

**PUBLIC INQUIRY INTO THE SAFETY AND SECURITY OF RESIDENTS
IN THE LONG-TERM CARE HOMES SYSTEM**

**CLOSING SUBMISSIONS:
REGISTERED PRACTICAL NURSES ASSOCIATION OF ONTARIO**

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KEYSER MASON BALL, LLP
Barristers & Solicitors
4 Robert Speck Parkway, Suite 1600
Mississauga, Ontario
L4Z 1S1

IAN WICK (613080)
Tel : (905) 276-0425
Fax: (905) 276-2298
Email: iwick@kmblaw.com

SHAUN R. SINGH (69747T)
Tel : (905) 276-0425
Email: ssingh@kmblaw.com

Lawyers for the Participant, Registered
Practical Nurses Association of Ontario

TO: THE LONG-TERM CARE HOMES PUBLIC INQUIRY
400 University, Suite 1800C
Toronto, ON M7A 2R9

MS. ANDREA BARTON, Executive Director

Tel: (416) 314-1763
Email: andrea.barton@longtermcareinquiry.ca

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1. The mandate of this Commission is to prevent and/or limit the ability of a Registered Nurse from intentionally harming a resident in a Long-Term Care Facility or Home Care Facility governed by the *Home Care and Community Services Act, 1994*. The position of the Registered Practical Nurses Association of Ontario ("RPNAO") is that the recommendations that come from this Inquiry should allow for Long-Term Care in Ontario to strive for more than just resident safety. To ensure that all residents in a Long-Term Care Facility or Home Care Facility experience joy and contentment where their safety is both assured and unquestioned.

OVERVIEW:

2. The Registered Practical Nurses Association of Ontario ("RPNAO") represents Ontario's Registered Practical Nurses ("RPN") with a mission to engage with and advocate for RPNs to provide high-quality, evidence-informed, patient-centred care.
3. RPNs are regulated by the College of Nurses of Ontario ("CNO") through the *Regulated Health Professions Act, 1991*, SO 1991 C18 and the *Nursing Act, 1991* SO 1991, C32. RPNs are health care professionals that combine nursing skill, knowledge and judgment and are experts of nursing care. 96.3% of Ontario's RPNs work in direct practice positions, caring for people at the bedside.

4. The practice of nursing is the promotion of health and the assessment of, the provision of, care for, and the treatment of, health conditions by supportive, preventive, therapeutic, palliative and rehabilitative means in order to attain or maintain optimal function.
5. RPNAO maintains that it is the responsibility of the individual nurse to provide the highest standards of professional practice which is achieved by ensuring that RPNs attain and maintain present competences and keep abreast of the new best practices and evidence through continuing education and participation in continuing education to improve the quality of direct client care to be in consort with the College of Nurses *Professional Standards, Revised 2002* ("Standards of Practice").

REGISTERED PRACTICAL NURSES IN LONG-TERM CARE

6. RPNs comprise the largest group of nursing care providers in the long-term care sector. Of all nursing positions in Ontario's long-term care sector, 66.4% are RPN positions, and of all nurses employed in Ontario who report Geriatrics (Seniors' Care) as their primary employment responsibility, 64.4% are Registered Practical Nurses.
7. In 2017, 38.1% of RPNs were employed in the long-term care sector¹.

¹ LTCI Doc ID 72558 at page 15.

8. As part of their training RPNs are required to complete a rotation in a Long-Term Care facility, exposing RPNs to the Long-Term Care environment and treating patients in that facility. Presently, Registered Nurses ("RN") do not.²
9. The role of an RPN is distinct with responsibilities including, but not limited to, assessing, planning, implementing and evaluating individualized care to meet residents' physical and emotional needs, communicating with relatives regarding the care and condition of respective residents as required, providing direct resident care and participating in resident teaching, liaising with the health care team to ensure effective resident care is provided and procuring and administering medications including injections and narcotics and providing treatments.
10. In contrast with other jurisdictions, the role of an RPN is distinct and to make the comparison that an RPN is equivalent to an LPN or vocational nurse is unwarranted. Not only is the training much different, the scope of practice of an RPN entitles RPNs to perform functions that LPNs, or vocational nurses require additional training to perform. Furthermore, in Ontario the approach to nursing is centered around assigning patients and/or residents to nurses based on the particular conditions. This approach is unique and should be recognized when considering the role of the RPN.
11. While the role of an RPN and that of an RN differ significantly, in the current Long-Term Care environment there is a significant degree of overlap between

² Transcript of Michelle Cornelissen, June 26, 2018 at page 3695

the functions performed by RPNs and RNs. As the evidence has revealed, this overlap is largely due, not to RPNs working above their intended scope of practice, but because RNs are carrying out functions comfortably within the RPN scope of practice.

