

April 17, 2007

Mr. Ernie Parsons, MPP
Chair
Standing Committee on Social Policy
Room 1405, Whitney Block
Queen's Park
Toronto, Ontario M7A 1A2

Dear Mr. Parsons:

Re: CNO's Response to Bill 171 – Health System Improvements Act

The College of Nurses of Ontario (CNO) is the regulatory body for Ontario's 145,000 nurses. We are pleased to be making our submission regarding *Bill 171, Health System Improvements Act, 2006*.

While CNO supports the principles of protecting public safety and bringing more accountability and transparency into the health professional regulatory system, we do have some concerns with the way the current draft legislation may affect the fulfilment of our mandate as a regulatory college. Our submission provides an overview of our general concerns and includes a series of recommendations for amending the legislation. We believe that these specific recommendations for amendments will strengthen the College's ability to regulate the practice of nursing. It is our hope that the following feedback is helpful, and that our recommendations will be incorporated into *Bill 171*.

Should you require any clarification of our recommendations regarding the *Health System Improvements Act*, please do not hesitate to contact me at (416) 963-7525 or by email at acoghlan@cnomail.org.

Sincerely,

Anne L. Coghlan, RN, MScN
Executive Director

/sk

Enclosures

cc: The Honourable George Smitherman, Minister of Health and Long-Term Care
Trevor Day, Clerk, Standing Committee on Social Policy



COLLEGE OF NURSES
OF ONTARIO
ORDRE DES INFIRMIÈRES
ET INFIRMIERS DE L'ONTARIO

THE STANDARD OF CARE.

CNO's Response to Proposed Amendments

Bill 171 HEALTH SYSTEM IMPROVEMENTS ACT

Submission to:

Standing Committee on Social Policy

April 2007

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INTRODUCTION

The College of Nurses of Ontario (CNO) is pleased to submit its comments and recommendations with regard to Bill 171, the *Health System Improvements Act, 2006*. Overall, CNO supports the government's efforts to make the health care system more responsive to the needs of the public by strengthening and supporting the regulatory framework that guides and supports the performance of Ontario's regulated health care professionals.

Our response to the *Bill* focuses on Schedule M, amendments to the *RHPA*. We also have included recommendations to amendments to Schedule B, the *Nursing Act, 1991*. Our comments below are restricted to those items in the *Bill* that CNO has a public interest concern with and include a series of recommendations for amending the legislation.

Structurally, our submission consists of four sections. The first section focuses on the proposed amendments in *Bill 171* relating to the regulatory changes that have a direct impact on nursing practice and includes investigations and hearings, public access to information, quality assurance and scope of practice. Section two deals with nursing issues not addressed in the proposed amendments. While CNO shares the government's commitment to greater accountability, public protection and increasing access to health services for all Ontarians, we are concerned that certain parts of *Bill 171* that seek to amend the *RHPA* may have the opposite effect, unless revised. The third section focuses on what we perceive to be drafting changes that are essential for clarity of governance. Finally, the last section provides a summary of all our recommendations to related to *Bill 171*.

While CNO is supportive of the intent of the *Bill*, we believe that these specific recommendations for amendments are necessary in order for regulatory bodies to successfully carry out their public protection mandate.

Bill 171 – HEALTH SYSTEM IMPROVEMENTS ACT

CNO’S RESPONSE TO PROPOSED AMENDMENTS

Proposed Amendments	Issue	Recommendations	Public Interest Rationale
INVESTIGATIONS AND HEARINGS			
25(6) of Schedule 2	A College may need to delay notice beyond 14-days if necessary to preserve evidence or protect an individual.	CNO recommends 25(6) be amended to permit a College to delay notice to the member beyond the 14-day time period if necessary to preserve information or protect an individual. Specifically, CNO recommends that the legislation permit a delay of up to 30 days.	There are instances when notification could lead to the destruction or alteration of information vital to the investigation or endanger individuals.
25.1(4) (a) of Schedule 2	Proceeding with an investigation while an ADR process is ongoing undermines the ADR process, which is voluntary. If the ADR has not achieved a satisfactory outcome, at any time the complainant or the member can withdraw from the process and an investigation would commence. Also, conducting an investigation while an ADR process is ongoing would duplicate cost and resources.	CNO recommends that an investigation not commence until the ADR process has been discontinued (i.e., either the member or the complainant has withdrawn from the process).	The proposed language conflicts with fundamental principles of the ADR process, which presumes that participants are engaging in the process voluntarily and with good faith. In addition, the proposed amendment lacks efficiency because it requires two concurrent processes.

