



The Relationship  
Between  
Health Professional  
Unions  
and  
Health Professional  
Licensing Bodies  
in  
Canada

**DISCUSSION PAPER**

Ottawa

June, 2003



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# DISCUSSION PAPER

## **The Relationship Between Health Professional Unions and Health Professional Licensing Bodies in Canada**

### **Introduction**

This paper is a brief overview of the traditional and current relationship between health professional unions and health professional licensing bodies in Canada.

It is not intended to reach conclusions and make recommendations; instead, its purpose is simply to provide descriptive information in order to frame and facilitate a discussion on this subject.

The nature of the relationship between unions and licensing bodies varies from one province to the next; there will always be unique issues that must be considered.

Therefore, it is important that health professional unions periodically survey the pan-Canadian landscape, collect information, and share valuable experiences in order to develop common strategies to continue building the appropriate relationship with professional licensing bodies.

This paper is intended to contribute to that effort in two ways; firstly, by identifying the traditional strengths and challenges posed by professional licensing bodies to health professionals and their unions. Secondly, by summarizing the opinions of health professional union leaders across the country with respect to which aspects of the union-licensing body relationship they believe are working well and how the relationship can be improved.



It is important to note that this paper is only an initial and modest attempt to provide a snapshot of the current situation in Canada. The Canadian Health Professionals Secretariat will be involved in ongoing efforts to collect, analyze, and distribute research on this issue to its member organizations.

The information contained in this paper was collected in two different ways: (1) a literature review of published sources; (2) data from a survey that was circulated to health professional union leaders in Canada in January 2003.

Taken together, the unions that belong to the CHPS represent the overwhelming majority of health professionals working in the public sector in Canada and a small percentage of those professionals working in the private sector.

A significant portion of the membership of these unions are licensed and regulated by the various health professional licensing bodies across Canada.

At the end of this paper there is a list of definitions for key terms and a list of some of the largest health professional licensing bodies which share members with the component unions of the Canadian Health Professionals Secretariat.



# PART ONE

## Literature Review

### **The traditional rationale behind the creation of health professional licensing bodies**

Most health professionals in Canada are self-regulated by professional licensing bodies.

The legislation and the consequent authority and procedures for the relevant licensing bodies vary across the country, each reflecting the regional needs of the profession, the prevailing political climate and conventional wisdom at the time the legislation and licensing body was sought.

The literature on this subject is extensive. For the most part, the literature is supportive of the concept of licensing bodies: it describes the rationale for their being, and stresses the service commitment of individual health professionals.

According to the literature consulted in the drafting of this paper, the primary rationale behind the creation of health professional licensing bodies is this: Regulation of a profession by licensing bodies can protect the public directly by raising professional standards of practice or by preventing unqualified professionals from practicing.

That is, health professional licensing bodies have traditionally been created across the country as a mechanism to provide an evaluation of the competence level and skills of persons engaged in the profession as well as providing a mechanism whereby professionals would be held accountable for their practice, not only to their peers, but to the general public at large.



## **Traditional strengths of licensing bodies**

### **1. Public protection**

The primary basis on which the function of professional licensing has been formulated is the principle of protection of the public and a citizen's right to such protection. The use of regulatory powers to protect the public by providing patients with a means to judge the preparation and skills of practitioners against a minimum set of standards and code of conduct has traditionally been considered the greatest strength of licensing bodies. Licensing allows for the exclusion and removal of unethical, unprofessional or unqualified professionals and these steps are deemed beneficial to public safety.

### **2. An independent complaint review process**

The provision of an independent mechanism outside the workplace for investigating charges of incompetence or impropriety against professionals has also been considered a traditional strength of licensing bodies.

### **3. Protection against de-skilling**

Another argument in favour of licensing bodies is that the legal and legitimate weight of licensing requirements can help protect against the de-skilling of professions and enhance the integrity of job classifications and job duties.

### **4. Ethical decision making models**

Adopting a code of ethics and interpreting what it means in practice have primarily occurred in Canada in the past fifteen years. Some regulatory bodies have played a constructive role in educating their



members about ethics and ethical decision making models, which can guide a practitioner in a difficult situation that is not black or white and has no clear answers.

## 5. Higher wages, improved status for practitioners

A final and long-debated argument about the strengths of professional licensing bodies is this: by raising the standards that all practitioners have to meet, thereby restricting the supply of practitioners in a particular field, licensing can increase incomes and professional recognition for practitioners. An oft-quoted U.S. study found that median earnings of licensed occupations were 50% greater than median earnings of unlicensed occupations (Clarkson, Kenneth W. and Muris, Timothy J., *“The Federal Trade Commission and Occupation Regulation,”* in *Occupational Licensure and Regulation*, Washington: American Enterprise Institute for Public Policy Research, 1980, pp107-141).

