

**Response to:
Commission of Inquiry
into Pathology Services at the
Miramichi Regional Health Authority**

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Published by:
Department of Health
Province of New Brunswick
P.O. Box 5100
Fredericton, New Brunswick
E3B 5G8
Canada

February 2009

Cover:
Communications New Brunswick

Typesetting:
Department of Health

Printing and Binding:
Department of Supply and Services

ISBN: 978-1-55471-132-1

Printed in New Brunswick

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Introduction

On Feb. 22, 2008, the provincial government established a commission of inquiry to investigate issues surrounding the provision of pathology services at the former Miramichi Regional Health Authority. The government believed a complete examination of this matter was in the public interest in light of complaints about the quality of pathology services.

The commission investigated the systemic issues that contributed to deficiencies in the health-care system. Over 3 months, the commission heard testimony from over 50 witnesses at a series of public hearings. The process culminated on Dec. 10, 2008, when the commission released its report.

The commission advanced 52 recommendations designed to ensure that appropriate safeguards are put in place to ensure the quality of services provided at New Brunswick hospitals. The scope and depth of the recommendations demonstrated a complex array of variables that the commission concluded had contributed to systemic problems.

Generally, the recommendations addressed issues of departmental oversight and quality assurance within the health-care system. Recommendations were made regarding optimal provision of pathology services, particularly in areas serving smaller populations. The commission discussed the role of the pathologist within the health-care system; and advocated continuing medical education, improved hiring procedures, increased remuneration, and revitalization of collegial associations. Changes to legislation, regulations and bylaws were recommended to bolster the administrative strength of the complaints, investigation and discipline process, as well as the administrative strength of the hospital privilege-granting process.

The commission identified a number of key players in addition to the Department of Health, the regional health authorities (RHAs) and the New Brunswick Health Council. The successful implementation of these proposals will rely on government collaboration with the College of Physicians and Surgeons of New Brunswick, the New Brunswick Medical Society the Canadian Medical Protective Association, the Canadian Association of Pathologists, other jurisdictions and Canadian educational institutions.

The Department of Health and the RHAs have been collaborating to develop a number of concrete responses to these recommendations. Some of the recommendations have already been implemented, but many represent long-term initiatives. The Department of Health's intent is that strategies be adopted provincewide, even though some of the recommendations are directed specifically at the former Miramichi Regional Health Authority. In this manner, the department may ensure the same level of high-quality health-care throughout the system.

The Department of Health has given full consideration to the recommendations, and it plans to implement them to the greatest extent possible.

1. Oversight by Department of Health

These recommendations go to the heart of the Department of Health's role as it relates to the delivery of health-care. In the past, the department established priorities and direction, but it left hospital operations to the RHAs. Monitoring by the department did not include the particulars of clinical service. Rather, it considered system performance in a broader spectrum. The commission's recommendations about department oversight represent, therefore, a fundamental change in the department's function.

Recommendation #1: The Department of Health accept and fulfill an oversight role with respect to the provincial hospital laboratory system.

The Department of Health accepts this recommendation.

Recommendation #2: The Department of Health designate and staff a position of director of diagnostic services, to include pathology laboratories, who shall report directly to the Deputy Minister.

See recommendation #3 response.

Recommendation #3: The Director of Diagnostic Services accept responsibility for monitoring the operation of diagnostic services in the province.

The Department of Health will designate a position to oversee the operation of diagnostic services, including laboratories, in the province. The official holding this position will report to the executive director of hospital services, who in turn reports to the assistant deputy minister.

The RHAs have the responsibility for the ongoing operation of diagnostic services and will continue to act in this capacity.

2. Quality assurance by the Department of Health

The issue of quality assurance in the provincial hospital laboratory system has been the subject of discussion among senior officials at the Department of Health and the RHAs, including laboratory managers and pathologists, since these problems came to light. All parties are of one mind with respect to making necessary changes to improve quality assurance within the system.

In the wake of the commission's report, many efforts have been made to develop greater consistency across the laboratory system. These efforts have been facilitated by the recent restructuring of the RHAs to two from eight. One concern that resurfaces is the issue of resources, both human and financial, to achieve desired objectives. Further consideration will be given to these issues as the Department of Health moves forward in the study of the recommendations within the agenda of effective, sustainable health-care, as set out in the provincial health plan.

Recommendation #4: The Department of Health, in consultation with the Regional Hospital Authorities, set standards for quality assurance in the provincial hospital laboratory system.

The Department of Health, in collaboration with the RHAs, will be examining the components of the prevailing accreditation models to determine which one will best meet the needs of New Brunswick.

Over the past year, New Brunswick's laboratories have done considerable work to prepare for accreditation according to Accreditation Canada's most current model. It is worth noting that the province's hospital system has a complete, established set of Canadian Standards Association (CSA) laboratory standards as adopted nationally by Accreditation Canada.¹ Accreditation Canada focuses on patient safety by considering the functioning of the hospital as a whole.

Other more discipline specific accreditation models, such as the one promoted by the College of American Pathologists, focus on patient safety but concentrate on the technical components of laboratory practice through the lens of quality assurance and quality control.

