



2020 AT-A-GLANCE

KEY TRENDS AND OVERVIEW

CNPS
Canadian Nurses
Protective Society

OUR SERVICES

Created by nurses, for nurses, the CNPS provides legal assistance and support to eligible nurses across all provinces and territories in Canada. We are proud to provide access to legal advice, risk management services, legal assistance and professional liability protection related to nursing practice to over 140,000 eligible nurses in all professional nursing designations.

CNPS: A legal resource in your day-to-day practice.

We encourage nurses to call to speak with our Legal Counsel should they have any specific legal questions or concerns related to their practice. The CNPS is available as a resource to nurses in their day-to-day practice, not only when they are implicated in a legal proceeding.





WHAT SERVICES ARE BENEFICIARIES GENERALLY ELIGIBLE FOR?

CNPS beneficiaries are generally eligible to access the following core services:

Confidential Legal Advice

Our experienced Legal Counsel offer prompt legal advice on diverse issues such as professional obligations or pre-contractual review of professional service agreements. All information shared remains confidential and is protected under client-solicitor privilege.

Assistance with Legal Proceedings, which includes Professional Liability Protection (PLP)

CNPS professional liability protection (PLP) supports a nurse's unique needs regardless of their type of employment.

PLP generally refers to the provision of legal representation to a nursing professional who faces allegations of professional negligence in a claim or lawsuit, along with the payment, on behalf of the nurse, of the compensation that the court may order to be paid following a trial or as a result of a settlement.

Risk-Management Education

Beneficiaries have access to a variety of [publications](#), [live webinars](#), [educational sessions](#), and [case studies with quizzes](#). These resources cover numerous legal subjects related to nursing practice.

Lifetime Access to Support

The CNPS offers occurrence-based professional liability protection, which means that nurses can seek assistance from the CNPS regarding legal proceedings arising from professional nursing services rendered while they were CNPS beneficiaries, regardless of when a claim resulting from this incident is made or a legal proceeding is commenced. Beneficiaries therefore remain eligible through retirement for assistance with incidents that took place while they were CNPS beneficiaries.

End-to-end Support

CNPS assistance includes advice and legal support, legal representation, and payment of legal expenses that may arise from the onset of proceedings.

Individual Pan-Canadian Protection

The CNPS offers individual professional liability protection that will generally respond to claims commenced anywhere in Canada. There is no group or shared limit of protection.

Discretionary Assistance

Our discretionary assistance entails a unique and flexible approach to providing PLP. The CNPS is not an insurance company. This means that the CNPS can use discretion to assist in the many unexpected circumstances that can arise in a nurse's changing practice. Requests for legal representation will be considered on a case-by-case basis by a committee of nurses to determine eligibility for assistance as well as the appropriate level of assistance.

CNPS Supplementary Protection Program Update

CNPS beneficiaries who are currently eligible for core services (which includes PLP) have the option to apply for the Supplementary Protection Program, which expands the circumstances in which they can seek assistance from the CNPS.

With this program, registrants are generally eligible for legal assistance if they are the subject of an investigation as a result of a complaint filed against them with the College. This assistance may also extend to disciplinary hearings (ex: disciplinary or fitness-to-practice committees), the cost of legal advice and representation, and expert evidence if necessary.

There has been a steady increase in the number of registrants to the Supplementary Protection Program, with a nearly 30% increase in registrations in 2020 alone. We anticipate further growth in this program in the coming years. There has also been strong parallel growth in requests for assistance with regulatory matters under the Supplementary Protection Program.

Please note that this is an optional additional program that is not included within CNPS core services. To learn more about the program and conditions of eligibility, please visit www.cnps.ca/supp.

2020: THE INTERNATIONAL YEAR OF THE NURSE AND MIDWIFE

To honour the 200th anniversary of Florence Nightingale's birth, the World Health Organization designated 2020 as the International Year of the Nurse and Midwife. Nurses and midwives provide extraordinary care for patients and families throughout difficult times, and the year 2020 proved to be no exception.

In early 2020, the CNPS reached out to beneficiaries and asked them to share some of their fondest moments throughout their nursing career. Their quotes were shared on social media during Nursing Week 2020 (May 11-17) and featured in CNPS publications.

The CNPS continues to extend our gratitude to nurses and healthcare workers for their leadership and continued dedication to the overall health and wellbeing of Canadians during this unprecedented time. As the pandemic persists, always remember that the CNPS is available to beneficiaries as a resource and a foundation of support.

Florence Nightingale (1820-1910), was the founder of modern nursing. She had strong principles regarding sanitation within her nursing practice and greatly influenced the quality of care in the 19th and 20th centuries. She improved hygiene practices, consequently lowering the mortality rate at the military hospital where she was employed by two-thirds. She also understood that nursing was more than just medical care: in the same hospital, she implemented many services that improved the quality of stay of the soldiers, such as personalized meals for people with dietary restrictions, laundry services, and access to a library.