Proposed Amendments	Issue	Recommendations	Public Interest Rationale
INVESTIGATIONS AND HEARINGS			
26(3) of Schedule 2	ICR powers are identified by cross-referencing QAC powers, which does not clearly delineate the separate functions and processes of ICR and QAC.	CNO recommends 26(3) be amended so that ICR powers are stated explicitly. References to “necessary modifications” should be eliminated.	Explicitly stating ICR powers will increase transparency to members and the public, and ensure procedural fairness.
26(3) of Schedule 2	The proposed amendment gives ICR the power to require remediation and impose terms, conditions, or limitations on matters outside the scope of the complaint or report. Providing ICR with “duplicate” QAC powers may promote misunderstanding of the Committees’ separate functions and may expose members to more serious consequences that require increased procedural fairness.	CNO recommends that ICR be given the limited power to order assessment and appropriate remediation in relation to specific practice concerns that arise from complaints or reports.	It is in the public interest to remediate specific practice concerns raised in complaints or reports in an efficient and effective manner that accords with procedural fairness is transparent to complainants. It is also important that there is no ambiguity between the roles of ICR and QAC.
27(1) and (2) of Schedule 2	Reasons should be given for all decisions including those where no action is taken.	CNO recommends that reasons be required for all decisions except where there is a referral to Discipline or Fitness to Practice.	The provision of reasons is an important element of procedural fairness and transparency. One of the most critical times to provide the complainant with reasons is when no action is taken.

Proposed Amendments	Issue	Recommendations	Public Interest Rationale
INVESTIGATIONS AND HEARINGS			
28(2) of Schedule 2	Additional time, beyond the 150 day timeline, should be provided to accommodate the ADR process.	CNO recommends suspending the 150 day deadline during the ADR process. Specifically, CNO recommends removal of 28(2).	ADR is a voluntary process that requires time for parties to consider resolution options and to enter an agreement in good faith. Parties would have decreased incentive to explore ADR options fully if any time devoted to the ADR process would take away from the time available for an investigation, should one of the parties choose to withdraw from the process.
28(8) of Schedule 2	ICR has ongoing jurisdiction while the Board undertakes the investigation, which results in confusion about the review process. This also results in duplication of resources.	CNO recommends that ICR cease its investigation when the Board commences an investigation.	The Board protects the public by ensuring an alternate fair process for the Complainant and ensuring accountability of the College. Furthermore, having two concurrent investigations is inefficient.
52(1) of Schedule 2	Under the proposal, all intentional or reckless conduct will fall only under professional misconduct. The narrower definition of incompetence will mean that Colleges must allege all	CNO recommends that “or disregard for the welfare of the patient” not be removed.	The proposed definition of incompetence is narrower and sets a higher threshold for a finding of incompetence. This may prevent Colleges from ensuring public protection.

Proposed Amendments	Issue	Recommendations	Public Interest Rationale
INVESTIGATIONS AND HEARINGS			
	<p>possible headings of professional misconduct. Also, the ability for a College to deal with pre-<i>RHPA</i> conduct will be affected since incompetence refers to a current state and the incompetence definition is still being used to discipline pre-<i>RHPA</i> conduct.</p>		
58 of Schedule 2	<p>The referral to an ICR panel is an inefficient requirement and would result in unnecessary delay. The recommended legislative scheme in Bill 171 mimics the Board's inefficiency under the current legislation. ICR should be able to, after reviewing a member's written submission, and based on reasonable and probable grounds of incapacity, order the member to undergo a health assessment.</p>	<p>CNO recommends that the Registrar on notice to the member be entitled to refer the results of the inquiry directly to ICR, which can of its own accord order a health assessment, based on reasonable and probable grounds of incapacity, after the member has been provided with an opportunity to make written submissions. CNO also recommends that the report from the assessor should be provided to the member.</p>	<p>When members are incapacitated, regulatory action must be prompt to ensure public protection. Referral to a panel will unnecessarily delay public protection.</p>