The existing provincial quality working groups for various laboratory disciplines, whose members are drawn from across the province, are charged responsible for identifying technical quality assurance issues on a provincial basis. The Department of Health intends to draw upon the expertise of these groups to undertake an examination of current standards of practice.

¹ The Accreditation Canada Standards are base largely on Canadian Standards Association (CSA) Standards Z15189-03 and Z902-04. They are also based on the companion document *Plus 15189: The ISO15189:2003 Essentials*, written by the CSA.

Recommendation #5: The Department of Health, in addition to the process of hospital accreditation, provide an audit mechanism to ensure that its quality assurance standards are maintained in the provincial hospital laboratory system.

An *ad hoc* group is studying audit mechanism options and is working toward the implementation of an audit system to ensure quality assurance within the province. Several options are under consideration; they may be used alone or in combination. These include internal and external audits, audit by New Brunswick practitioners from different zones, and audit by the provincial quality groups.

The Department of Health acknowledges the necessity of a provincewide audit mechanism as a fail-safe to ensure that the standards promoted by the accreditation process are being observed. To date, this has been done primarily by way of internal audit within the facilities. That is, random selections of pathology samples are periodically reviewed by another pathologist within the institution. This process has been undertaken in hospitals with varying degrees of formality. As revealed by the commission, this process is impracticable in a smaller facility and therefore alternative procedures, such as external review, are required.

Recommendation #6: The Department of Health retain the College of Physicians and Surgeons of New Brunswick to establish and perform this audit function through a competent external peer review.

The College of Physicians and Surgeons of New Brunswick uses the services of the Atlantic Provinces Medical Peer Review² to perform competent external peer review. This organization has representation from the Atlantic provinces. It began by reviewing the practice of family physicians, and later extended to specialty practices such as pediatrics and cardiology. This year, pathology has been added to its mandate. The first series of audits will be conducted over the next five years, initially by physicians from Ontario, with the expectation that local auditors will be recruited from New Brunswick, Prince Edward Island, and Newfoundland.

While the Department of Health works with the Atlantic Provinces Medical Peer Review to supply this service in the short term, the department continues to work with the College of Physicians and Surgeons of New Brunswick about peer review. Literal implementation of this recommendation would represent a fundamental change for the College of Physicians and Surgeons of New Brunswick, effectively increasing operations beyond its current scope. Whether this occurs is dependent on a number of considerations, including legislative amendment, funding increases, and staffing. A change of this magnitude would reasonably be expected to take a number of years to implement.

² More information on the Atlantic Provinces Medical Peer Review is available at www.apmpr.ca.

Recommendation #7: The Department of Health provide the College of Physicians and Surgeons of New Brunswick with adequate funding to establish and perform this audit function.

The Department of Health will review this question with the College of Physicians and Surgeons of New Brunswick to determine its level of interest in assuming a role as auditor. The Department of Health will also discuss the question of funding for the audits with the College of Physicians and Surgeons of New Brunswick to establish clearly and recognize each organization's responsibilities and associated funding requirements.

Recommendation #8: The Department of Health enter into negotiations with the College of Physicians and Surgeons of New Brunswick with a view to implementing a diagnostic services quality assurance program similar to that in effect in the Province of Saskatchewan.

Implementation of this recommendation would rely on the collaborative effort of all stakeholders. As such, it has been identified as a long-term initiative to be explored.

An *ad hoc* group has been formed to review the current New Brunswick Hospital Services Lab Standards to align them with ISO standards. The New Brunswick Hospital Services Lab Standards were established in 1996 and revised in 2002. These standards are similar to those in Saskatchewan and provide a solid foundation for a revised quality assurance program. Such a review and revision would provide an updated, consistent administrative framework against which specific accreditation and other quality assurance mechanisms would be implemented.

One key difference between the Saskatchewan and New Brunswick programs is the legislative framework. In Saskatchewan, its college of physicians and surgeons has delegated authority under public legislation to perform the audit function. Physicians in New Brunswick are governed by private legislation and are a self-regulating profession.

Recommendation #9: The Department of Health enter into negotiations with the Province of Nova Scotia with a view to obtaining a commitment that the Capital Health Centre in Halifax will offer the same level of consultative or referred laboratory services to pathology laboratories in New Brunswick as it does to laboratories in Nova Scotia outside the service area of the Capital Health Center.

In the event that the need for consultation cannot be met by current relevant experience within New Brunswick, the Department of Health will leverage existing relationships, and negotiate with other jurisdictions, to obtain the relevant expertise and service. Health-care facilities throughout the province regularly access specialists in the field of pathology in other centres such as Quebec City, Montreal and Toronto.

3. Pathology services

Pathology services play a vital role in New Brunswick's health-care system. Accurate and timely diagnosis is the foundation of appropriate treatment for patients. Therefore, it is essential that pathology laboratories are properly positioned to promote efficient delivery of service, harness emerging technology and provide for contingencies.

Recommendation #10: The Department of Health maintain pathology laboratory services in all the regional hospitals in the province in accordance with the requirements of each hospital.

