GUIDELINES for
Self-Employed Practice

NANB

Mandate

Public protection through regulation of nurses in New Brunswick.

Under the *Nurses Act,* the Nurses Association of New Brunswick (NANB) is legally responsible to protect the public by regulating members of the nursing profession in New Brunswick. Regulation makes this profession, and nurses as individuals, accountable to the public for the delivery of safe, competent, and ethical nursing care.

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Acknowledgements

Elements of this document have been adapted from the Nova Scotia College of Nursing *Self-employed Practice Guideline for Nurses* (2020) and the Saskatchewan Registered Nurses Association *Self-employed Practice Guideline* (2021).

For the purposes of this document, the term ''nurse'' refers to registered nurses and nurse practitioners.

Words in bold print are found in the glossary. They are shown in bold on first appearance.

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Self-employed Nursing Practice

The purpose of this document is to provide guidance to nurses who are **self-employed** or considering self-employment. Self-employed nurses hold an active practice registration and operate their own economic enterprise to provide nursing services (College of Registered Nurses of Newfoundland and Labrador [CRNNL], 2022). In legal terms a self-employed individual is known as an independent contractor (Canadian Nurses Protective Society [(CNPS]), 2006). Self-employed nurses apply nursing knowledge, skill, and judgement in the provision of health services to **clients** in a variety of settings and roles. Practice domains include direct care, education, research, administration, and/or consultation. Clients may be individuals, families, groups, communities, educational institutions, corporations, or other health-care agencies. Self-employed nurses may provide nursing services themselves or in **collaboration** with other providers. They may also employ others. More factors that may indicate self-employment can be found in the Appendix.

Scope of Practice

All nurses are required to practice according to:

- related federal and provincial legislation
- the Code of Conduct for Registered Nurses and Nurse Practitioners
- the standards of practice
- best practice guidelines
- their individual competence

In addition, nurse practitioners (NPs) are also accountable to the *Standards of Practice for Nurse Practitioners.*

Nurses, regardless of their practice setting, are required to seek additional knowledge and assistance when needed and collaborate with other members of the **health-care team** to promote comprehensive client care (Nurses Association of New-Brunswick [NANB], 2019).

Recognition of Nursing Practice

Prior to establishing a self-employed business, nurses must ensure that their service is recognized as nursing practice by completing an assessment of active hours of nursing practice. An assessment package can be obtained by contacting NANB at nanbregistration@nanb.nb.ca. NANB assesses each submission and issues a decision as to whether or not the proposed practice is recognized as nursing practice. When adding nursing services to a self-employed business that has previously been recognized by NANB as nursing practice, the additional services must also be assessed by NANB following the same assessment of nursing practice process.

Nursing services provided by a self-employed nurse need to be validated by NANB to:

- use the practice hours toward annual renewal of registration;
- ensure correct use of title (e.g., registered nurse, RN, nurse practitioner, or NP); and
- be eligible for individual professional liability protection through the CNPS.

Liability Protection

Nurses who are self-employed may require additional liability protection. Information regarding liability protection is available by contacting CNPS (www.cnps.ca). Self-employed nurses are responsible for researching and determining the level of liability risk associated with their nursing practice in order to purchase the appropriate liability coverage.

Policies and Procedures

Policies and procedures are required in self-employed practice to demonstrate the nurse's **accountability** and to ensure consistent practice between clients. Self-employed nurses should develop various policies, including but not limited to:

- scope of business and nursing service;
- **scope of practice** of the nurse;
- documentation;
- **confidentiality**, storage, and release of personal health information;
- **informed consent;**
- procurement, maintenance, repair, cleaning, and storage of equipment or supplies;
- **continuous quality improvement** and risk management strategies;
- client recruitment;
- consultation with, or referral to other health care providers; and
- business management, including billing, advertising, product endorsement, and insurance.

Developing policies may be challenging when a nurse is beginning a self-employed practice. Nurses should consult with independent legal counsel and an accountant and/or business consultant to ensure that all policies are based on best practice and reflect relevant legislation.

Information Management

Self-employed nurses are responsible for managing information in accordance with relevant legislation and the *Standards for Documentation*. Information management must include:

- confidentiality of client information;
- accurate record of services provided and client outcomes;

- documentation of client consent and/or agreed business contract; and
- appropriate storage, retention, disposal, and release of client information.

