



Canadian Nurses  
Protective Society

# CNPS ANNUAL REPORT



**2015**  

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**INNOVATION**



# 2015 CNPS ANNUAL REPORT INNOVATION

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# INTRODUCTION

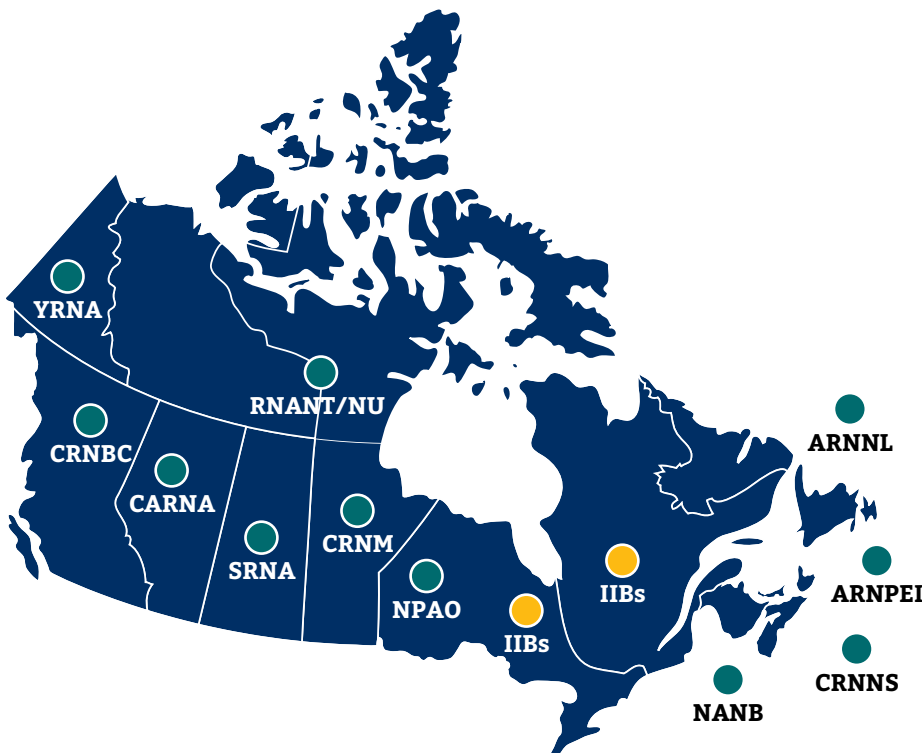
## MISSION

The Canadian Nurses Protective Society (CNPS) exists so that Canadian registered nurses and nurse practitioners are enabled to effectively manage their professional legal risks, and are appropriately assisted when in professional legal jeopardy.

## WHAT DOES THE CNPS OFFER?

CNPS is *more* than liability protection. CNPS is the Canadian nursing profession's own legal support system:

- Up-to-date **education and expertise** on legal trends and legislation that affect nursing practice
- **Professional liability protection** specifically tailored to nurses, whether providing care in a hospital, clinic, independent setting or as a volunteer
- **Occurrence-based protection**, for any incident that occurred while a CNPS beneficiary\*, irrespective of when a claim arising from an incident is made or a civil action begins
- One-to-one **access to lawyers** for legal advice or assistance
- Optional **legal support** for regulatory matters (college complaints) – new in 2016



\* All nurses eligible for CNPS services, including professional liability protection, are referred to as 'beneficiaries'

### DID YOU KNOW?

The Canadian Nurses Protective Society (CNPS®) was established in 1988 when commercial liability insurance had become too expensive and in some cases, unsustainable. As an alternative, provincial and territorial nurses' professional associations came together to create a national, not-for-profit society to provide a better option in professional liability protection for nurses.