## Traditional challenges of licensing bodies

### 1. Disciplinary procedures/complaint review process

Reviewing complaints and assessing what disciplinary action might be necessary is a main function of licensing boards. While considered by many to be a strong rationale for the creation of licensing bodies, both recorded experience and anecdotal evidence suggest that serious challenges arise with this traditional function of licensing bodies, such as:

- a) It has been argued that allowing licensing bodies to develop their own rules for discipline amounts to an outside agency assuming



one of the employers more onerous obligations; that is, the obligation to ensure the proper conduct of the workforce. In effect, licensing boards often take the onus away from the employer to create working conditions that may allow for a high standard of performance by practitioners.

b) There are recorded experiences which demonstrate that the discipline function is often unnecessarily strict and rigorous when carried out by an outside tribunal rather than by the normal employer-employee-union relationship and procedures. For example, there have been cases where a complaint is filed against an employee, the employer has taken disciplinary action, the union has filed a grievance and won and then subsequently the employee is sanctioned by the licensing body – this often involves suspending a professional's license and thereby preventing the person from practicing his/her profession. It is worth mentioning that licensing bodies can be motivated to enforce strict discipline in order to protect the reputation of the profession rather than the interests and reputation of the professional under review.

As noted, the conduct of service is almost always monitored between the employer, employee and union through the grievance and arbitration procedure. That is to say, there already exists an appropriate procedure within workplaces for complaint, investigation and either disciplinary action or exoneration. It can also be argued that this method, for the most part, has been proven effective. In part, that's because the persons hearing and investigating complaints are more aware of specific work situations than some outside body; granted, the licensing bodies almost always consist of very qualified people, but they may be unaware of specific circumstances relating to: (i) working conditions; (ii) workload demands; and, (iii) employer expectations.



c) There is also the potential for licensing bodies to get bogged down in disciplinary procedures, dealing with allegations of misconduct against a minority of health professionals, at the expense of promoting the positive collective activity of the health profession as a whole.

## 2. Setting licensing standards

With respect to licensing standards, it can be asserted that the responsibility of protecting against unqualified and/or incompetent practitioners is better left with employers, who know their own requirements, and with trade unions that will defend fair hiring and performance evaluation procedures; as opposed to an external agency.

## 3. Re-entry into practice rules

Many licensing bodies (national and provincial) have a requirement regarding currency of practice and registration with the body as a condition of employment. For instance, if you obtained your license in 1980, but have not “officially” practiced (i.e. worked in a clinical setting) since 1984, you may be deemed unable to practice in the year 2000. This process can pose serious problems for practitioners who have been promoted to positions that are supervisory in nature or elected to a union or public office who, as a result, are no longer performing clinical work and, therefore, are considered not to be practicing the profession according to licensing standards.

Consequently, these professionals are often deemed ineligible for registration with the licensing body and this is a serious barrier to re-entering the profession at a later date. The licensing body will almost



always require professionals in this predicament to be re-licensed, which usually means further training and examinations.

#### 4. Controlling wages through legislated bodies rather than collective bargaining

The regulation of entry into a profession is often described as a function essential to ensure that the supply of workers is balanced with the demand. However, the implications are less clear when a third element, price/wages, is introduced. It is well documented that restricting supply while demand is high will often result in higher income for practitioners. This may be described as desirable and appropriate, but should not be accomplished through a legislated licensing body; rather, it should be accomplished and protected by collective bargaining.

#### 5. Inhibit a worker from participating in work stoppages

In the past, some licensing bodies have attempted to prevent health professionals from participating in work stoppages.

#### 6. Decreased practitioner mobility and fluidity of the provision of services

When licensing is carried out at the provincial level, as is often the case, each province develops its own divergent standards and requirements. This can restrict mobility for practitioners across provincial borders and diminish the fluidity of the provision of professional services across Canada.

**Note:** The Agreement on Internal Trade between the provinces and the federal government emphasizes a reduction in the barriers to the



mobility of health professionals wishing to work in another province. An agreement in principle has been reached but to date not all licensing/regulatory bodies have officially signed the agreement. In addition, the federal government has increasingly been discussing the need to try to achieve a standardization of the various Acts governing health professionals.

## 7. Continuing education requirements to ensure continued competence

First, the notion that there is a correlation between continuing education and competency has been the source of a long and ongoing debate.

Second, several well known and respected commentators on this subject believe that the “one size fits all” mentality of most mandated continuing education programs is not flexible enough to allow individual professionals to select the programs and courses that best meet his/her specific needs. If continuous improvement as a discipline is the true goal, then licensing bodies should be open to new models of professional development e.g. a model of self-assessment and portfolio development that allows a professional to develop a personalized plan for continuing education that targets specific areas of competency.

## 8. Licensing can disenfranchise some workers

Many health professionals and their unions have argued that licensing bodies tend to want to establish a high level of educational requirements, which in many cases is unnecessarily restrictive and prevents some members from working their way up within the system simply because they lack formal education and training. It can be



detrimental to both the employer and employee to deny promotional access by workers who may be a great resource and asset because of their in-service experience.

There are many skilled and effective professionals who could work competently in a profession but a licensing body refuses to allow them to practice because their competency was developed through training on the job. There is strong evidence in the evaluation research literature that “worker effectiveness and competence” is not exclusively or substantially influenced by formal education and training, but rather depends on many other factors. This is not to invalidate formal education and training, but rather to stress that many other important factors are discounted in the licensing process and this can disqualify competent and effective workers.

