

BILL 22

AN ACT RESPECTING HEALTH PROFESSIONALS

AN ANALYSIS OF THE IMPACT ON THE NURSING PROFESSION

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EXECUTIVE SUMMARY

During the 1996 spring sitting of the legislature, the Minister of Health and Community Services introduced Bill 84 entitled *An Act Respecting Sexual Abuse of Patients by Health Professionals* . Over the summer months, minor amendments were made to the Bill, and it was reintroduced in December 1996 as Bill 22, *An Act Respecting Health Professionals* . The Bill received third and final reading at that time and is expected to be proclaimed and become law on May 1, 1997.

An Act Respecting Health Professionals is an omnibus act which amends most existing private acts of regulated health care professionals, including the *Nurses Act*. Some of the amendments relate specifically to the issue of sexual abuse of patients, while others pertain to general disciplinary procedures.

This report provides an overview of the development of Bill 22 including the:

- " historical background;
- " major changes to the *Nurses Act* and implications for practice; and
- " economic, policy, procedural and public relations implications for the Nurses Association of New Brunswick.

HISTORICAL BACKGROUND

Introduction

In New Brunswick, regulated health disciplines have traditionally been governed by private acts (i.e.; the *Nurses Act*, the *Medical Act*, etc.). Approximately 13 years ago, the Department of Health and Community Services (DHCS) proposed the development of a public health disciplines act which would replace the various private acts and cover all health disciplines. Resistance from the professions was great. Ultimately, the DHCS was unsuccessful in its attempt to introduce health disciplines legislation.

In the early 1990's, there was a resurgence in government interest in health disciplines legislation across the country. Ontario was in the process of finalizing its health disciplines act; Quebec adopted a system of central control over the regulation of all professions; and the remaining provinces were exploring ways of standardizing the regulation of health professions. Diminished public confidence in the ability of some health professions to regulate themselves, and the desire of governments to have more control over the health professions are generally cited as the major driving forces behind the renewed interest in health disciplines legislation.

New Brunswick Revisits Health Disciplines Legislation

In this province, the issue of sexual exploitation of patients was very much in the public eye due to a highly publicized case in the early 90's involving a New Brunswick physician. During the spring 1994 sitting of the legislature, Elizabeth Weir introduced a private members bill to amend the *Medical Act*. The amendment was to include sexual abuse in the definition of professional misconduct regarding physicians, and to address prevention, reporting and victim compensation. The government made a commitment to address the issue, but felt that the legislation proposed by Weir was both premature and too narrow in scope. The DHCS suggested that legislative changes should apply to all health professionals.

Proposed Regulatory Reform

In May 1994, the DHCS released a discussion paper addressing the future regulation of health professions in New Brunswick. The paper proposed the introduction of a single public act to regulate new health care provider groups seeking self-regulation status in the future. While existing groups, such as NANB, would not be covered by the new legislation, the DHCS proposed that we be required to change our legislation to make it consistent with the Health Disciplines Act. The DHCS proposed to accomplish this in two steps:

Narrowing the Scope of Health Disciplines Legislation

1. Following passage of the Health Disciplines Act, the government would amend all of the existing private acts through the introduction of an omnibus bill. The amendments would harmonize the private acts with respect to sexual misconduct, complaints and discipline and liability protection requirements.
2. Each regulatory group, including NANB, would then be given approximately two to three years to introduce any other amendments necessary to make the rest of their private acts consistent with the Health Disciplines Act.

Extensive discussion and debate of the Department's proposal occurred over the next 2-1/2 years involving all of the affected health professional groups. Opposition was great as the Department's proposal provided for government intervention or involvement in all facets of our respective regulatory functions.

After much discussion, debate and many meetings, the DHCS decided to proceed only with an omnibus bill which amend all existing private acts, except for the *Medical Act*. Bill 84 entitled *An Act Respecting Sexual Abuse of Patients by Health Professionals* will harmonize the complaints and disciplinary procedures of the various health professions and contains specific provisions relating to sexual abuse of patients.

As previously stated, the government's rationale for not acting on Elizabeth Weir's bill in 1994 to amend the *Medical Act* was that it was too narrow in scope and should apply to all health professionals, not just physicians. However, the irony of the situation is that Bill 84 applies to all health professions except physicians.