The Department of Health and the RHAs will examine the resources and requirements of the regions with a view to maintaining laboratories in all existing locations. Patient safety cannot be compromised. The department must ensure that this can be achieved while ensuring the necessary oversight to maintain a consistently high quality of service in each of these centres.

Recommendation #11: The Department of Health develop a contingency plan for the establishment of centralized pathology services in the instance that an adequate number of qualified pathologists cannot be recruited and retained in all regional hospital laboratories.

The Department of Health will collaborate with all relevant stakeholders, including the RHAs and the New Brunswick Association of Pathologists, to develop the recommended contingency plan.

Recommendation #12: The Department of Health study and plan for the potential of providing pathology services for regional hospital laboratories through new technology in the field of pathology digital imaging and computer transmission and establish an association with the University Health Network in Toronto with a view to introducing this technology to New Brunswick.

The Department of Health will study the feasibility of implementing this technology. There is no question that there is great value in the technology for pathology digital imaging and computer transmission.

4. Remuneration and education of pathologists

The Department of Health agrees that remuneration and education of pathologists is critical to the recruitment and retention of qualified candidates. To ensure the future viability of pathology service in New Brunswick, it is necessary to create a competitive working environment for professionals looking to relocate. It will also be necessary to address the shortage of pathologists emerging from Canadian educational systems. The expanding role of the professional pathology assistant in the health-care system is also being considered.

Recommendation #13: The Department of Health negotiate fair and reasonable compensation arrangements with pathologists who work in New Brunswick based on remuneration related to salary ranges across the country, parity of salaries paid in the Atlantic Provinces, and salaries paid to other medical professionals in the field of diagnostic medicine.

The Department of Health recognizes that competitive compensation is a cornerstone of an effective recruitment and retention strategy.

Recommendation #14: The Department of Health enter into discussions with the Medical Council of Canada with a view to finding means to increase the number of pathologists trained in Canadian medical schools and specifically to remove or limit restrictions that presently exist on allowing medical students to make “specialty shifts” and also to improve the exposure of medical students to pathology practice during their training.

The provincial government has secured an additional training position at Dalhousie University starting in July 2009 with a return-of-service arrangement. This means that the sponsored resident must return to New Brunswick to work for one year or, alternatively, repay the financial assistance provided him or her.

The Department of Health has also undertaken discussions with Dalhousie University to add another pathology position for 2010. Dalhousie University will advise the Department of Health by July 2009 whether this is feasible.

The Department of Health is working with medical faculties and the Association of Medical Faculties to ensure that the training of specialists meet the needs of this jurisdiction. This is an ongoing process through a provincial-territorial committee on post-graduate training.

Recommendation #15: The Department of Health establish a program to attract, retain and financially assist in the training of the laboratory technologists required to sustain a functioning pathology laboratory in all regional hospitals.

Since 2005, the Department of Health has funded annual New Brunswick health bursaries, which target hard-to-recruit health occupations. Medical laboratory technologists have been one of the targeted professionals and will continue to be targeted in 2009-10.

Recommendation #16: The program, to attract, retain and, financially assist in the training of technologists to provide pathology services in smaller regional hospitals, be specifically directed to high school graduates from the area in which the hospital is located.

A recruitment and retention steering committee will be established in the fall of 2009 to explore the feasibility of a return-of-service concept, as well as other innovative measures, with a view to establish such a program in 2010-11. Specifically, the concept of an adopt-a-student arrangement has been discussed with both RHAs. This concept would allow local individuals to be sponsored for a return-of-service in their community or in another New Brunswick community where a need has been identified.

Recommendation #17: The Department of Health investigate and study the potential for establishing a program to introduce the use of professional pathology assistants as a new professional resource in the provincial laboratory system.

The Department of Health will investigate and study the potential for establishing a program to introduce the use of professional pathology assistants as a new professional resource in the provincial laboratory system. The study will include such topics as understanding the scope of practice; identifying issues relative to implementation of pathology assistants; researching educational programs offered in Canada and the United States; and reviewing of on-the-job training received by two pathology assistants employed in RHA B.

5. New Brunswick Health Council

The commission made a number of recommendations about enlisting the New Brunswick Health Council in initiatives related to health-care governance. The role of the New Brunswick Health Council is to monitor, report and make recommendations on the performance of the health-care system. It will have a role to play as the Department of Health moves forward in implementing the recommendations. The Department of Health supports these recommendations to the extent that they fall within the identified mandate of the New Brunswick Health Council.

Recommendation #18: The Department of Health refer the issue of engaging individual members of the medical profession as participants in the management of health care facilities to the New Brunswick Health Council for the study and development of appropriate initiatives toward that end.

The Department of Health will refer the issue of engaging individual members of the medical profession as participants in the management of health care facilities in New Brunswick to the RHAs. They currently involve individual members of the medical profession as participants in the management of health care facilities and, therefore, are well positioned to address this recommendation.

Recommendation #19: The Department of Health refer the issue of the role of the patient in the health delivery system and in the management of health care facilities to the New Brunswick Health Council for the study and development of appropriate initiatives in this regard.

