RNAO Submission on Bill 87: *Protecting Patients Act, 2016*

Submission to the Standing Committee on the Legislative Assembly

April 26, 2017

Summary of RNAO recommendations – Schedule 3: *Ontario Drug Benefit Act* (ODBA)

Recommendation 1. Proceed with the inclusion of nurse practitioners (NP) "registered nurse in the extended class" in the ODBA (Sections 1, 3 and 4 of Schedule 3 of Bill 87) and ensure NPs are included under all relevant sections to maximize access to all medications within their scope of practice.

Recommendation 2. Amend the ODBA (Sections 1 and 3 of Schedule 3 in Bill 87) to include registered nurses (RN) in anticipation of their expanded scope of practice.

Summary of RNAO recommendations – Schedule 4: *Regulated Health Professionals Act, 1991* (RHPA)

Recommendation 3. Amend Bill 87 to mandate the creation of a new centralized regulatory body and independent tribunal to oversee all cases of alleged sexual abuse of patients by members of a professional college, with the minister's oversight to sustain accountability, as outlined in the minister's task force report.

Recommendation 4. Proceed with RHPA amendments proposed in Schedule 4 of Bill 87, to give regulatory colleges more power to protect the public by issuing interim suspensions to members accused of sexual misconduct (Clause 15 - i.e. RHPA Schedule 2, 25.4(1)) and mandatory revocation of a member's license (Clause 19(2) - i.e. subsection 51(5) of RHPA Schedule 2)) if found guilty.

Recommendation 5. In Schedule 4 of Bill 87, amend clause 4(1) (i.e. subsection 36.1 (1) of the RHPA) to ensure information provided to the minister for HHR planning and research be devoid of personal information

Recommendation 6. Remove from Schedule 4 of the RHPA, clause 12(3) (i.e. subsection 23(5) of RHPA schedule 2.) which gives public access to member's personal information.

Recommendation 7. Amend the definition of "patient" in Bill 87 Schedule 4, Clause 7 (i.e. subsection 1(6) of RHPA Schedule 2) to remove time restriction of one year, keeping in line with the minister's task force recommendations outlined in the report.

Introduction

The Registered Nurses' Association of Ontario (RNAO) is the professional association representing registered nurses (RN), nurse practitioners (NP), and nursing students in all roles and sectors across Ontario. Since 1925, RNAO has advocated for healthy public policy, promoted excellence in nursing practice, increased nurses' contributions to shaping the health system, and influenced decisions that affect nurses and the public they serve. RNAO appreciates the opportunity to provide feedback to the Standing Committee on the Legislative Assembly on *Bill 87, Protecting Patients Act.* RNAO will respond to Schedules 3 (*Ontario Drug Benefit Act*) and 4 (*Regulated Health Professions Act, 1991*), and identify the key elements of each for which we wish to respond.

SCHEDULE 3: *ONTARIO DRUG BENEFIT ACT*

Role of Nurse Practitioners and Registered Nurses

Nurse Practitioners

The inclusion of nurse practitioners (NP) under the provisions of the *Ontario Drug Benefit Act* (ODBA) is critical to facilitate the changes to *Nursing Act* regulations announced on April 19, 2017 that permit NPs to prescribe controlled drugs and substances in Ontario. As stated by the Ministry of Health, authorizing NPs to prescribe opioids, benzodiazepines and other drugs listed on the federal *Controlled Drugs and Substances Act* will provide faster access to care for Ontarians dealing with pain, anxiety, those needing palliative care, as well as people living in remote and rural areas. While RNAO welcomes this long awaited change to the scope of NP practice, some medications are still restricted for NPs working in palliative care and other areas and will remain so unless legislative and policy changes to the Exceptional Access Program are implemented. Currently, requests for coverage of drug products not listed in the Ontario Drug Benefit Formulary (under section 8 of the Ontario Drug Benefit Act) are restricted to physicians through the Exceptional Access Program.

NPs could help to improve access to treatments if given legislative authority to prescribe the drugs required as part of their comprehensive assessments and care plans. Studies have shown that effective pain management, associated with appropriate medication, contributes to positive clinical outcomes and improved quality of life. [1] Consequently, allowing NPs to provide more comprehensive primary care to their clients, through policy and legislative support, will improve access to care and overall health system performance. [2] [3] RNAO firmly believes these changes will serve the public interest by responding to demands for increased patient access to appropriate care, improving continuity of care, providing access to essential health services in the most cost-effective manner, and ensuring greater clarity in the roles of professionals working collaboratively in Ontario's health system

Registered Nurses

On February 23, 2017 at RNAO's 17th annual Queen's Park Day, the Minister of Health and Long-Term Care, Eric Hoskins announced that he is bringing forward amendments to the Nursing Act this spring to give RNs the authority to prescribe medications independently and communicate a diagnosis.[4] [5] This will improve access to quality health services across the system and enhance patient outcomes. As the province moves forward with

this scope expansion, it should be anticipated that the ODBA will require amendments to include registered nurses (RN) once the province has authorized independent RN prescribing and communication of diagnoses.[6]

Recommendation 1. Proceed with the inclusion of nurse practitioners (NP) "registered nurse in the extended class" in the ODBA (Sections 1, 3 and 4 of Schedule 3 of Bill 87) and ensure NPs are included under all relevant sections to maximize access to all medications within their scope of practice.