In 1995, the College of Physicians and Surgeons proceeded with a bill of their own which will amend the *Medical Act*. The amendments address a number of issues, including sexual abuse of patients.

During the spring sitting of the legislature, Bill 84 entitled *An Act*

MAJOR CHANGES TO THE NURSES ACT

Recent Developments

Respecting Sexual Abuse of Patients by Health Professionals received first and second reading. Over the summer months, the Nurses Association shared its dismay and concern with the Minister of Health and Community Services regarding two issues:

1. that the *Act* does not cover physicians thereby suggesting that it is a problem from which they are exempt; and
2. that the title of the Bill, *An Act Respecting Sexual Abuse of Patients by Health Professionals* is inappropriate and misleading.

In a letter dated June 17, 1996, the Minister of Health and Community Services agreed to take the necessary measures to change the name of the Bill at the fall sitting of the legislature and requested that the Nurses Association propose a suitable alternative. The President, Roxanne Tarjan, subsequently wrote to the Minister recommending that the Bill be entitled *An Act Respecting Health Professionals* along with supporting rationale.

When the legislature resumed in the fall, the Bill was reintroduced with some minor amendments including a name change. Bill 22, *An Act Respecting Health Professionals* received third and final reading in December 1996. It is expected that this Act will be proclaimed on May 1, 1997 at which point it will become law.

In December 1996, the Nurses Association again expressed concern to the Minister of Health and Community Services regarding the readiness of the health care system to implement the forthcoming changes in legislation particularly in relation to the mandatory reporting of sexual abuse. Imposing obligations on individual health care providers to report situations involving sexual abuse of patients does not serve as a substitute for institutional and agencies policies for dealing with these matters. Where such policies exist, it is important that they be reviewed and revised as required, to ensure consistency with the legal obligations now imposed on individual practitioners. In agencies where no such policies exist, it is imperative that protocols be developed which support health care providers in meeting their new legal obligations.

General Overview

Bill 22 *An Act Respecting Health Professionals* amends the *Nurses Act*. Some of the changes relate specifically to the issue of sexual

Sexual Abuse Provisions

abuse of patients, while others pertain to general disciplinary procedures.

This section summarizes the new provisions in the *Nurses Act* pertaining to sexual abuse of patients.

Definition

Sexual abuse is defined as a form of professional misconduct and means.

(a) sexual intercourse or other forms of physical sexual relations between the member and the patient,

(b) touching, of a sexual nature, of the patient by the member, or

(c) behaviour or remarks of a sexual nature by the member towards the patient.

Appropriate touching, behaviour or remarks of a clinical nature are excluded.

Obligation to Report

Nurses who have reasonable grounds to believe that another health care professional has sexually abused a patient must report that person to their governing body within 21 days. Failure to report constitutes professional misconduct. A nurse is not obligated to file a report if the nurse does not know the name of the health care professional.

The nurse must make every effort to advise the patient involved that a report is being filed before doing so. The patient's name must not be included in the report unless the patient consents in writing.

Any nurse making a report against another health care professional will not be subject to any liability unless it is proved that the report was made maliciously.

Public Access to Information

When a nurse's registration is suspended or revoked subsequent to a

finding of sexual abuse, in addition to providing public notice of the decision, the Nurses Association must provide for public access of the following information for an indefinite period of time:

- " the Discipline Committee findings;
- " the penalty imposed; and
- " a brief description of the nature of the professional misconduct.

Preventative Measures

The Nurses Association must take measures to prevent sexual abuse of patients by nurses, including:

- (a) education of members about sexual abuse,*
- (b) guidelines for the conduct of members with patients,*
- (c) providing information to the public respecting such guidelines, and*
- (d) informing the public as to the complaint procedures under this Act.*

Reports to the Minister of Health and Community Services

Activities undertaken by the Nurses Association to prevent sexual abuse must be reported to the Minister of Health and Community Services two years after the amendments become law and within 30 days at any time thereafter on the request of the Minister.