## 9. Practitioner shortages

It has been noted that shortages of skilled practitioners are more likely in licensed professions, exacerbated in part by the rising costs of educational requirements (i.e. post-secondary education tuition) and the fact that many licensing bodies do not recognize foreign credentials or prior learning.

## 10. Lack of union representation on the Board of licensing bodies

There may be union members elected or asked to sit on a licensing board or one of its committees, however, in most cases these individuals are not asked to sit as representatives of their union. This means a major institutional player is excluded from the decision-making process, which decides the types of inputs and outcomes needed in a licensing process.



## PART TWO

### **The Canadian Health Professionals Secretariat Union Leaders' Survey**

#### **Most important roles for licensing bodies are public protection and independent complaint review and disciplinary process**

Survey recipients were asked to list what they believe are the most important roles for licensing bodies. The majority of the responses supported what have traditionally been viewed as the primary rationale for the creation of licensing bodies; namely, public protection and the provision of an independent complaint review and disciplinary process.

Three clear trends existed in the survey responses:

First, all responses placed public protection and the provision of an independent complaint review and disciplinary process at the top of their list. The exception to this was the NSGEU/NUPGE who listed public protection and the provision of an independent complaint review and disciplinary process as the third and fourth most important roles for licensing bodies.

Second, the majority stated that after public protection and provision of an independent complaint review and disciplinary process, the most important role for licensing bodies is continuing education requirements and setting educational standards for health professionals. Again, the exception was the NSGEU/NUPGE who placed this role at the top of their list.



Third, the majority of the respondents viewed the roles of improving the visibility and recognition of health professionals and protection against de-skilling as less important for licensing bodies. In fact, there was not a consensus that improving the visibility and recognition of health professionals is even a legitimate role for licensing bodies. The exception in this case was the HSAS and the NSGEU/NUPGE who stated their belief that the role of providing protection against de-skilling was one of the most important for licensing bodies. In both cases this was consistent with their belief that continuing education requirements and setting educational standards were very important roles for licensing bodies.

With respect to other important roles for licensing bodies, the following information was provided: insurance coverage (e.g. liability, malpractice); counselling; occupationally-based statistical data.

### **High variation in satisfaction levels when it comes to the relationship between unions and licensing bodies**

Survey recipients were asked to rate how satisfied they are with the relationship between their organization and the various professional licensing bodies they deal with.

Satisfaction levels are highly variable across the country and often depend on specific circumstances, specific licensing bodies and sometimes specific directors of a particular licensing body.

In B.C., the HSABC is dissatisfied with the relationship they have with provincial licensing bodies. More specifically, it was reported that some colleges have attempted to interfere in collective bargaining and provision of essential services; and, certain college by-laws (e.g. malpractice insurance) have not always been enforced or written with any awareness of collective agreement language.



In Alberta, the HSAA reported that on average they're neither satisfied nor dissatisfied overall with their relationship with health professional licensing bodies; there is considerable variation in the level of satisfaction depending on the licensing body in question i.e. in some cases there is little or no contact, while in other cases contact is reasonably regular.

In Saskatchewan, the HSAS does not have an extensive relationship with any of the health professional licensing bodies in the province.

In Ontario, OPSEU/NUPGE indicated that they are not satisfied with the relationship between their union and various licensing bodies. OPSEU/NUPGE has repeatedly asked for the support of various licensing bodies but they've always been denied.

In Quebec, according to the CPS the level of satisfaction ranges from totally unsatisfactory to rather satisfactory. Not surprisingly, it was reported that the level of satisfaction often depends on the specific circumstances and the particular individual directing the licensing body.

The NSGEU/NUPGE also reported that they do not have an extensive relationship with any of the health professional licensing bodies in the province.

In Newfoundland and Labrador, the AAHP has been very satisfied with their relationship with the professional licensing bodies in the province. When a situation has required the AAHP to contact a licensing body, the union has always received cooperation.

In contrast, the NAPE/NUPGE is completely dissatisfied with the relationship that exists between their organization and various health professional licensing bodies. In particular, NAPE/NUPGE noted that



the LPN council is “profoundly unable to understand concepts of law and evidence; they routinely suspend NAPE/NUPGE members for matters that other adjudicative bodies find to be unfounded.”

## **Where positive relationships exist, both the union and the licensing body have promoted the relationship**

Not surprisingly, where a positive relationship exists between the union and a licensing body, it is most often because both organizations have promoted and cultivated the relationship.

In B.C., the HSABC noted that a more positive climate exists when they initiate a relationship with a new licensing body. In particular, relations are more positive when the new licensing body has been formed from an established Professional Association because they have been able to build upon an existing relationship with the specific individuals associated with the Professional Association.

In Alberta, efforts have been made by both the union and the licensing body to build a positive relationship. The HSAA has sought out information from specific licensing bodies in order to assist with their bargaining efforts. The HSAA occasionally receives invitations to place an information booth at conventions and to address the members at such conventions. In addition, the HSAA routinely invites representatives from professional bodies and licensing bodies to annual open houses and public portions of general membership meetings.

In Quebec, the CPS leadership and the directors of most licensing bodies have initiated working relationships and learned to discuss contentious cases while respecting the different mandate(s) of each organization.



