

DISCIPLINE COMMITTEE

TERMS OF REFERENCE



Mandate

On the recommendation of the Counselling and Investigation Committee, the Discipline Committee hears formal complaints and determines whether a Licensed Practical Nurse (LPN) is guilty of professional misconduct or professional incompetence pursuant to The Licensed Practical Nurses Act, 2000 (the “LPN Act”). Where an LPN is found guilty, the Discipline Committee makes a report to the SALPN Council of their decision(s) and the applicable orders.

Membership Structure

The LPN Act provides:

28(1) The discipline committee is established consisting of at least three persons appointed by the council, the majority of whom are to be practising members and one of whom is a member of the council appointed pursuant to section 8.

(2) No member of the counselling and investigation committee and no elected member of the council is eligible to be appointed as a member of the discipline committee.

Committee Members

- Five (5) Practising LPNs, in good standing with the SALPN. One (1) Practising LPN may serve as an alternate to be available to act in cases of conflict of interest
- A minimum of one (1) member of the public
- One (1) public representative from the SALPN Council
- The SALPN Council appoints all members of the Committee based on interest, ability, and availability.
- From the Discipline Committee membership, the SALPN Council appoints a Chairperson.
- A majority of members sitting on each hearing must be practising members
- The Discipline Committee is provided with administrative support by SALPN staff:
 - o Complaints & Compliance Coordinator

Terms and Appointments

- Three (3) years
- Discipline Committee Members may serve for one (1) additional term
- The public representative appointed by the SALPN Council will serve for a (3) year term or the remainder of their appointed term on SALPN Council, whichever comes first
- The maximum term is six (6) years

Roles and Responsibilities

Committee Chair

- Oversee the Discipline Committee's discharge of duties as provided by the LPN Act.
- Oversee the distribution of hearing information as soon as possible to the Discipline Committee in a secure and manageable form
- Preside over and conduct Discipline Committee business in an efficient, effective and focused manner
- Communicate Discipline Committee concerns with the SALPN Council or appropriate SALPN staff

All Committee Members, including chair

- Review the written reports of the Counselling & Investigation Committee;
- - Conduct hearings to review the complaints set out in the written reports of the professional conduct committee;
- Determine whether the member whose conduct is the subject of a written report is guilty of professional misconduct and/or professional incompetence
- Make an order where the member is found guilty
- Provide a written decision with reasons and discipline orders to the SALPN Council and SALPN as required by the LPN Act
- Recommend to the SALPN Council any policy or procedural improvements which would facilitate the work of the Discipline Committee or be in the best interests of the public
- Complete Discipline Committee orientation
- Develop an understanding of and comply the applicable legislation and procedure manual of the Discipline Committee
- Attend / Complete education with respect to the discipline process as prescribed by the SALPN Council

Authority

The Discipline Committee's authority to hear and determine formal complaints is set out in the following provisions of the LPN Act:

Professional Incompetence

23 Professional incompetence is a question of fact, but the display by a member of a lack of knowledge, skill or judgment or a disregard for the welfare of a member of the public served by the profession of a nature or to an extent that demonstrates that the member is unfit to:

- a. continue in the practice of the profession; or
- b. provide one or more services ordinarily provided as a part of the practice of the profession; is professional incompetence within the meaning of this Act.

Professional Misconduct

24 Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, is professional misconduct within the meaning of this Act if:

- a. it is harmful to the best interests of the public or the members;
- b. it tends to harm the standing of the profession;
- c. it is a breach of this Act or the bylaws; or
- d. it is a failure to comply with an order of the counselling and investigation committee, the discipline committee or the council.

Discipline committee

28(1) The discipline committee is established consisting of at least three persons appointed by the council, the majority of whom are to be practising members and one of whom is a member of the council appointed pursuant to section 8.

(2) No member of the counselling and investigation committee and no elected member of the council is eligible to be appointed as a member of the discipline committee.

(3) Subject to this Act and the bylaws, the discipline committee may make rules regulating its business and proceedings.