Q. Right. Now, you have mentioned a significant amount of overlap between the RPN role and the RN role. What were some of the examples that are required that an RN would have to perform at the care facilities?

A. Right now I -- to be honest with you there really isn't -- I don't know of anything different because the RPNs on the other side, the night nurse, they print out the quarterlies. The RNs used to do that now RPNs do it on section A.

I'm sorry, I honestly can't see the -- don't honestly -- can't think of one thing different. I just can go back years ago, I remember when I started there I wasn't to do a catheter, I wasn't to do IM needles, RPNs weren't to do any of that. And then we did the schooling and now we're doing it out there, because that was years ago. Now they're getting trained all that in college now, of course, but I'm talking years ago, right.³

Q. And what were the roles and responsibilities of RPNs?

A. In the community, very similar to the roles of the RN...⁴

12. By way of a brief example, both RPNs and RNs develop the initial care plans and perform assessments for the RAI/MDS System; admit patients; prepare the three-month medication review⁵ administer medication, including insulin, run PICC lines, change dressings, just to name a few.
13. Furthermore, it was revealed that in addition to their nursing functions, RNs were often charged with routine administrative tasks which could be performed by other staff members and are completely unrelated to nursing.

³ Transcript of Laura Long, dated June 18, 2018 at page 1980

⁴ Transcript of Tamara Condy, dated June 28, 2018 at page 4031

⁵ Transcript of Laura Long, dated June 18, 2018 at page 1977

14. Importantly, this is *not* to suggest that RNs in Long-Term Care are obsolete or that RNs in Long-Term Care have been replaced by that of an RPN – that is far from the case. As it presently stands, RNs are not being properly utilized in Long-Term Care and as a result, patients are not receiving the full benefit of the additional training an RN receives (as compared to an RPN).

PATIENTS SHOULD BE ASSIGNED TO NURSES BASED ON THEIR PARTICULAR CONDITIONS REGARDLESS OF DESIGNATION.

15. The Standards of Practice⁶ provides an overall framework for the practice of nursing and a link with other standards, guidelines and competencies developed by CNO and describes the professional expectations of nurses. Moreover, it sets out the legal and professional basis of nursing practice and a guide to the knowledge, skills, judgment and attitudes that are needed to practice safely.
16. Importantly, the most recent revision of the Standards of Practice is from 2002, over 15 years ago. Given that the educational requirements for RPNs have changed significantly, it is significant that some of the functions carved out as specifically applying to RNs or Nurse Practitioners ("NP") are also applicable to RPNs. These include functions of research, analytical and theoretical critiques in healthcare to enhance their practice, leadership and coordinating care and handling a level of complexity where patients have co-morbidities and other

⁶ LTCI Doc ID 55074

complex ailments while also considering the predictability of the resident and the risk of negative outcomes.⁷

Q. And in your experience with the increased schooling and training, would you say that RPNs are appropriately suited to treat patients that do have a complex set of co-morbidities or illnesses where there is little fluctuation in the patient's health condition over a period of time?

A. Yeah, absolutely.⁸

17. It is clear that the present regulations must permit Long-Term Care and Home Care Facilities to employ the best available regulated nursing professional, regardless of their designation.
18. This, however, is not the current state of affairs.
19. Section 8(3) of the *Long-Term Care Homes Act, 2007, SO 2007 C8*, outlines that
24-hour nursing care
(3) Every licensee of a long-term care home shall ensure that at least one registered nurse who is both an employee of the licensee and a member of the regular nursing staff of the home is on duty and present in the home at all times, except as provided for in the regulations. 2007, c. 8, s. 8 (3).
20. It is RPNAO's recommendation that this piece of legislation be repealed to equip Long-Term Care Facilities with the tools to staff based on resident needs.
21. Long-Term Care and Home Care Facilities ought to be permitted to hire the best possible regulated nursing professional that is qualified, capable and competent, and also matches the needs of the patient population.