An annual report of complaints received respecting sexual abuse of patients by nurses must be submitted to the Minister by the end of February each year and contain the following information:

- (a) the number of complaints received during the calendar year for which the report is made and the date each complaint was received;
- (b) (i) a description of the complaint in general non-identifying terms,
(ii) the decision of the Complaints Committee with respect to the complaint and the date of the decision,

**General
Disciplinary
Procedures**

(iii) if complaints are referred to the Discipline Committee or the Review Committee, the decision of the committee and the penalty imposed, if any, and the date of the decision, and

(iv) whether an appeal was made from the decision of the Discipline Committee or the Review Committee or order of the Board and the date and outcome of the appeal; and

(c) with respect to each complaint reported in a previous calendar year, a report on the status of the complaint.

This section summarizes the new or amended provisions in the *Nurses Act* regarding general disciplinary procedures, irrespective of the nature of the complaint.

Increased Investigatory Powers

The person investigating a complaint may, *enter and inspect the business premises of a member and examine anything found there that the investigator has reason to believe will provide evidence in respect of the matter being investigated.* .

This power applies in spite of any provision in any act relating to the confidentiality of health records.

An investigator may also apply to a judge of the Court of Queen's Bench for a search warrant. The judge can *issue a warrant authorizing the investigator to enter the building, receptacle or place and search for and examine or remove anything described in the warrant* .

The investigator may seize and remove anything not described in the warrant if it will provide evidence regarding the complaint.

Hearing Procedures

The following rights of members against whom complaints have been lodged in any Discipline or Review Committee proceedings have been extended to complainants as well:

(a) may present evidence or make representations in either English or French,

(b) may be represented by legal counsel, at their expense,

(c) shall be entitled to a full right to examine, cross-examine and re-examine witnesses in accordance with the rules of procedure established by the Committee or the Board, as the case may be,

(d) shall be entitled to receive copies of all documents presented to the Committee or the Board in connection with the complaint unless such documents are privileged by law,

(e) shall be entitled to at least thirty days written notice of the date of the first hearing of the Committee or the Board, and

(f) shall receive prompt notice of and a copy of the decision rendered.

It should be noted that it is the current practice of NANB to extend these rights to complainants in Discipline and Review Committee hearings. The above amendment entrenches our current practice in the legislation.

Powers of the Discipline/Review Committee

The orders that the Discipline/Review Committee has been able to make since 1984 under the *Nurses Act* include:

- " dismissal of the complaint;
- " a reprimand;
- " placing conditions on the nurse's registration;
- " suspension;
- " revocation;
- " a fine; and
- " an assessment of the costs of the hearing.

Under the amendments, the committee will also be able to order that public notice be given of any decision of the committee and/or that the findings, penalty and nature of the complaint be entered into the records of the Association and made available to the public upon request for a period of five years or for such longer period they may prescribe.

It should be noted that, under the amendments, the Association is automatically required to give public notice of all suspensions and revocations.

Public Access to Information

The Registrar must give public notice of all suspensions and revocations, irrespective of the nature of the complaint. Public notice may be given in under other circumstances when ordered by the Discipline/Review Committee.

Upon request, the public will have access to information about cases resulting in suspension, revocation or where ordered by the Discipline/Review Committee for a period of five years, or longer when specified by the Discipline Committee, or for an indefinite period of time if the nurse was found to have sexually abused a patient.

Reports to Board

A report containing a summary of complaints received during the preceding year by source and type and outcome must be submitted to the Board annually.

IMPLICATIONS FOR NURSES AND NURSING PRACTICE

Mandatory Reporting

This section highlights some of the implications for nurses and nursing practice arising from the legislative amendments to the *Nurses Act*. It is anticipated that additional issues of practical significance will likely be identified as we proceed with implementation of the amendments.

The legislative amendments impose a legal duty on the individual nurse to report cases of sexual abuse of patients by health care providers. A nurse failing to appropriately report a case of sexual abuse within 21 days is guilty of professional misconduct. The duty to report exists if the nurse has reasonable grounds to believe that another health professional has sexually abused a patient as defined in the amendments. What constitutes reasonable grounds to believe is a matter of interpretation and requires the nurse to exercise professional judgement.