My 35-years of maternity nursing gave me so much joy and love! I am grateful for every birth I helped deliver in this small town.

-Colleen

As one of my residents was dying, surrounded by family, I walked silently into the room to apply a cool, damp cloth to their forehead. The family later said, "it was like an angel walked into the room." I was deeply touched. Small actions can make a difference.

-Bonnie

Message from the CEO and President

When the World Health Organization proclaimed 2020 as the International Year of the Nurse and Midwife, little did any of us realize at the time how relevant this proclamation would be in light of the monumental efforts that nurses would be called upon to provide during COVID-19.

We are mindful that the past year has brought an array of challenges for nurses, regardless of their setting of care. It has called on their courage, expertise, creativity, and adaptability to a greater extent than we thought possible. Despite these additional demands, nurses have continued to answer the call for those who are most vulnerable.

If anything, COVID-19 has highlighted globally what we have known all along – nurses are not only critical to our healthcare system, but they are also essential to the health and wellbeing of our communities.

The impact of COVID-19 on the healthcare and legal landscapes

COVID-19 has profoundly changed and challenged our healthcare system, and it is to be expected that the effects of the pandemic will reverberate for many years to come. As we move further away from the toughest days of COVID-19, our priority remains not only to provide nurses with advice and access to legal assistance when needed, but also to consider the occurrences that may become the subject of legal review.

The introduction of immunity legislation (as discussed in the Legal Trends section of this report) is a positive development for healthcare professionals and any essential services provider, and the CNPS continues to counsel beneficiaries on ways to further manage potential risks arising from COVID-19. Our goal remains to provide early advice or assistance, as appropriate, to prevent formal claims or investigations, whenever possible.

Virtual care and its future role in healthcare

We can expect that the global pandemic has forever changed the way in which some healthcare services will be delivered in Canada. It placed unparalleled demands on modern healthcare systems, and the resulting limitations on personal contact have led to tremendous innovation in virtual care. In fact, by April 2020, 55% of patient visits had already shifted to online or phone consultations.¹ While the healthcare system was able to quickly adapt to these alternate models of care, these innovations also come with new legal and regulatory considerations. In 2020, the CNPS saw a marked increase in the number of questions



Chantal Léonard, CEO



Julie Fraser, RN, President



surrounding privacy, security, and documentation as they relate to virtual care. We encourage you to review the Legal Trends section of this report for a more detailed summary of the CNPS initiatives in this area throughout 2020.

Social Media and Advocacy

We saw much advocacy from nurses throughout 2020 pertaining to COVID-19 and the systemic issues our country was facing. We also received some guidance from the courts with the long-awaited *Strom* decision, which presented one of the first instances where Canadian courts discussed when nurses might publicly comment about the healthcare system. The decision discussed the use of social media to advocate, as well as the role of the nursing regulatory body in setting and enforcing standards relating to public speech by registered nurses. While the decision demonstrated that nurses may comment on the healthcare system, it also brought with it a note of caution to those who wish to take this route. While nurses can be tremendous advocates for themselves, their patients, and their profession as a whole, it is important to carefully consider the factual basis and the extent of the proposed public expression, as well as its expected impact on the profession. We discuss this further in the Legal Trends section of this report.

Medical Assistance in Dying

Over the course of 2020, alongside with the pandemic, the federal government was presented with a significant challenge in seeking to adopt safeguards that would adequately protect vulnerable citizens once the Quebec Superior Court ruled, in the *Truchon*² decision, that the requirement for a reasonably foreseeable death was unconstitutional and could no longer be a condition for medical assistance in dying (MAID). The CNPS engaged in numerous consultations with Health Canada, a ministerial round table discussion and made written submissions. The purpose of these submissions was to present three recommendations: explicitly provide that initiating a MAID discussion with a patient does not, in and of itself, contravene the Criminal Code; create a committee of experts having ultimate authority to approve or deny a patient's request for MAID where death is not reasonably foreseeable, such as to shield healthcare professionals from a potential complaint under the Criminal Code, and finally, to redefine the MAID framework in a standalone legislation that would recognize it primarily as a healthcare service in addition to an exemption from the assisted-suicide provisions of the Criminal Code. The CNPS would like to express its gratitude to the Canadian Nurses Association (CNA) for its collaboration and support on this important national initiative.