⁷ Transcript of Anne Coughlan, dated June 26, 2018 at page 5806

⁸ Transcript of Tamara Condy, dated June 28, 2018 at page 4036

22. Each Long-Term Care and/or Home Care Facility should have the flexibility to determine how best to align staff resources and determine staff mix to meet the particular needs of their residents and their local circumstances.
23. Perhaps more importantly, when the Long-Term Care and Home Care Facilities are mandated by law to hire a RN, they may be forced to employ a RN that may lack competencies, has a history of being prone to medication errors or is unable to meet the CNO Standard of Practice, even if there is a better suited regulated nurse that would be able to perform at the said facility.

*Q. Okay. Now, at paragraph 42 of your affidavit... I will just read it, quotes:
"Over the years we realized that Elizabeth Wettlaufer was not the best nurse. She was lazy. We did think that she would rather eat than get off her chair. But we needed her. We weren't getting applications from Registered Nurses."*

Can you explain, please, what you meant by "But we needed her"?

A. We didn't have applications from Registered Nurses to replace her.

Q. And so is this statement reflective of the Long-Term Care Act requirement that there be at least one Registered Nurse staff on shift at all times?

A. Yes, I believe it would be.

Q. And approximately how long from the time that you realized Ms. Wettlaufer was not, quote, "the best nurse" to the time she was terminated?

A. I would think from -- in the years 2012, 2013 we were thinking along those lines, that we were giving more disciplines.⁹

24. The College of Nurses publishes a guideline as a resource to assist in determining the appropriate nurse for a particular patient or environment in Long-

⁹ Transcript of Brenda Van Quaethem, dated June 7, 2018 at page 594

Term Care – RN and RPN Practice: The Client, the Nurse and the Environment.¹⁰

25. Given that there is no "one size fits all" solution for staffing in Long-Term Care, RPNAO submits that it is of critical importance that all of the factors included in the guideline are considered when determining staffing levels and staffing mixes:
- (a) **The Client:** Decisions about the utilization of an RN and an RPN are influenced by
- (i) Complexity
 - the degree to which a client's condition and care requirements are identifiable and established
 - the sum of the variables influencing a client's current health status, and
 - the variability of a client's condition or care requirements.
 - (ii) Predictability: the extent to which a client's outcomes and future care requirements can be anticipated.
 - (iii) Risk of negative outcomes: the likelihood that a client will experience a negative outcome as a result of the client's health condition or as a response to treatment.
- (b) **The Nurse:**
- (i) The factors that affect a nurse's ability to provide safe and ethical care to a given client include leadership, decision-making and critical-thinking skills. Other factors include the application of knowledge, knowing when and how to apply knowledge, and having the resources available to consult as needed.
 - (ii) It is important for nurses to be aware of the limits of their individual competence and their practice. Based on individual practice reflection and the current requirements of their practice environments, nurses must continually enhance their knowledge and competence through ongoing learning, education, experience and participation in quality assurance activities.

¹⁰ LTCI Doc ID 54989

- (iii) Nurses consult with one another when a situation demands nursing expertise that is beyond their competence.
 - (c) **The Environment:** factors include practice supports, consultation resources and the stability/ predictability of the environment. Practice supports and consultation resources support nurses in clinical decision-making."¹¹
26. By fully considering and employing the aforementioned factors, Long-Term Care facilities would be in a position to implement creative solutions to direct patient care in a manner that fully utilizes each nurse (whether RN or RPN) in a manner that is efficient, cost effective and provides patient centered care.
27. In fact, when Caressant Care did not have the ability to conform to the legislative requirement of maintaining one RN on shift, they came up with a solution that ensured that residents were properly cared for, and in no way compromised resident care.

Q. Now, you have mentioned that at one time Caressant did receive a finding from the Ministry for not having at least one full-time Registered Nurse on shift and that's instead of one RN there were additional RPNs that you employed; correct?

A. Correct.

...

Q. No, no, at the time did you find that this was an effective solution so that the residents were properly cared for?

A. Well, it was in our staffing levels how many to have, and yes, it was effective in caring for our residents.

Q. And at any time did you feel that patient care was compromised as a result of having the additional RPNs as opposed to the mandated RN?