Recommendation 2. Amend the ODBA (Sections 1 and 3 of Schedule 3 in Bill 87) to include registered nurses (RN) in anticipation of their expanded scope of practice.

SCHEDULE 4: *REGULATED HEALTH PROFESSIONS ACT, 1991*

Proposed changes to the *Regulated Health Professionals Act* (RHPA) are the result of the government's action plan titled *Patients First: Action Plan for Health Care*.[7] As part of the Ontario government's commitment to prevent and better respond to the sexual abuse of patients, the province appointed a task force on the prevention of sexual abuse of patients. This task force submitted a report titled *To Zero: Independent Report of the Minister's Task Force on the Prevention of Sexual Abuse of Patients and the Regulated Health Professions Act, 1991*.[8] Actions to amend sections of the RHPA are a result of the recommendations set out in this report.

Consistent with RNAO's best practice guidelines[9] [10] [11] and ongoing advocacy against sexual violence,[12] [13] [14] RNAO supports the strictest sanctions possible in the movement towards zero tolerance of sexual abuse by a health-care provider. There appears to be serious and persistent problems among some regulated colleges with weak enforcement and penalties, in relation to allegations of sexual misconduct by their members. For example, on August 5, 2016 the *Toronto Star* published a story about a physician who had been found guilty of sexually abusing a patient and yet, was still being allowed to practise pending a penalty hearing at an unknown date.[15] Although within the rights of the College of Physicians and Surgeons (CPSO) to revoke this member's license, the physician in question was still practising after this finding while waiting for a penalty hearing. This case is one of many examples, which show amendments to the *Regulated Health Professions Act, 1991* over the past decade still are not serving the citizens of Ontario when it comes to sexual abuse by a health-care provider.[16] Therefore, further changes are needed to impose and implement zero tolerance.

RNAO formally presented to the minister's task force calling for stronger mandatory reporting requirements, better support services for patients who have been sexually abused, and more education for health-care providers.[17]

Current Nursing Regulations under the RHPA:

In Ontario, the CNO regulates the practice of nursing under the authority of the *Regulated Health Professions Act, 1991,* (RHPA) and the *Nursing Act, 1991*.[18] As part of its role, the CNO enforces standards of practice to which every nurse is accountable for upholding in order to provide safe, effective, and ethical nursing care.[19] Professional misconduct is defined as "an act or omission that is in breach of these accepted ethical and professional standards of conduct".[20]

On January 23, 2015, the CNO responded to a request by the Minister of Health and Long-Term Care for information on measures to prevent and address sexual abuse of patients.[21] Acts of professional misconduct are treated seriously by the CNO and result in an investigation and disciplinary proceedings. Furthermore, sexual abuse of a client is seen as a breach of the nursing principle to do no harm and consequently a violation of professional standards and the therapeutic nurse-client relationship.[22] When the college receives information of suspected sexual abuse, a formal investigation is initiated and all parties involved in the case are asked to provide information to the Inquiries, Complaints and Reports Committee (ICRC). Once a complaint has been investigated by the ICRC committee, the nurse is referred to the discipline committee where a panel holds hearings in order to make a formal decision.

In the report of the Minister's Task Force, the CNO is cited in a case that models a regulatory college upholding the zero tolerance standards under the RHPA in addition to criminal legal system outcomes.

> "*A College of Nurses of Ontario (CNO) case involving Rick Klein, RPN, provides an example of a college upholding the zero tolerance standard under the RHPA as well as criminal legal system outcomes.[7] Klein was charged in 2007 with one count of sexual assault contrary to subsection 271(1) of the Criminal Code of Canada. In his interview with the police, he admitted to touching the patient's breasts. The patient was a resident of an ambulatory dementia unit where Klein worked. In 2009, Klein pleaded guilty to the offence of sexual assault before an Ontario court and was found guilty, receiving a suspended sentence with probation for two years. As a term of his probation, Klein was not to be left alone to care for vulnerable people. Further, he was not to be employed at any long-term care facility unless under direct supervision while in contact with clients.*
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> *Subsequent to Klein's criminal conviction, the CNO acknowledged the significant breach of public trust by Klein's actions, found him guilty of professional misconduct for sexually abusing a patient and revoked his certificate of registration. The task force notes that in this case, the CNO used its discretion under the RHPA to revoke Klein's certificate, even though the sexualized acts to which he admitted are not specified in the list in section 51(5) of the Health Professions Procedural Code (Code). This is a significant contrast to the decisions identified in this report in which college panels have avoided the mandatory revocation penalty by characterizing the sexualized acts of a member as being outside the ambit of the list in section 51 of the Code that attracts mandatory revocation."*[23]

Health-care professionals hold power by virtue of having professional knowledge and skill that the patient must rely on for his/her well-being, as well as access to the patient's personal health information.[24] Due to this power imbalance, any sexual relationship with a patient is abuse and professional misconduct. Sexual assault is often mistakenly considered to be a sexual act instead of a "crime of power, control, and violence".[25] This case shows one example where CNO did an exemplary job in upholding zero tolerance. However, when harm of this nature occurs, it warrants the interim suspension of members accused of sexual misconduct and the mandatory revocation of a member's license if found guilty.