In Nova Scotia, the various licensing bodies rarely contact the NSGEU/NUPGE and when they do it usually relates to new legislation being proposed. Likewise, the union rarely contacts the licensing bodies and when they do it is usually to gain information helpful to bargaining objectives e.g. vacancy statistics, minimum staffing requirements.

In Newfoundland and Labrador, the AAHP believes that the union has been more proactive than the licensing bodies in terms of building a positive relationship.

## **Common challenges of working with licensing bodies**

Survey recipients were asked to list, based on their experiences, what they view to be the top three challenges of working with professional licensing bodies. The responses illustrate that the challenges are relatively common across the country. Further, many of the responses demonstrate support for what the literature has defined as the traditional challenges of working with professional licensing bodies.

For example, many respondents stated the following challenges: lack of respect for the unions' role and mandate; licensing demands and standards can sometimes be questionable; licensing bodies offer little public support for the unions' collective bargaining efforts; little and even hostile relations with licensing boards dominated by private sector players; lack of legal training for licensing board representatives; lack of a formal communication structure between licensing bodies organizations and unions; smaller licensing bodies and 'hybrid' associations have inadequate resources resulting in unacceptable delays in important decision-making processes among other things.



In BC, the HSABC reported that the top challenges are: (1) altering the assumption of hostility towards unions; (2) establishing a working relationship with those licensing bodies represented by private sector practitioners or non-union (i.e. management) practitioners.

The HSAA described the following three challenges of working with licensing bodies in Alberta: (1) at times it appears that these bodies are somewhat removed from clinical realities. Specifically, some of our members tell us that the increasing demands for entry level qualifications are questionable. There is also a concern that in some disciplines these initiatives will result in public sector employers supporting the development of 'assistant' classes within fields, and thereby reducing the number of positions that might otherwise be available, i.e. contributing to de-skilling; (2) licensing bodies do not necessarily recognize or consider the role of collective agreements and unions; (3) in some cases the Boards of these bodies are dominated by management, who will often be provided with paid time to participate, while unionized and clinical practitioners must take unpaid time. Thus, the issues that are often addressed may be of more interest to employers than to front line practitioners.

The top three challenges in Saskatchewan, according to the HSAS, are: (1) getting licensing bodies to be more vocal with respect to minimum staffing requirements and workload issues; (2) in some cases, these bodies are predominantly administered by private sector and management practitioners who have a very different perspective than the union on most issues; (3) licensing bodies are often serviced by volunteers without adequate resources such as staff and this can make it difficult to cultivate a relationship with the organizations.

OPSEU/NUPGE reported the following three challenges in Ontario: (1) Representatives on the Boards of licensing bodies are mostly managers. Employers usually will not allow employees time off to run for executive positions. Some licensing bodies also have a policy that union executives can't sit on their Board. (2) Licensing bodies refuse to speak (i.e. object) on labour/employment law changes or labour



relations issues e.g. the Ontario government made legislative changes to allow for a 60 hour work week but licensing bodies did not speak out about the impact this would have on a practitioners ability to meet the high standards that are expected from them. Licensing bodies have also not taken positions or spoken out about health & safety issues e.g. during the recent SARS outbreak, licensing bodies said nothing about inferior safety equipment. (3) The government often uses licensing bodies to push their agenda e.g. relaxing standards for international students but not for Ontario students.

In Quebec, the CPS has experienced the following challenges: (1) maintain respect for the individual role and mandate of each organization; (2) to obtain the support of licensing bodies during contract negotiations in order to improve the recognition and respect level of the work done by health professionals; (3) to improve working relationships with the directors of certain licensing bodies.

In Nova Scotia, the NSGEU/NUPGE has had to deal with the following difficulties: (1) too difficult to access information; (2) lack of communication between the organizations; (3) volunteerism associated with the bodies leads to a lack of commitment and in many cases there's a lack of adequate resources e.g. facilities and staff.

In Newfoundland and Labrador, the AAHP has faced the following challenges: (1) not all members of the professional body are members of the union and therefore the relationship and resolutions often leave a lot to be desired; (2) the professional bodies will often work independently because they're concerned about their image and they do not want to be viewed as collaborating with the union; (3) lack of a formal communications structure/process to discuss common issues.

In addition, the NAPE/NUPGE reported that: (a) persons with no legal training (at the licensing bodies) are making findings of fact which have significant legal consequences for NAPE/NUPGE members; (b)



legal counsel for the LPN council acts like a prosecutor; (c) unacceptable delays in the council's decisions and actions.

## **Disciplinary cases the source of most serious conflicts between unions and licensing bodies**

Survey recipients were asked to describe an example of a recent conflict between their union and a health professional licensing body. The majority of respondents stated that the most frequent source of conflict(s) is the complaint review and disciplinary process. This supports the literature which has suggested that a traditional challenge of working with professional licensing bodies has related to the performance of one of their most important functions: the provision of an independent complaint review and disciplinary process. Interestingly, while the complaint review and disciplinary process seems to be the greatest source of conflict, the majority of survey recipients still stated the belief that this is one of the most important functions performed by professional licensing bodies.