Proposed Amendments	Issue	Recommendations	Public Interest Rationale
INVESTIGATIONS AND HEARINGS			
76 (2) of Schedule 2	“The place of practice of the member” may limit access to important information for investigations. For example, a community nurse may have records stored in more than one place including his or her home. Some members under investigation may refuse entry to a place where their business records are stored because it is not perceived as their “place of practice”.	CNO recommends that the phrase “place of practice of the member” read “places of practice of the member and the places where the member stores paper or electronic records”.	Lack of access to records may seriously impair the College’s ability to access information critical to an investigation.
77 (1) of Schedule 2	The proposed exclusion of “a dwelling or part of a dwelling that is not the place of practice of the member” may limit access to information stored by members.	CNO recommends “a dwelling or part of a dwelling that is not the place of practice of the member” be removed.	Limiting access to dwellings may result in the College not being able to access evidence essential to an investigation.
85.2 (1) of Schedule 2	The requirement for reporting all cases of incapacity by operators of facilities is of major concern. Mandatory reporting of	CNO recommends mandatory reports under section 85.2 (1) of Schedule 2 be restricted to incapacity concerns where matters are not being appropriately addressed or dealt with by the employer or within the practice setting.	Members do not pose a risk to the public when they are supported by their employer in receiving appropriate treatment and monitoring upon return to the practice

Proposed Amendments	Issue	Recommendations	Public Interest Rationale
INVESTIGATIONS AND HEARINGS			
	<p>incapacity could undermine the employer's ability to appropriately deal with incapacity issues. Members who are supported by their employer and are under treatment for conditions or disorders either through a professional program, an Employee Assistance Program, or a private provider with employee monitoring do not pose a risk to public safety. The reporting of health care professionals to the College who are in recovery is contrary to the notion that employers and health care providers regularly assist health care professionals to obtain treatment and return to practise safely.</p>		<p>setting and no regulatory action is required. It is in the public interest to encourage nurses to seek treatment for conditions that may impact on their nursing practice.</p>

Proposed Amendments	Recommendations	Public Interest Rationale
PUBLIC ACCESS TO INFORMATION		
Overall, CNO supports increased public access to information. Increasing the amount of information available better protects the public from unethical or incompetent providers.		
<p>36(1) of the Act is updated with new wording and provisions: (1) Every person employed, retained or appointed for the purpose of the administration of this Act, a health profession Act or the <i>Drug and Pharmacies Regulation Act</i> and every member of a Council or committee of a College shall keep confidential all information that comes to his or her knowledge in the course of his or her duties and shall not communicate any information to any other person except, (h) where disclosure of the information is permitted or required by law;</p>	<p>CNO recommends that (h) be eliminated or modified to allow the College to have discretion in decisions about disclosure (rather than mandating disclosure) OR that (h) provide a list of statutes and regulations under which disclosure is both mandated and appropriate.</p>	<p>It is in the public interest that the College not be compelled to disclose sensitive information except where the public interest requires it. The proposed amendment is unclear about required disclosure and could lead to ambiguity regarding the relative priority of statutes.</p>

Proposed Amendments	Recommendations	Public Interest Rationale
PUBLIC ACCESS TO INFORMATION		
<p>New 36.1 (1) of the Act: At the request of the Minister, a College shall collect information directly from members of the College as is reasonably necessary for the purpose of Ministry health human resources planning.</p>	<p>CNO recommends collaboration with the Ministry on a procedure for such requests. CNO would be interested in such a collaborative effort to identify the information that the Ministry considers most useful and the appropriate time periods for providing such information.</p>	<p>A collaborative and streamlined process for Ministerial requests of information could improve the efficiency of providing the Ministry and the public with aggregate nursing data (Bill 171 notes that the Minister could publish requested information in reports).</p>
<p>Changes to 23(2) of Schedule 2 - The register shall contain the following:</p> <p>4. The terms, conditions and limitations that are in effect on each certificate of registration.</p> <p>5. A notation of every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 and has not been finally resolved, but this notation shall be removed when the matter has been resolved.</p> <p>6. The result, including a synopsis of the decision, of every disciplinary and incapacity proceeding, unless a panel of the</p>	<p>4. CNO would like additional clarification as to what is to happen when the terms, limits or conditions are no longer in effect.</p> <p>5. CNO recommends a modification to require referrals to the Fitness to Practise (FTP) Committee to be noted on the register. CNO by-laws already require that referrals to FTP be posted on the public register, and we feel such a requirement should be extended to all <i>RHPA</i> Colleges.</p> <p>6. CNO would like clarification or a definition on the meaning of synopsis as it pertains to the public register. Such clarification would be</p>	<p>4. Increased clarity would ensure that consistent procedures are developed across all <i>RHPA</i> Colleges.</p> <p>5. Public access to Fitness to Practise referrals protects the public from harm. Given that Fitness to Practise hearings are closed to the public, the register provides a means of accessing information on the allegation prior to a proceeding decision.</p> <p>6. Increased clarity would ensure that consistent information is provided to the public across all <i>RHPA</i> Colleges.</p>