The Department of Health will refer the question of the role of the patient in the health delivery system and in the management of health-care facilities to the New Brunswick Health Council for consideration during its public engagement process.

6. Quality assurance by RHAs

In the wake of the commission's report, quality assurance and quality control within provincial laboratories have been foremost in the minds of both administrators and clinicians within the RHAs. Even before seeing the recommendations, the Department of Health and the RHAs were constantly making improvements. They will continue to build on these efforts with the additional guidance of the recommendations.

Recommendation #20: The CEO of the Regional Health Authority has the responsibility to implement the standards of quality assurance set by the Department of Health and further to provide mechanisms to ensure quality control.

Effective with the interim by-laws of Sept. 1, 2008,³ the CEOs of the RHAs have the responsibility to implement standards of quality assurance set by the Department of Health.

Recommendation #21: The following quality control mechanisms be considered by the CEO in formulating a program for quality control in the laboratory at the Miramichi Regional Hospital:

- a) **Acceptable turn-around times should be set out with special allowance for difficult or special cases.**

The Department of Health believes that provincially consistent turn-around times – with allowance for urgent cases, and for equipment and support services availability – should be set. The department consulted with pathologists in reaching this position.

- b) **A log should be maintained as to TAT showing “time in” and “time out” with opportunity for notation for difficult or special cases.**

Throughout the province, time in and time out are already logged electronically in the hospital's laboratory information systems.

- c) **The log should automatically notify the department chief and the hospital administration when the acceptable TAT has been exceeded, with notation as may be required in difficult or special cases.**

See Recommendation #21(d) for response.

³ Processes surrounding hospital privileges, complaints and discipline fall squarely within the provisions of a RHA's bylaws. As part of the restructuring of the RHAs to two from eight, the Department of Health introduced a set of interim bylaws. In crafting these bylaws, the Department of Health was keenly aware of procedural issues that may have contributed to the circumstances prevailing at the former Miramichi Regional Health Authority. Each RHA is reviewing the interim bylaws to address the needs of its organization, subject to approval by the minister of Health. Department staff will work with legal counsel for the RHAs as they conduct their review. Those recommendations arising out of the commission's report that relate to RHA bylaws have been identified by staff and will be addressed.

- d) There should be a monthly audit of the TAT of each pathologist by way of report to the department chief and hospital administration.**

The Department of Health will organize an *ad hoc* stakeholder forum to determine a consistent notification and audit approach provincewide. Automatic notifications are not technologically possible within the current environment, but reports are generated from the hospital information systems weekly or monthly for review by the pathologist or division head.

- e) There should be double sign-off on all slides requiring a cancer diagnosis.**

A process has already been established for most of the province that a second pathologist reviews the case – including the slides – and concurs with the cancer diagnosis. The RHAs are continuing work toward a consistent double sign-off approach for the entire province.

- f) In the instance of disagreement, the slide should be sent for external peer review and the consulting physician informed.**

The Department of Health has already established this process provincewide.

- g) Standard or synoptic reporting templates should be used by all pathologists and the template should be updated annually.**

The New Brunswick Cancer Network is implementing an initiative to expand and standardize (synoptic) reporting templates for certain specimen types throughout the province. Through standardized reporting, improved data quality will support timely diagnosis and treatment. Currently, the project team is identifying the technological requirements, engaging stakeholders, and securing long-term funding. The project is scheduled to be completed in 2010.

- h) Difficult or special cases should be reviewed internally by two pathologists. In the instance of disagreement, the slide should be sent for external peer review and the consulting physician informed.**

The RHAs have already established this process provincewide.

- i) A percentage of all slides (5-10%) should be selected randomly on a monthly basis and sent for external peer review.**

The Department of Health will create an *ad hoc* group to study the risks and resources required to implement this monthly external review provincewide. The review will ensure that pathology specimens are available for follow-up consultations with clinicians, and above all, that the security of the slides is ensured during transit.

Various quality assurance reviews – internal and external – are in place throughout the province, but vary locally. The *ad hoc* group will focus on a consistent provincial model.

- j) **An external laboratory should be designated by the department chief as the external reference resource and used in all cases in which practicable and technical links should be established to permit maximum exchange of information.**

Cases are directed to a laboratory having trusted expertise in the relevant sub-specialty. Pathologists do not routinely refer cases to a single laboratory. Because external review of cases is done by multiple laboratories to provide the best clinical support, these referrals will be made according to the professional judgment of pathology departments.

Accreditation standards require referral centres and their respective pathologists to hold appropriate certifications and credentials.

- k) **There should be greater collaboration between the diagnostic services of pathology and radiology and the other services that are the prime users of the diagnostic services.**

The Department of Health and the RHAs are implementing measures to foster this relationship.

- l) **The services of pathology, radiology, and surgery should be considered as one department with respect to internal management and direction, when the diagnostic services have less than four practitioners.**

With the reorganization of health-care governance in the province, RHA A and RHA B now have more than four practitioners performing diagnostic services. Consequently, this recommendation is not applicable.