In BC, the HSABC described the following two incidents: (a) “the union represented a Psychiatric Nurse in a disciplinary hearing that jeopardized the member’s potential employment;” (b) when the by-laws of the P.T. College required malpractice insurance even though contract language protected the public.”

The HSAA reported that conflicts are fortunately quite rare; however, when they have occurred the circumstances often involved the professional licensing body objecting to, or refusing to recognize the legitimacy of HSAA’s representation of the member concerned.

The HSAS reported no major conflicts but added the following information: “There were concerns raised recently with a new Act governing Psychologists in the province. The Act defined Psychologist in a way that excluded some HSAS members and the union’s grand-mothering arguments were not successful.”



OPSEU/NUPGE reported six major conflicts with licensing bodies:

- (1) During a recent “Day of Action” by health professionals in Ontario, many employers reported workers to their licensing bodies (i.e. some employers took disciplinary action against employees and sent the letter of discipline to the relevant licensing body). So far the licensing bodies have not taken any action.
- (2) The union wins a grievance against the employer but then the licensing body suspends the member.
- (3) Members will often report other members to a licensing body.
- (4) Employers will often use a licensing body’s complaint review process (i.e. file complaints) as a way to “get rid of” certain employees.
- (5) The by-laws of many licensing bodies exclude union executives from being a member of the Board of a licensing body.
- (6) Licensing bodies would not speak out against a 60 hour work week, which could seriously impact on patient care and the ability of professionals to do their jobs according to the standards set by their licensing body.

In Quebec, the CPS gave the following example: “There was a complaint from a beneficiary against a professional. Following a licensing body investigation, they suspended the professional’s license to practice and the employer dismissed the employee. The union appealed the dismissal, negotiated a leave without pay for the duration of the license suspension and supported the salaried employee in representations before the licensing body disciplinary committee.”

In Nova Scotia, the NSGEU/NUPGE noted that disciplinary hearings for Registered Nurses before the Registered Nurses Association of Nova Scotia have been the greatest source of conflict between the union and licensing bodies.

In Newfoundland and Labrador, the AAHP has not experienced major conflicts with any licensing body.



On the other hand, the NAPE/NUPGE described two major conflicts: “(a) John Miller v Council for Licensed Practical Nurses. The Council sent complaints against an LPN to two panels, identically constituted. The NAPE/NUPGE took this to court where the decision was overturned and the LPN Council then decided not to pursue the matter any further; (b) Vicki Gillis v LPN Council. The Council unilaterally set a hearing date of three weeks down the road. Legal counsel was not available and the Council refused postponement. The NAPE/NUPGE applied to the Supreme Court for an injunction and the Council changed its attitude at the last minute. A hearing was held and Ms. Gillis was found guilty and suspended for six months. An arbitration board overturned the suspension and found no cause for discipline. The matter is currently under appeal.”

## **Licensing bodies not promoting the public profile of health professionals**

Survey recipients were asked to rate their level of satisfaction with the performance of licensing bodies when it comes to promoting the profile of health professionals. The majority stated that licensing bodies in their province have little interest in performing this function.

The HSABC does not see this as a role for the licensing bodies as most regulated professions have a Professional Association that promotes the profile of the profession.

The HSAA described the situation in Alberta like this: “The performance is quite variable, depending on the size of the membership of various organizations. Many have produced literature for the public, most have web sites and some have engaged in major publicity campaigns. Most recently, the pharmacists’ organizations produced an advertising feature in major newspapers. Many of the



professions have designated ‘awareness’ weeks or months, during which they engage in significant public education activity.”

The HSAS pointed out that paramedicals in Saskatchewan do not have an equivalent advocate to the nurses licensing body – most likely due to smaller numbers and thus fewer resources. The nurses licensing body has resources to invest in the promotion of the profession and as a result nurses enjoy a higher public profile.

In Ontario, some licensing bodies have undertaken promotion efforts such as subway signs, flyers in hospital waiting rooms and on their websites.

According to the CPS, most licensing bodies in Quebec have few resources to perform this function. The licensing bodies that do have significant resources (doctors and registered nurses) do invest a lot in promoting the profile of their members.

The NSGEU/NUPGE reported that in Nova Scotia there’s a total lack of effort on the part of licensing bodies to raise the public profile for most health professionals, nursing being the exception.

In Newfoundland and Labrador, the experience of the NAPE/NUPGE has been that the Council of LPN and Social Workers pay no attention to the interests of their members (especially raising the public profile of these members); the sole purpose of these organizations is public protection.

In addition, the AAHP commented that larger organizations have more resources to invest in public relations. In their experience, the members that belong to the “smaller” organizations are turning to their union more to promote the profession than to solve industrial relations issues.



## **Licensing bodies take ‘neutral’ position when it comes to collective bargaining efforts of unions**

Survey recipients were asked to report on whether or not licensing bodies have, in general or specific instances, enhanced, impeded or not affected the collective bargaining efforts of their union. The majority indicated that licensing bodies have not impeded collective bargaining efforts but at the same time they have done little to support or enhance these efforts.

In B.C., licensing bodies have not in general affected the collective bargaining efforts of the HSABC. Although these bodies have occasionally communicated a limitation to job action, even within the framework of essential services legislation.

