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Patient File Retention

NBASLPA is happy to introduce our new regulatory newsletter that will be published on a quarterly basis. The newsletter will contain the latest information on a variety of topics, including legislative changes to assist you to better serve your clients/patients as self-regulated health professionals. The regulatory landscape is constantly changing and the NBASLPA staff are making every effort to stay connected with our New-Brunswick and Canadian counterparts, and to remain current on new research and best practices to incorporate into our organization. We have been working on several initiatives that have led to important changes that we are sharing with you. It is strongly encouraged that all registrants read the quarterly newsletters to stay current on college operational & regulatory changes to help you remain compliant with your regulatory responsibilities.

NEED TO KNOW

SEPARATION UPDATE



As of January 2023, we have begun operating as a single mandate regulatory body by divesting ourselves of association duties. While in a transitional state, we continue to support the association committees with registrant communication. We also continue to post continuing education opportunities on the NBASLPA website until registrants can access this information from SAC. We are currently working with the SAC to transfer association responsibilities and helping them recruit a part-time NB advocacy position.

We are pleased to say that after many months of work, our Act has been updated by our legal team and approved by our Executive Council. Based on registrant feedback, we have updated the definition of speech-language pathologist and audiologist in our Act to accurately reflect scope of practice. Once the Act is translated it will be shared with our registrants and stakeholders. Our intention is to present our new Act to the legislature this Spring. Once our Act has been approved by legislature will we be able to officially change our name to the New Brunswick College of Audiologists and Speech-Language Pathologists (NBCASLP).

As a regulatory body, our sole mandate is the protection of the public. To help us achieve this, we are increasing the number of public representatives on our Council. I am happy to announce that a new public representative, Odette Comeau Lavoie, has joined us. She has a tremendous amount of experience in regulation, and we are certain that she will be an excellent addition to our team. You can find a short biography below.

Our team is now working on a new Code of Ethics, updating our Bylaws based on the amendments to our Act and a new visual identity.

STRATEGIC OBJECTIVES



Since we are in a transitional phase, we have developed interim strategic objectives and goals for 2023 to guide us until our legislative documents are updated. Once the separation project is complete, we will hire an HR consultant to develop a three-year college strategic plan as well as updated Vision, Mission, and Values.

2023 STRATEGIC OBJECTIVES

- **Separation:** Divest ourselves of all association functions as of January 2023 and update our Act, Bylaws & Rules.
- **Education:** Provide staff and Council with regulatory education to excel in their roles and provide education to registrants to help them fulfill their regulatory duties.
- **Administration:** Update some of the college's policies and processes and ensure the necessary resources (i.e., HR, financial, technological, etc..) are in place to meet our regulatory requirements.
- **Quality Assurance:** Develop and improve quality assurance programs and tools necessary to ensure registrant clinical competence, and compliance with relevant legislation, bylaws, and standards of practice, for the purpose of public protection.
- **Governance:** Ensure staff and Council remain current on governance best practices.



To function as a college, we have developed/updated the following two committees:

Committee	Purpose
Practice Advisory Committee (similar to the Legislative Committee)	To oversee and actively participate in the development and review of key College documents affecting the practice of audiology and speech-language pathology.
Registration & Continuing Competence Committee (similar to the Membership Committee)	To review applications for registration, renewal, and reinstatement, conduct annual quality assurance audits, and actively participate in the development of materials and resources to support members in their continuing competence.

PLEASE REVIEW THE ATTACHED TERMS OF REFERENCE FOR MORE INFORMATION ABOUT THE COMMITTEE DUTIES AND TERMS OF OFFICE.

The College's committees act in service to the College Council to protect the public, and to exercise its powers and discharge its responsibilities in the public interest. To help achieve this objective, a new Committee Member Conduct Agreement has been developed that clearly outlines the conduct of committee members required in service of the College's objectives. All committee members must review and sign the agreement as well as a Declaration of Interests form highlighting any conflicts of interest prior to their term.

Recruitment of committee members!!!

All registrants interested in joining the following committees are asked to contact the office as soon as possible. These committees will begin operating immediately.

