/Bylaws%20-%20July%202013%20(1).pdf)

### *Standards of Practice for Registered Nurses*

[http://www.nanb.nb.ca/downloads/NANB%20Standards%20of%20Practice%202012\\_E.pdf](http://www.nanb.nb.ca/downloads/NANB%20Standards%20of%20Practice%202012_E.pdf)

### *Standards of Practice for Primary Health Care Nurse Practitioners*

<http://www.nanb.nb.ca/downloads/Standards%20of%20Practice%20for%20Primary%20Health%20Care%20Nurse%20Practitioners-E.pdf>

### *Documentation: Practice Standard*

<http://www.nanb.nb.ca/downloads/Practice%20Standard-Documentation-E.pdf>

### *Medication Administration: Practice Standard.*

<http://www.nanb.nb.ca/downloads/Med%20Standard%20Revised%20October%202013.pdf>

### *Code of Ethics for Registered Nurses*

<http://www.nanb.nb.ca/PDF/practice/CNA%20Code%20of%20Ethics.pdf>

### *The Therapeutic Nurse-Client Relationship: Practice Standard*

[http://www.nanb.nb.ca/downloads/Practice%20Standard-The%20Therapeutic%20Nurse-Client%20Relationship\\_E.pdf](http://www.nanb.nb.ca/downloads/Practice%20Standard-The%20Therapeutic%20Nurse-Client%20Relationship_E.pdf)

### *Ethical and Responsible Use of Social Media Technologies: Practice Guideline*

<http://www.nanb.nb.ca/downloads/Practice%20Guidelines-%20Social%20Media-E%281%29.pdf>

### *Recognition and Management of Problematic Substance Use in the Nursing Profession*

[http://www.nanb.nb.ca/downloads/Recognition%20and%20Management%20of%20Problematic%20Substance%20Use%20in%20the%20Nursing%20Profession\\_E.pdf](http://www.nanb.nb.ca/downloads/Recognition%20and%20Management%20of%20Problematic%20Substance%20Use%20in%20the%20Nursing%20Profession_E.pdf)

### *Managing Registered Nurses with Significant Practice Problems: Practice Guideline*

[http://www.nanb.nb.ca/downloads/Practice%20GuidelineManaging%20RNs%20with%20Significant%20Practice%20Problems\\_E.pdf](http://www.nanb.nb.ca/downloads/Practice%20GuidelineManaging%20RNs%20with%20Significant%20Practice%20Problems_E.pdf)

### *Resolving Professional Practice Problems*

[http://www.nanb.nb.ca/downloads/Resolving%20Professional%20Practice%20Problems\\_E.pdf](http://www.nanb.nb.ca/downloads/Resolving%20Professional%20Practice%20Problems_E.pdf)





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