The HSAA pointed out that historically, the role of licensing bodies has been quite neutral in Alberta. The HSAA provided the following illustration: “In the current round of bargaining for our provincial facilities agreement, we contacted all of the professional and licensing bodies known to represent HSAA members for information relating to demographics, employment levels, pay levels outside the public sector, and any other relevant information. We had varying levels of cooperation from organizations that responded, some providing detailed and extensive data, others unable to provide any. It appeared, however, that where no data was provided, it was due to the fact that the organizations did not have such information. This was particularly so where the body represents only a small number of members and where membership was voluntary. In some cases the data we received confirmed that which we had already acquired through other sources, while in other cases it was very useful.”

In Saskatchewan, generally speaking, licensing bodies have not impacted on the collective bargaining efforts of the HSAS. However,



during the 2002 strike, some licensing bodies expressed support for the union.

For the most part, licensing bodies in Quebec have not impeded the collective bargaining efforts of the CPS but at the same time they have not done anything to enhance collective bargaining efforts. In Ontario, the licensing requirements established by licensing bodies have had an impact on recruitment and retention issues that are raised during collective bargaining.

There has not been enough interaction between the NSGEU/NUPGE and various licensing bodies to cause any effect on collective bargaining efforts.

In Newfoundland and Labrador the AAHP reported that in general terms the licensing bodies have been helpful to the union's collective bargaining efforts – mostly by providing occupational data relevant to bargaining. However, overall, the licensing bodies try to steer clear from collective bargaining issues.

In contrast, the Newfoundland and Labrador Association of Social Work (NLASW) interfered with the collective bargaining efforts of NAPE/NUPGE to obtain higher pay scales for Bachelors of Social Work. The NLASW advised the provincial Treasury Board that these members did not deserve higher pay scales as they were less qualified than people with Masters of Social Work.

### **Most unions represent members subject to disciplinary measures enforced by their licensing board**

Survey recipients were asked whether or not their union represents members who have been subject to disciplinary measures enforced



by their licensing body. The majority of unions do provide representation and support.

The HSABC advocates on behalf of members appearing before disciplinary panels in the same way they do for grievances.

The HSAA recently passed a resolution to provide representation to all members who face disciplinary action by licensing bodies. In Saskatchewan the HSAS does not represent members subject to disciplinary measures enforced by their licensing body.

OPSEU/NUPGE always provides representation to members facing disciplinary action from their licensing body. Recent examples include the following: (1) a member accused of not following hospital procedures; (2) blood bank errors; (3) blood collection errors; (4) allegations of patient abuse; (5) a doctor complained that a health professional interrupted patient treatment without his/her consent.

The CPS provides the services of a lawyer to represent and defend members before licensing body disciplinary procedures in Quebec.

Representation is provided by NSGEU/NUPGE to members appearing before licensing disciplinary hearings. The union is performing this role more frequently as inconsistent reporting of complaints has brought forward increasing numbers of frivolous accusations/complaints.

In Newfoundland and Labrador, the NAPE/NUPGE represents every member subject to disciplinary measures enforced by their licensing body.



## **Serious difficulties with re-entry to practice rules**

Survey recipients were asked whether or not members of their union have experienced conflict with a health professional licensing body with respect to re-entry to practice rules. The majority indicated that some of their members have experienced serious difficulties with these rules.

The HSABC has experienced difficulty with requirements for foreign trained professionals (i.e. physiotherapy) which has exacerbated recruitment and retention, particularly in the isolated, rural communities.

The HSAA provided the following information: “Several years ago, when layoffs occurred in a number of disciplines, some laid off members were asked to do voluntary, unpaid work in order to keep their licenses current. HSAA opposed this suggestion. Where individuals have participated in re-entry to practice, they are normally paid 90% of entry level salary for a fully qualified practitioner.”

In addition, the HSAA reported that: “One of the biggest sources of conflict in this area has to do with new legislation “re: licensing and the transition from Societies to Colleges. While we deal with shortages, recruitment etc., the professional associations seem reluctant to address the needs of some members who fall between the cracks. The union currently represents an X-ray Tech at ACB who was trained in Poland. Various employers over the years have hired her as an X-ray Tech and she has excellent references; however, she did not complete the Canadian exams when she first moved to Canada. Now she has to work as an X-ray assistant, while there are shortages because the college will not give her consideration for a license until she goes back to school for 2-3 years and successfully completes exams. A similar issue has come up with Lab Techs.



There are several who paid their national fees (mandatory) but not their provincial fees (voluntary). Now, provincial legislation has been introduced stating Lab Techs must be registered with the provincial body in order to maintain their license, and further, they must pay all back fees before they can be reinstated. Meanwhile, they have been working for years, maintaining their Canadian registration, and now their employer says they must be licensed as per the provincial act or they can't continue working."

In Saskatchewan, re-entry to practice rules is not a serious problem for members of the HSAS.

In Ontario, OPSEU/NUPGE reported that they're not aware of any problems with re-entry to practice rules.