¹ "Canadian Institute for Health Information," New data paints picture of how Canadian health care changed as the COVID-19 pandemic took hold, Nov 2020, <https://www.cihi.ca/en/new-data-paints-picture-of-how-canadian-health-care-changed-as-the-covid-19-pandemic-took-hold>

² *Truchon c. Procureur général du Canada*, 2019 QCCS 3792 (CanLII), <https://canlii.ca/t/j2bz1>

Human Rights

The systemic nature of racism and inequality when accessing healthcare has been the subject of many reports released in 2020. As a legal organization, the CNPS ascribes to the federal and provincial human rights legislation which prohibits discrimination based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, or disability. There is no question that expertise within the provision of our services as they relate to these issues is necessary to adequately counsel beneficiaries as they navigate within this framework in a way that respects legal principles. The CNPS will be focusing efforts in this area in 2021.

An Expanding Membership

After welcoming the registered psychiatric nurses of Manitoba and Saskatchewan to the CNPS family of beneficiaries in late 2019 and early 2020, preparation was initiated for the transfer of the CNPS membership from the British Columbia College of Nurses and Midwives to Nurses and Nurse Practitioners of British Columbia. This transfer will occur in 2021.

Operational Highlights

In assisting beneficiaries in understanding the legal ramifications of their new normal, it is not surprising that calls to the CNPS for legal advice and assistance increased across most categories in 2020. Of note, legal risk management calls increased by over 18%, including requests for advice with confidentiality, privacy, liability, and accountability. Calls for assistance with telepractice and virtual care considerations increased by 200%, likely related to the significant growth in this area throughout the pandemic. Requests for contract reviews also significantly increased in 2020 as more nurses accepted roles in the private sector with emerging virtual care providers.

The CNPS adopted corporate health and safety protocols early in the pandemic, enabling most employees to work from home. It is a tribute to the dedication and agility of CNPS staff, that the growing requests for legal advice and assistance were handled without any service interruptions to nurses, particularly during the 2020-21 registration period. The CNPS also continued to transition its IT infrastructure to a cloud-based model to improve remote accessibility and security. To maximize service efficiencies, legal support capacity was streamlined to provide enhanced legal research and contract review support.





Due to the pandemic, most in-person speaking engagements were cancelled, and the CNPS shifted to online learning platforms to offer public webinars and privately hosted webinars for beneficiaries. We introduced a monthly newsletter to keep beneficiaries updated on new resources and educational offerings. The CNPS also launched a new Nursing Educator program that offers presentations, case studies and resources for students with the goal of helping them to identify and reduce legal risk in their future nursing practice.

As our national organization grows to support an increasing number of nurses of all designations across all provinces and territories, the CNPS is also currently re-examining its membership model and how it may adapt to offer more flexible options to accommodate the needs of different beneficiary groups. A full membership review is anticipated in 2021 for this purpose.

While it is clear that the healthcare industry will continue to respond and react from the impact of COVID-19 for years to come, the CNPS is proud to continuously provide legal advice and assistance to beneficiaries during these challenging times. To the CNPS Board of Directors, please know that we are profoundly grateful to you for your insight and dedication, and the enthusiasm that you bring to your work on the Board even though it adds to your many responsibilities. Your regional expertise and knowledge enable the CNPS to serve its beneficiaries in the best way possible.

To the organizations that make up the membership of the CNPS – thank you for your leadership and adaptability as you guide nurses through these uncertain times. We appreciate the monumental task of enabling emergency licensure, creating new regulatory guidelines, and communicating these changes effectively amidst a constantly evolving pandemic. We recognize the partnership and collaborative spirit you bring to the CNPS.

We would also like to thank CNPS staff for their enduring commitment to serving our beneficiaries during this critical time, and for their flexibility and adaptability through the shifting tides of the pandemic. The care and compassion you bring to every interaction with nurses speaks to your understanding of the difficult reality our healthcare providers have been facing over the past year.

And last but certainly not least - thank you to all the nurses we serve. You have shown courage and commitment like no other. You have been called upon time and again, making many personal and professional sacrifices to do the best you can for all of us. Words cannot adequately express the depth of our gratitude for all that you do.

Chantal Léonard
CEO

Julie Fraser, RN
President

2020 STATS AT-A-GLANCE

OUR MOST POPULAR PUBLICATIONS:

1. Ask a Lawyer: Refusal to wear a mask and mask exemption requests
2. Quality Documentation: Your Best Defence
3. Medication Errors
4. Confidentiality of Health Information
5. Twelve Things to Consider Before Joining a Virtual Care Practice