BIOGRAPHIES



ODETTE COMEAU LAVOIE - PUBLIC REPRESENTATIVE

Ms. Comeau Lavoie is originally from Néguaac NB and currently resides in Bocabec. She is a graduate of UdeM (Bachelor of Science in Nursing) and StFX (Masters in Adult Education). She has worked as a Registered Nurse in several different roles, including Public Health Nurse, Regulatory Consultant and as the Principal Nursing Advisor for the Department of Health. Ms. Comeau Lavoie officially retired in the fall of 2021 and continues to work on a casual basis. She has a keen interest in regulation and looks forward to contributing to the Executive Council's important work.



SHEILA MECKING - LEGAL COUNSEL

We have been very fortunate to work with our lawyer, Sheila Mecking, who is leading our transition to college through the update of our legislative documents. Sheila has many years of experience in regulation law and is highly regarded by her peers for her extensive knowledge in this field.

Whether it is issues relating to professional discipline or labour and employment, Sheila works with her clients to develop strategies to reach the best possible outcome. Her bilingual practice focuses on several areas, including:

- Governance and regulatory law: Sheila has extensive experience in representing professional associations/colleges, and has guided a number of regulatory bodies by ensuring compliance with their governing legislation and fiduciary obligations.
- Discipline: Sheila has been involved in over 100 disciplinary cases for professional associations/colleges in New Brunswick, has advised decision makers on due process and procedural fairness and has represented members who are facing disciplinary sanctions.
- Labour and employment: Sheila has helped clients face a range of challenges, including contractual obligations, discipline, termination, human rights or official language complaints.
- Investigations: Sheila's experience in advising decision makers on due process paired with her experience dealing with workplace-related challenges provides the perfect skill set to perform workplace investigations and investigations of regulatory compliance. Sheila conducts investigations for corporations both inside and outside Atlantic Canada.



In addition, she has appeared before all levels of Court in New Brunswick, as well as a variety of administrative tribunals.

Throughout her practice, Sheila has:

- Successfully represented a municipality in a termination grievance involving workplace discrimination and harassment;
- Successfully represented a variety of clients in defending Human Rights Complaints;
- Successfully represented a variety of clients in defending official languages complaints; and,
- Successfully negotiated with the provincial government on behalf of various regulatory bodies for a multitude of matters such as new legislation and scope of practice expansions.

CHANGES AFFECTING REGISTRATION

As a regulatory body, NBASLPA is responsible for the protection and safety of the public, while ensuring regulations are fair, reasonable, and harmonized with our regulatory counterparts. Due diligence and best regulatory practices with regards to registration renewal and reinstatement requirements are essential components in meeting our mandate of public protection.

We have been working to streamline and simplify the registration renewal process while still meeting best regulatory practices to ensure public safety by ensuring the competent, safe and ethical practice of audiologists and speech-language pathologists in New Brunswick.

NEW REGISTRATION PROCESS FOR 2024

The following changes will be implemented for registration renewal 2024. The NBASLPA Rules are currently being amended to reflect the following changes.

Requirement	Process
Registration Renewal Period	<ul style="list-style-type: none">✓ The registration renewal period will be extended to 2 months, beginning October 1st, and closing December 1st of each year.✓ An extended registration renewal period will allow registrants more time to complete the registration renewal process.
Communication Health Assistant Agreement	<ul style="list-style-type: none">✓ The CHA agreement form is no longer required.
Conduct Form	<ul style="list-style-type: none">✓ The Conduct Form will now include a declaration of criminal activity.
Continuing Education Equivalents (CEE)	<ul style="list-style-type: none">✓ Registrants are no longer required to submit their list of CEEs on an annual basis.✓ Registrants are now only required to submit their CEEs at the end of their 3-year cycle (A-B-C). For registration renewal 2024, registrants in Cycle C will be required to submit their CEEs by uploading the NBASLPA tracking form by January 31st.✓ The online reporting form will no longer be used: Registrants will track their CEEs on the new NBASLPA tracking form (found in the CEE tab of the Member's Area) and will upload their form at registration renewal at the end of their 3-year cycle.✓ Registrants are still required to obtain 45 CEEs within their 3-year cycle.✓ There are no longer maximums for any eligible CEE categories.
Currency Hours	<ul style="list-style-type: none">✓ Registrants are required to report their active practice hours (Currency hours) at registration renewal. This is a declaration of hours only. Please do not submit any documents unless audited.✓ The following link may be used to access the new FAQ on the website regarding currency hours (https://nbaslpa.ca/regulation/faqs/)✓ Currency hours are part of the required Quality Assurance Program to help ensure audiologists and speech-language pathologists, working in any capacity in New Brunswick as registrants of NBASLPA, are kept current in knowledge and/or practice of the profession.✓ Currency hours are obtained through ongoing involvement in the profession of audiology or speech-language pathology within direct client/patient care or related work capacity.