The following example was given by the CPS in Quebec: "The relevant licensing body suspended the license of a technologist in nuclear medicine and forced her to take a six-month updating course; however, during the evaluation the member was unable to obtain her license and she was forced to take a second six-month training/evaluation."

Members of the NSGEU/NUPGE have also had problems with re-entry to practice rules in Nova Scotia. The union defined these problems as the result of a "lack of consistency on the requirement for clinical hours practiced; inadequate records of continuing education credits; high variation in national, provincial and international standards; and a lack of consistent credentialing guidelines."

The AAHP has not been required to deal with this issue to any great extent but the union did describe the following situation: "a social worker was being disciplined for a violation and the employer threatened to have the worker's license pulled if the worker did not complete a BSW. The worker was eventually "grand-fathered" in under legislation and was close to retirement."



## **Licensing bodies do not prevent or prohibit workers from participating in work stoppages**

Survey recipients were asked whether or not there are any regulations or policies of a licensing body which prevent or prohibit union members from participating in work stoppages. All of the respondents, except OPSEU/NUPGE, reported that they were not aware of any policies or regulations of this nature. Two additional comments were provided by HSABC and NAPE/NUPGE.

HSABC explained that some licensing bodies in BC have tried to do this but have not been accepted by the Labour Relations Board who has the jurisdiction of Essential Service Legislation. The NAPE/NUPGE pointed out that most licensing bodies prevent participation in a wildcat strike.

OPSEU/NUPGE reported that in Ontario the licensing body for radiologists has a policy prohibiting job action by their members (this policy is posted on their website). While this is the only example of an official policy that OPSEU/NUPGE is aware of, they did state that most licensing bodies would not hesitate to discipline members if they believed job action threatened patient care.

## **No specific union representation on boards of licensing bodies**

Survey recipients were asked if they knew of any union representation on the boards of various licensing bodies. All respondents were unaware of any provisions for union representation on the boards of licensing bodies. This supports the literature which suggests this has been a traditional challenge of working with licensing bodies.

In Alberta, there are HSAA members on the boards of several licensing bodies (e.g. Alberta College of Medical Laboratory



Technologists; College of Medical Radiation Technologists of Alberta; College of Physical Therapists of Alberta); however, these individuals do not participate on these boards specifically as union representatives. No licensing body that HSAA is aware of has any provision for representation from HSAA or any other union. In Ontario, union executives are prohibited from sitting on the Board of a licensing body but other union members can run for these positions.

### **Other comments and suggestions**

1. The HSABC emphasized the need to focus on the following issue: National Regulatory limitations that result in changes or difficulties in recruiting foreign trained health professionals.
2. The HSAA stressed the need to clearly distinguish between the roles of licensing bodies and professional associations. “Licensing bodies are organizations whose primary purpose is the protection of the public, and which our members must belong to under Alberta’s Health Professions Act, in order to practice their profession. The professional associations are voluntary organizations that members may belong to, and tend to concentrate their efforts in areas such as providing continuing professional education. Where a segment of the profession provides services in the private sector, some professional associations also participate in negotiating or recommending fees for the services their members provide. There are also a number of ‘hybrid’ organizations that provide certifications for professionals, but in which membership is not legally mandated. Public sector employers tend to require such certification or to strongly recommend it.”
3. The HSAS suggested that the following issues require further and more in-depth research: (A) Identify licensing standards from province to province. What’s common? What’s different? Can they



be standardized? (B) In keeping with the Labour Mobility Act, could we identify a standard curriculum for health professional graduates and a standard national and/or inter-provincial examination(s)? (C) Identify and define who are health professionals. What is the minimum requirement, if any. Is there any definition or consistency from province-to-province in reference to who is a health care professional?

## Summary

From this brief overview, it is clear that the relationship between health professional unions and health professional licensing bodies in Canada is highly variable and illustrative of most evolving and changing relationships.

In many cases, the traditional challenges to forming a positive working relationship between health professional unions and licensing bodies still remain today.

It is important that health professional unions continue to examine the official licensing and regulating processes, and learn from each others experiences, in order to build a fruitful relationship with health professional licensing bodies in Canada.

## Definitions

**Accreditation:** Similar to certification in that it is voluntary and measures capability to perform. It differs in that it applies to organizations and programs, not individuals. A familiar example is the accreditation of education programs.



**Certification:** A voluntary act which, according to some organized procedure, measures an individual's qualification to perform a particular function. Because it is voluntary, it conveys no authority or privilege, i.e. one need not possess the certificate to legally perform a function or service, albeit custom or market forces may require it.

**Licensing:** Refers to a mandatory system of standards to which a health practitioner must conform in order to practice a given profession.

**Licensing body or authority:** A quasi-public body with a legislated mandate that includes the duty to license entry into a profession, monitor the standards of practice of individual professionals, prevent or reduce both incompetence (lack of knowledge, skill or ability) and misconduct (criminal, unprofessional and unethical behaviour) in order to improve the quality and accountability of services. Licensing bodies are expected to promote competent, safe and ethical behaviour by regulating in a number of areas: setting educational standards, licensing or certification, defining and enforcing scopes of practice, overseeing competence, handling complaints, disciplining members and requiring remedial actions.