A. Oh, no, yes -- you are referring to that four hours?

Q. The specific findings, yes.

¹¹ LTCI Doc ID54989

A. Yes, no, we -- and the Director of Nursing was on call, and so no, I didn't feel that anything was compromised.¹²

28. Mandating that all facilities must have an RN on staff does not account for the realities of the present Long-Term Care Environment and do not place the facilities, who are in the best position to understand their resident population and needs, the flexibility to come up with creative solutions that enhance patient care. Moreover, the legislation does not take into account the realities of the Long-Term Care environment.
29. The determination of whether a Registered Nurse ought to be employed at a Long-Term Care Facility must consider the clinical needs of the resident and not be based on the unit or geographical location.
30. In other jurisdictions, creative solutions are being employed in Long-Term Care to address the accessibility of RNs (or lack thereof). These include:
 - (a) Collaborative access to acute care, where hospitals are directly assigned to Long-Term Care Facilities;
 - (b) Consultative access with acute care whereby RPNs are able to consult with RNs or NPs via telephone or video conference;
 - (c) More frequent assessments of residents to ensure that if an RN is needed for proper care, they can be employed; or,
 - (d) alternative access for RPNs to consult with RNs.

¹² Transcript of Brenda Van Quaethem, June 7, 2018 at page 595

*"There is a significant difference in pay between Registered Nurses and Registered Practical Nurses. **In my opinion, in the long-term care setting there is not as much difference in practice.** However the Registered Nurse would do more of the in-depth assessments. At Caressant Care, Registered Practical Nurses do more of the treatments, and Registered Nurses more assessments. In addition, the Registered Nurse is the supervisor, someone who Registered Practical Nurses can go to for advice. However, both Registered Nurses and Registered Practical Nurses administer medications, assess wounds, do treatments, take doctor's orders and process them, speak to families, update care plans and lead the resident's team conference, etc"[Emphasis Added].¹³*

31. It has been established that the legislation mandating a Long-Term Care Facility to employ at least one RN at all times is problematic; however, if the Commissioner feels that it is necessary, RPNAO suggests that the fines associated with rigid compliance be adjusted. The evidence has revealed that when facilities have been desperate to comply with the legislation, they have turned to agency staff, or in some cases employed an RN whose performance did not meet the Standards of Practice. As such, the associated fines must be adjusted for severity and take into account the external factors that the facility was facing. There is a significant difference between a facility that does not have an RN on shift due to illness versus one who is simply not making best efforts to recruit.

Strengthening Professional Practice Environments

32. Research indicates that initiatives that support nursing professional practice environments may lead to safer quality of resident care.

¹³ Affidavit of Helen Crombez, sworn June 7, 2018 at para 24

33. Professional Practice Resources consist of experts in the Standards of Practice that are trained to observe, analyze, and determine whether the standards of a regulated nurse operating in a Long-Term Care or Home Care Facility are being met. These experts provide information, support and oversight to facilities to assist in determining where standards are not being met and how to address the issues and oversight to ensure that any gaps are being adequately addressed.
34. Presently, many smaller homes and homes in rural and remote areas may not have adequate access Professional Practice Resources and /or Professional Practice Resources are not available.
35. A distinction ought to be drawn between Professional Practice Resources and Compliance Officers. Compliance Officers are dispatched to ensure that the regulations pursuant to the requisite legislation are being complied with by the facilities. Professional Practice Resources have distinct and specialized knowledge to ensure that a standard of excellence is met, that which is outlined by the Standards of Practice.

Ensuring a Culture of Safety is promoted in Long-Term Care

Q. Okay.· You mentioned that at Saint Elizabeth you guys make best efforts to promote a culture of safety.· Now, I think this is one of the first times we have heard "culture of safety" in the Inquiry.· Can you explain to us what a culture of safety is?

A. Well, I think what I said is a no-blame culture...

...

A. So saying that we understand that medication errors happen despite everybody's best efforts, and that sometimes medication errors are a result of a

process that should be changed, not necessarily negligence by one specific person.