- m) **A rotation program should be established in which pathologists from one hospital laboratory would practice in another hospital laboratory for fixed periods during the year.**

The RHAs have given due consideration to this recommendation. Having consulted with stakeholders, they see possible value in experiencing new clinical environments. However, it has been determined that this is not feasible to implement. A rotation schedule would not be an efficient use of staffing due to the necessary travel time and the learning curve associated with new clinical environments. Such an initiative is not attractive to pathologists because it would interfere with their personal lives.

That being said, the stakeholders do see other opportunities to collaborate to enhance clinical knowledge, such as the Provincial Pathology Quality Group and the New Brunswick Association of Pathologists.

- n) **An annual random peer audit program should be established specific to hospital laboratories, to be managed by the College of Physicians and Surgeons of New Brunswick and funded by the Department of Health.**

Please see Recommendation #5 response.

Recommendation #22: The CEO of the Regional Health Authority report immediately any material problems that arise in the diagnostic services provided by hospitals in the Province to the Director of Diagnostic Services that may go to the issue of patient safety.

The Department of Health and all the stakeholders acknowledge that early communication of patient safety problems can only be beneficial. Both RHAs have an established mechanism to report immediately any material problems that arise in diagnostic services. A working group, composed of risk management and laboratory representatives, will be created. The group will examine the current state of reporting, including the established chain of command in reporting of incidents. It will better define the types of incidents that must be reported, ensure that this mechanism serves its purpose, and that it is consistent provincewide.

Pursuant to the interim bylaws that came into effect Sept. 1, 2008, the Department of Health is to be notified in the event that there is a temporary suspension of privileges, arising from an issue of patient safety. Also, the department is to be notified of all disciplinary complaints, setting out in writing the nature of the complaint, the final decision, and any recommendations for discipline.

Recommendation #23: The Government of New Brunswick and the Regional Health Authority draft and implement all necessary legislation, regulations, and by-laws required to establish a clear designation of responsibility and authority for quality assurance and quality control in the CEO of the Regional Health Authority.

The CEOs of the RHAs already have implicit responsibility for quality assurance and quality control. According to the current organizational structure, medical advisory committees and professional advisory committees are the committees of the board having the expertise in hospital administration and clinical practice. While they bear the primary responsibility for quality assurance and quality control, these committees report to the board of directors.

The RHAs are re-examining the interim bylaws to align the current structure with the inquiry recommendations and are taking Recommendation #23 into account as they consider amendments.

7. Recruitment and retention protocol

The Department of Health and the RHAs will introduce recruitment and retention protocols in response to the commission's recommendations. When a physician is introduced into the health care system, it is critical that an established procedure govern hiring. Ideally, this procedure will ensure that the physician has acquired the appropriate education, credentials, and expertise in the area of practice. It is equally important to ensure that the physician maintains these qualifications throughout his or her tenure.

Recommendation #24: The Regional Health Authority establish a written protocol for the recruitment and retention of physicians at the Miramichi Regional Hospital.

RHAs A and B will be developing a written protocol for the recruitment and retention of physicians in conjunction with the Department of Health in the fall of 2009.

Recommendation #25: The written protocol provide for input from physicians who work in the medical service for which a physician is being recruited.

The written protocol will formalize the current provision for input from physicians who work in the medical service for which a physician is being recruited. Currently, every department within the regional hospitals have guidelines, requirements and expectations when recruiting a new physician. No physician is recruited without a consultation with the involved department. There are also strict procedures about granting credentials.

Recommendation #26: The Regional Health Authority grant and continue hospital privileges only to those physicians who meet this protocol.

The Department of Health agrees with this recommendation.

Recommendation #27: The CEO of the Regional Health Authority has responsibility to see that this protocol is adhered to.

See Recommendation #24 response.

Recommendation #28: The Government of New Brunswick and the Regional Health Authority draft and implement all necessary legislation, regulations, and by-laws required to establish a clear designation of responsibility and authority for physician recruitment and retention in the CEO of the Regional Health Authority.

Both RHAs are revising their bylaws, and the rules and regulations made pursuant to those bylaws are also under review. Due consideration is being given to this recommendation in confirming and further defining the role of the CEO in hiring.

8. Privileges, complaints and discipline

Processes surrounding hospital privileges, complaints and discipline fall squarely within the provisions of an RHA's bylaws. As part of the restructuring of the RHAs to two from eight, the Department of Health introduced a set of interim bylaws. In crafting these bylaws, the Department of Health was keenly aware of procedural issues that may have contributed to the circumstances prevailing at the former Miramichi Regional Health Authority. Each RHA is reviewing the interim bylaws to address the needs of its organization, subject to approval by the minister of Health. Department staff will confer with legal counsel for the RHAs as they conduct that review. Those recommendations arising out of the commission's report that relate to RHA bylaws have been identified by staff and will be addressed.

Recommendation #29: The Board of Directors of the Regional Health Authority has responsibility to grant, retain, limit or withdraw a physician's hospital privileges.

