



ONA Position Statement

Duty to Report under the *Nursing Act* and the *Regulated Health Professions Act* when Acting in the Role of a Union Representative

This position statement has been developed for Ontario Nurses' Association (ONA) members and representatives who represent other ONA members in all aspects of labour relations in all sectors.

Nurses must report to their employer or the College of Nurses of Ontario (CNO) the unsafe or unethical conduct of other health-care providers (*Nursing Act, 1991, Reg. 799/93, S. 25*). In addition, all regulated health professionals have a duty to report to a regulatory college if they have reasonable grounds to believe a member of any college has sexually abused a client (*Regulated Health Professions Act, 1991, Procedural Code, S. 85(1)*).

However, this duty to report arises only if the member or ONA representative becomes aware of this information in the course of their practice. The duty does not arise if the ONA representative acquires this information from communications made in the context of a labour relations relationship. In other words, if an ONA representative becomes aware of a possible breach of professional standards because he or she is assisting a member with a labour relations matter, this information does not need to be reported to the college or employer.

ONA believes the labour relations context of communication between union representatives/members and ONA members is legally privileged and, therefore, information shared in this context does not need to be disclosed to regulatory colleges. Unions are required to fairly represent their members. This duty of fair representation includes a duty to protect the confidentiality of incriminating statements or confessions a member might make. Conversations between union representatives and their members must happen in confidential circumstances. Confidentiality is essential to the relationship. A college's authority to regulate health-care professionals in the course of their work does not interfere with this confidentiality.

Please note: Any ONA representative or member who witnesses or reports alleged professional misconduct in the course of their professional duties should not be involved in the labour relations aspect of the same matter. This matter must be referred immediately to a Labour Relations Officer (LRO).

Addiction Case Study

A nurse becomes aware, during the course of his or her work, that a colleague has an addiction that is causing unsafe or unethical care, for example if patients are being deprived of pain medication. If the employer is not aware of this situation, the health professional has a duty to report to the employer (*Nursing Act, S. 25*). However, ONA suggests the health professional raise this issue with the union before reporting it to the employer.

If the information about the addiction is obtained in the context of union representation, there is no obligation to disclose it to the employer. The union representative may discuss with the member whether it is a good idea for the member to disclose this to the employer. Similarly, if the addiction information is obtained in the context of union representation, there is no duty to report it to the College. In fact, there is no obligation for the member suffering from the addiction to self-report to the College and ONA discourages members from doing so.

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