2020 TOTAL NUMBER OF WEBINARS AND PRESENTATIONS:


18 CNPS hosted public webinars

23 private webinars

41 total

TOP 5 WEBINARS

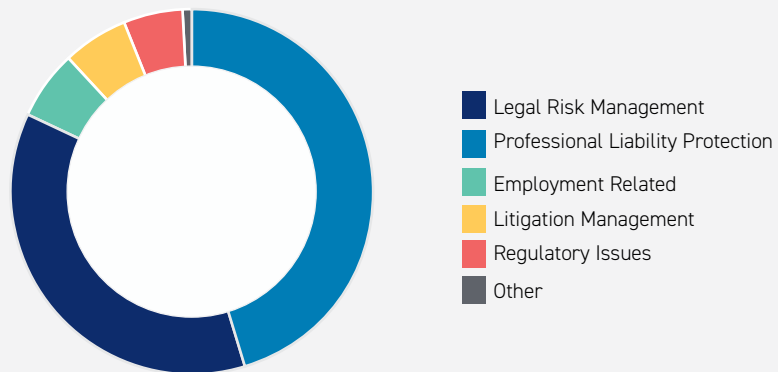
1. Virtual Care
2. Documentation
3. COVID-19 Legal Panel
4. Defamation
5. Social Media



As with many organizations, the COVID-19 pandemic transformed the way the CNPS delivered services, including presentations. In 2020, the CNPS shifted from providing in-person conferences and meetings to online learning platforms, offering both public and private webinars. It offered a total of 41 webinars, through which it reached over 5,700 beneficiaries.

2020 STATS AT-A-GLANCE

2020 CALLS BY CATEGORY



LEGAL RISK MANAGEMENT: TOP QUESTIONS FROM BENEFICIARIES IN 2020

1. Assessment of legal risk or legal liability in specific circumstances, including regarding the COVID-19 pandemic
2. Request for CNPS' legal opinion or analysis of legal documents (such as contracts, bylaws and policies or the interpretation of legislation)
3. Confidentiality and Privacy
4. Telepractice and Virtual Care
5. Ethical Issues related to COVID-19

2010-2020 INCURRED COSTS BY TYPE OF ASSISTANCE

- Civil litigation and threats **95%**
- Criminal investigations and prosecutions **2%**
- Other **2%**
- Statutory offences **0.5%**
- Witness **0.5%**

A photograph of medical professionals in full personal protective equipment (PPE), including face shields, masks, and gowns, working in a clinical setting. The image is overlaid with a blue tint. The text "2020 LEGAL TREND: COVID-19" is centered over the image, with a horizontal orange line underneath it.

2020 LEGAL TREND: COVID-19

COVID-19

National Update

It is impossible to speak about 2020 without discussing COVID-19 and the impact that it has had on both healthcare and the nursing profession. Governments, regulators, and healthcare providers have needed to adapt quickly to respond to constantly evolving conditions to maintain healthcare delivery while mitigating the risks of COVID-19 spread. At the onset of the pandemic, most nursing regulators enacted emergency licensure protocols to license or register healthcare professionals (such as nurses from other jurisdictions, or former registrants) as quickly as possible.

As a novel disease, COVID-19 has unfortunately had a disproportionate effect on Canada's most vulnerable populations, with the first wave of the pandemic spreading quickly through long-term care facilities. In fact, an analysis by the Canadian Institute for Health Information concluded that Canada had the highest proportion of deaths in long-term care homes (81% of reported COVID-19 deaths), compared to other OECD countries, where the average was 38%.³ Many strategies were implemented to try and control the spread of COVID-19, such as restricting visitor access, limiting staff from working in multiple facilities, and sending the Canadian Armed Forces to assist with long term care facilities in crisis.

As nurses and other healthcare professionals are acutely aware, it has been extremely challenging to balance providing safe patient care while managing issues such as access to personal protective equipment (PPE), reassignments or redeployment of staff, and staffing shortages. There is no question that the stress and the uncertainty of the ongoing pandemic has been tremendously difficult on the mental health and wellbeing of healthcare providers. According to Statistics Canada data from the fourth quarter of 2020, job vacancies increased by 56.9% in healthcare and social assistance, with 10,800 new vacancies reported in nursing and residential care facilities.⁴ Another

³ Canadian Institute for Health Information, Pandemic Experience in the Long-Term Care Sector: How Does Canada Compare With Other Countries?, June 2020, <https://www.cihi.ca/sites/default/files/document/covid-19-rapid-response-long-term-care-snapshot-en.pdf>

⁴ Statistics Canada, Job vacancies, fourth quarter 2020, March 2021, online: <https://www150.statcan.gc.ca/n1/daily-quotidien/210323/dq210323b-eng.htm>





recent study by Statistics Canada indicates that 7 in 10 healthcare workers who worked directly with COVID-19 patients reported worsening mental health.⁵ This can be attributed to several factors, such as long hours and lack of staff, or fear of contracting COVID-19 or passing it on to a loved one.⁶ The study also found that appropriate access to PPE was a significant factor in reducing stress among healthcare providers.