## STRATEGIC OBJECTIVE 1

**ELIGIBLE NURSES UNDERSTAND THEIR PROFESSIONAL LEGAL IDENTITY, LEGAL OBLIGATIONS AND LIABILITY RISKS**

- Access for members of nursing colleges and associations
- New! Access for Independent, Individual Beneficiaries\* (IIBs)

# MESSAGE FROM THE PRESIDENT



[Click to view video](#)

## MARY ELLEN GURNHAM

In my first year as President of the CNPS Board of Directors, we focused on updating our strategic objectives. We talked about the changing context within nursing practice from a mission-based perspective. How can the CNPS be responsive, innovative and proactive in this very changing environment? How do we continue to offer the best available support to Canadian nurses so that they are, as our mission declares, *“enabled to effectively manage their professional legal risks, and are appropriately assisted when in professional legal jeopardy?”*

Our mission is driven by the following three strategic objectives:

- 1) Eligible nurses understand their professional legal identity, legal obligations and liability risks
- 2) Eligible nurses have available a comprehensive, sustainable and sensible occurrence-based professional liability protection and legal assistance plan that meets their needs

- 3) CNPS collaborates with members and stakeholders to promote practice frameworks and environments that support safe nursing practice

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## STRATEGIC OBJECTIVE 2

**ELIGIBLE NURSES HAVE AVAILABLE A COMPREHENSIVE, SUSTAINABLE AND SENSIBLE OCCURRENCE-BASED PROFESSIONAL LIABILITY PROTECTION AND LEGAL ASSISTANCE PLAN THAT MEETS THEIR NEEDS**

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Our second strategic objective has a specific sub-goal that really struck a chord with me, “Eligible nurses are protected when their professional integrity is threatened or compromised in the course of legal proceedings arising from the practice of nursing.” Whenever a nurse is accused of wrongdoing, their professional integrity is always threatened, whether or not they are ultimately found to have acted appropriately. In this situation it is very difficult to be objective, and to know how to proceed. CNPS lawyers who understand the context of nursing practice are only a phone call away. Unlike the experience of Susan Pine (née Nelles) who did not have the benefit of the CNPS, any nurse who’s a member of the CNPS is not alone. That’s very important, and it sets us apart.

**“Looking back on 2015, the Board challenged itself to find innovative ways to address our governance and service model within the changing context of nursing practice.”**

Some of the highlights of 2015 for me as President included:

- Our expert [submission on physician assisted death \(PAD\)](#), now medical assistance in dying (MAID), which is such an important matter to all health-care practitioners and to all Canadians
- Enhanced stakeholder engagement which helped better inform Board decisions
- Taking steps to ensure sustainability of the CNPS legal assistance fund
- Managing our organizational risk with a business continuity plan
- Welcoming the College of Registered Nurses of British Columbia (CRNBC) as a new member organization
- Looking at the value of services we offer, that they are what nurses need at the best possible price
- Collaborating with the NPAO to offer CNPS protection to their members
- Broadening access to CNPS by enabling individual nurses to register as CNPS beneficiaries
- Developing a new service for assistance with College complaints

Innovation truly hails from the genesis of the CNPS, when nurses came together to create their own alternative, dedicated organization as a better option in professional liability protection. As we move into 2016 and beyond, we will work hard to continue to honour the gift and legacy of the people who had the vision to create the CNPS and lead it into the 21st century.



# INTERVIEW WITH THE CEO



**CHANTAL LÉONARD**

## **Innovation: Why did CNPS choose this theme for 2015?**

It was the one word that most accurately described changes in the nursing profession, and what we needed to do to be responsive to our members and our beneficiaries. Nurses must constantly innovate, in their individual practice and as a profession, to respond to the needs of their patients. Similarly, the CNPS needed to innovate. In 2015 we welcomed a new provincial member in British Columbia (the first in 25 years), developed a new partnership with the Nurse Practitioners' Association of Ontario, and opened the door to individual beneficiary registration for CNPS services. We also did preliminary work on expanding the scope of our services to include assistance with College complaints.

## **Looking back on the legal environment in 2015, what kind of year was it?**

It was a year of ground-breaking changes in health law. The Supreme Court of Canada decision to legalize medical assistance in dying (MAID) is the most obvious example. But there were also other important decisions and proposed changes to legislation

that could significantly impact nurses, in areas such as privacy of personal health care information, quality assurance reviews and the admissibility of expert evidence.

