

The Duty to Report

INTERPRETIVE DOCUMENT

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Interpretive documents clarify and promote the understanding of current legislation, regulations, and other College of Licensed Practical Nurses of Manitoba (CLPNM) documents that guide the profession of practical nursing. The purpose of this interpretive document is to provide practical nurses, employers, and the public with information regarding the profession's duty to report.

The Duty to Report

The duty to report is a professional and ethical responsibility set out in *The Licensed Practical Nurses Act*, the CLPNM Standards of Practice and the CLPNM Code of Ethics. This duty arises from an obligation for all nurses¹ to protect clients and to advocate for safe, competent and ethical care. The duty to report strengthens public trust and confidence and upholds the integrity of practical nursing as a self-regulating health profession.

Reporting Requirements

It is important for all nurses to be aware of the responsibilities associated with the profession's duty to report. This includes knowing when to report, what to report and how to report. Nurses, and those who employ nurses, are expected to use their knowledge, skill and judgment to determine whether a circumstance meets a reporting obligation and if so, to report it to the appropriate authority. Depending on the circumstance, the appropriate authority could be the employer, the CLPNM, another regulatory body, or even the police.

The Licensed Practical Nurses Act and Regulation

The Licensed Practical Nurses Act (the LPN Act) and Regulation establish the framework for regulating the profession of practical nursing in Manitoba. They

¹ For the purpose of this document, the word nurse refers to all three types of CLPNM registrants: licensed practical nurses (LPN), graduate practical nurses (GPN), and/or student practical nurses (SPN).

include a number of reporting requirements aimed at ensuring the CLPNM is aware when a nurse's physical or mental condition, conduct, competence, and capacity place the public at risk. These reporting requirements enable the CLPNM to take follow-up action as necessary to protect the public, as is its mandate.

The LPN Act requires a nurse to report another nurse of the same profession if they believe that there are concerns related to fitness to practice. Specifically, section 65(1) states:

"A member who believes that another member is suffering from physical or mental condition or disorder of a nature or to an extent that the member is unfit to continue to practice or that the member's practice should be restricted, shall inform the executive director of that belief and the reasons for it".

It is important to note that not all physical or mental conditions need to be or should be reported; only those that place the public at risk. Some reportable examples might include an acute mental health episode, a drug or alcohol addiction, or a physical limitation significant enough that it impairs the nurse's ability to provide safe and effective nursing care.

As per the LPN Act, it is important to note that a nurse who makes such a report is protected from liability depending on their intentions. Section 65 (2) of the LPN Act states:

"A member who discloses information under subsection (1) (see above) is not subject to



any liability as a result, unless it is established that the disclosure was made maliciously."

The LPN Act also speaks to the duty of employers to report any nurse employee termination. Pursuant to Section 66(3) of the Act:

"If a person who employs a licensed practical nurse terminates the licensed practical nurse's employment for misconduct, incompetence or incapacity, the employer shall promptly report the termination to the executive director and give the licensed practical nurse a copy of the report".

The person responsible for making this report may be another LPN in a manager role, but the reporting requirement applies equally to any person who employs and terminates an LPN, even if that person is not a member of the practical nursing profession. This includes other nurses in manager roles, or members of other professions. The CLPNM interprets the employer reporting requirement to include reporting a termination that was avoided by a resignation, but that would have otherwise taken place for reasons of misconduct, incompetence or incapacity.

CLPNM's Code of Ethics and Standards of Practice

CLPNM's Code of Ethics and Standards of Practice establish professional standards for Manitoba's practical nurses and broaden the duty to report if doing so is necessary to safeguard the public. This broadened duty is aimed at ensuring that the profession upholds its obligation to advocate for the best care of all Manitobans.

The Code of Ethics serves as a guide to ethical decision-making and outlines the profession's commitment to respect, promote, protect and uphold the fundamental rights of those who are recipients and providers of health care. The Code establishes the ethical responsibility to take:

"appropriate action to safeguard individuals, families, and communities (including reporting to the applicable authorities) when their health is endangered by a co-worker or any other person."

Examples of actions or omissions that could endanger the health of another person include, but are not limited to:

- verbal, physical, mental, or sexual abuse,
- failure or refusal to provide direct nursing care (see CLPNM's Duty to Care Regulatory Bulletin), or
- providing care while under the influence of drugs or alcohol.

The Standards of Practice are objective guidelines to provide and evaluate nursing practice and articulate what the public can expect of the profession. CLPNM's Standards of Practice IV, V, and VII establish the professional obligations to:

- identify, respond to, and report situations of unsafe practice or professional misconduct to the appropriate authorities,
- support the mandate of the College of Licensed Practical Nurses of Manitoba to protect the public, and
- support policies and practices consistent with the College of Licensed Practical Nurses of Manitoba's Standards of Practice and report those in conflict with the Standards.

Situations of unsafe practice could include any of the reportable acts and omissions noted above; other examples might also include:

- inappropriate critical thinking and clinical judgment,
- engaging in nursing care for which the nurse does not have the competence, or
- engaging in or recommending therapies for which there is inadequate evidence of effectiveness and safety.

