

RNAO's Legal Assistance Program (LAP[®]) presents:

The College of Nurses of Ontario (CNO): Understanding the Investigation Process

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The College of Nurses of Ontario (CNO)

Mandate of the CNO

- “Protecting the public’s right to quality nursing by providing leadership to nurses in self regulation”

Self-Regulation

- The Nursing profession governs itself through the CNO
- The CNO sets the standards for carrying out the practice of Nursing in a manner that protects the public interest
- Members of the College are responsible for practicing in accordance with professional standards

Statutory Framework

Two important statutes create the legal framework for the self-regulation of the Nursing profession by the CNO:

- Regulated Health Professions Act [“RHPA”]*
- Nursing Act*

The RHPA

- Is administered by the Minister of Health and Long-Term Care
- According to the Act:
- **3.** It is the duty of the Minister to ensure that the health professions are regulated and co-ordinated in the public interest, that appropriate standards of practice are developed and maintained and that individuals have access to services provided by the health professions of their choice and that they are treated with sensitivity and respect in their dealings with health professionals, the Colleges and the Board. 1991, c. 18, s. 3

RHPA (continued)

- Sets out a number of prohibitions, including issues relating to controlled acts and delegation
- Schedule 1 of the RHPA sets out the self-governing health professions and the corresponding statute which governs the profession – includes the Nursing Profession which is governed by the *Nursing Act*

RHPA: Health Professions Procedural Code

- Schedule 2 of the RHPA sets out the Health Professions Procedural Code [“the Code”]
- The Code sets out the Objects of the various Colleges
- The Code sets standards with respect to the registration process, complaints process, discipline process, incapacity proceedings, investigatory powers, reporting health professionals, etc.

Professional Misconduct under the Code

- Criminal Conviction
- S. 51(1)(a) – A panel shall find that a member has committed an act of professional misconduct if the member has been found guilty of an offence that is relevant to the member’s ability to practise

Misconduct under the Code (continued)

- Finding of professional misconduct in another jurisdiction
- S. 51(1)(b) – A panel shall find that a member has committed an act of professional misconduct if the governing body of a health profession in a jurisdiction other than Ontario has found that the member committed an act of professional misconduct that would, in the opinion of the panel, be an act of professional misconduct as defined in the regulations

Misconduct under the Code (continued)

- S. 51(1)(b.01) - the member has failed to cooperate with the Quality Assurance Committee or any assessor appointed by that committee
- Sexual Abuse
- S. 51(1)(b.1) – A panel shall find that a member has committed an act of professional misconduct if the member has sexually abused a patient

Misconduct under the Code (continued)

- S. 51(1)(c) – A panel shall find that a member has committed an act of professional misconduct if the member has committed an act of professional misconduct as defined in the regulation

Nursing Act

- Is a statute with Nursing-specific standards
- Health Professions Procedural Code is deemed part of the Nursing Act
- Sets out numerous matters relevant to Nursing including scope of practice, authorized acts, classes of Nurses, etc.

Nursing Act – Regulation 799/93

- Regulation under the Nursing Act which deals with Professional Misconduct
- Sets out acts of professional misconduct as per s. 51(1)(c) of the Health Professions Procedural Code
- 37 Acts

Professional Misconduct: Examples

- Contravening a standard of practice of the profession or failing to meet the standard of practice of the profession (ss. 1)
- Abusing a client verbally, physically or emotionally (ss. 7)
- Misappropriating property (ss. 8)
- Failing to keep records as required (ss. 13)
- Etc.

Nursing Standards

Nursing Standards

- RHPA
- Nursing Act
- ALSO -> Practice Standards set by the CNO

Standards (continued)

- Nursing is a highly regulated and complex profession
- As a Nurse practicing in the profession you need to be familiar with the standards you are expected to meet
- Need to be familiar with RHPA, Nursing Act, regulations under these Acts, CNO Standards
- When in doubt – use resources available to you (other nurses, CNO Practice Consultants)

Complaints

Sources of Complaints

- Public (patients, patient families, etc.)
- Employer
- Colleagues
- Yourself

Public Complaints

- Hard to predict when a member of the public might file a complaint
- Not uncommon for Nurses to be the subject of frivolous complaints
- *You do not have to do something wrong to be the subject of a complaint!*

Employers

- Employers are required to report members who are terminated for reasons of professional misconduct, incompetence or incapacity [RHPA Procedural Code s. 85.5(1)]
- If an Employer is going to terminate the employment of a member for above reasons but does not because of a resignation – Employer must report [RHPA Procedural Code s. 85.5(2)]
- May be a complaint from an Employer even in the absence of a termination

Colleagues

- Not uncommon to have a complaint from a colleague
- Nurses are required to report sexual abuse of clients under statute [RHPA Procedural Code – s. 85.1(1)]
- Under Regulation 799/93 – it is professional misconduct if you fail to report an incident of unsafe practice or unethical conduct of a health care provider to the Employer or the College
- Co-worker could file a complaint with respect to a workplace matter

Colleagues (continued)

- Section 1 of Regulation 799/93 under the Nursing Act sets out 37 acts of Professional Misconduct
- Subsection 37 – Engaging in conduct or performing an act, relevant to the practice of nursing, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional
- Very broad wording – colleagues may claim a variety of behaviours as being disgraceful, etc.