**Licensed profession:** An occupation defined by the possession of a body of knowledge and skill, obtained through education, training, and experience, and by the intention to use that knowledge for the societal good rather than personal gain. Members of a profession profess a commitment to competence, integrity, morality, altruism, and the promotion of the public good within their profession. These commitments form the basis of a social contract between a profession and society. In return for the contribution the profession makes to society it is accorded certain privileges, among them the right to define its own standards of ethics and morality, the right to establish standards of education, training, and experience, and the right to govern, regulate and license members of the profession. It



should be noted, however, that the legal accountability of licensed professionals operates not only through the licensing body; the self-regulating processes of licensing bodies interact with other legal systems, such as the criminal justice system, common law, human rights law, and employment law.

**Professional association:** The self-defined primary role of most professional associations is to be an information source for members of the profession. Most professional associations also attend to the professional development needs of their members, offering programs and continuing education credits. Finally, professional associations are also concerned with actively promoting the professions they represent. There are significant differences between a licensing body and a professional association: membership in a professional association is usually voluntary in nature and the association does not exert the same control over members as licensing bodies do. It is the legislative authority granted to licensing bodies, which offers licensing standards, codes of conduct, educational requirements, etc. that establishes the main differences between the two types of organizations. That being said, most professional associations maintain a close working relationship with the licensing body in their field and some associations participate directly in setting standards and licensing requirements.

**Registration:** Listing with and by some entity - it can be a governmental or non-governmental entity that does the registration. Registration grants no authority, nor does it address an individual's qualifications.



# Licensing Bodies which Intersect with CHPS component members

## **British Columbia**

College of Physical Therapists  
College of Pharmacists  
College of Registered Psychiatric Nurses  
Dieticians  
Psychologists  
Dental hygienists  
Society for Medical Laboratory Scientists  
Physiotherapy Association of BC  
BC Pharmacy Association  
Medical Radiation Technologists Association of BC  
Respiratory Therapists Association of BC  
Art & Music Therapists  
Recreation Therapists  
Social Work Association  
Speech-Language Pathologists  
Health Records Association  
Massage Therapists Association  
Clinical Perfusionists  
Radiation Therapists

## **Alberta**

Alberta Society of Engineering Technologists  
Alberta Society of Cardiology Technologists  
Canadian Society of Clinical Perfusion  
Canadian Board for Certification of Prosthetists and Orthotists  
Alberta College of Combined Laboratory & X-ray Technicians  
Alberta Dental Assistants Association  
Alberta Dental Hygienists Association  
Alberta Diagnostic Sonographers Association  
Alberta Health Records Association  
College of Medical Radiation Technologists  
Alberta College of Medical Laboratory Technologists



College of Medical Radiation Technologists and Therapists of Alberta  
Alberta Association of Registered Occupational Therapists  
Association of Technical Personnel in Ophthalmology  
Canadian Society of Orthopaedic Technologists  
Alberta College of Pharmacists  
Canadian Association of Pharmacy Technicians – Alberta  
College of Physical Therapists of Alberta  
Psychologists Association of Alberta  
College of Alberta Psychologists  
Alberta Public Health Association  
Canadian Association of Cardio-Pulmonary Technologists  
College of Dieticians of Alberta  
College and Association of Respiratory Therapists of Alberta  
Alberta College of Social Workers  
The Speech, Language & Hearing Association of Alberta  
Alberta Therapeutic Recreation Society

## **Saskatchewan**

Physical Therapists  
Social Workers  
EMS (EMT, EMTA, & Paramedics)  
Occupational Therapists  
Pharmacists  
Dieticians  
Psychologists  
Speech Language Pathologists  
Dental Therapists  
Public Health Inspectors  
Nurses

## **Ontario**

Laboratory  
Radiology  
Respiratory  
Psychology  
Social Work  
Chiropody  
Pharmacy  
Occupational Therapy  
Physiotherapy  
Psychometry  
Dietetics  
Nursing  
Speech Language Pathology & Audiology



## **Québec**

Ordre des Technologues en Radiologie du Québec  
Ordre Professionnel de la Physiothérapie du Québec  
Ordre Professionnel des Ergothérapeutes du Québec  
Ordre Professionnel des Orthophonistes et Audiologistes du Québec  
Ordre Professionnel des Travailleurs Sociaux du Québec  
Ordre Professionnel des Psychologues du Québec

## **Nova Scotia**

Canadian Society of Medical Laboratory Science  
Canadian Association of Medical Radiation Technology  
Registered Nurses Association of Nova Scotia  
Nova Scotia Pharmacy Association  
Canadian Society of Respiratory Therapists  
Nova Scotia Association of Social Workers  
Nova Scotia College of Physiotherapy  
Nova Scotia Association of Occupational Therapists

## **Newfoundland and Labrador**

Newfoundland and Labrador Council of Licensed Practical Nurses  
Newfoundland and Labrador Association of Social Workers  
Newfoundland and Labrador Association of Occupational Therapists  
Newfoundland and Labrador Association Physiotherapists  
Newfoundland and Labrador Association Speech Language Pathologists and Audiologists  
Newfoundland and Labrador Association of Psychologists  
Newfoundland and Labrador Pharmacy Association



## Notes