Proposed Amendments	Recommendations	Public Interest Rationale
PUBLIC ACCESS TO INFORMATION		
<p>relevant committee makes no finding with regard to the proceeding.</p> <p>12. Where, during or as a result of a proceeding under section 25, a member has resigned and agreed never to practice again in Ontario, a notation of the resignation and agreement.</p>	<p>helpful in understanding the extent and type of information that should be provided on the register beyond the “results of the proceeding”. In particular, we are concerned with highly confidential information from incapacity proceedings being available on the register when not required for protection of the public.</p> <p>12. CNO recommends that the words “and the Committee has accepted the agreement” be added after Ontario in subsection 12.</p>	<p>12. Public protection will improve if resignation agreements are vetted and approved by the appropriate statutory committee.</p>
<p>New 23(6), Schedule 2: The Registrar shall refuse to disclose to a member of the public or to post on the College’s website information referred to in paragraph 6, 7, 10 or 12 of subsection(2) if,</p> <ul style="list-style-type: none"> (a) more than six years have passed since the information was prepared or last updated; (b) the member has made an application for the removal of the information from public access, and the relevant committee has directed the Registrar to that effect; and 	<p>Should this become law, CNO recommends that the new amendments clarify the government’s intent and expectation with regard to when information should be removed from public access. Specific criteria for removal could be outlined for <i>RHPA</i> Colleges.</p>	<p>It is in the public interest that all <i>RHPA</i> Colleges employ consistent criteria for removing information from public access. Variations among the Colleges could result in confusion for parties trying to access information, and generate an unfair result for members of different professions (especially in cases where multidisciplinary care was provided) and could increase the number of legal appeals.</p>

Proposed Amendments	Recommendations	Public Interest Rationale
PUBLIC ACCESS TO INFORMATION		
the information does not relate to disciplinary proceedings concerning sexual abuse as defined in subsection 1 (3).		

New Proposed Amendments	Issues	Recommendations	Public Interest
QUALITY ASSURANCE			
<p>Schedule 2 to the Act is amended by adding the following sections:</p> <p>Section 80. 2 (1) of Schedule 2 The Quality Assurance Committee may do only one or more of the following:</p> <p>2. Direct the Registrar to impose terms, conditions or limitations for a specified period to be determined by the Committee on the certificate of registration of a member,</p> <p>i. whose knowledge, skill and judgment have been assessed or reassessed under section 82 and found to be unsatisfactory or,</p> <p>ii. who has been directed to participate in specified continuing education or remediation programs as are required by the Committee under paragraph 12 and has not completed these programs successfully.</p>	<p>2. There is no mechanism specified for a member to apply for the removal or modification of <i>Terms Conditions and Limitations</i> applied by the QA Committee.</p>	<p>2. CNO recommends a mechanism to request the removal or modification of <i>Terms Conditions and Limitations</i> applied by the QA Committee in a manner similar to the process delineated in Section 19 of Schedule 2.</p>	<p>2. It meets the principles of due process and fairness in dealing with members and provides an efficient mechanism to protect the public.</p>