IMPORTANT NOTE:

- o All registrants are strongly encouraged **not to wait until the last minute to renew their registration**, in case of illness, technical difficulties, or unforeseen circumstances which may result in a violation of the Bylaws and Rules, late fees, and possible revocation of their entitlement to practice as a speech-language pathologist or audiologist in the province of New Brunswick.
- o **Exceptions** to the late filing fee **will not be granted** unless the registrant **can prove exceptional circumstances** and the **Registrar is notified at least 14 days prior to the registration renewal deadline** of December 1st.
- o **Late filing fees** have been increased to **\$300.00**.
- o Complete your registration renewal as early as possible within the registration renewal period to avoid late filing fees or any complications.

Summary of registration renewal requirements:

1. Completed Registration Renewal Form
2. Conduct Form
3. CEE Reporting (end of assigned 3-year Cycle only) - upload NBASLPA Excel Tracking form
4. Proof of personal professional liability insurance. Personal PLI must clearly meet NBASLPA requirements as per Rule 14.9.1 (c) vi , if not from one of the NBASLPA pre-approved professional liability insurance providers. No exceptions will be made . It is your responsibility to confirm with your insurance provider that your policy meets NBASLPA requirements.
5. Declaration of Currency Hours
6. Renewal Payment

PATIENT FILE RETENTION

Over the past year, NBASLPA has received numerous inquiries from registrants regarding the file retention of patients/clients.

As the NBASLPA legislation, Personal Health Information Privacy and Access Act (PHIPAA), and other comparable legislation do not provide minimum retention periods for patient/client records, we have consulted our lawyers at Stewart McKelvey and asked for provision of guidance on best practice for NBASLPA registrants.

Our lawyer stated that NBASLPA should not prescribe the manner or timeframe for which registrants should retain patient/client files and provided the following guiding principles and policy considerations for registrants.

In accordance with the PHIPAA ([Personal Health Information Privacy and Access Act \(gnb.ca\)](#)), all custodians of health information, including speech-language pathologists and audiologists (regardless of work setting) are required to develop their own policies with respect to retention, storage, and disposal of patient/client files.



Our lawyer has provided the following guiding principles and policy considerations regarding the development of a patient/client file retention policy.

GUIDING PRINCIPLES IN DEVELOPING A FILE RETENTION POLICY

The following is a summary of our lawyer's response.

THERE ARE TWO TYPES OF PATIENT RECORDS:

Patient/client records for which the professional relationship continues and for which the professional relationship has been discontinued.

- With respect to ongoing patient/client relationships, it is our lawyer's opinion that these records should be kept indefinitely.
- With respect to files where the patient/client relationship has been discontinued, our lawyer has provided the following four reasons to continue to retain their files:
 - the possible reactivation of the professional relationship;
 - the protection against a claim for negligence;
 - the protection against a complaint to NBASLPA; and
 - the protection against a complaint with respect to the Criminal Code.

Consideration of the Statutes of Limitation:

- There is no limitation period for making a complaint about a current or past registrant of NBASLPA.
- As per the Limitation of Actions Act (Limitation of Actions Act (gnb.ca)):
 - A civil action must be brought within two years after the claim was discovered.
 - A civil action must be brought within fifteen years of when the circumstances upon which a claim could be made took place.
 - The limitation period for claims related to children begins on their 19th birthday.

The protection of the registrant against a complaint to NBASLPA, for which there is no limitation period, and the general limitation periods pursuant to the Limitation of Actions Act, would tend to favour longer retention periods - especially in cases where children are involved.

The costs associated with the indefinite retention of all files, however, will at some point outweigh the risks associated with the disposal of patient/client files. In consideration of this, it is reasonable to develop an effective and consistent policy for the disposal of files. Such a policy might include notifying patients and returning their documents, retaining the remaining contents of the file for a given period, and, eventually eliminating the file, recognizing that there is always 'commercial risk' associated with the disposal of files. A registrant, or their employer, should develop a policy that considers these known risks.

