Manitoba nurses Union
A COMMITMENT TO CARING

Submission to the Advisory Council on Workplace Safety and Health

2017 Review of the Workplace Safety and Health Act
July 26, 2017

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The Advisory Council on Workplace Safety and Health
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The Manitoba Nurses Union (MNU) is pleased to present our submission for the 2017 legislative review of *The Workplace Safety and Health Act*.

In representing over 12,000 nurses across the province, MNU is committed to protecting the health and safety of nurses in every workplace. We believe that a safe, healthy work environment is an undeniable right of every nurse and is the foundation of safe patient care. MNU has a longstanding reputation for being at the forefront of advancing progressive health and safety legislation in Manitoba. This was most apparent in our 2011 workplace violence campaign in which our substantial lobbying efforts led to the enactment of one of the strongest workplace violence legislative models in Canada.

As the current co-chair for Manitoba's Advisory Group on Violence Prevention, I have seen firsthand the innovative changes labour, employers and government can collectively make to address and improve workplace health and safety challenges in our province. Manitoba has made innovative strides in strengthening workplace safety and health legislation and policies however our work is far from over. We need to ensure our legislation accurately reflects the workplace hazards nurses encounter on a daily basis. Equally important, we need to ensure our legislation is enforced effectively to protect every employee's psychological and physical safety.

MNU appreciates the opportunity to propose amendments to the *Workplace Safety and Health Act*. We trust that our government will undertake all reasonable efforts to protect the health and wellbeing of Manitoba's nurses as the delivery of quality patient care rests upon a safe and healthy nursing workforce. I look forward to continuing to work with our government to build a legislative model that is receptive to the health and safety concerns of Manitoba's nurses. I thank the Advisory Council in advance for the consideration of our submission.

Sincerely,

Sandi Mowat
President, Manitoba Nurses Union

1. Inclusion of Workplace Psychological Health and Safety in the Act and Regulation

Similar to other provinces, Manitoba's *Workplace Safety and Health Act* (WSHA) acknowledges workplace psychological health and safety strictly within the confines of harassment. There is currently no requirement that legally obligates an employer to practise due diligence in preventing psychological harm and protecting employees' mental health. While there are variations between each province and territory's workplace safety and health legislation, there is currently no law in Canada that explicitly requires employers to provide a psychologically healthy workplace or protect employees from mental health hazards. Recent research has commented that the legal landscape pertaining to workplace mental health is shifting as previously, only egregious management acts that caused psychological harm were cause for legal action; whereas now, employers are confronted with a legal liability to not only ensure a physically safe workplace but to also protect the psychological wellbeing of employees, including becoming legally responsible for workplace practices that create foreseeable risks for mental injuries[1] [2]. Despite the fact that there is a gap in our legislation with respect to psychological health and safety, Manitoba has embarked upon provincial efforts to increase education and awareness in this area, most notably through SafeWork Manitoba. While these initiatives are a step in the right direction, they do not possess the necessary authority to instil a mandatory obligation for employers to practise due diligence in protecting employees' mental health and preventing psychological injuries in the workplace.

In recognizing the integral role employers and organizational supports have in addressing psychological health and safety, MNU has spent the past two years advocating for an amendment to the WSHA that will protect and uphold the right for nurses and all employees in the health care sector to work in psychologically safe workplaces. There is no shortage of research that establishes that while the nursing profession is one that can be gratifying, challenging and rewarding, the risk of psychological distress is exceptionally high[3], especially by virtue of the work environment in which nurses face inevitable exposure to trauma, pain, suffering and death. All of these hazards have been proven to increase the risk of nurses acquiring physical and psychological injuries. Equally important, there are direct patient care implications with respect to psychologically safe work environments. It has been confirmed that prolonged exposure to trauma amongst other psychosocial factors greatly impact a nurse's ability to provide quality care[4]. In 2015, MNU's independent research corroborated these findings as it was found that:

- One in three nurses in Manitoba identify exposure to trauma as a common work environment factor;
- One in four nurses in Manitoba commonly experience one or more symptoms that lead to the development of PTSD;
- Nurses employed in areas with high exposure to critical incidents have high to moderate PTSD symptoms[5];
- Over three quarters of Manitoba's nurses (77%) commonly experience symptoms of psychological burnout including prolonged stress, fatigue, exhaustion, irritability and loss of hope;

- Approximately 43% of new nurses in Canada report a high level of psychological distress[6]; and
- Psychological hazards pose implications for the employer as it was found nurses who endure exposure to trauma are more likely to reduce work hours, have decreased job satisfaction and experience increases in psychosomatic distress, sick leave and staff turnover[7].