Discipline hearing

29(1) Where a report of the counselling and investigation committee recommends that the discipline committee hear and determine a formal complaint, the executive director shall, at least 14 days before the date the discipline committee is to sit:

- (a) send a copy of the formal complaint to the member whose conduct is the subject of the hearing; and
- (b) serve notice on the member whose conduct is the subject of the hearing of the date, time and place of the hearing.

(2) The counselling and investigation committee shall prosecute or direct the prosecution of the formal complaint, but its members shall not participate in any other manner in the hearing of the formal complaint except as witnesses when required.

(3) The discipline committee shall hear the formal complaint and shall determine whether or not the member is guilty of professional misconduct or professional incompetence, notwithstanding that the determination of a question of fact may be involved, and the discipline committee need not refer any question to a court for adjudication.

(4) The discipline committee may accept any evidence that it considers appropriate and is not bound by rules of law concerning evidence.

(5) The discipline committee may employ, at the expense of the association, any legal or other assistance that it considers necessary, and the member whose conduct is the subject of the hearing, at his or her own expense, may be represented by counsel.

(6) The testimony of witnesses is to be under oath or affirmation administered by the chairperson of the discipline committee.

(7) At a hearing by the discipline committee, there is to be full right: (a) to examine, cross-examine and re-examine all witnesses; and (b) to present evidence in defence and reply.

(8) On application and payment of the appropriate fee, the local registrar of the court at any judicial centre shall issue writs of subpoena ad testificandum or subpoena duces tecum to:

- a. a member whose conduct is the subject of a hearing pursuant to this Act;
- b. a member of the counselling and investigation committee;
- c. a member of the discipline committee.

(9) Where a writ issued pursuant to subsection (8) is disobeyed, the proceedings and penalties are those applicable in civil cases in the court.

(10) Subject to The Evidence Act and section 8-2 of The Provincial Health Authority Act and notwithstanding any other Act or the regulations made pursuant to any other Act, the records of any facility operated by the provincial health authority or an affiliate, as defined in The Provincial Health Authority Act, may be brought before the discipline committee, without special order, by writ of subpoena duces tecum issued pursuant to subsection (8) and served on the chief executive officer of the provincial health authority or affiliate.

(11) Where the member whose conduct is the subject of the hearing fails to attend the hearing, the discipline committee, on proof of service of the notice mentioned in subsection (1), may proceed with the hearing in his or her absence.

(12) If, during the course of a hearing, the evidence shows that the member whose conduct is the subject of the hearing may be guilty of a charge different from or in addition to any charge specified in the formal complaint, the discipline committee shall notify the member of that fact.

(13) If the discipline committee proposes to amend, add to or substitute the charge in the formal complaint, the discipline committee shall adjourn the hearing for any period that the discipline committee considers sufficient to give the member an opportunity to prepare a defence to the amended formal complaint, unless the member consents to continue the hearing.

(14) The person, if any, who made the complaint pursuant to section 26:

a. is to be advised orally or in writing by the executive director of the date, time and place of the hearing; and

b. subject to subsection (16), is entitled to attend the hearing.

(15) Subject to subsection (16), the discipline committee shall conduct all hearings in public.

(16) The discipline committee may exclude members of the public and the person who made the complaint from any part of the hearing when the committee is of the opinion that evidence brought in the presence of the person or persons to be excluded will unduly violate the privacy of a person other than the member whose conduct is the subject of the hearing.

Disciplinary powers

30(1) Where the discipline committee finds a member guilty of professional misconduct or professional incompetence, it may make one or more of the following orders:

a. an order that the member be expelled from the association and that the member's name be struck from the register;

b. an order that the member's licence be suspended for a specified period;

c. an order that the member's licence be suspended pending the satisfaction and completion of any conditions specified in the order;

d. an order that the member may continue to practise, but only under conditions specified in the order, which may include, but are not restricted to, an order that the member:

i. not do specified types of work;

ii. successfully complete specified classes or courses of instruction;

iii. obtain medical or other treatment or counselling or both;

(e) an order reprimanding the member;

(f) any other order that the discipline committee considers just.