Effective with the interim bylaws of Sept. 1, 2008, the boards of directors of the RHAs have the responsibility to grant and retain hospital staff upon the recommendations of all relevant committees, including the medical advisory committees and the professional advisory committees. The CEOs of the RHAs, in consultation with the chiefs of staff, may limit or withdraw a physician's hospital privileges by temporarily suspending privileges where it is believed that patient safety is at risk. The boards of directors of the RHAs are the ultimate arbiters of disciplinary reviews.

Recommendation #30: The Board of Directors of the Regional Health Authority act promptly on a question of a physician's hospital privileges after receiving advice from the CEO and the Medical Advisory Committee reporting to the Regional Health Authority.

Effective with the interim bylaws of Sept. 1, 2008, the CEOs of the RHA, in consultation with the chiefs of staff, may temporarily suspend privileges where it is believed that patient safety is at risk.

The interim bylaws preserve procedural fairness for physicians who are the subject of disciplinary review by providing such physicians with adequate time to prepare and present evidence, and make argument. There is also adequate opportunity for appeal of a decision. These procedural requirements mean that the entire disciplinary review process is not always swift, but because the physician is suspended during this process, patient safety is not at risk.

Recommendation #31: The Regional Health Authority establish a Medical Advisory Committee that will render advice to it and the CEO regarding, among other matters, a physician's hospital privileges.

The interim bylaws of Sept. 1, 2008, provide for a medical advisory committee that will render advice to the RHAs and their CEOs regarding, among other matters, a physician's hospital privileges.

Recommendation #32: The MAC established by the Regional Health Authority shall include representation from all the Regional Hospitals governed by the Authority and shall include a representative from all the medical services provided in those hospitals, including pathology.

The interim bylaws have already addressed the spirit of this recommendation. They provide for composition of a medical advisory committee representative of the clinical management structure as well as geographical and specialty areas. There is equitable representation from all areas of the province, regional and rural hospitals, and various medical services. In addition, the local medical advisory committees have representation from all departments within their part of the province.

Addressing this recommendation to the letter would mean increasing representation from all medical services from all regional hospitals. Such a move would greatly enlarge the medical advisory committees, potentially rendering their proceedings prolonged and ineffective.

Recommendation #33: The Government of New Brunswick and the Regional Health Authority draft and implement all necessary legislation, regulations and by-laws required to establish a clear designation of responsibility and authority to grant, retain, limit or withdraw hospital privileges in the Board of Directors of the Regional Health Authority.

Effective with the interim bylaws of Sept. 1, 2008, the boards of directors of the RHAs have the power to grant, retain, limit or withdraw hospital privileges.

Recommendation #34: Where a question of professional competence arises that, in the opinion of the CEO, after consultation with the MAC, goes to an issue of patient safety that warrants serious determination as a matter of discipline, the CEO shall not refer the question to the MAC as a matter of hospital privileges, but shall refer the question to the College of Physicians and Surgeons of New Brunswick for determination as a matter of formal complaint.

Effective with the interim bylaws of Sept. 1, 2008, serious questions of professional competence will result in a temporary suspension of privileges, which must be reported to the College of Physicians and Surgeons of New Brunswick, among others. While the College of Physicians and Surgeons of New Brunswick is examining the formal complaint, the RHAs address the limitation or withdrawal of hospital privileges, rather than having hospital privileges tied to the proceedings of the College of Physicians and Surgeons of New Brunswick.

Recommendation #35: The Regional Health Authority shall designate and staff the position of director of patient relations, who shall report directly to the CEO.

Recommendation #36: The Director of Patient Relations shall be responsible among other things for monitoring all issues of professional medical competence in the regional hospitals and to communicate, as may be reasonably required, keeping all interested parties, including the patients concerned, informed as to the status of outstanding serious questions of professional competence that involve the issue of patient safety.

A process must be established in both RHAs for the management of complaints of a medical nature. The description of the role of director of patient relations represents an amalgam of existing roles. Currently, the chiefs of staff for each zone monitor medical competence and report to the Board. However, the chief of staff usually does not communicate with patients or individuals making complaints. A patient representative would receive complaints or concerns, ensure a thorough follow-up is done, advise the CEO, and communicate with the patient and the chief of staff.

9. Continuing medical education protocol

The Department of Health recognizes that continuous professional development is essential to a viable health-care system. To provide the best service to patients, the health-care system in New Brunswick must ensure that professional staff is current with the latest issues and techniques by participating in such programs. While responsibility for continuing medical education typically falls to the individual professional, the RHAs are willing to facilitate this process to the greatest extent possible.

Recommendation #37: The Regional Health Authority establish a written protocol for continuing medical education in all regional hospitals in the province in accordance with available resources and the requirements of each hospital.

The interim bylaws of Sept. 1, 2008, identify the RHAs' chiefs of staff as responsible to ensure that all members of their medical staffs participate in continuing medical education; the chiefs of staff also ensure that each department under the medical staff structure maintain and promote a continuing medical education program for its members.

The RHAs intend to further address this recommendation by establishing a continuing medical education protocol. Specific requirements for continuing medical education are linked to national professional certification bodies rather than to hospitals. The protocol will be linked to the professional certification bodies and will form part of the hospital privilege renewal process.

