PRACTICE GUIDELINE

Duty to Report

Mandate

Public protection through regulation of nurses in New Brunswick.

Under the *Nurses Act*, 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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Practice Guideline: Duty to Report

As part of practicing in accordance with the Code of Conduct for Registered Nurses and Nurse Practitioners, nurses[1] have a legal and ethical duty to report certain circumstances. It is important for nurses to understand when, what, and how to report. This guideline provides information and direction on a nurse's duty to report.

Nurses have an obligation to report the following:

- incompetence, professional misconduct, conduct unbecoming the profession and/or incapacity of a nurse;
- sexual abuse by a nurse or any other health professional; and
- specific situations that must be reported to an external authority (for example, reporting suspected cases of child abuse).

It is important to note that reporting done in good faith is part of a legitimate regulatory and legal process and the person making the report is not subject to liability. Equally important to note is that failure to report is a violation of the Code of Conduct for Registered Nurses and Nurse Practitioners , and in some cases, the Nurses Act, and such failure to report is considered professional misconduct.

Reporting Incompetence, Professional Misconduct, Conduct Unbecoming the Profession and/or Incapacity

Nurses are often the first to identify changes or problems in a colleague's practice. These situations can be distressing. To help determine if the practice, conduct or behavior should be reported, the following should be considered:

- Is there display of significant, broad, or repeated lack of judgment, skills, or knowledge?
- Is there breach of standards of practice or ethical standards?
- Is there reason to believe the nurse has a condition that negatively impacts their capacity to practice?
- Does it pose a risk to client safety?

If the answer to these questions is "no" but the nurse still has concerns about the practice, conduct or behaviour of a nurse, it could be appropriate to discuss the situation with the health care provider involved and/or report the situation to the employer. However, if the answer to any of these questions is "yes" the nurse must:

- take immediate action to ensure client safety;
- document a factual description including date, time, and description of what occurred:
- report to the employer; and

[1] "Nurse" refers to all NANB members, including graduate nurses, nurse practitioners, and registered nurses.

- ensure that a complaint is filed with the Nurses Association of New Brunswick (NANB).

For more guidance on responding to and reporting incompetent, non-compassionate, unsafe, or unethical care:

- consult the Code of Conduct for Registered Nurses and Nurse Practitioners and applicable nursing standards
- explore the situation with your employer
- refer to the NANB Complaints and Discipline Process – How to file a complaint

The duty to report applies to a nurse's own practice as well as to the practice of his or her colleagues. According to the Code of Conduct for Registered Nurses and Nurse Practitioners, nurses are expected to maintain their fitness to practice, and if they do not have the necessary physical, mental, or emotional capacity to practice safely and competently, then remove themselves from practicing nursing, after informing their employer; in this case, self-employed nurses must notify the client and arrange for someone else to attend to their client's health care needs. Nurses then take the necessary steps to regain their fitness to practise, in consultation with appropriate professional resources.

Employers also have an obligation to report to NANB any nurse whose engagement as a nurse is terminated because of incompetence or incapacity. Note that "engagement" is broader than traditional "employment": the obligation to report applies whether employers engage nurses as employees, as contractors, or through third parties.

Employers should also report to NANB concerns of incompetence, incapacity, or misconduct even if the nurse's engagement is not terminated.

Reporting Sexual Abuse

According to the *Nurses Act*, nurses are required to report situations when there are reasonable grounds to believe that another health professional has sexually abused a client. Sexual abuse is defined as sexual intercourse or other forms of physical sexual relations between a nurse and a client; touching, of a sexual nature, of a client by a nurse; or behaviour or remarks of a sexual nature by a nurse towards a client (*Nurses Act*, section 28.1(2)). For the purposes of this definition, "sexual nature" does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided. Nurses who have reason to believe that another health professional has sexually abused a patient, or client must report that person to the applicable governing body within 21 days. It is professional misconduct on the part of the nurse who fails to report the sexual abuse of a client or patient.

Reporting to External Authority

Nurses also have a legal obligation, as required by provincial/federal legislation, to report specific situations to an external authority. Nurses are responsible to know when and to whom to report

these situations and must understand and follow their applicable employer policies on the reporting process.

Examples of reporting to an external authority include:

- Under the *Child and Youth Well-Being Act,* professionals such as nurses are required to report to the Department of Social Development if they have reason to believe that the well-being of a child or youth is in danger, even if such reason to believe arises from a professional context or is otherwise confidential. The *Child and Youth Well-Being Act* protects people (including nurses) from liability for reporting such information to the Department in good faith. In fact, failing to report such a situation to the Department is an offence under the *Child and Youth Well-Being Act* that can lead to prosecution and/or a complaint to NANB.
- The *Family Services Act* authorizes professionals such as nurses to report to the Department of Social Development if they have reason to believe that a person is a neglected adult or an abused adult, including information that has been acquired through a professional relationship. The *Family Services Act* protects professionals from liability for reporting such information to the Department in good faith.
- The *Public Health Act* and the *Reporting and Diseases Regulation* under that *Act* requires reporting specific infections, diseases, and exposures to the medical officer of health or a person designated by the Minister.
- The *Coroners Act* states that death under certain circumstances must be reported to a coroner.
- The *Motor Vehicle Act* requires nurse practitioners, who believe that a person may not be able to safely operate a motor vehicle due to physical or mental impairment, disease or condition, to report such person to the Registrar of Motor Vehicles.

If you have additional questions about the duty to report, please consult a nurse consultant at practiceconsultation@nanb.nb.ca

References

Canadian Nurses Association. (2017). Code of Ethics for Registered Nurses. https://nanb.nb.ca/en/library/document/code-of-ethics-document-cna/

Nurses Association of New Brunswick. (2002). *Nurses Act*. https://nanb.nb.ca/en/library/document/nurses-act/

Adapted from the Nova Scotia College of Nursing Practice Guideline: Duty to Report

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