2. In addition to any order made pursuant to subsection (1), the discipline committee may order:

a. that the member pay to the association, within a fixed period:

ii. a fine in a specified amount not exceeding \$5,000; and

iii. the costs of the investigation and hearing into the member's conduct and related costs, including the expenses of the counselling and investigation committee and the discipline committee and costs of legal services and witnesses; and

b. where a member fails to make payment in accordance with an order pursuant to clause

c. that the member's licence be suspended.

3. The executive director shall send a copy of an order made pursuant to this section to the member whose conduct is the subject of the order and to the person, if any, who made the complaint.

4. Where a member is expelled from the association or a member's licence is suspended, the registrar shall strike the name of the member from the register or indicate the suspension on the register, as the case may be.

5. The discipline committee may inform a member's employer of the order made against that member where that member has been found guilty of professional misconduct or professional incompetence.

Continuity of committee

31 Where an investigation is commenced by the counselling and investigation committee or a hearing is commenced by the discipline committee and the term of office of a member of the committee expires or is terminated before the investigation or hearing is disposed of, the person shall remain a member of the counselling and investigation committee or the discipline committee, as the case may be, for the purposes of completing the investigation or hearing, in the same manner as if the member's term of office had not expired or been terminated.

Criminal conviction

32 The discipline committee may make any order pursuant to section 30, where:

- a. the member has been convicted of an offence pursuant to the Criminal Code, the Cannabis Act (Canada), the Controlled Drugs and Substances Act (Canada) or the Food and Drugs Act (Canada);
- b. a report of the counselling and investigation committee is made to the discipline committee respecting the conviction mentioned in clause (a);
- c. the discipline committee has given the member mentioned in clause (a) an opportunity to be heard; and (d) the discipline committee finds that the conduct of the member giving rise to the conviction is professional misconduct

Duty to report

33 Where the counselling and investigation committee in its investigation pursuant to section 26 or the discipline committee at the conclusion of its hearing pursuant to section 29 believes that the member whose conduct is the subject of the investigation or hearing may be guilty of a criminal offence, the committee may immediately discontinue its investigation or hearing, as the case may be, and shall make a report of its findings to:

- a. the president of the association; and
- b. the Deputy Minister of Justice

Suspension

34 A judge of the court, on the application of the council, may direct that a member's licence be suspended pending the disposition of a criminal charge where:

- a. a criminal charge is laid against the member; and
- b. the member has applied to the court for a stay of any disciplinary proceedings against the member.

Review by council

35(1) A member may appeal the decision or any order of the discipline committee to the council by serving the executive director with a notice of appeal within 30 days after the decision or order where:

- a. the member has been found guilty of professional misconduct or professional incompetence by the discipline committee; or
- b. the member is subject to an order made pursuant to section 32

(2) An appellant shall set out the grounds of appeal in a notice of appeal mentioned in subsection (1).

(3) On receipt of a notice of appeal, the executive director shall file with the council a true copy of:

- a. the formal complaint sent and notice served pursuant to section 29 or the report of the counselling and investigation committee made pursuant to section 32;
- b. the transcript of the evidence presented to the discipline committee; and (c) the decision and order of the discipline committee.

(4) The appellant or the appellant's solicitor or agent may obtain from the executive director a copy of the documents filed pursuant to subsection (3) on payment of the costs of producing them.

(5) On hearing an appeal, the council may:

- a. dismiss the appeal;
- b. quash the finding of guilt;
- c. direct a new hearing or further inquiries by the discipline committee;
- d. vary the order of the discipline committee; or
- e. substitute its own decision for the decision appealed from.

(6) The council may make any order as to costs that it considers appropriate.

(7) The member of council appointed pursuant to section 8 who is a member of the discipline committee shall not participate in the hearing of an appeal pursuant to this section.

SALPN Regulatory Bylaws

Discipline Committee

23(1) The Discipline Committee that the council is required to appoint pursuant to section 28 of the Act shall consist of at least two members, in addition to the public representative appointed to the council pursuant to section 8 of the Act.

2. The council shall select the committee's chair.

3. The Executive Director shall provide the committee with administrative support.

4. The committee shall publish any rules that it adopts in accordance with subsection 28(3) of the Act and shall ensure that the published document is publicly available on request and without charge.