Places of work, businesses providing services to the public, sports facilities and the entertainment industry which had been closed under public health orders started to re-open within the limits and in accordance with the measures outlined by public health orders. As such, nursing expertise was sought to provide advice on the implementation of the applicable public health measures, testing requirements, as well as the reporting and containment of outbreaks.

In early 2021, the third wave of the pandemic brought more complex variants of concern that increased the spread and severity of COVID-19 as well as its strain on the healthcare system. Many nurses working with COVID-19 patients are now reporting symptoms of post-traumatic stress disorder and burnout. At the same time, nursing schools report significant increases in registration. Considering these multiple factors, it will be important to monitor the longer impact of the pandemic on the nursing profession as well as its implications for patient care, outcomes, and safety in the post-pandemic period.

In addition to the healthcare sector, COVID-19 may also impact Canada's legal system. Whenever there is an unprecedented event that results in unexpected adverse consequences, it is often the case that individuals look to the legal system for answers. This usually progresses over time, however in the case of COVID-19, we have seen this process unfold quite early. Over the course of 2020, there has been a substantial increase in the number of class-actions, particularly against long-term care facilities.

Some of these suits allege breach of fiduciary duty or negligence for failing to properly respond to the pandemic.

⁵ Statistics Canada, Mental health among health care workers in Canada during the COVID-19 pandemic, 2021, <https://www150.statcan.gc.ca/n1/daily-quotidien/210202/dq210202a-eng.htm>.

⁶ *ibid*

Regional Changes

Public health needs have led to the temporary expansion of nurses' scope of practice in many jurisdictions, and some of these changes may become permanent. There are several examples, such as nurses in Québec being able to fill out certificates of death or perform COVID-19 tests without a prescription. NPs in Alberta may now work to the full scope of their practice in long-term care homes, act as primary care providers, and prescribe treatments to residents, which has become a permanent change.⁷ In British Columbia, LPNs may temporarily perform COVID-19 nasopharyngeal swabs without a client-specific order from a designated healthcare professional.⁸

To shield healthcare workers from potential COVID-19 liability, certain provinces have introduced legislation⁹ to protect businesses, workers, volunteers, and organizations that make an "honest effort to follow public health guidelines and laws relating to exposure to COVID-19"¹⁰ from COVID-19-related lawsuits. At the time of publication, such immunity legislation premised in good faith compliance with legislation has been implemented to some extent in British Columbia, Ontario, Saskatchewan, New Brunswick, Nova Scotia and Alberta.

The CNPS is also mindful however that the pandemic has led to new policies and procedures and decisions with respect to access to care to prioritize resources where they were most needed and to limit viral transmission. These may include the reliance on virtual care, phone consultations, decisions to delay appointments and treatments, and the re-deployment of nursing staff to new settings and functions.

Mass immunization efforts were launched at the end of 2020, beginning with certain vulnerable populations along with healthcare professionals. To meet the unprecedented challenge of vaccinating a large population within a short timeframe, many provinces have created exemptions that allow nurses to administer the COVID-19 vaccine without an order. Further, most jurisdictions such as Ontario, Manitoba, British Columbia, and Québec are enabling a wider range of regulated and unregulated healthcare professionals to administer the COVID-19 vaccines by issuing documents such as ministerial orders.

⁷ Office of the Minister of Health of Alberta, M.O. 6/2020, <https://open.alberta.ca/dataset/32251f5b-55e8-4b05-96ca-d701b2e304d0/resource/37e1bc24-0c0a-4502-8706-767b0c18100e/download/health-covid-ministerial-order-6-2020-health.pdf>

⁸ Order of the Provincial Health Officer, Licensed Practical Nurses SARS-CoV-2 Swabbing Order, online: <https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/covid-19-pho-order-lpn-swabbing.pdf>

⁹ Please note that for the purposes of this report, "legislation" encompasses ministerial/government orders, bills, acts, and regulations.

¹⁰ Ontario Newsroom, Ontario Protects Workers, Volunteers and Organizations Who Make Honest Efforts to Follow COVID-19 Public Health Guidelines and Laws, Oct 20th, 2020, online: <https://news.ontario.ca/en/release/58886/ontario-protects-workers-volunteers-and-organizations-who-make-honest-efforts-to-follow-covid-19-pub>





CNPS in Action

As we enter the second year of the pandemic, the CNPS continues to advise nurses on legal risk management issues regarding COVID-19. Towards the onset of the pandemic, CNPS worked with nursing regulatory bodies across the country to facilitate access to professional liability protection for those with emergency licensure/registration. The CNPS also received several speaking requests from beneficiaries on this topic and hosted a panel where members of CNPS legal counsel answered many questions from beneficiaries. The CNPS also created the [COVID-19 Resource Hub](#), which contains articles on various subjects including independent practice considerations and mask exemption requests.