FILE RETENTION POLICY CONSIDERATIONS

FILE CLOSURE:

- The file must be closed when a patient/client relationship has terminated.
- The registrant must review the file and return any documents that belonged to the patient/client.
- The registrant should purge the file by eliminating multiple copies of documents unless there is a reason for retaining earlier versions.
- The registrant who is the custodian of the patient/client's file must participate in the purging of the file.
- The registrant should notify the patient/client well in advance that the file will be closed.
- Registrants should keep a file closure checklist as an integral part of the process.

RECORD RETENTION:

- Registrants should decide how long they will retain patient/client records based on the considerations contained herein.
- Registrants should have a 'bring forward' system that alerts them once a file has been closed for a pre-determined length of time, at which point the registrant should review the file to determine how to proceed (see Disposal of Records below).

CHILDREN AND PERSONS WITH MENTAL DISABILITIES:

- The general limitation period, as per the Limitations of Actions Act, for any claim related to a child does not begin until after the child has reached their 19th birthday (age of majority).

- In case a claim related to a person with a mental disability is made, it is strongly recommended that their records be kept indefinitely.

TAX CONSIDERATIONS:

- The Income Tax Act ([Income Tax Act \(justice.gc.ca\)](https://justice.gc.ca)) sets out specific rules for retaining records, for which registrants in private practice should be aware. These records pertain to the accounting of the business and includes supporting documents and cheques.

SEXUAL ASSAULT:

- Neither the Criminal Code of Canada ([Criminal Code \(justice.gc.ca\)](https://justice.gc.ca)), the NBASLPA Act (<https://nbaslpa.ca/regulation/act-incorporating-the-new-brunswick-association-of-speech-language-pathologists-and-audiologists/>) nor the LAA ([Limitation of Actions Act \(gnb.ca\)](https://gnb.ca)) provide for statutes of limitations with respect to sexual assault.
- Alleged victims of sexual assault can file a complaint against a NBASLPA registrant many years after the alleged incident occurred.
- If the registrant has any doubt regarding the possibility of a patient/client one day raising an allegation of sexual misconduct, the registrant should retain the file for a longer period.

DISPOSAL OF RECORDS

THE PHIPAA STATES AS FOLLOWS:

55(1) A custodian shall establish and comply with a written policy for the retention, archival storage, access and secure destruction of personal health information that [...]

(c) requires that a custodian who destroys personal health information to keep a record of the individual whose personal health information is destroyed, a summary of the contents of the record, the time period to which the information relates, the method of destruction and the name of the person responsible for supervising the secure destruction.

DISPOSAL OF RECORDS:

- When the registrant's 'bring forward' system alerts the registrant to the names or numbers of patient/client files that are due to be discarded, those affected files must first be re-assessed.
- The registrant who is the custodian of the patient/client record should take part in this assessment.
- If the registrant who is the custodian is unable to participate in the reassessment of the affected files, another speech-language pathologist or audiologist (as the case may be) who is familiar with the type of file must proceed.

AFTER THE REASSESSMENT OF THE AFFECTED FILES, THREE OPTIONS ARE POSSIBLE:

1. The registrant can keep the file for a longer period because of an occurrence during the retention period that warrants continued retention (e.g., the patient/client's return).
2. The registrant may contact the patient/client to inform them of the disposal of their file. Registrants might choose this option if they have had no communication with their patient/client at the closing of the file. If too much time has elapsed, however, this may be difficult due to a number of circumstances (for example, due to a death or a move).
3. Dispose of the file. When disposing of the file, caution must be taken to maintain confidentiality (for example, by shredding the file).

AT A MINIMUM, A PERMANENT RECORD OF ALL DISCARDED FILES MUST BE MAINTAINED, INCLUDING:

- (a) the name and address of the patient/client, file number, and brief description of the issue being addressed;
- (b) the notices to the patient/client regarding the disclosure and disposal of their file;
- (c) the date of the disposal of the file and the name of the member who authorized it; and
- (d) the location and nature of the records kept.

**** The information provided regarding file retention is based on current legislation which is subject to change.***

Please note that all registrants of NBASLPA must meet other obligations under the PHIPAA, including the collection, use, and retention of personal health information, as well as how they must proceed in the event such information is called into question. This article addresses the development of file retention policies only.

Please do not hesitate to contact the NBASLPA Registrar (registrar@nbaspla.ca) if you have any further questions or require clarification regarding file retention.