Ontario Nurses' Association (ONA) Submission on Bill 87 - *Protecting Patients Act, 2017* (Schedule 4)

Standing Committee on the Legislative Assembly - April 12, 2017

Affected Act: *Regulated Health Professions Act* (RHPA) and *RHPA Procedural Code (Schedule 2)*

Overview

- Bill 87 includes a major overhaul of the *Regulated Health Professions Act* and many of the proposed amendments will have serious consequences for ONA members.
- Most problematic for ONA members is the requirement that colleges post on their registers results of all Discipline Committee and Fitness to Practice hearings even when there has been no finding against a member.
- ONA is also concerned with the proposal that the Inquiries Complaints and Reports Committee be given the authority to issue interim suspensions any time after a complaint is filed.
- Finally, ONA is concerned with the definition of patient with respect to sexual abuse (the "one year" definition), given the serious mandatory consequences for sexual misconduct.

Section of Bill 87, Schedule 4	**Affected Section of *RHPA* or *Procedural Code***	**Issues**	**ONA Submissions**
S. 2	Act, s. 5(2.1)	• At present, the Minister has the power to: ask College Council about the state of practice of the profession, review Council's activities, and require Council to make regulations. The proposed language will allow the Minister to also ask Council about the personal information and personal health information of a member of the College to determine whether the College is fulfilling its duties under *RHPA, Nursing Act*, etc.	This provision is very intrusive. It allows the Minister to be overly involved with respect to how the College deals with individual health inquiries. ONA is concerned that the Minister may intervene in circumstances where it is inappropriate to do so, especially in cases that have attracted significant media attention. In addition, ONA is troubled with the idea of the Minister asking College Council for personal health information given that it is our understanding that Council itself would not normally have access to PHI.

S. 7	Code, s. 1(6)	• The proposal regarding sexual abuse provisions defines "patient" as including someone who was the member's patient within the past year (or longer period as may be prescribed).	ONA finds the "one year" definition to be an arbitrary and unreasonable requirement. Nurses in certain fields are regularly in situations where they provide care to a patient only once and have only a fleeting therapeutic relationship (e.g. An emergency room triage nurse). The penalty for a finding of sexual abuse of a patient is extremely serious and is mandatory once the finding of fact is made (either revocation or suspension, depending on the specifics of the conduct). Given the seriousness of the consequences, an arbitrary, "one year" definition regarding who is a patient is not appropriate. It does not allow a discipline panel to tailor the punishment to the misconduct by considering the type of care provided and the length, intensity and nature of the therapeutic relationship.
S. 12(1) 10	Code, s. 23(2)7	• At present, results of Discipline Committee and Fitness to Practice Committee decisions are posted only if there is a finding against the member. The proposed amendment states that <u>all results will be posted</u>. Section 12(7) makes it clear that "result" includes, among other things, "the failure to make a finding".	This proposal is harmful because, even in a situation where a nurse is cleared of all allegations, the record of the allegations and the hearing remain publicly available for a minimum of six years, pursuant to s. 23 (11) of the *RHPA*. In theory, the "no finding" decision may exonerate the nurse; however, there will still be a taint that attaches to the posting of this information, an assumption in the minds of some members of the public that the member must have done something wrong and that there must be some truth to

			the allegations. For Fitness to Practice decisions, we submit this is a violation of the *Ontario Human Rights Code*. A nurse who wins a contested FTP hearing and proves he or she is <u>not</u> incapacitated will have this result posted on the register. Given the fact that FTP hearings invariably relate to mental health issues and the stigma attached to mental illness and, especially, addictions, even members cleared of these allegations will face discrimination based on perceived disability. ONA proposes that the current practice continue, of posting discipline and fitness to practice results only when a finding has been made against a member.
S. 28(2) & (4)	Code, s. 85(4) and (5)	• The provision for therapy for patients who have been sexually abused is extended so therapy is also available when there are <u>allegations</u> of sexual abuse but no finding yet.	ONA is not opposed to this proposal. However, see next point below.
S. 28 (2) (12)	Code, s. 85.7(12)	• The College can go to court to recover from a member the costs of therapy for a patient covered by s. 28(2(4)) above.	This proposal is problematic because this section does not require that there be a <u>finding</u> in order for the College to seek this recovery from a member. This may simply be a drafting error – it is unreasonable to suggest therapy monies could be recovered from a member simply because of an allegation and without a finding against that member.
S.15	Code, s. 25.4(1)	• At present, the ICRC can impose an interim suspension on a member after it refers a	This provision is problematic because there

		matter to the Discipline Committee. The proposed amendment gives the ICRC the ability to impose an interim suspension any time after a complaint is received. The ICRC can do this if they consider the conduct of the member or the "member's physical or mental state" to be likely to expose patients to harm.	may be an increase in interim suspensions issued in situations where the ICRC has not even received submissions from counsel. The current provisions of the *Procedural Code* allow interim suspension re health matters only after a matter is referred to FTP (Code s. 62).
S.15	Code s. 25.4 (6)	• The member will receive notice of the intention to make the interim suspension and will have 14 days to respond.	While this provision does allow some time for a member to respond to allegations, it may be meaningless: without any sort of investigation or disclosure of documents (e.g. patient's chart), it will be extremely difficult for a member or counsel to write meaningful submissions and defend against an interim suspension. This puts members at risk of being deprived of their ability to earn a living, without any of the protections of procedural fairness.
S.19(1) S.19(2) 3	Code, s. 51(5)2 Code, s. 51(5)	• When the DC makes a finding of sexual abuse but the conduct does not fall under the list which requires mandatory revocation (below), the panel must suspend the member's certificate. • The list of acts that constitute sexual abuse mandating automatic revocation has expanded from five to seven, adding the following: vi) touching patient's genitals, anus, breasts or buttocks or vii) other conduct prescribed in the regulations.	See notes above regarding mandatory penalties for sexual abuse. Note: the "Mandatory revocation" section, which relates to s. 5.1 a) & b) of the Code (at p. 28 of Bill 87) is incomprehensible.