The CNPS also provided advice in connection with professional nursing services agreements relating to the implementation of public health measures to prevent COVID-19 transmission in places of work, educational institutions, sports facilities, and entertainment venues.

From a legal perspective, the CNPS is cognizant that any circumstance where there has been an unanticipated illness or loss of life can lead to a legal review, whether this takes the form of claims for financial compensation, public inquiries, or other legal proceedings. As a professional liability protection provider, the CNPS must anticipate that certain COVID-19 outbreaks and instances of COVID-19 management will therefore be the subject of legal review. It is particularly difficult to anticipate the potential impact of such major and unusual events; however, even in such circumstances – particularly in such circumstances – the CNPS must take reasonable steps to ensure that it will be able to respond to the needs of beneficiaries. In any instance, our goal remains to keep costs and fees as low as reasonably possible and when the need for an additional fee arises, it will be reviewed as circumstances unfold to ensure that it is both adequate and necessary.

The CNPS also continues to monitor the legal landscape and advise nurses on ways in which risk can be reduced when working in new or unfamiliar circumstances as it relates to COVID-19 and beyond.



2020 LEGAL TREND: ADVOCACY AND SOCIAL MEDIA



ADVOCACY AND SOCIAL MEDIA

National Update

Advocacy is defined in the CNA Code of Ethics as “the act of supporting or recommending a cause or cause of action (...) to improve systems and societal structures to create greater equity and better health for all.”¹¹ As such, nurses may feel an ethical or moral duty to raise concerns or to advocate on behalf of either their own interests or those of their patients if faced with a contentious situation. As social media has become a part of most individual’s day-to-day lives, advocacy can sometimes begin through platforms such as Facebook or Twitter. In the past year, there have been a growing number of examples of nurses advocating via social media, particularly in relation to the COVID-19 pandemic and subsequent public health recommendations.

While the advantages of social media are numerous, it is easy to forget the lightning speed at which information is distributed, and the permanence of this information. It is often recommended that nurses therefore avoid social media and use more appropriate channels, such as speaking with a supervisor or their regulatory body, should they have a concern directly related to nursing care they have witnessed or issues they have identified within the workplace. In fact, raising such concerns on social media instead of using proper communication channels could on occasion lead to legal consequences (e.g., an action for defamation or regulatory complaint).

Healthcare professionals are held to a higher professional standard than most when it comes to expressing their views on their profession or public health, which can extend beyond the boundaries of work. When it comes to advocating for larger, systemic issues, it is therefore prudent to ascertain whether information is factual, objective, and evidence-based prior to posting or sharing. In the public health context, health professionals who spread misinformation may also face both professional and regulatory consequences.

¹¹ Canadian Nurses Association, 2017 Edition, Code of Ethics for Registered Nurses.

Regional Changes

In 2020, the Court of Appeal for Saskatchewan noted that “the Legislature intended the Discipline Committee to have broad discretion to determine what constitutes professional misconduct,”¹² provided that there is no reviewable error. However, the Court emphasized that the determination of misconduct turns on all the circumstances of an individual case.¹³ The Court also discussed a non-exhaustive list of contextual factors that help determine whether speech relating to healthcare constitutes professional misconduct. Such factors include whether the speech was made while nurse was on or off duty, whether the nurse identifies themselves as a nurse, whether their affirmation is true or fair, the extent of the publication and the size and nature of the audience, whether the speech contributes to social or political discourse about an important issue, and the damage it may cause to the profession.¹⁴ This case demonstrates that healthcare professionals should remain cautious and thoughtful in the creation and dissemination of any content on social media.

To help guide nurses in this context, some nursing regulators have released or updated existing guidelines on appropriate social media usage as it relates to personal advocacy. For instance, the Nova Scotia College of Nursing released its practice guideline on the subject in January 2020, while the Ordre des infirmières et infirmiers du Québec updated theirs in April.