New Proposed Amendments	Issues	Recommendations	Public Interest
QUALITY ASSURANCE			
<p>4. Disclose the name of the member and allegations against the member to the Inquiries, Complaints and Reports Committee if the Quality Assurance Committee is of the opinion that the member may have committed an act of professional misconduct, or may be incompetent or incapacitated.</p>	<p>4. If after a full QA review, there is serious concern about the member <i>as a risk to the public</i>, then ICR should receive more information than the name and allegation. If ICR only receives information about allegations, there is little that ICR can do to take appropriate action. As this recommendation is worded, it does not permit disclosure: i) for the purpose of eliminating or reducing a significant risk to a person or group; or, ii) for interprofessional collaboration for the provision of quality care, continuous improvement and patient safety.</p>	<p>4. CNO recommends that if there is serious concern about the member <i>as a risk to the public</i>, then ICR should receive enough information so that it can act expeditiously. This could include the name, allegation and a report about the specific referral to ICR.</p>	<p>4. More detailed information will allow the ICR to protect the public in an efficient manner. Disclosing only the name and allegations will create a delay in the process which will continue to place the public at risk.</p>

New Proposed Amendments	Issues	Recommendations	Public Interest
QUALITY ASSURANCE			
<p>Section 75(1) of Schedule 2. The Registrar may appoint one or more investigators to determine whether a member has committed an act of professional misconduct or is incompetent if,</p> <p>(b) the Registrar has received a report from the Quality Assurance Committee with respect to the member and the Inquiries, Complaints and Reports Committee approves of the appointment</p>	<p>75(1) and 80.2 (1) 4 and 5. These two sections of the Act appear to be in conflict with one another. It is not clear whether the information should be disclosed to the Registrar or ICR. 75(1) indicates disclosure to the Registrar, and 80.2 (1) 4 and 5 indicate disclosure to ICR.</p>	<p>CNO recommends that the legislation be consistent with the current process in Section 75(b) of Schedule 2 - that QAC reports to Executive Committee and request that the Registrar investigate. This conflict would be resolved by mirroring the current process by QAC referring to ICR and ICR requesting that the Registrar investigate.</p>	<p>75(1) Clear language will ensure that the public is protected from members under report from the Quality Assurance Committee and that that the member is treated fairly and consistently.</p>

Proposed Amendments	Substantive Issue	Recommendations	Public Interest Rationale
SCOPE OF PRACTICE			
14 (1.1) <i>Nursing Act</i>	<p>The process of updating drugs in regulation is lengthy and cumbersome. In addition, with potential regulation of adult, paediatric and anaesthetic RN(EC)s, drug lists or categories of drugs in regulation is neither practical nor feasible due to diverse clinical foci. This will also create issues for pharmacists in relation to tracking and monitoring. In addition, the lack of open prescribing is not in line with the ability of nurses to respond to changes in the practice environment, which is a proposed objective.</p>	<p>CNO recommends open prescriptive authority for RN(EC)s.</p>	<p>Due to the lengthy process of adding drugs in regulation, RN(EC)s may not have access to drugs based on current evidence, which is a patient safety issue. An RN(EC) client may be required to see a physician, resulting in duplication of services with associated costs and burdens such as time and travel cost. In addition, there are issues with access to care if there is no physician to see the client.</p>

ISSUES NOT ADDRESSED IN PROPOSED AMENDMENTS

Proposed Amendments	Substantive Issues	Recommendation	Public Interest Rationale
Nursing Act	Registered Nurses in the Extended Class [RN(EC)s] need to have independent access to additional controlled acts that are a part of their education and practice. RN(EC)s' scope of practice also needs to keep pace with other jurisdictions in Canada to facilitate drafting a Mutual Recognition Agreement.	<p>CNO recommends that RN(EC)s gain full access to the following controlled acts:</p> <ul style="list-style-type: none"> ▪ communicating a diagnosis identifying a disease or disorder as the cause of a person's symptoms; ▪ setting or casting a fracture of a bone or a dislocation of a joint; ▪ administering a substance by injection or inhalation; ▪ applying or ordering the application of a form of energy prescribed by the regulations under this Act; and ▪ prescribing, dispensing, selling or compounding a drug. <p>Barring this, CNO recommends that unresolved scope of practice issues be referred by the Minister to HPRAC.</p>	The broadening of controlled acts will allow RN(EC)s to practice to their full scope and result in increased access to care, timeliness of client care and increased patient safety. Some areas where RN(EC)s practice have no physicians. As a result, restricting RN(EC) practice can result in significant patient safety issues, increased wait times and decreased access to care.
Nursing Act	The issues related to diagnostic tests are similar to the issues related to drugs. Updating diagnostic tests in regulation is lengthy and cumbersome. With	CNO recommends open authority to order diagnostic tests.	Limiting diagnostic tests that are an essential component of RN(EC) practice may result in decreased access to care and delays in treatment.