The failure to adequately address workplace psychological health and safety poses emotional and financial implications for employers, employees, families and the broader society[8]. According to the Mental Health Commission of Canada, mental health costs the Canadian economy $51 billion as a reported one in five Canadians (20%) will experience a mental illness at one point in their lives. Furthermore, forecasts have indicated that the economic burden of mental illness will increase over the coming decades and will become increasingly difficult for Canada and its provincial and territorial jurisdictions to bear[9]. Research pertaining to workplace psychological health and safety is not a new phenomenon. In fact, workplace mental health has been previously discussed at the federal government level most notably in the 2006 report published by the former Standing Senate Committee Social Affairs, Science and Technology, chaired by the former Honourable Michael J.L Kirby and Honourable Wilbert Joseph Keon (referred to as the Kirby Report[10]). The Kirby Report examined the state of mental health and mental illness in Canada and noted how the stigmatization associated with mental illness can further compound the challenges associated with addressing workplace mental health.

Additionally, it has been found that mental health outcomes resulting from workplace psychological hazards pose a direct threat to health human resources as seen through increasing reports of sick leave, disability claims, and higher than average rates of absenteeism. Recent research revealed that those who work in health care are 1.5 times more likely than the average Canadian to be off work due to illness or disability[11]. The results of the 2005 National Survey of the Work and Health of Nurses (NSWHN) illustrated a similar picture as a reported nine percent of nurses in Canada experienced clinical depression in comparison to seven percent of women and four percent of men in the general workforce[12]. In Manitoba, our health care sector experienced an average of 32 days for time loss injury claims, and 23 days for nurses, both exceeding the overall provincial average of 21 days[13]. Statistics published by SafeWork Manitoba prove that the health sector is equally dangerous as other high risk occupations, such as those in the manufacturing sector, as the injury rate (7.8) exceeds the provincial average (6.0). In addition, the health care sector was ranked third with respect to those who submit the most claims, comprising 16% of all submitted claims in Manitoba. The effects of workplace psychological hazards is equally dire on a national scale. Statistics gathered by the Association of Workers' Compensation Boards of Canada suggest that psychological injuries are the leading workplace injury category in Canada as in 2015, 89% of time loss injury claims were for traumatic injuries and disorders[14]. Lastly, disability claims attributable to psychological disorders and illnesses have exceeded claims associated with physical diseases. In 2016, there were 391 active psychological disability claims, representing the highest active claim category for Manitoba's Healthcare Employee Benefit Plan (HEB) and 27% of all active claims. If action is taken to develop clear health and safety policies with respect to psychological health and

safety hazards, we anticipate the rates of absenteeism, disability and workplace injuries to decrease.

Despite the absence of provincial/territorial legislation, the Federal Government of Canada made an innovative stride by establishing *The National Standard of Canada for Psychological Health and Safety in the Workplace (*the Standard*).* The Standard was released in 2013 and has been recognized as an international health and safety milestone as Canada became the first country to develop a framework on addressing and preventing psychological health hazards in the workplace. The Standard defines a psychologically safe workplace as one where the employer or organization makes every reasonable effort to protect the mental health of its employees[15]. It provides a comprehensive framework for employers to assess psychological hazards in the work environment and prevent psychological harm to employees. The relationship between psychosocial factors and workplace health and safety has been previously and recently explored in the contexts of health care settings, validating that psychosocial work environmental hazards are in direct relation to the physical and mental health of nurses and other hospital staff[16]. It is important to note that the Standard is a voluntary framework in which there is no binding obligation for employers to implement any of the recommendations, guidelines or policies.

Upon release of the Standard, the Mental Health Commission of Canada led a pilot implementation phase with over 40 organizations[17], 19 of which were from the health care sector. An important distinction became apparent from the pilot phase as it was found proactive approaches in the assessment and mitigation of psychological hazards in health care settings can lead to positive results for facility operations, health human resources and patient care. For example, the former Toronto East General Hospital (now referred to as Michael Garron Hospital), a facility comprised of acute care, rehabilitation, complex continuing care and mental health, experienced a 7% decrease in overall health care costs and a decrease in days absent (10.66 in 2008 to 6.55 in 2014) once it took proactive measures to address and prevent psychological hazards in the workplace. The hospital also reported dramatic improvements to staff engagement and significant improvements to patient satisfaction and overall quality metrics within the hospital[18]. In addition, research continuously shows that the best defense for protecting the psychological wellbeing of employees rests heavily on the availability of preventative measures as organizational supports can have a positive impact on employee psychological health[19]. While MNU's current collective agreement obligates the employer to commit to ensuring a safe workplace, there are inconsistencies and variations of workplace policies and prevention supports. Presently, there is no psychological health and safety policy enforced by each Regional Health Authority that obligates an assessment and mitigation of psychological hazards in the workplace.