The self-employed nurse is often considered the legal custodian of the health information of their clients (CNPS, 2017) and must understand the legal obligations associated with ownership, retention, disposal, and access to client records. *Personal Health Information Privacy and Access Act* (PHIPAA) is the personal health information legislation specific to New Brunswick. For more on nurses' legal responsibilities related to privacy and access to information visit the Government of New Brunswick website.

Compensation

Nurses who provides services on a direct fee-for-service basis, with the fees being paid directly by the client or by the client's private insurance is responsible for making the client aware of the fees at the onset of the nurse-client relationship.

Soliciting gratuity in nursing practice presents a conflict of interest and is prohibited. Prompting for gratuity in nursing services presents ethical concerns blurring the lines between professional duties and financial gain, impacting the integrity of the nurse-client relationship.

Many nursing services are exempt from goods and services tax (GST) and harmonized sales tax (HST). Self-employed nurses should consult an accountant or other tax professional to understand any applicable obligations to register for, collect, and remit GST/HST.

Advertising

Advertising must be ethical, truthful, accurate, professional, verifiable, and maintain the public trust in the nursing profession. NANB requires that all advertising is consistent with federal and provincial legislation and nurses are encouraged to refer to the Canadian Code of Advertising Standards for guidance.

Nursing

- Nurses who are self employed must include their name and professional **designation** in any advertisement. Advertising must not mislead the public with exaggerated claims of the effectiveness of the service being provided. False or misleading advertising may be considered as **professional misconduct**.

Health Product

- *The Canadian Food and Drugs Act* (1985) defines an 'advertisement' as "any representation by means whatever for the purpose of promoting directly or indirectly the sale or disposal of any food, drug, cosmetic or device". Any person who promotes the sale of a specific health product, including medical aesthetic injectables, is subject to advertising legislation.

- Nurses should familiarize themselves with *Act* and the *Food and Drug Regulations* to ensure product advertising is consistent with the legislative requirements specific to aesthetic practice.

Social Media

- Social media has become a popular form of promotion and advertisement of medical aesthetic services. When advertising on social medica, nurses must continue to meet the standards of practice in all cases.
- They must maintain professional boundaries, confidentiality and privacy while using social media. Nurses' individual actions can reflect negatively on their employer and/or the nursing profession.

When engaging in social media use for practice advertisement, nurses have the responsibility to:

- Maintain a professional presence
- Uphold the integrity of the nursing profession
- Ensure confidentiality and protect privacy at all time
- Set and maintain professional boundaries
- Remain accountable to relevant legislation, standards of practice, *Code of Ethics*, and employer policy

For strategies to minimize the risk of social media use, please refer to the NANB document Practice Guideline: Social Media.

Conflict of Interest

A **conflict of interest** occurs when a nurse's personal or private interests interfere with a client's best interests. A conflict can be potential, perceived, or actual. When a conflict of interest influences, or appears to influence a nurse's practice, the nurse client relationship can be jeopardized.

The following are examples of potential conflicts of interest:

- Using the role as an employee (staff nurse/nurse practitioner/nurse educator, etc.) to recruit clients for the nurse's own business.
- Collecting a specific fee for a service, while simultaneously being paid by an employer to provide that same service as an employee.
- Soliciting gratuity for treatment rendered.
- Withholding elements of care within the nurse's scope of employment in order to provide that service in their self-employed role.
- Endorsing or promoting a product or service by using one's title to lend credibility to a commercial product or service or to promote interest in a commercial product or service.
- Receiving a benefit from a manufacturer or distributor for endorsing a specific manufacturer's product over another.

Closing, Leaving, or Extended Absence

Self-employed nurses may close, leave, or be absent for an extended period. In this situation the nurse should provide:

- notification to their clients of the date the services will no longer be available;
- information about their expected return to practice (if applicable);
- information about where client records are to be located and how the records can be transferred to another health care provider or how copies of the records can be obtained; and
- information about alternative options for care and referral processes in place to support continuity of care (CRMN, 2021).

Self-employed nurses are custodians of health records and are therefore responsible for safeguarding health records until the custody of the records passes to another custodian (PHIPPA, 2009). Abandoning health records raises the risk of privacy breaches, individuals not being able to access their health records, and health care providers not having access to information needed to provide health care. Nurses contemplating selling their business, should contact the Access to Information and Privacy Commissioner via the NB Ombud's Office to ensure they are aware of the requirements to meet all accountabilities for safeguarding clients' privacy and for being discharged of all privacy obligations.