Proposed Amendments	Substantive Issues	Recommendation	Public Interest Rationale
	<p>diverse clinical foci, it is not feasible to develop comprehensive, evidence-based lists.</p>		<p>Clients may be required to see a physician, which may result in duplication of services. In areas where RN(EC)s practice, there is not always a physician to provide client care; thus, limiting diagnostic tests may result in patient safety issues.</p>
<p><i>Public Hospital Act and Public Hospital Act, Regulation 965</i></p>	<p>RN(EC)s work in many practice settings including inpatient units within public hospitals. The <i>Public Hospital Act</i> and <i>Public Hospital Act, Regulation 965</i> need to be amended to be in line with amendments to the <i>Nursing Act</i>, in particular giving authority to provide inpatient services.</p>	<p>CNO recommends the following changes:</p> <ul style="list-style-type: none"> ▪ creating a Professional Advisory Committee (PAC); ▪ giving admitting privileges for RN(EC)s; ▪ amending definition of nurse to include RPN; ▪ amending definitions "attending registered nurse in the extended class" and "extended class nursing staff" to broaden authority to provide inpatient services; and ▪ giving nurses authority to initiate orders for treatment. 	<p>Supervision by PAC could increase accountability and transparency to the public. Admitting privileges for RN(EC)s, broadening authority of RN(EC)s and giving nurses authority to initiate orders will increase access to care and decrease wait times. Physician resources are stretched (e.g., physicians working 20 hour shifts) and not permitting RN(EC)s to practice to their full scope is a patient safety issue.</p>
<p>Schedule 2 of the <i>RHPA</i></p>	<p>CNO has had reported cases of illegal practitioners (individuals who are not members and are</p>	<p>For effective investigation and prosecution of illegal practitioners CNO recommends providing appropriate</p>	<p>The public must be protected from unqualified illegal practitioners.</p>

Proposed Amendments	Substantive Issues	Recommendation	Public Interest Rationale
	<p>practising illegally). CNO needs appropriate mechanisms to address concerns regarding illegal practitioners.</p>	<p>authority and processes including:</p> <ul style="list-style-type: none"> ▪ appointment of an investigator (similar to 75(a) of Schedule 2); ▪ powers of an investigator (similar to 76 of Schedule 2); and ▪ processes to compel individuals to produce evidence. 	

DRAFTING ISSUES

Investigations and Hearings

1. 30(1) of the Act: “Bodily harm” is not defined to capture the intent behind this wording change.
 - CNO recommends stating “serious physical, psychological or emotional harm”.
2. 36(3) of the Act: The phrase “any proceeding” in 25.1(2) of Schedule 2 may create an adverse inference about the phrase “civil proceeding” in 36(3) of Schedule 2; specifically, a court may interpret 36(3) of Schedule 2 to apply only for civil actions and not to other non-criminal proceedings.
 - CNO recommends removing the word “civil” in 36(3) of the Act, and 7(2), 32(3)(d), 45(2)(c) and 68(2)(c) of Schedule 2.
3. 10(1) 3 of Schedule 2: CNO does not find the name “Inquiries, Complaints and Reports Committee” to be reflective of the committee.
 - CNO recommends changing the name to “Investigations and Resolutions Committee” to make the committee more meaningful to the public.
4. 25(1) of Schedule 2: Limiting 25(1) to 79(a) does not take into consideration 79(b).
 - CNO recommends amending 25(1) to include 79(b).
5. 25-29 of Schedule 2: It is unclear throughout 25-29 what constitutes a “report”. Specifically, 25(1) indicates that “report” refers to 79(a). It is unclear whether “report” used subsequently (25-29) refers to the results of an investigation under 79(a) or a report under 85.1 and 85.2.
 - CNO recommends clarifying the term “report” so that it refers throughout 25-29 to a report under 79(a).
6. 25(6) of Schedule 2: The statement “receipt of the complaint or the report” is open to interpretation.
 - CNO recommends stating that the notice requirement should date from the date the complaint was filed with the Registrar, not from the date of receipt of the complaint.
7. 25.1(4) of Schedule 2: There are no particulars related to the coordination of the investigation and the ADR.
 - CNO recommends that 25.1(4) be clarified to include details on the coordination of the investigation and the ADR. For example, an investigation should not commence until the ADR process has been discontinued.
8. 26(2) of Schedule 2: It is unclear whether all decisions to take no action or only decisions made under 26(5) are to be excluded under 26(2).
 - ICR may decide to take no action under 26(1)4 as well as under 26(5). CNO recommends the subsection state “unless the decision was to take no further action