Self-Reporting

- Must report a *finding of guilt* in relation to a criminal offence [do not have to report a matter which would only result in a fine – speeding or parking]
- Must report if they have been found guilty of professional misconduct, incompetence or incapacity in Ontario or another jurisdiction
- Must report if you are the subject of an on-going disciplinary or incapacity proceeding

Investigations

Investigatory Power

- Investigator is appointed by the Registrar to determine whether a member has committed an act of professional misconduct
- A number of ways that an Investigator may be appointed [RHPA Procedural Code, s. 75]

Investigator Appointments – s. 75

- (a) the Registrar believes on reasonable and probable grounds that the member has committed an act of professional misconduct or is incompetent and the Inquiries, Complaints and Reports Committee approves of the appointment;
- (b) the Inquiries, Complaints and Reports Committee has received information about a member from the Quality Assurance Committee under paragraph 4 of subsection 80.2 (1) and has requested the Registrar to conduct an investigation; or
- (c) the Inquiries, Complaints and Reports Committee has received a written complaint about the member and has requested the Registrar to conduct an investigation.

Investigator Appointments – s. 75

- **Emergencies**
- (2) The Registrar may appoint an investigator if,
 - (a) the Registrar believes on reasonable and probable grounds that the conduct of the member exposes or is likely to expose his or her patients to harm or injury, and that the investigator should be appointed immediately; and
 - (b) there is not time to seek approval from the Inquiries, Complaints and Reports Committee.

The Complaints Process

Know Your Rights

If you are the subject of a complaint you have the right to:

- Impartial and adequate investigation
- Legal assistance
- Know the details of the complaint and what is being investigated
- Provide a written response
- Have adequate time to respond

Know Your Rights (continued)

You have the right to:

- Meet with and provide information to the investigator
- Have the investigation or complaint reviewed impartially
- Have a written explanation of the decision and reasons of the ICRC
- Request that an ICRC decision be reviewed by an independent body (Health Professions Appeal Review Board – HPARB)

Steps in the Complaints Process

Step 1: Receipt of Complaint

- Complaint will be addressed to the CNO's Executive Director

Step 2: Intake

- Once complaint received by the Executive Director, the complaint is then processed through intake

Step 3: Investigator Assigned

- The complaint is assigned to an Investigator following intake
- Investigator's role is to act as a fact-finder
- Investigator's are impartial
- Investigator act objectively in gathering the information with respect to the complaint
- Investigator DOES NOT determine the action to be taken

Step 4: Member Notified

- The member receives written notification that a complaint has been received by the College
- Typically a copy of the complaint is attached to the notification
- The letter often states that the Investigator wants to speak with the member; Investigator often provides a date

Step 4 - continued

- I advise clients NOT to respond to the Investigator
- If you call the Investigator – the Investigator will make notes of the conversation
- You have the right to respond in WRITING
- Written response – have the opportunity to review it, think it through
- If you speak directly with an Investigator – could make a statement which could be against your interest

Step 4 - continued

- You have a right to legal assistance
- Once you have legal assistance – the lawyer will notify the CNO Investigator that they are representing you
- Investigator will not speak directly with you once notified that you have Counsel
- Getting legal assistance provides you with the opportunity to review the matter with a lawyer, and working towards providing the best written response possible

Step 5: The Complaint is Investigated

- Investigator gathers all of the relevant information
- CNO will provide disclosure of the relevant documents (Progress notes, etc.)
- A date will be set for the ICRC to review the allegations
- A date will be set for your written response to the complaint (generally 2 – 3 weeks before the Complaints Committee is scheduled to meet) – you will have at least 30 days of notice to respond

Alternative Dispute Resolution (ADR)

- In appropriate cases where the complainant and member are willing to participate, Investigator may try to assist the parties in reaching a settlement
- Try to agree on a settlement which protects the public interest and which the parties are willing to live with; not about blame
- Not an adversarial process; intended to be cooperative – ICRC must approve