## **What would you like us to know about the work CNPS did last year?**

There was a continued, concerted effort to identify legal issues and address them at the earliest opportunity. By providing advice or appointing counsel early there is a much better chance of avoiding a formal complaint or legal proceeding later on, with all the worry and stress that would bring. On a larger scale, when it became apparent that the *Carter* decision to legalize "physician-assisted death" made no mention of the role of nurses, we recognized the importance of informing policy-makers to ensure legislation would protect nurses from criminal prosecution if they chose to participate. What we were able to accomplish speaks to the expertise and quality of collaboration that exists at the Board level, within the organization and within the membership. I am thankful every day to be surrounded by such accomplished and resourceful colleagues and partners.

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## **STRATEGIC OBJECTIVE 3**

**CNPS COLLABORATES WITH MEMBERS AND STAKEHOLDERS TO PROMOTE PRACTICE FRAMEWORKS AND ENVIRONMENTS THAT SUPPORT SAFE NURSING PRACTICE**

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## **What would you tell someone who is thinking about becoming a CNPS beneficiary?**

The CNPS is unique in Canada. It's difficult to imagine how a nurse could practice these days without having personal access to a legal resource. The law is changing constantly and it would not be possible for nurses to individually keep up with those changes. CNPS provides nurses ready access to legal resources as well as professional liability protection - all for an annual fee that is a fraction of one hour of a lawyer's time.

## **What are your expectations for 2016 and beyond?**

In 2016, CNPS will consider whether it can extend services to the broader family of nursing. We frequently receive requests from members of other nursing professions for access to CNPS services, and the time has come to turn our mind to this question.

More generally, I think many nurses may not know that the CNPS is different from an insurance company. I would like them all to know that CNPS is a not-for-profit society created and operated by nurses for nurses, and to understand that it is their personal legal resource as they navigate every aspect of their nursing practice. Nurses face situations every day where they could use some advice and support and we often hear the comment from our beneficiaries that "they wish they had called sooner." I would like to ensure that our beneficiaries truly understand the full range of CNPS services that are available to them.

# 2015 HIGHLIGHTS SERVICES

**PROFESSIONAL LIABILITY PROTECTION** specifically tailored to registered nurses and nurse practitioners, whether providing care in a hospital, clinic, independent setting or as a volunteer

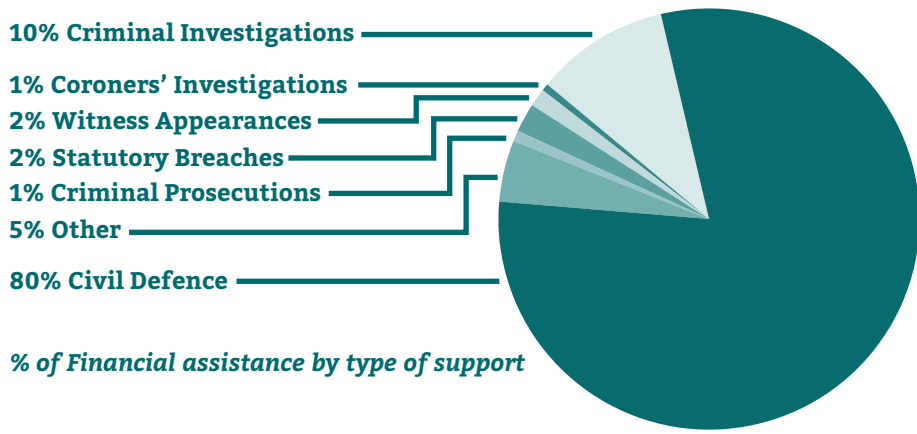
## ACCESS TO CNPS SERVICES

CNPS enhanced access to its services for registered nurses and nurse practitioners in 2015 in four significant ways:

- 1) **For member organizations**, a new Registration & Renewal System (RRS) was developed which offers:
  - **Improved responsiveness** – beneficiaries are able to access CNPS’ confidential services more efficiently as their eligibility is confirmed automatically by the new system
  - **Transparency** – the cost of the CNPS professional liability protection is readily available
  - **Direct communication** - CNPS is now able to reach individual beneficiaries directly, to provide updates about professional liability considerations and important changes in the law
- 2) **For nurses in BC**, the College of Registered Nurses of British Columbia (CRNBC) became a new member organization, enabling their members to have CNPS beneficiary status as of 2016
- 3) **For individual nurses**, Independent, Individual Beneficiary (IIB) access was made available to nurses not already affiliated with a CNPS eligible organization
- 4) **For nurse practitioners in Ontario**, the CNPS collaborated with the Nurse Practitioners’ Association of Ontario (NPAO) to provide CNPS services to their members

## LEGAL ASSISTANCE TO NURSES

10% increase in financial assistance in 2015 overall



### FEATURE EVENT

in Toronto: Collaborative Practice in the Courtroom and The Nurse, the Police & the Law, with guest presenters Susan Pine (née Nelles) and criminal defence lawyer Phil Patterson

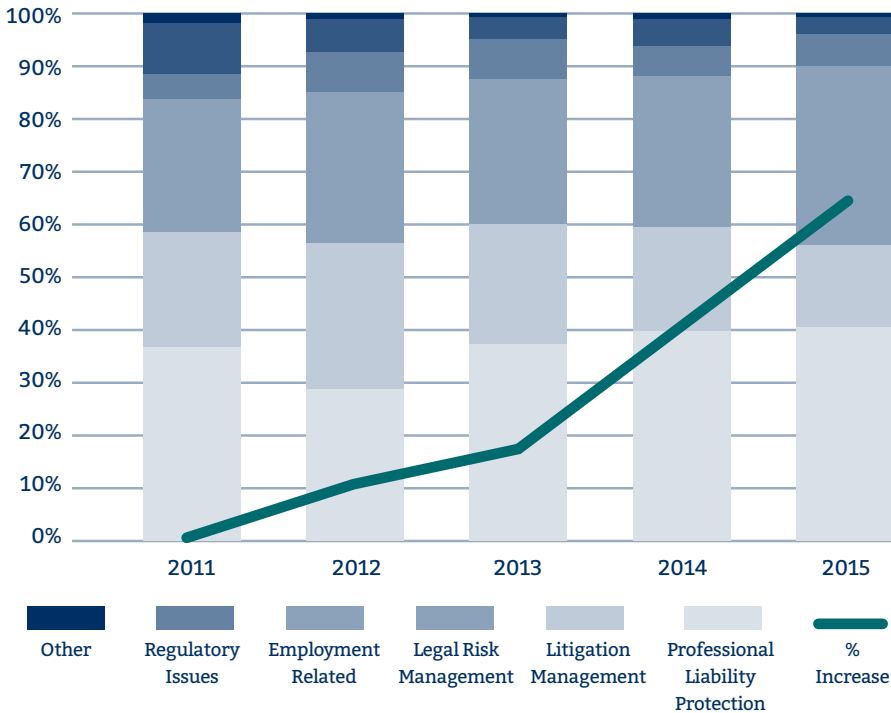
*“If I had access to the kind of protection available today, my life would have been much better...”*

NURSE SUSAN PINE  
(NÉE NELLES)

# EDUCATION & EXPERTISE

Up-to-date information on **LEGAL TRENDS AND LEGISLATION** that affect nursing practice

One-on-one **ACCESS TO LAWYERS** for advice or assistance  
**CNPS ADVICE & ASSISTANCE: 5 YEAR TREND**



## 16% INCREASE IN REQUESTS FOR ADVICE AND ASSISTANCE IN 2015

Nurses continue to rely on CNPS advice and assistance. From 2014 to 2015, demand increased by 16% for matters which include legal advice, management of patients' personal health information and how to reduce professional liability.