Recommendation #38: The CEO of the Regional Health Authority has responsibility to see that this protocol is adhered to.

See Recommendation # 39 response.

Recommendation #39: The Government of New Brunswick and the Regional Health Authority draft and implement all necessary legislation, regulations and by-laws required to establish a clear designation of responsibility and authority for ensuring compliance with the CME protocol.

Each RHA will give effect to the recommendation that the CEO is responsible for ensuring that the continuing medical education protocol, once established, is observed.

Recommendation #40: The Regional Health Authority provide adequate protected time and resources for staff physicians, including pathologists, to maintain the requirements of the CME protocol.

The RHAs will provide adequate protected time and resources for staff physicians, including pathologists, to maintain the requirements of the continuing medical education protocol.

10. Amendments to the *Medical Act*

The commission identified a number of key players in the health-care system, including the College of Physicians and Surgeons of New Brunswick, a self-regulating body that derives its authority from the Medical Act and regulations. It has responsibility for the licensing of physicians, for monitoring standards of medical practice and for investigating complaints against physicians. The College of Physicians and Surgeons of New Brunswick is preparing amendments to the Medical Act that will address the commission's recommendations and update existing legislation.

Recommendation #41: The College of Physicians and Surgeons of New Brunswick continue its discussions with the Government of New Brunswick with a view to amendments of the *Medical Act* that would result in:

- a) Expanding the College's investigatory authority to allow more direct access to records, specimens, and other material necessary to an investigation;**
- b) Clearly allowing the initiation of investigations without prior receipt of a formal complaint;**
- c) Clarifying the circumstances under which information can be shared between the College and other agencies during an investigation;**
- d) Providing provisions to allow and maintain emergency suspensions of physicians when required in the public interest;**
- e) Enhancing the College's ability to order assessments of members regarding the physical and mental health, clinical competence, and practice activity;**
- f) Enhancing the transparency of the College processes by providing for open disciplinary hearings with the authority to limit publication of information where required in the public interest;**
- g) Providing capacity in the College to perform audit functions on the operation of provincial laboratories through competent external peer review; and**
- h) Providing capacity in the College to implement a diagnostic services quality assurance program similar to that in effect in the Province of Saskatchewan.**

The Department of Health and the College of Physicians and Surgeons of New Brunswick are continuing discussions on all areas highlighted in Recommendation #41. A draft bill of amendments to the *Medical Act (the Bill)* has been submitted by the College of Physicians and Surgeons of New Brunswick to the Department of Health and is under review. In addition, a full review of comparable legislation in other Canadian provinces has been conducted. The Department of Health and the College of Physicians and Surgeons of New Brunswick are working together to ensure the earliest possible introduction of the *Bill* in the Legislative Assembly..

Recommendation #42: Steps be taken to expedite the process of dealing with complaints of professional misconduct made to the College of Physicians and Surgeons of New Brunswick, and the College and Government of New Brunswick continue discussions to draft and implement all necessary legislation and regulations necessary to that end.

The minister of Health has already asked the College of Physicians and Surgeons of New Brunswick to address this in the *Bill* (noted above). The department and the College of Physicians and Surgeons of New Brunswick are in discussions respecting the drafting of these provisions. The department and the College of Physicians and Surgeons of New Brunswick are working together to ensure the earliest possible introduction of the *Bill* in the Legislative Assembly.

11. College of Physicians and Surgeons of New Brunswick

Under the authority of the Medical Act and applicable regulations, the College of Physicians and Surgeons of New Brunswick has the responsibility within the province for regulating the practice of medicine. While the primary areas of responsibility of the College of Physicians and Surgeons of New Brunswick are licensing, standards and the complaint and discipline process, it also provides advice regarding quality of care and code of conduct. The commission advocated an increased role in all of these areas. Given that the practice of medicine is a self-regulating profession, it is ultimately the decision of the College of Physicians and Surgeons of New Brunswick to determine how its role might evolve.

Recommendation #43: Where the College of Physicians and Surgeons of New Brunswick determines that the safety of the public warrants the interim suspension of a physician's license to practice, the physicians whose licenses are suspended on an interim basis should continue to receive their salaries, in the case of salaried physicians or compensation in lieu of their past annual average earnings from fee for service until the matter of appropriate final action is concluded.

All pathologists in New Brunswick are remunerated under the terms and conditions of the medical pay plan. That is, they receive a salary in the same manner as other employees of the RHA. Accordingly, in the event of an interim suspension by the College of Physicians and Surgeons of New Brunswick, they are entitled to receive their salary until the matter is resolved. Although there are not any fee-for-service pathologists in the province, the Department of Health will take the appropriate steps to ensure compliance with this recommendation in the event this becomes an actuality.

Recommendation #44: The College of Physicians and Surgeons of New Brunswick adopt a proactive approach to professional competence with a view to preventing complaints, not just taking the role of dealing with complaints once they are received.

The Department of Health will follow up with the College of Physicians and Surgeons of New Brunswick.