under subsection (5) and paragraph 4 of subsection 26(1)”, if the intent is to exclude all prior decisions to take no action.

9. 32(1) of Schedule 2: It is unclear what constitutes “a record of the investigation and all relevant documents and things”.
 - CNO recommends providing a clear description of “a record of the investigation and all relevant documents and things” in this administrative context.
10. 75(1) (c) of Schedule 2: It is unclear who receives a written complaint about the member (ICR or the Registrar). There are some discrepancies in the Bill. For example, 25(1) of Schedule 2 states: “A panel shall be selected by the chair of the Inquiries, Complaints and Reports Committee to investigate a complaint filed with the Registrar”, whereas 75(1)(c) of Schedule 2 suggests that ICR receives a written complaint.
 - CNO recommends clarification around language indicating who receives a written complaint.
11. 85.2(1) of Schedule 2: Facility is not defined
 - CNO recommends defining facility.

Public Access to Information

12. In 23(2) of Schedule 2 to the Act, paragraph 7 provides that the public register shall include “A notation of every reprimand that has been issued to a member”. This provision duplicates the effect of subsection 6, which requires that all results of Disciplinary proceedings be publicly available. The separation of reprimand from other penalties raises a question as to whether a broader synopsis of the decision (as is required for all disciplinary or incapacity proceedings) is required when a reprimand is issued to the member.
 - CNO recommends either the removal of subsection 23(2)7 as it appears to be captured under subsection 23(2)6 or an addition to paragraph 7 to specify that results must be included on the register alongside the notation of the reprimand.
13. In 23(2) 8 and 9 of Schedule 2 to the Act, the words “in effect” are absent (in contrast to paragraph 4). In essence, this will mean that all revocations and suspensions will remain on the public register indefinitely, as members are unable to apply for their removal under 23(6). Fairness and administrative issues may arise with regard to maintaining all revocations or suspensions (including those not related to disciplinary or incapacity proceedings) on the public register indefinitely. Currently, members can be suspended for non-payment of fees, and there is no public safety rationale for keeping this type of information on the public register after it is no longer required (for example, after a member has paid the fee and the suspension is no longer in effect).

Should this section become law, CNO recommends that the words “in effect” be added to paragraphs 8 and 9 (as drafted in paragraph 4) or that a provision be added to note that the indefinite publication requirement does not apply to suspensions that are non-disciplinary in nature.

SUMMARY OF RECOMMENDATIONS

Investigations and Hearings

1. CNO recommends 25(6) of Schedule 2 be amended to permit a College to delay notice to the member beyond the 14-day time period if necessary to preserve information or protect an individual. Specifically, CNO recommends that the legislation permit a delay of up to 30 days.
2. CNO recommends that an investigation not commence until the ADR process has been discontinued (i.e., either the member or the complainant has withdrawn from the process).
3. CNO recommends 26(3) of Schedule 2 be amended so that ICR powers are stated explicitly. References to “necessary modifications” should be eliminated.
4. CNO recommends ICR be given the limited power to order assessment and remediation in relation to specific practice concerns that arise from complaints or reports.
5. CNO recommends that reasons be required for all decisions except where there is a referral to Discipline or Fitness to Practice.
6. CNO recommends suspending the 150 day deadline during the ADR process. Specifically, we recommend removal of 28(2) of Schedule 2.
7. CNO recommends that ICR cease its investigation when the Board commences an investigation.
8. CNO recommends that “or disregard for the welfare of the patient” not be removed from 52(1) of Schedule 2.
9. CNO recommends that the Registrar on notice to the member be entitled to refer the results of the inquiry directly to ICR, which can of its own accord order a health assessment, based on reasonable and probable grounds of incapacity, after the member has been provided with an opportunity to make written submissions. CNO also recommends that the report from the assessor should be provided to the member.
10. CNO recommends that the phrase “place of practice of the member” in 76(2) of Schedule 2 read “places of practice of the member and the places where the member stores paper or electronic records”.
11. CNO recommends “a dwelling or part of a dwelling that is not the place of practice of the member” be removed.
12. CNO recommends mandatory reports under Section 85.2(1) of Schedule 2 be restricted to incapacity concerns where matters are not being appropriately addressed or dealt with by the employer or within the practice setting.