### 96% MORE WEBINARS WITH TIMELY INFORMATION ON LEGAL TRENDS AND ISSUES

	2013	2014	2015
<b>CNPS-hosted webinars</b>	5	10	18
<b>Requested webinars</b>	10	15	31
<b>Total webinars</b>	15	25	49
<b>% increase</b>		67%	96%

### 2015 WEBINARS

- A Right to Life is Not a Duty to Live
- CNPS - What you need to know
- Collaborative Care
- Dealing with Patient Conflict and Safety
- Documentation
- Independent Practice
- Legal Issues for New Grads
- Legal Risk Management
- Legal Risk Reduction in Patient Handover
- Nurse Practitioner Series: Consultations and Referrals
- Nurse Practitioner Series: Prescribing Controlled Drugs & Substances
- Student Nurses: Ethical Ways of Knowing and Caring
- Protecting your Patients' Privacy
- Technology and Social Media
- The Law at the End of Life
- The Nurse, the Chart and the Law
- Understanding Defamation, Libel and Slander

**NEW ASK A LAWYER ARTICLES:**



- Assisting at Accident Scenes [more >](#)
- Acting as Expert Witness [more >](#)
- Late Entry Court Evidence [more >](#)
- Working in Collaborative Teams [more >](#)

**COLETTE FOISY-DOLL:  
BUILDING A CULTURE  
OF INNOVATION  
IN NURSING EDUCATION**



Colette Foisy-Doll prepares nursing students for the real world using patient simulators—mannequins that blink, breathe, talk, bleed, sweat, cry and even give birth.

MacEwan University faculty member Foisy-Doll established the nursing-simulation centre 13 years ago and has since overseen its remarkable growth and impact. She explains:

*“Students say, ‘I can’t believe I’m crying over a mannequin. It feels very real—and it should. Simulation is all about transformational learning, empowering students to identify their strengths and building them up to be safe, effective and ethical patient care professionals.”*

**39 SPEAKING ENGAGEMENTS**

*CNPS responded to requests for in-person presentations focused on many different areas of nursing practice*

- Cardiovascular
- Critical care
- Hospice
- Independent practice
- Medical/surgical
- Neonatal intensive care
- Nurse practitioners
- Obstetrical
- Occupational health
- Operating room
- Pediatrics
- Public health
- Student nurses
- Trauma

**ENGAGEMENT**

*Launch of our Facebook page and Twitter feed meant more ways to connect with the nursing community*

**NEW! SOCIAL MEDIA IN 2015**

**TOTAL ENGAGEMENT: 9601 likes, shares, retweets, interactions**

		
<b>TWITTER</b> <b>1109</b>	<b>FACEBOOK</b> <b>8104</b>	<b>LINKEDIN</b> <b>388</b>

*27% more page views and 32% increase in website visits overall*



# TRENDING LEGAL ISSUES IN 2015

## WHAT LEGAL ISSUES AND TRENDS DID CNPS FOLLOW IN 2015?

### MEDICAL ASSISTANCE IN DYING

The CNPS has been closely monitoring the developments in the law regarding end-of-life care as they unfold, including the decisions of the Supreme Court of Canada relating to physician-assisted death. In February 2015, the Court rendered its unanimous decision in [Carter v. Canada \(Attorney General\)](#) striking down the absolute ban on assisted suicide and creating an exemption for physician-assisted death for mentally-capable Canadian adults with a grievous and irremediable medical condition causing intolerable enduring suffering. The operation of the decision was suspended until June 6, 2016 to allow time for amendment or enactment of statutory law.

Throughout 2015, the CNPS was fully engaged in consultations regarding physician-assisted death and its work was instrumental in advocating for provisions to protect nurses against unnecessary risk of criminal prosecution.

In October, the CNPS appeared before and provided a written submission to the federally-appointed External Panel on Options for a Legislative Response to *Carter v. Canada*, whose mandate was to engage Canadians and stakeholders and report back to the federal Departments of Health and Justice. Specifically, the CNPS advocated for legal protection for nurses involved in physician-assisted death who act in good faith and within the scope of practice of their profession while providing education or advice (i.e. counseling) or clinical nursing care for physician-assisted death. The CNPS ac-

knowledged that a nurse practitioner may be a patient's most responsible practitioner and therefore may be enabled by legislation to perform assisted death. As a result, the CNPS recommended that the name of this exemption be practitioner-assisted death or assisted death.

As 2015 drew to a close, the opportunity arose to provide submissions to the Special Joint Committee on the implementation of Physician-Assisted Dying, and the CNPS acted. The CNPS' submission in January 2016 highlights legal implications of the *Carter* decision for nurses and proposes ways to address them.