To ensure that nurses are prepared to fulfill their mandatory reporting obligations, it is vital that:

1. nurses fully understand the issue of sexual abuse of patients in all of its forms;
2. nurses understand the importance of maintaining appropriate professional boundaries in relationships with patients; and
3. agency/institutional protocols for dealing with suspected sexual abuse, consistent with the legislation, be in place.

Public Access to Information

NANB has maintained a closed system of information pertaining to complaints and disciplines.

The public has not traditionally been notified of discipline decisions. Notices appearing in *Info Nursing* identify the nurse by registration number only and not by name.

Increased pressure for improved public accountability and an increase in the number of nurses self-employed or in independent practice have necessitated greater public access to disciplinary information. NANB will be required to provide public notice (i.e.; through the newspaper) of all suspensions and revocations, irrespective of the nature of the complaint.

**Search and
Seizure Reports**

The public may also access additional disciplinary information by request through the Registrar.

The amendments significantly increase the powers of an investigator looking into a complaint on behalf of the Complaints Committee. It is unclear, at this point, how the search and seizure provisions will apply to nurses working in public institutions or agencies. Section 40.3(1) provides that an investigator may enter and inspect the business premises of a nurse and examine anything there that the investigator has reason to believe will provide evidence.

Section 40.3(2) further provides that this authority applies in spite of any provision on any act relating to the confidentiality of health records. Questions have been raised regarding the application of these sections in a hospital or other institutional context and the resulting implication for patient confidentiality.

On the other hand, the amendments will likely enhance the NANB's ability to effectively investigate complaints regarding nurses who are in independent practice or who are self-employed.

IMPLICATIONS FOR NANB

This section sets out the actions the Nurses Association must take in order to fulfill its amended legislative responsibilities under the *Nurses Act*, and identifies the corresponding economic, policy, procedural and public relations implications. It is intended to serve as a working document as more detailed implementation plans are developed. Indirect costs, such as staff time and space in *Info Nursing*, while significant, are not included in the analysis of the economic implications.

Action Required	IMPLICATIONS				Notes
	Economic	Policy	Procedural	Public Relations	
1. Print and distribute amended <i>Nurses Act</i>	" cost of printing and distribution			" users to be advised of new act (ie; librari es, corporations, etc.)	
2. Inform members of major changes and implications for practice, education and administration	" depending on method used to disseminate information (ie; Info, workshops, document video)			" communication strategy to be developed	
3. Draft, print and distribute necessary by-law and rule changes re: " mandatory waiting period before eligibility for reinstatement " public notice of suspensions and revocations " other public access to information under certain conditions " retention schedules for discipline information	" cost of legal consultations in drafting by-law and rule changes " cost of providing public notice of discipline decisions	"policy regarding how to provide for public notification to be developed	"disciplinary procedures to be changed to reflect by-law and rule amendments	"communication strategy for presentation of by-law changes to Annual Meeting "public relations strategy to address increased public access to discipline decisions to be developed "effect on members and image of the profession to be assessed	

Action Required	IMPLICATIONS				Notes
	Economic	Policy	Procedural	Public Relations	
4. Revise and print NANB's document on complaints and discipline procedures	" cost of legal consultation " cost of printing		" disciplinary procedures to be updated to reflect legislative changes		
5. Develop and print guidelines for conduct of nurses with patients	" cost of printing				
6. Educate nurses re sexual abuse and guidelines for conduct with patients	" depending on method used to educate nurses and disseminate the guidelines			" strategy to deal with issue in a positive manner to be identified.	
7. Provide information to the public about the guidelines for conduct of nurses with patients, and complaints procedure	" cost of development and dissemination of information " potential increase in use of 1-800 line " potential increase in number of complaints			" public relations strategy to maximize positive and minimize negative aspects to be developed " possibility of interdisciplinary work	

Action Required	IMPLICATIONS				Notes
	Economic	Policy	Procedural	Public Relations	
<p>8. Submit reports to Minister of Health and Community Services:</p> <p>" regarding implementation of sexual abuse provisions</p> <p>" annual report re complaints and discipline activity</p>				" new avenue for demonstrating public accountability	