Public Access to Information

13. CNO recommends that 36(1) (h) be eliminated or modified to allow the College to have discretion in decisions about disclosure (rather than mandating disclosure), OR that specific legislation be listed where disclosure is mandated and appropriate.
14. CNO recommends collaboration with the Ministry on a procedure for requests made under 36.1(1). CNO would be interested in such a collaborative effort to identify the information that the Ministry considers most useful and the appropriate time periods for providing such information.
15. CNO would like additional clarification as to what is to happen when the terms, limits or conditions are no longer in effect under 23(2)4 of Schedule 2.
16. CNO recommends a modification to require referrals to the Fitness to Practise (FTP) Committee to be noted on the register. CNO by-laws already require that referrals to FTP be posted on the public register, and we feel such a requirement should be extended to all *RHPA* Colleges.
17. CNO would like clarification or a definition on the meaning of synopsis as it pertains to the public register. Such clarification would be helpful in understanding the extent and type of information that should be provided on the register beyond the “results of the proceeding”. In particular, we are concerned with highly confidential information from incapacity proceedings being available on the register when not required for protection of the public.
18. CNO recommends that the words “and the Committee has accepted the agreement” be added after Ontario in 23(2)12 of Schedule 2.
19. Should 23(6), Schedule 2 become law, CNO recommends that the new amendments clarify the government’s intent and expectation with regard to when information should be removed from public access. Specific criteria for removal could be outlined for *RHPA* Colleges.

Quality Assurance

20. CNO recommends a mechanism to request the removal or modification of Terms Conditions and Limitations applied by the QA Committee in a manner similar to Fitness to Practice or Registration Committees.
21. CNO recommends that if there is serious concern about the member *as a risk to the public*, then ICR should receive enough information so that it can act expeditiously. This could include the name, allegation and a report about the specifics about the referral to ICR.

22. CNO recommends that the legislation be consistent with the current process in Section 75(b) of Schedule 2 – that QAC reports to Executive Committee and request that the Registrar investigate. This conflict would be resolved by mirroring the current process by QAC referring to ICR and ICR requesting that the Registrar investigate.

Scope of Practice

23. CNO recommends open prescriptive authority for RN(EC)s.

Recommendations not Addressed in the Proposed Amendments

24. CNO recommends that RN(EC)s gain full access to the following *Controlled Acts*:
- communicating a diagnosis identifying a disease or disorder as the cause of a person's symptoms;
 - setting or casting a fracture of a bone or a dislocation of a joint;
 - administering a substance by injection or inhalation;
 - applying or ordering the application of a form of energy prescribed by the regulations under this Act; and
 - prescribing, dispensing, selling or compounding a drug.

Barring this, CNO recommends that unresolved scope of practice issues be referred by the Minister to HPRAC.

25. CNO recommends open authority to order diagnostic tests.
26. CNO recommends the following changes:
- creating a Professional Advisory Committee (PAC);
 - giving admitting privileges for RN(EC)s;
 - amending definition of nurse to include RPN;
 - amending definitions "attending registered nurse in the extended class" and "extended class nursing staff" to broaden authority to provide inpatient services; and giving nurses authority to initiate orders for treatment.
28. For effective investigation and prosecution of illegal practitioners CNO recommends providing appropriate authority and processes including:
- appointment of an investigator (similar to 75(a) of Schedule 2);
 - powers of an investigator (similar to 76 of Schedule 2); and
 - processes to compel individuals to produce evidence.

April 19, 2007 s:\ppd\3. policy team\issues & projects\rhpa\bill 171 - an act to improve health systems by amending\april 2007 - final - cno response to bill 171.doc