Step 6: Member's Response

- The member provides a written response to the allegations
- Can prepare a response yourself; may have legal assistance in preparing a response
- College has a specific format for a written response

Member's Response

- Set out Nursing Education, Employment History (previous 5 years), Background Information, Response to Complaint, Conclusion
- When receive complaint, CNO provides guideline for responding

Step 7: Forwarding of Complaint to ICRC

- The Investigator forwards all of the information gathered, including the member's written response to the ICRC

Step 8: ICRC Decision

- Approximately once a month the ICRC meets to review the case record of various complaints
- ICRC makes a decision based on all of the information
- ICRC will provide a detailed decision

ICRC Decisions

Potential Outcomes

The ICRC may:

- Take no action
- Issue advice – advice on standards
- Issue an oral caution
- Require the completion of a remediation program
- Refer the matter to the Discipline Committee
(happens in less than 5% of cases)

Referral to Discipline Committee

- Matters referred to the Discipline Committee involve serious issues of professional misconduct or incompetence
- Only the Discipline Committee has the power to make a finding of professional misconduct or incompetence
- ICRC would generally refer a matter to the Discipline Committee where they believe there is sufficient evidence to support the allegations

ICRC Findings

- Are confidential
- Only the member and the complainant receive a copy of the Complaint Committee's decision and reasons
- Information is not released to third parties about the complaint or action taken

Health Professions Appeal Review Board

HPARB

- If either the complainant or the member disagree with the findings of the Complaints Committee they may request that the Health Professions Appeal and Review Board (HPARB) review the investigation and the decision
- HPARB members are not health care professionals – they are members of the general public

Matters which can be referred to HPARB

- According to the Code, s. 29(2)
- The complainant may request the Board to review a decision of a panel of the ICRC unless the decision was
 - a) to refer an allegation of professional misconduct or incompetence to the Discipline Committee; or
 - b) to refer the member to a panel of the Inquiries, Complaints and Reports Committee under section 58 for incapacity proceedings.

HPARB (continued)

- HPARB will examine the investigation and decision to determine:
 - a) if the investigation was sufficiently thorough or adequate; and
 - b) if the decision seems reasonable

Discipline Committee

Discipline Panel

- Generally consists of five individuals – two public members, and three nurses
- Discipline panel will:
 - consider allegations, hear the evidence and determine the facts of the case
 - make a determination of whether the allegations are proven based on the evidence
 - determine if the member committed an act of professional misconduct, or if the member is incompetent
 - determine penalty

Possible Outcomes

- Oral reprimand
- Fine
- Imposition of terms and conditions and/or limitations on the member's registration
- Specify remedial action to be taken
- Suspend registration
- Revoke registration

Process

- Much more adversarial
- CNO has a Prosecutor – a lawyer that prosecutes the case
- Much more formal
- There is an opportunity to try to resolve the matter with the assistance of a Committee member; also opportunity to deal with any outstanding issues

Important Information

- Disciplinary Hearings are public
- Decision is public – available on the CNO website
- Name may be published in the Standard if found to have engaged in professional misconduct

Some Numbers...

- According to the ICRC Annual Report for 2016
- 298 complaints were considered in 2016
- 102 were resolved through agreements between complainants and a member
- 6 matters were determined to be an abuse of process
- 156 complaints resulted in no action

2016 Statistics

- 5 members referred to the Discipline Committee
- HPARB received 36 new requests to review ICRC decisions; 34 from complainants and 2 from members

****Important Update****

- **Interim suspension – under the Code**
- **25.4 (1)** The Inquiries, Complaints and Reports Committee may, subject to subsections (2) and (6), at any time following the receipt of a complaint or following the appointment of an investigator pursuant to subsection 75 (1) or (2), make an interim order directing the Registrar to suspend, or to impose terms, conditions or limitations on, a member's certificate of registration if it is of the opinion that the conduct of the member exposes or is likely to expose the member's patients to harm or injury. 2017, c. 11, Sched. 5, s. 14.

Interim Suspension

- (4) An order under subsection (1) continues in force until it is varied by the Inquiries, Complaints and Reports Committee or until the matter is withdrawn, resolved by way of an alternative dispute resolution process or otherwise finally disposed of by a panel of the Inquiries, Complaints and Reports Committee, the Discipline Committee or the Fitness to Practise Committee. 2017, c. 11, Sched. 5, s. 14.
- Just started seeing this being used in the past few weeks
- Can be suspended pending investigation

Statutes

- For any statute or regulation, go to:

www.e-laws.gov.on.ca

College Website

www.cno.org

RNAO's Legal Assistance Program (LAP[®])

www.rnao.ca/lap

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