Although the CNO has a consistently strong position and history of enforcement with respect to allegations of sexual abuse, the minister's task force found "no standardized approach [among the health profession colleges]

to the collecting, maintaining and reporting of information connected to sexual abuse complaints … this lack of standardization means that the colleges and professions are not easily compared to each other, based on the data provided".[26] Thus, RNAO understands and supports the reasoning behind the standardization of all regulated professional bodies in the interest of public safety against the sexual abuse of patients.

The minister's task force recommended that the RHPA's delegation of authority to the regulatory colleges in the handling of complaints of sexual abuse of patients be amended to remove their jurisdiction over all responses of sexual abuse of patients by their members and instead transition to a new, centralized regulatory body and an independent tribunal.[27] Ontarians place a great amount of trust in our health system and the health-care professionals from whom they seek assistance in times of need. Despite this, there are numerous stories of abuse by health-care providers. The regulatory response is all too often inadequate. When health-care professionals are accused of committing a sexual offence against a patient, yet are allowed to practise in their respective field, the system in place has indeed failed to uphold its mandate. This long history of negligence in pursuing and punishing the perpetrators of patient abuse needs to end in order to restore faith in our health-care system.

Recommendation 3. Amend Bill 87 to mandate the creation of a new centralized regulatory body and independent tribunal to oversee all cases of alleged sexual abuse of patients by members of a professional college, with the minister's oversight to sustain accountability, as outlined in the minister's task force report.

Recommendation 4. Proceed with RHPA amendments proposed in Schedule 4 of Bill 87, to give regulatory colleges more power to protect the public by issuing interim suspensions to members accused of sexual misconduct (Clause 15 - i.e. RHPA Schedule 2, 25.4(1)) and mandatory revocation of a member's license (Clause 19(2) - i.e. subsection 51(5) of RHPA Schedule 2)) if found guilty.

Personal Health Information

Security and confidentiality are of paramount importance whenever personal health information (PHI) is collected, stored, and accessed. Robust security mechanisms must be in place to prevent intentional and accidental breaches in confidentiality. While privacy and security are essential, these issues can be resolved and they cannot hinder efforts to protect the public against allegations of sexual abuse by members of a professional college. Nevertheless, safeguards are needed to ensure the PHI of college members is protected and used in an appropriate manner. However, in the case of health human resource planning and research, collection of members' personal information should not be necessary to fulfill these efforts. In addition, RNAO questions the intent behind disclosing personal information of the accused member to the public. If a member is charged with the sexual abuse of a client and their license has consequently been suspended or revoked, a statement posted to the appropriate regulatory college website stating such a fact should suffice.

Recommendation 5. In Schedule 4 of Bill 87, amend clause 4(1) (i.e. subsection 36.1 (1) of the RHPA) to ensure information provided to the minister for HHR planning and research be devoid of personal information

Recommendation 6. Remove from Schedule 4 of the RHPA, clause 12(3) (i.e. subsection 23(5) of RHPA schedule 2.) which gives public access to member's personal information.

Disclosing Abuse by a Health-care Professional

One of the most common human responses to sexual abuse is denial, at both individual and societal levels. This contributes to a long history of negligence in the pursuit and punishment of perpetrators of patient abuse. This is made more challenging because sexual abuse by health professionals almost never seems to result from physical force.[28] As a result, disclosure of the abuse is often hidden and it can take victims years to report the offense. Accordingly, the definition of "patient" needs to be standardized across the professions and not be limited to the start and end of the formal treatment period. This definition ignores the authority, respect, and trust that society has in our health-care professionals and the health system as a whole. RNAO recommends using the language and definition of a patient outlined in the minister's task force report as follows:

"'patient' means an individual who at any time has received, or is receiving, health care from a member, or has been assessed by the member, or is otherwise under, or assigned to, the care of the member, including psychotherapy delivered through a therapeutic relationship or counseling for emotional, social, educational or spiritual matters delivered through a confidential treatment context"[29]

Recommendation 7. Amend the definition of "patient" in Bill 87 Schedule 4, Clause 7 (i.e. subsection 1(6) of RHPA Schedule 2) to remove time restriction of one year, keeping in line with the minister's task force recommendations outlined in the report.

CONCLUSION

RNAO is honored to provide input to the Standing Committee on the Legislative Assembly regarding amendments to schedule 3 and 4 of *Bill 87- An Act to implement health measures and measures relating to seniors by enacting, amending or repealing various statues*. We believe that the recommendations are both practical and achievable and will be strengthen the bill to protect patients from sexual abuse by a health-care provider.

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