Recommendation #45: The resources of the College of Physicians and Surgeons of New Brunswick be increased either through a further assessment on its members or from a grant from the Government of New Brunswick in lieu of payments to physicians under Medicare to permit the College to adequately perform its licensing, monitoring, and disciplinary functions.

The Department of Health will follow up with the College of Physicians and Surgeons of New Brunswick.

12. Canadian Medical Protective Association

The Canadian Medical Protective Association “provides its physician members with medico-legal advice, risk management education and legal assistance related to their clinical practice. By promoting patient safety, the association contributes to improving the quality of the Canadian health-care system.”⁴ While each party has a role to play in ensuring patient safety, the Department of Health does not influence or control the affairs of the Canadian Medical Protective Association.

Recommendation #46: The Canadian Medical Protective Association publicly disclose the amounts and basis of calculation of the grants it receives annually from each provincial government in lieu of fees otherwise payable to physicians under Medicare.

The Department of Health will follow up with the Canadian Medical Protective Association.

Recommendation #47: The Department of Health should publicly provide specifics of this information in the alternative.

The Province of New Brunswick does not provide grants directly to the Canadian Medical Protective Association . Rather, physicians pay their premiums directly to the Canadian Medical Protective Association .Subsequently, the Canadian Medical Protective Association submits physicians’ receipts to the New Brunswick Medical Society, which, in turn, reimburses the amount payable as dictated under the fee-for-service agreement or the medical pay plan.

In the 2008 public accounts, under Unaudited Supplementary Supplier Lists, the Province of New Brunswick reported that \$4,272,711 was paid to the New Brunswick Medical Society for administration of benefits. This included reimbursement for Canadian Medical Protective Association premiums, continuing medical education, parental leave, and service by physicians on Department of Health committees. Of that amount, \$2,069,757 represented the Canadian Medical Protective Association reimbursement.

Recommendation #48: The CMPA encourage its members to report to the appropriate authority any unprofessional conduct by a professional colleague.

The Department of Health will follow up with the Canadian Medical Protective Association.

Recommendation #49: The CMPA encourage its members to report to the provincial College of Physicians and Surgeons any information that suggests that a professional colleague may be incapacitated or unfit to practice.

The Department of Health will follow up with the Canadian Medical Protective Association

⁴ See, <http://www.cmpa-acpm.ca> . Further information on the Canadian Medical Protective Association is available on this website.

13. Pathology associations

The Canadian Association of Pathologists is a voluntary professional organization for Canada's laboratory physicians and scientists.⁵ Similarly, the New Brunswick Association of Pathologists is a voluntary collegial association, with membership derived from this province. Directed at improving the practice of pathology and educating their memberships, both associations contribute to the practice of pathology in New Brunswick but they are independent of the Department of Health.

Recommendation #50: The New Brunswick Association of Pathologists be reactivated and strengthened with a view to raising the profile and status of the specialty in the province, promoting collegiality among the pathologists practicing in the province, providing information and opportunities for continuing medical education for pathologists, and improving the quality of the practice in New Brunswick.

Stakeholders within the RHAs concur that the revitalization of the New Brunswick Association of Pathologists is an initiative that must be spearheaded by the pathologists themselves. To date, their level of activity in this voluntary association has been irregular due to the demands of their professional obligations combined with staff shortages. However, there appears to be some renewed interest in participating in this collegial association. There would be a number of opportunities for the New Brunswick Association of Pathologists to lend its voice to the response to commission's recommendations.

Recommendation #51: The Canadian Association of Pathologists open its membership to include all pathologists qualified by their respective provincial Colleges to practice pathology.

See Recommendation # 52 response.

Recommendation #52: The Canadian Association of Pathologists establish provincial or regional sections that would permit the Association to promote a national standard but at the same time reflect the realities of the nature of the practice of pathology in different areas of the country.

The Department of Health intends to confer with the Canadian Association of Pathologists to gauge whether the adoption of these recommendations by this association is feasible and desirable.

⁵ Further information on the Canadian Association of Pathologists is available at: <http://cap-acp.org> .

Conclusion

Safety, quality and clinical sustainability must be the first and foremost considerations in the planning, implementation and delivery of all health-care services.

Provincial Health Plan 2008-2012, p. 19.

The Department of Health is committed to providing patients with safe, effective, and sustainable health care. This is the cornerstone of the publicly funded health-care system in New Brunswick. Central to providing high-quality care are safeguards to ensure that health-care facilities and providers are held to an appropriate professional standard.

The Department of Health has heard the commission loudly and clearly, and has implemented a number of the shorter-term recommendations and is continuing to work diligently – alongside stakeholders – on addressing the longer-term recommendations.

The commission has provided the provincial government and the public with a thorough analysis of the systemic issues facing the Department of Health as it moves toward a better system of service delivery. The department will be responsive by:

- improving oversight;
- emphasizing quality assurance and quality control;
- providing stronger legal and administrative controls to improve the complaints and discipline process;
- creating competitive working environments;
- enhancing continuous professional development; and
- ensuring that the supply of qualified candidates will meet demand.

The Department of Health will be proactive, open, and accountable to all New Brunswickers as the province moves toward a better health-care system.