Specific studies have noted that while Canada continues to make progressive steps to address workplace psychosocial hazards, provincial and territorial legislation continues to lag behind as very few policy makers have addressed psychological health and safety through regulatory reform. Rather, most legislative initiatives designed to prevent or reduce psychological hazards have typically been restricted to violence and harassment[20].

As noted earlier, Manitoba's efforts to address psychological health and safety have thus far been limited as there is no legislative requirement that aims to create and ensure a psychologically healthy workplace, specifically for the health care sector. As such, the employer's obligation rests in the general duty clause of the Act (s.4 (1)) in which employers have the general obligation to "ensure safety, health and welfare at work of all workers and comply with the Act and regulations". The definition of "health" in the Act refers to "the condition of being sound in body, mind and spirit and shall be interpreted in accordance with the objects and purposes of this Act." There is currently no legal obligation for employers to assess and prevent psychological hazards in the workplace. As a result, psychological injuries or psychological burnout have been most often addressed in the labour relations realm, leading to discipline and at times termination. We believe that this style of minimizing psychological impacts in the workplace is longer appropriate as oftentimes it is discriminatory against those suffering from mental illnesses. Employers must evaluate the psychological hazards within their work environment and identify ways to ensure the psychological safety for all workers.

While occupational health and safety standards are established at a macro level through legislation and regulations, it is critical to recognize that nurses and other health professionals are immersed into the health and safety culture in a more practical, organizational way as they are the ones who are exposed to psychological hazards on a daily basis. It is without question that Manitoba's current legislative framework is not receptive to the psychological hazards most prevalent in the health care sector. Our current Act and regulation do not instil an obligation for health care work environments to assess psychological workplace hazards, develop and implement psychological health and safety policies, and adopt procedures to mitigate these hazards. Lastly, our legislation does not possess sufficient authority to ensure employers are compliant with their obligation to protect the psychological wellbeing of all health professionals. As the prevention of workplace health and safety hazards rests under provincial jurisdiction, it is important for the Government of Manitoba to once again champion progressive workplace safety and health legislation by developing a legal response for workplace psychological health and safety.

Recommendations:

a) For the Act to recognize and define psychological health and safety.

b) Create a new section of the regulation for "psychological health and safety" which will apply to work environments that provide health care services as previously defined in section 11.8 of the current regulation;

c) For the regulation to identify and define workplace psychological hazards in compliance with the evidence-based factors, as apparent in the Standard;

d) For the regulation to instil a mandatory requirement for employers to develop and implement a psychological health and safety policy with defined content parameters that align with

evidence-informed best practices, and ensure all staff are educated and trained with respect to the policy; and

e) For the regulation to be amended to enact an obligation for the employer to investigate psychological hazards in the workplace and implement preventative and intervention supports.

2. Workplace Violence in Health Care Settings: Improved Security Requirements

There is no shortage of research concluding the prevalence and risk of workplace violence is exceptionally high in the health care sector. Every day nurses go to work knowing they may be verbally or physically abused. This is not a unique characteristic for Manitoba's health workforce but rather a national and international epidemic. International studies have cited that nurses face a higher risk of workplace violence and assault compared to prison guards[21]. The Canadian Federation of Nurses Union (CFNU) recently released a report examining workplace violence which revealed that the number of violence-related lost-time claims for frontline health care workers has increased by almost 66% over the past decade, three times the rate of increases for police and correctional service officers combined[22]. The threat of violence poses a significant impact to the future supply of health human resources. CFNU found that 61% of nurses have had a serious problem with some form of violence in the past 12 months, whether bullying, emotional or verbal abuse, racial or sexual harassment, or physical assault, but unfortunately, only about a quarter of these nurses sought help from their unions, and only 60% reported it. Significantly, two thirds (66%) of nurses have thought of leaving their job in the past year, either to work for a different employer or go into another occupation. As per The Association of Workers Compensation Boards of Canada statistic report, the amount of accepted lost-time injuries in 2015 for the health and social services sectors tops the list for the number of lost time injuries, comprising almost 20% of all claims.