So instead of laying the blame on the person saying, You did something wrong and it is all your fault, let's talk about the whole situation, what happened, make sure the patient is okay, make sure we are being transparent to the LHIN, if that is applicable, and to the patient's physician and the family, and then let's figure out how we can make sure that it doesn't happen again.¹⁴

36. Many witnesses including Ms. Crofts-Yorker and Ms. Greenall outlined the need to employ a culture of safety. Literature shows that only 5-10% of medication errors are reported. In order for resident safety to increase, it is paramount that efforts be taken to ensure that voluntary disclosure of medication errors.
37. A culture of safety in Long-Term Care and Home Care Facilities means creating an environment where regulated nurses are encouraged to come forward in reporting medication errors without fear that by doing so they will be penalized or punished. When facilities place blame for medication errors directly on the individual, as opposed to investigating methods with which to improve the facility's infrastructure and process they fail to uncover, understand and prevent the reasons behind the error from reoccurring. The culture must be shifted to promote an environment where all staff are working to minimize risks in the facility, which begins with staff feeling comfortable reporting medication errors.
38. In order to remove the barriers to medication error reporting Long-Term Care and Home Care Facilities ought to be equipped with a reliable and readily available reporting system, knowledge on how to report a medication error and a feedback system provided to both the facility and the reporter of the error.

Increasing Transparency

39. At present, gaps exist whereby Long-Term Care and Home Care Facilities are prevented from fully disclosing the extent of incidents occurring at the facility due to exposure of civil liability. In order to assist the Long-Term Care and Home Care Facilities, increased protections are required to:
- (a) Permit the facilities to disclose all pertinent information relating to an incident so that CNO is presented with all necessary information to determine whether an investigation should take place; and,
 - (b) Prevent any agreements and documentation from including clauses which limit, skew, misstate and/or influence a facility's obligation to accurately outline the state of events as it pertains to an individual nurse both to CNO, other facilities and/or the general public.

Limiting Disclosure Prior to an Investigation

40. Long-Term Care and Home Care Facilities are exposed to pressure by the union and potential civil liability when disclosing information to CNO about a regulated nurse in conjunction with filing a complaint or a report. It is only once the CNO has appointed an investigator that the Long-Term Care and Home Care Facilities

¹⁴ Transcript of Tamara Condry, dated June 20, 2018 at page 4029.

are able, and in fact required to, disclose all relevant information pertinent to the investigation.

41. As such, Long-Term Care and Home Care Facilities cannot provide full and frank disclosure as to why an investigation may be necessary (for fear of a civil action being commenced), and CNO is not basing their decision as to whether to commence an investigation on all information some of which may be a relevant consideration.
42. It is clear that there is a gap in the regulatory scheme that must be addressed. It is in the public interest that Long-Term Care and Home Care Facilities be able to provide all information about an incident from the outset to ensure that all offenses are properly investigated.

Obligation for Accurate Reporting

43. Long-Term Care and Home Care Facilities have obligations to many parties including, CNO, the facility's residents and their families, the regulated nurses they employ and the public in general.
44. Given the complex regulatory scheme within which Long-Term Care and Home Care Facilities operate, it is inevitable that, at some point, they will have to terminate a RN and disclose information relating to that termination to other interested parties.

45. Because this information is relied upon by future employers in determining whether to hire a RN, it is imperative that any letters of reference, minutes of settlement or other agreements, accurately reflect the reasons for termination in an effort to avoid repeating the incident(s) that may have led to the termination at first instance.
46. In connection with the Commission's mandate, it is the position of RPNAO that in order to prevent and/or limit the ability of a Registered Nurse from intentionally harming a resident in a Long-Term Care Facility or Home Care Facility governed by the *Home Care and Community Services Act, 1994*, it is important for the Commission to make recommendations that:
- (a) Strengthen professional practice environments in Long-Term Care and Home Care Facilities including providing access to specific Professional Practice Human Resources;
 - (b) Promoting a culture of safety in Long-Term Care and Home Care Facilities in an effort to increase the voluntary disclosure of Medication Errors;
 - (c) Increasing protections for Long-Term Care and Home Care Facilities to increase the transparency in reporting between said facilities, CNO, other facilities and the general public; and,
 - (d) Amending the present regulations to permit Long-Term Care and Home Care Facilities to employ the best available regulated nursing professional, regardless of designation.