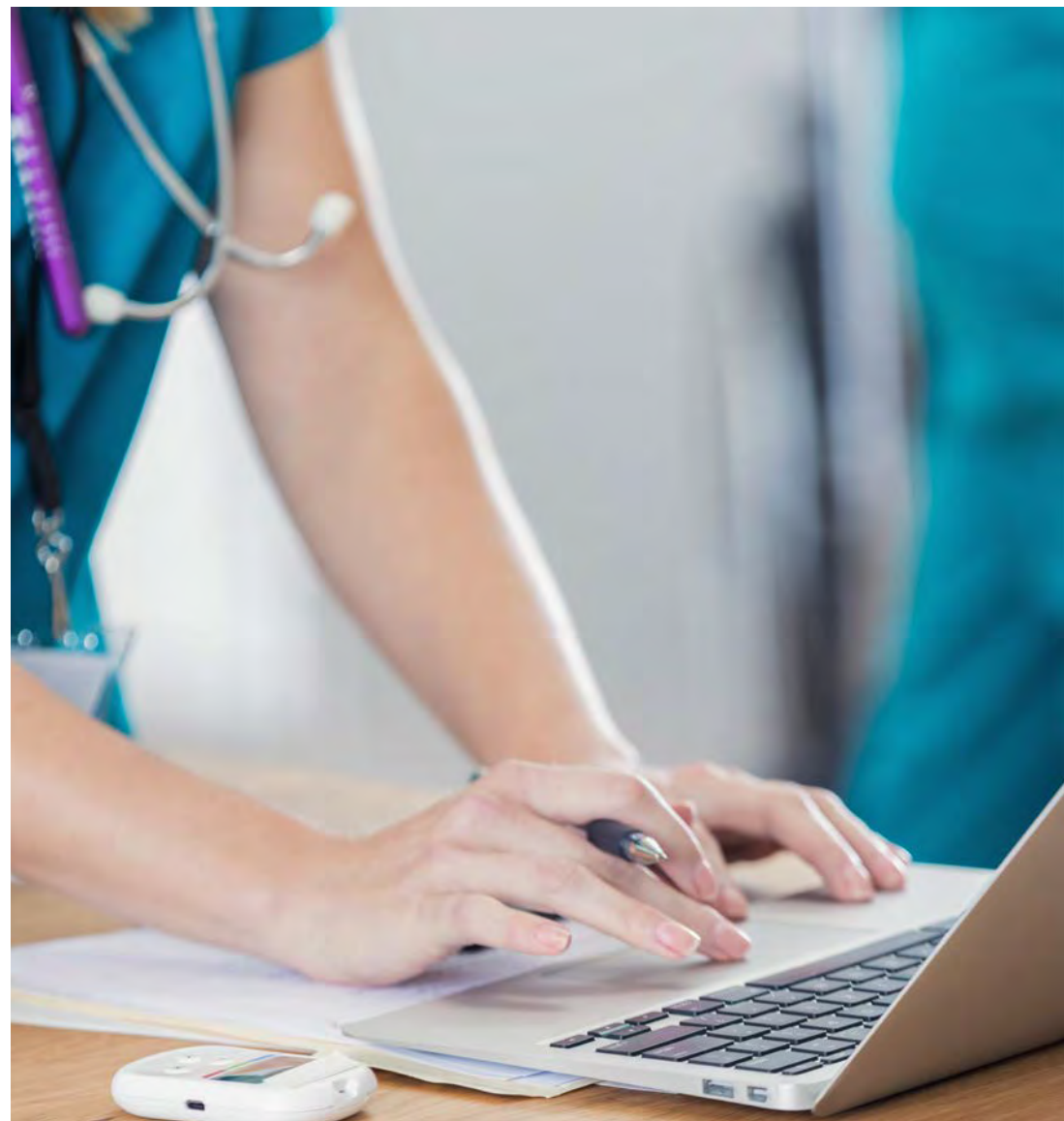
CNPS in Action

The CNPS continues to advise nurses on the legal considerations when advocating on behalf of patients or the nursing profession. In 2020, the CNPS received several speaking requests from beneficiaries on this topic. Social media and advocacy continue to be among the most popular webinar and presentation topics offered by the CNPS. In 2020, this topic was offered in public and private webinars to beneficiaries. The CNPS also updated its [Social Media](#) and [Defamation](#) InfoLAWs so that nurses have access to the most current information on these evolving issues.

¹² *Strom v Saskatchewan Registered Nurses' Association*, 2020 SKCA 112, at para. 76.

¹³ *Ibid.*

¹⁴ *Ibid* at para. 155.



2020 LEGAL TREND: VIRTUAL CARE



VIRTUAL CARE

National Update

The provision of virtual care has been increasing in recent years, with the COVID-19 pandemic accelerating its use both across Canada and globally. In response, the Federal government invested \$240.5 million in 2020 to increase access to virtual care services.¹⁴ And while virtual care services have proven to be beneficial in enabling patients to access healthcare safely, conveniently and in a timely manner, it requires a thorough understanding of regulatory, privacy, clinical and contractual implications.