As the implementation of what has now become known as medical assistance in dying (MAID) unfolds, the CNPS will remain actively engaged by educating nurses, engaging with stakeholders and continuing to advocate for appropriate legal protection for nurses.

### ELECTRONIC HEALTH RECORDS AND PRIVACY

Many hospitals and other health-care organizations have implemented electronic health records to manage patients' personal health information (PHI). Health-care professionals acting as employees are generally permitted to access, use and disclose patients' PHI for the purpose of fulfilling their duties, which is typically for providing health care but can also be for administrative or educational purposes.

#### What are the privacy issues?

Electronic record systems may well provide an improved means to moni-

LARRY THOMPSON:  
INSPIRING NURSE OF  
THE NORTH



For over two decades, Larry Thompson has worked in remote communities from Attawapiskat to Tuktoyaktuk, providing the full spectrum of front-line care - from treating injuries and chronic diseases, to counselling patients on family planning. He has loved every minute of it.

*"In most cases, I and another nurse or two are the only healthcare providers available, so we do all that we can to help our patients. And the greatest moments of my life have come when the care I've provided proves to be exactly right."*

In 2015, Health Canada honoured Larry with an Excellence in Nursing award.

tor access and use of PHI than existed with paper records. Nevertheless, these systems may not necessarily provide conclusive information as to whether an employee has, in fact, inappropriately accessed, used or disclosed PHI. For example, do these systems allow nurses (or others) to note the reason for accessing a patient's record (e.g. to provide care for educational purposes, to oversee the quality of care, to generate an administrative report, etc.)? If there is no ability to document the reason for access at the time of access, must the hospital or health-care organization rely on inferences when investigating access, use or disclosure of PHI? Are those employees, who are subject to investigation, given the opportunity to review the electronic records in order to refresh their memory and explain their rationale for accessing, using or disclosing the PHI?

Allegations of committing a privacy breach can have a number of negative implications for health-care professionals, including employer discipline, an investigation by the Information and Privacy Commissioner, discipline by the relevant College, or civil actions (which can include class actions). Because of this, the process to determine whether a privacy breach has occurred should be fair and predictable.

#### What's next?

The CNPS will continue to work with stakeholders to encourage a fair and consistent application of privacy legislation for the effective delivery of health care and protection of privacy in the best interests of patients.

## QUALITY-OF-CARE INFORMATION

Around the time that the patient safety movement gained momentum in Canada (mid 2000), legislators across Canada started building protections into their respective provincial and territorial laws regarding quality-assurance proceedings, and the

information collected during these processes. These protections foster a climate of open, transparent and frank discussion between health-care administrators and regulated health professionals, allowing for the identification of gaps in care and the avoidance of similar incidents in the future.

In Ontario, the [Quality of Care Information Protection Act, 2004 \(QCIPA\)](#) was enacted. This legislation provides for a confidential environment to review, collect, analyze and share important information regarding a critical incident or event which occurs within a health-care facility for the purpose of improving quality of care and ultimately patient safety.

The protections set out in QCIPA, and similar provisions in other provincial legislation, prohibit defined "quality-of-care information" from being disclosed or used in proceedings such as a civil lawsuit or regulatory investigation into a health professional related to the critical incident.

#### What's changed?

Now, [Bill 119](#) proposes to bring changes to the definition of quality-assurance information, which will effectively narrow the scope of the protected information under the Act. Careful attention must be paid to ensure that it does not lead to an erosion of the protective environment which is essential to the quality-assurance process. Similarly, recent case law in Newfoundland narrows the extent of the legislative protection afforded to quality-of-care information through the Court's interpretation of the applicable legislative provisions.

#### What to watch for

The effect of these proposed changes may require health practitioners to approach quality-assurance proceedings with caution.