Professional misconduct refers to acts or omissions that are contrary to professional standards or legislation, and that would not be expected from a reasonable and prudent professional in the same situation. Examples of professional misconduct include but are not limited to:

- falsifying client information,
- putting personal needs above the needs of those who are in the nurse's care,
- any type of theft (client, staff, or employer-related), or

- inappropriate use of professional status for personal gain.

Other Legislation

In addition to the LPN Act, Standards of Practice and Code of Ethics, other provincial legislation may direct the nurse to report activities that pose a risk to the public. Nurses should be aware of these other circumstances in which they have a legal duty to report. Some examples include, but are not limited to:

- *The Protection of Persons in Care Act*, which requires reporting of suspected abuse of residents or patients of health care facilities. For more information, see <http://www.gov.mb.ca/health/protection/>.
- *The Vulnerable Persons Living with a Mental Disability Act*, which mandates service providers (including those who provide care) to report, to Manitoba Child and Family Services, the suspected abuse and/or neglect of the vulnerable persons they support. For more information, see <http://gov.mb.ca/fs/pwd/vpact.html#A5>.
- *The Child and Family Services Act*, which requires any person (including, but not limited to care providers) to report a child who is in need of protection. For more information, see http://www.gov.mb.ca/fs/childfam/child_protection.html.

The above mentioned laws are not described in detail here, nor is the list exhaustive, as these laws fall outside of CLPNM's direct mandate. Other resources available to assist the nurse in gaining a better understanding of the responsibilities, circumstances, and procedures for reporting include:

- employer policies,
- dialogues with your employer/manager, and/or
- by visiting the Government of Manitoba website (<http://web2.gov.mb.ca/laws/index.php>).

Nurses working in independent practice² are expected to make themselves aware of these and other reporting requirements, and implement policies and procedures to meet all reporting obligations. This may require that they seek guidance from third parties (e.g. government agencies or legal counsel).

Disclosures

In some cases, the nurse's duty to report extends to his or her own personal practice and history. To meet the registration criteria set out in the Licensed Practical Nurses Regulation, all applicants applying for or renewing a registration with the CLPNM are required to disclose whether they:

- are currently under investigation and/or have been convicted of an offence under the *Criminal Code, Controlled Drugs and Substances Act, or Food and Drug Acts*;
- have ever been denied registration or had a finding by any professional regulatory body;
- have had a registration/license denied, revoked, suspended, restricted, or subjected to individual terms and conditions by any regulatory authority in any jurisdiction;
- have ever been and/or are currently under investigation by any regulatory authority in any jurisdiction; and/or
- have a physical or mental condition, disorder, or an addiction that impairs their ability to practice nursing competently and safely.

These declarations must be made at the time of application for registration, but any changes in status must be reported to the CLPNM as soon as they occur.

When to Report

Nurses may feel conflicted between the above-mentioned professional obligations and their personal relationships with colleagues, which may discourage them from taking the appropriate course

² Independent practice refers to the application of nursing knowledge, skills, and judgment in a self-directed employment setting. See CLPNM's Independent Practice Regulatory Bulletin for more information.

of action. When faced with this conflict, the nurse must always take the action that best protects the client and contributes most to the delivery of safe, competent, and ethical care.

The timing of the nurse's actions depends on the level of risk to the public. When a nurse encounters a situation that may place a client or the public in immediate danger, the first priority is to take action to safeguard those at risk. If there is no immediate danger, the nurse may choose to first address the matter with those directly involved or contact other appropriate authorities.

Employer policies should also be reviewed to determine additional reporting obligations or internal reporting procedures. When reviewing these policies, nurses should be mindful that employer policies do not override a reporting obligation established in law or outlined in professional standards. However, they may complement or expand on the nurse's expectations, and provide clarity regarding processes to be followed.

When making a report to the CLPNM, the report must be in writing and must be signed. In as much detail as possible, the following should be included:

- the name of the person making the report,
- the name and designation of the nurse whose actions or omissions are being reported,
- a detailed description of the incident(s),
- the date(s) and location(s) of these specific incidents, and
- the names of any others involved or who have direct knowledge of the situation.

All reports, when received by the CLPNM, are reviewed by the Executive Director. The Executive Director then, by the authority of the LPN Act, is able to make a decision based on the information, which may include a referral to the CLPNM Investigation Committee. Information related to the decisions of the Investigation Committee, can be found in the LPN Act Part 6, Section 23(1).

Failing to Report

Deciding to make a report can be a difficult decision; however, failing to make a report may place a client, the public, colleagues, and the reputation of the profession at risk. All nurses should be aware that failing to make a report required by legislation or the professional standards may result in disciplinary action by the employer and/or the CLPNM.

Conclusion

As a member of a self-regulating profession, nurses are required to intervene and report when their own practice or conduct, or the practice or conduct of a colleague, puts the public at risk.

By understanding and fulfilling the duty to report, nurses and employers can help to protect and even strengthen the public's trust in the profession, while ensuring that Manitobans receive safe, competent and ethical care.

For more information

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This publication is provided to promote understanding of the legislation and standards that guide the profession of practical nursing in Manitoba. For more specific guidance, please see the Licensed Practical Nurses Act and Regulation, the CLPNM Code of Ethics, and the CLPNM Standards of Practice. These are available on our website at www.clpnm.ca

References

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