In 2020, virtual visits accounted for up to 60% of total visits with primary care physicians, compared to approximately 4% prior to the pandemic.¹⁵ Virtual care has also been steadily increasing in nursing practice. In fact, a survey found that three in five nurses believe having a mobile device to document direct patient care and communicate with other members of the healthcare team is essential.¹⁶ Further, a third of nurses have used secured email to respond to a patient, and over a quarter had conducted a consultation through virtual videoconference.¹⁷

There have often been long-standing issues with access to healthcare in the rural or remote areas of Canada. With the monumental strides that have been made in the virtual care field over the course of 2020, virtual care may become a viable solution to ensuring that patients in rural communities receive equitable healthcare in a practical, innovative, and cost-conscious method.¹⁸

¹⁵ Prime Minister of Canada, Prime Minister announces virtual care and mental health tools, May 3rd 2020, online:

<https://pm.gc.ca/en/news/news-releases/2020/05/03/prime-minister-announces-virtual-care-and-mental-health-tools>

¹⁶ Canada Health Infoway, Canadians' Health Care Experiences During COVID-19- Uptake of Virtual Care, March 2021 edition,

<https://www.infoway-inforoute.ca/en/component/edocman/3828-canadians-health-care-experiences-during-covid-19/view-document?Itemid=0>

¹⁷ Canada Health Infoway, 2020 National Survey of Canadian Nurses: Use of Digital Health Technology in Practice, April 2020,

<https://www.infoway-inforoute.ca/en/component/edocman/3812-2020-national-survey-of-canadian-nurses-use-of-digital-health-technology-in-practice/view-document?Itemid=101>

¹⁸ *ibid.*

¹⁹ Ryan Buyting et al, Virtual care with digital technologies for rural and remote Canadians living with cardiovascular disease, Dec 2020, online:

<https://www.medrxiv.org/content/10.1101/2020.12.17.20248333v1.full>





In a 2020 Competition Bureau market study of Canada's healthcare sector focusing on access to digital healthcare across the country, many submissions highlighted barriers within the regulatory system for healthcare practitioners as well as privacy and security considerations. Submissions also highlighted the lack of French virtual care services, and the importance of innovation in that sector.¹⁹ Currently, there is very little data as it relates to Francophone usage of virtual care services.

To tighten guidelines regarding the additional risks inherent to this model of care and to ensure consistent and quality care, healthcare groups have also suggested that the federal government create a pan-Canadian framework for virtual care, including privacy and security, that provinces and territories would then implement.²⁰

Regional Changes

In March 2020, all Canadian jurisdictions had imposed restrictions regarding the types of health services that could be offered in person, with most elective surgeries, cosmetic services, and other non-essential procedures canceled. These restrictions varied several times throughout the year depending on the severity of the pandemic and differed widely based on region.

Many provinces enacted specific policies. For instance, Prince Edward Island proclaimed that residents with no primary care provider would have access to virtual care from their homes. Additionally, Ontario expanded its telehealth resources, as well as its virtual mental health services. Several nursing regulators also provided updates on virtual care standards to update their members on best practices during and after COVID-19. All provinces and territories also added billing codes for physicians to easily use virtual care.²¹

²⁰ Competition Bureau, Responses to the consultation on Share your views on how to support innovation and choice in Canada's health care sector, 2020, [https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/Submission-04547-ReseauServicesSanteOntario.pdf/\\$file/Submission-04547-ReseauServicesSanteOntario.pdf](https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/Submission-04547-ReseauServicesSanteOntario.pdf/$file/Submission-04547-ReseauServicesSanteOntario.pdf)

²¹ Canadian Medical Association, Virtual care is real care, June 2020, <https://www.cma.ca/news/virtual-care-real-care-national-poll-shows-canadians-are-overwhelmingly-satisfied-virtual>

²² Canadian Institute for Health Information, Physician billing codes in response to COVID-19, May 2021: <https://www.cihi.ca/en/physician-billing-codes-in-response-to-covid-19>

CNPS in Action

The CNPS continues to advise nurses on the risks and benefits of virtual care and telepractice. In 2020, the CNPS received several speaking requests from beneficiaries on this topic, and virtual care remains one of the most popular webinar and presentation topics offered by the CNPS. In 2020, this topic was offered six times in public webinars to beneficiaries. Many new articles on the subject were published to our website in 2020, such as [Twelve Things to Consider Before Joining a Virtual Care Practice](#); [Six Considerations for Independent Practice during the pandemic](#); [a revised InfoLAW on Telepractice](#), and [a Virtual Care case study](#).

CNPS legal counsel also provided many pre-contractual reviews of professional service agreements for beneficiaries entering into virtual care practice. The CNPS also engaged directly with commercial organizations and clinics providing virtual care to highlight the applicable legal requirements to enable nurses to deliver services in compliance with their professional obligations. In 2021, the CNPS plans to continue to educate beneficiaries about the importance of virtual care, particularly as technologies and accessibility evolve. The CNPS will continue to closely monitor emerging technologies and developments in this area and publish new resources for its beneficiaries at www.cnps.ca.