Conclusion

This guideline is an overview of information for nurses who are self-employed or for nurses considering self-employment, is not an exhaustive list of considerations. Although many topics have been mentioned in this guideline, CNNB recommends reviewing the following documents for more detailed information:

- *Standards for Documentation*
- *Standards for the Nurse-Client Relationship*
- *Practice Guideline: Duty to Report*
- *Practice Guideline: Duty to Provide Care*
- *Guideline for Conflict of Interest*
- *Guidelines for Telenursing Practice*
- *Practice Guideline: Scope of Practice*
- *Fact Sheet: Consent*
- *Fact Sheet: Use of Professional Title*

Additional information regarding self-employed practice can be obtained by contacting a NANB Nurse Consultant at practiceconsutlation@nanb.nb.ca.

Glossary

Accountability: The obligation to acknowledge the professional, ethical, and legal aspects of one's activities and duties, and to answer for the consequences and outcomes of one's actions. Accountability resides in a role and can never be shared or delegated (NSCN, 2017).

Client: Individuals, families, groups, populations, or entire communities who require nursing expertise. The term "client" reflects the range of individuals and/or groups with whom nurses may be interacting. In some settings, other terms may be used such as patient or resident. In education, the client may also be a student; in administration, the client may also be an employee; and in research, the client is usually a subject or participant (NANB, 2018).

Collaboration/Collaborate: Working together with one or more members of the health care team, each of whom makes a unique contribution toward achieving a common goal. Collaboration is an ongoing process that requires effective communication among members of the health care team and a clear understanding of the roles of the individuals involved in the collaboration process. Nurses collaborate with clients, other nurses, and other members of the health care team in the interest of client care.

Confidentiality: The ethical obligation to keep someone's personal and private information secret or private (CNA, 2017).

Conflicts of interest: occur when the nurse either makes or is in a position to make a decision based upon what is good for the nurse's own best interests, not the best interest of others who might be affected (Oberle & Raffin Bouchel, 2009).

Continuous quality improvement: A philosophy of the quality management process that encourages all health care team members to continuously ask the questions, "How are we doing?" and "Can we do it better?" (Edwards, P. J., Huang, D. T., Metcalfe, L. N., & Sainfort, F., 2008).

Designation: A professional title attributed to a category of nursing professional that is granted by the individual's professional regulatory authority.

Health-care team: Providers from different disciplines, often including both regulated health professionals and unregulated workers, working together to provide care for and with individuals, families, groups, populations, or communities. The team includes the client (CNA, 2017).

Informed consent: the process of giving permission or making choices about care. It is based on both a legal doctrine and an ethical principle of respect for an individual's right to sufficient information to make decisions about care, treatment, and involvement in research. In the Code the term informed decision-making is primarily used to emphasize the choice involved (CNA, 2017).

Professional misconduct: Means a digression from established or recognized professional standards or rules of practice of the profession and includes the sexual abuse of patients (NANB, 2002).

Scope of practice: The activities that registered nurses are educated and authorized to perform, as set out in legislation, and described by standards, limits, and conditions set by regulators (BCCNP, 2018).

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Appendix- Factors That May Indicate Self-Employment

The CNPS (2006) describe two ways to work, one as an employee and the other as a self-employed individual (known in legal terms as an independent contractor). It is self-employment if a nurse is operating a business they own (e.g., a foot care business) or if a nurse is operating under contract to perform nursing services for another party (e.g., providing medical aesthetic services for a spa). The self-employed nurse generally does not operate under the direct supervision of an employer, health care institution/regional health authority, or physician, they are directly accountable for the entirety of the services provided (CRNNL, 2022).
Further, CNPS list factors that indicate self-employment including, but are not limited to:

- owning the business or practice
- having a financial investment in the enterprise
- profiting from the enterprise or risking financial loss
- supplying business and/or personal equipment
- having autonomy over the activities being performed
- submitting invoices for the services provided
- hiring own employees, and
- as a term of a contract, may be required to follow certain policies and procedures.

165 Regent Street
Fredericton, NB, E3B 7B4
Canada www.nanb.nb.ca