MNU was a key stakeholder in developing the Act's current workplace violence regulation which stipulates that all health care facilities must have violence prevention policies in place. Despite our strong legislation, the prevalence and occurrence of workplace violence is still high as MNU found that:

- More than half of nurses in Manitoba have been physical assaulted, 76% verbally abused and 17% have dealt with an individual with a weapon;
- Over 90% of nurses working in Manitoba's long-term care facilities experience physical violence or verbal abuse from patients and patients' families; and
- 37% of psychiatric nurses and 30% of ER nurses experience physical violence at least once per week;

In addition to physical safety threats associated with violent assaults, workplace violence also continues to be the most compounding risk factor influencing PTSD and mental health issues in nurses. It has been found that it is not only the direct experience of violence that increases the risk of PTSD in nurses, but rather equally the threat of violence[23].

Nurses first and foremost care about their patients however, there is an imbalance of responsibility placed upon nurses and other health professionals to identify and mitigate potentially violent threats. While we recognize nurses do indeed have a role in addressing workplace violence, there should be an equal amount of responsibility placed upon the Manitoba government and employers to provide safe practice environments. There are many public spaces in our province, such as sports arenas, that are equipped with appropriate safeguards to protect the physical safety of the general public, yet our health care facilities lack the same level of safeguards and security measures. There are still many health facilities, most notably in rural Manitoba, that do not have accessible security supports on a consistent basis. For example, one health facility has removed the security contract with the police with no other prevention response plan in place. In a separate rural facility, the RCMP have stated that they no longer have the resources to address violent incidents unless staff are assaulted and wish to press charges. Most recently, a nurse in our province was seriously assaulted by a patient however when security was called, they were unable to attend the situation as they were busy. The nurse was then left to wait for police officers to arrive at the facility. We recognize and understand that local enforcement officers do not have the capacity to attend to all emergent and urgent requests at once. While we understand the limitations of local enforcement, the health and safety of our nurses and all employees working in health facilities needs to be prioritized in our health care system. We need to ensure that every health facility has access to available security resources that have the authority to diffuse violent situations and restrain violent individuals until law enforcement arrives.

Recommendations:

a) To amend the Act and regulation to include a mandatory requirement for all health facilities to have readily available security resources, either onsite or mobile, to be used to augment local enforcement that may not be available.

3. Workplace Harassment

As per the current Act and regulation, every employer has an obligation to take certain measures to prevent workplace harassment and to implement a workplace harassment policy. MNU is of the opinion that more stringent efforts need to be exercised by the Workplace Safety and Health (WSH) division with respect to ensuring employers comply with the legislation.

Specifically within the nursing profession, MNU is seeing an increase in workplace harassment claims being addressed through formal grievances and arbitration cases as opposed to falling under the auspices of the Manitoba WSH. Workplace harassment is a serious health and safety hazard impacting the nursing profession. As previously noted in our submission, CFNU found that 61% of nurses have experienced abuse, harassment or assault in the workplace in the past year however this is in stark contrast to the fifteen per cent of employees in other sectors who have experienced the same threats in the past 24 months. Despite the high prevalence of workplace harassment, the majority of incidents go unreported.

CFNU's report and the Canadian Centre for Occupational Health and Safety revealed that the underreporting of workplace violence, bullying and assaults are typically due to fear of

retaliation, the perception that these hazards are part of the job, poor or non-existent institutional policies/procedures and a belief that nothing will be done[24]. In addition, there is a lack of risk assessments completed to ensure appropriate measures are in place to diffuse the risk of workplace harassment.

We recognize that s 10.2 (1) (c) of the regulation grants the right for employers to take corrective action should a worker experience harassment in the workplace however, the WSH division should investigate these matters thoroughly and issue administrative penalties to employers if it is deemed that an employer failed to take appropriate corrective action and complete a risk assessment. As per the *WSH Quarterly Report Q2 2015 – 2016,* harassment continues to be one of the top ten improvement orders issued in our province yet it does not appear in the division's 2016-17 enforcement strategy. Specifically for the health care sector, harassment was the second highest category for issued orders while both harassment and violence were the top two health and safety tips received from the health care sector. There is an obvious disparity between the number of workplace harassment issues being reported and the level of enforcement currently provided. While the operations of the WSH division is beyond the scope of this review, MNU recommends that the division consider developing a focused model for workplace harassment for its 2017-18 enforcement strategy.

Recommendations:

a) To amend the Act and regulation to require that all workplace harassment issues be reported to the Workplace Safety and Health division in which all matters will be investigated thoroughly to ensure proper compliance and enforcement of the Act.

b) To amend the Act to require all employers to complete risk assessments for workplace harassment and for the regulation to clearly identify specific parameters for what should be included in the assessment.

c) To amend the regulation to include authority to levy an administrative penalty against employers who fail to complete workplace harassment risk assessments.