### SUZANNE TYLKO: DRIVING IMPROVEMENTS IN VEHICLE SAFETY



Suzanne Tylko has followed a unique path to helping others. She was an RN for over a decade and then became a mechanical engineer. As Transport Canada's Chief of Crashworthiness Research, Tylko draws on knowledge of injury biomechanics to make vehicles safer. She describes her nursing background as foundational:

*"Interpreting patient symptoms requires analytical skills similar to those needed to read mechanical clues of a car crash. There are many links between the two fields, and I encourage young nurses to recognize that innovation often occurs where multiple disciplines intersect."*

### What's next?

These recent developments serve as an opportunity to reiterate the importance of protected discussions on quality assurance between health-care professionals and health facilities. Moving forward, in the best interests of patient safety, it is essential that the underlying principles and purpose of the legislation are maintained. The CNPS will continue to monitor the issue and will actively engage with stakeholders to highlight the importance of an environment where health-care professionals can speak without fear of blame or negative impacts, given that any other related proceedings (civil proceedings, criminal proceedings, disciplinary proceedings) can carry legal repercussions related to their care.

## NURSE PRACTITIONER PRIVILEGING

While the privileging process was historically used to grant physicians permission to work within a facility, this process is now being extended to nurse practitioners in some provinces, including British Columbia, Manitoba, Ontario, Yukon, Nova Scotia and Prince Edward Island.

### What's behind this development and what are the implications?

It is common in medical malpractice actions for plaintiffs to allege that the hospital or health authority failed to exercise care in the evaluation and appointment of the health-care professional. One way that hospitals and health authorities are seeking to limit or reduce this liability is by promoting individual accountability for a practitioner's practice. Privileging is the process of requesting, reviewing and granting permission to undertake specified activities within a facility, such as admitting, prescribing, performing procedures and discharging patients. Before being granted privileges, practitioners must produce evidence of relevant education, licensure,

training, experience, reputation and skill in order to establish that they have the required qualifications.

As with physicians, where there are professional or ethical concerns, privileges may be at risk. Privileges may be summarily restricted or suspended if an immediate patient or staff safety risk is identified. A report to the nurse practitioner's regulatory body may occur if disciplinary action results or if there are significant concerns about the nurse practitioner's practice. A practitioner is generally permitted to have legal representation present at special meetings, medical advisory committee hearings and before a hospital appeal board, if applicable.

### How is privileging different for nurse practitioners?

Unlike physicians, nurse practitioners may also be employees of the hospital. New questions arise in this context:

- What are the rights and obligations of the nurse practitioner who holds both an employment status and privileges?
- Is the nurse practitioner governed by the employment contract (or collective agreement), the hospital bylaws or both?
- Can a nurse practitioner lose privileges while maintaining their employment status with the hospital?

The answers to these questions will have significant implications for nurse practitioners, and the CNPS will be watching closely as developments unfold in this emerging area.

### Theresa Patenaude: Going the Extra Mile to Inspire Change



Theresa Patenaude goes to extraordinary lengths to better appreciate the patient's perspective, such as donning a hospital gown for Change Day—an initiative to spark ideas on how to improve Alberta's health-care system.

*"The gown elicited quite a range of reactions from managers, administrators and other healthcare providers. And I think it also influenced a decision taken to improve patient safety."*

An experienced RN, Theresa has worked in quality assurance and improvement for the past 12 years. She is now Integrated Quality Management Project Director for Alberta Health Services' Edmonton zone.



# BOARD OF DIRECTORS

The CNPS Board of Directors is comprised of directors appointed from each of CNPS' member jurisdictions, the Chief Executive Officer of the Canadian Nurses Association and the Chief Executive Officer of the Canadian Nurses Protective Society.



**Mary Ellen Gurnham,**  
**President**  
Nova Scotia



**Claire Mills, Vice-President**  
Alberta



**Brianne Timpson**  
Northwest Territories



**Peggy Martens**  
Manitoba



**David Kline**  
Saskatchewan



**Monique Cormier-Daigle**  
New Brunswick



**Marilyn Barrett**  
Prince Edward Island



**Denise Durfy-Sheppard**  
Newfoundland and Labrador



**Jackie MacLaren**  
Yukon



**Julie Fraser**  
British Columbia



**Anne Sutherland Boal,**  
**ex-officio**  
**CEO,**  
Canadian Nurses Association



**Chantal Léonard, ex-officio**  
**CEO,**  
Canadian Nurses  
Protective Society