4. Amendment to Section 2. 6 (b) (iii) and (vii) of the Regulation

Section 2.6 of the current legislation outlines the definitions and parameters for what is to be considered a serious incident. MNU has witnessed and experienced a wide degree of subjectivity used to accept nurses' workplace safety and health complaints under subsections 2.6 (b) (iii) and (vii) of the regulation.

Section 2.6 (b) (iii) states that a fracture to the skull, spine, pelvis, arm, leg, hand or foot is considered a serious incident however, it is unfortunate to confirm that many nurses have had their complaints denied if they suffer a fracture to the face or eye region. It can be reasonably assumed that a skull fracture could encompass and include injuries to the face, yet it remains unclear as to why facial fractures are not included in this definition and are not recognized as valid workplace safety and health claims. Any damage to one's eyes or face should be considered a serious incident as it poses significant threats to an individual's vision and physical health.

Additionally, section 2.6 (b) (vii) states that any injury in which there is "a cut or laceration that requires medical treatment at a hospital" may be considered a serious incident. Unfortunately, there have been incidents where nurses have suffered severe punctures to the skin, specifically by the force of biting, however these incidents were denied as a safety and health violation on the basis that it was not considered a cut or laceration. As such, more clarification is required to explicitly define what Manitoba WSH considers to be a cut or laceration to the skin.

Lastly, there have been multiple occurrences where cut or laceration injuries were denied as a workplace health and safety violation on the basis that a nurse sought treatment from a Quick Care Clinic as opposed to a hospital. Workers should have the right to seek medical treatment in a manner that is most accessible to them whether that be a hospital, Quick Care Clinic, Access Clinic or a physician's office. As long as the worker is under the direction of a licensed medical professional such as a physician or nurse practitioner, a safety and health violation should not be denied on the basis that medical treatment was not received in a hospital.

Recommendations:

a) Update s 2.6 (b) (iii) of the regulation to include and recognize injuries to the eye and facial region as a serious incident.

b) Clarify language in s 2.6 (b) (iv) of the regulation to clearly define what a cut or laceration is and update the definition to include punctures to the skin.

c) Amend s 2.6 (b) (iv) of the regulation by replacing "requires medical treatment at a hospital" to "requires medical treatment at a hospital or an institution or organization that is not a hospital but provides facilities or services in Manitoba for, or ancillary to, the treatment or diagnosis of disease, illness or injury."

5. *Compliance and Enforcement Efforts for the Health Care Sector*

We recognize that Manitoba is fortunate in that we have one of the strongest pieces of workplace safety and health legislation in Canada. It is important to clarify that most of our concerns are in relation to the level of enforcement currently provided to ensure employers are compliant with their obligation to provide a safe workplace. Inspections in Manitoba for 2016-17 have decreased by 46% since the 2014/15 fiscal year while the rate of issued improvement orders have increased by only 6%. While one would assume that this illustrates there are less workplace safety and health complaints, this is not indicative of Manitoba's health sector where there are increasing reports of workplace injuries and increasing rates of absenteeism and disability claims. Since 2014, an average of 1.9% of all inspections in Manitoba were completed for the health care sector. When looking at data for the 2016/17 fiscal year, only 120 inspections (2%) were completed in the health sector out of a total of 5,501 inspections. More diligence is required to inspect health and safety requirements in the health care sector, specifically in areas that provide direct patient care. It is important to note that at one time, our province had inspectors delegated strictly for the health care sector. Since 2012, there have been no administrative penalties issued in the health care sector yet workplace safety and health hazards have not been eradicated. Additionally, it is important to note that many supervisors in health care facilities have not been provided the necessary training to fulfill their duties as stipulated by the Act. The lack of enforcement and employer education may be key contributing factors to the lack of compliance with respect to the Act in the health care sector.

Recommendations:

a) Ensure there are adequate resources are available to increase the number of inspections in the health sector to ensure employers are able to carry out their necessary duties to protect the health and wellbeing of all employees.

Additional Comments

The *Advisory Council on Workplace Safety and Health* identified reducing red tape or barriers to economic growth as an area of focus for this review. It is our expectation that any recommendations formulated with the intent to improve economic growth will not come at the expense of the health and safety of Manitoba's workforce. Furthermore, we recognize the fiscal constraints our government continues to publicly proclaim however, Manitoba's nurses and the overall workforce are the backbone of our economy. We cannot expect a strong economy without first ensuring the safety and health of all workers in Manitoba. Most importantly, it is valuable to remind our government that nurses and all other health professionals work diligently to care and improve the health of all Manitoba citizens. Protecting the health and safety of our nurses will help ensure Manitoba has an active, stable labour force and strong economy.

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