

Summary of NIRO Regulatory Reform Proposal

Background - NIRO

- The Network of Interprofessional Regulatory Organizations (NIRO) is an informal network (i.e. not incorporated) consisting of all 27 regulated health professional bodies as well as the Saskatchewan Association of Social Workers (SASW), which falls under the jurisdiction of the Ministry of Social Services. NIRO provides a forum for its members to share information regarding best practices with respect to regulatory excellence to allow them to better fulfill their public protection mandate. Attached at the end of this proposal summary is a list of all of the governing legislation for the 27 NIRO members.

I. NIRO Regulatory Reform Proposal

- **NIRO proposes the following nine (9) changes to enhance their public protection mandate:**

- **The authority to address a practitioner's fitness to practice.**

Fitness to practice is defined as the ability of an individual to practice their profession free from any impairments, including but not limited to, cognitive, physical, psychological or addiction impairments/issues that could impact that individual's ability to competently practice their profession. Currently, there is a lack of authority in legislation to appropriately address concerns about a professional's fitness to practice, other than by formal discipline. This prevents regulatory bodies from addressing such concerns using more appropriate alternatives, leading to possible human rights complaints (e.g., discrimination on the basis of disability). The authority to address fitness to practice concerns could be added to template legislation to allow for more effective alternative mechanisms to deal with the issue that protects both the rights of practitioners and the public.

- **Empowering regulatory bodies to suspend or restrict a member's ability to practise while a complaint is under investigation.**

Few of the current template statutes allow a regulatory body to issue an interim suspension of a member's licence during an investigation where the alleged conduct is of such a nature that the public could be put at serious risk if the member is allowed to continue practicing during the investigation process.

Further, for those regulators, such as the College of Physicians and Surgeons of Saskatchewan (CPSS), that have the legislative authority to suspend a member's licence on an interim basis, it is an "all or nothing" decision, which may not always be appropriate depending on the circumstances of each case.

No statute allows a regulatory body the flexibility to either place restrictions on a member's licence (e.g., chaperon, supervised practice) or suspend a licence. Therefore, providing all regulatory bodies with this authority will allow them to take any necessary and proportionate interim measures against a member (i.e. practice restrictions or

licence suspension) when investigating particularly serious misconduct allegations where the member's continued practice could put the public at serious risk.

- **Enabling council to adopt bylaws without membership approval.**

Some regulatory bodies such as the CPSS only require council to approve bylaws. However, many professional regulatory statutes require members to approve bylaws. Regulators note that it is common for a small subset of members to attend annual general meetings (AGMs) and vote on bylaws based on their own interests rather than the public interest. This prevents regulators from being able to fulfill their mandate effectively. For example, if members do not ratify modest increases to their licensing fees (the primary source of revenue for regulators) for self-interested reasons, then the financial stability of regulators can be put at serious risk, thereby preventing them from fulfilling their legislated mandate.

It should be noted that although members would no longer ratify bylaws, there would still be an expectation for regulators to consult with their members as stakeholders on bylaw amendments as regulators would engage with any other key stakeholders (e.g., Ministry of Health, employers). Ministerial approval (by either the Minister of Health or Social Services depending on the regulator) would also still be required for regulatory bylaws.

Requiring the bylaws of regulated health professional bodies to be approved by council rather than members aligns with the legislative framework in other Canadian jurisdictions for self-regulating health professions.

- **Allowing council to adopt bylaws that establish panels from the investigation committee and the discipline committee to address hearings or investigations.**

Except for *The Medical Profession Act, 1981*, the current legislative framework for each health professional regulatory body only refers to a single investigation committee and a single discipline committee for each regulator. This current structure makes it impossible for regulatory bodies, which deal with a number of investigations, to have a single committee conduct all of the investigations or hearings. Instead regulators need the flexibility to create investigation and discipline panels to handle the volume of complaints against members. As already noted, this authority already exists for the CPSS under *The Medical Profession Act, 1981*, and would be extremely beneficial to other NIRO members, especially those that have high complaint volumes.

- **Giving investigation committees the authority to properly investigate complaints.**

The authority in template legislation to investigate possible unprofessional conduct or lack of competence is inadequate. When NIRO conducted a jurisdictional scan comparing the investigative powers of Saskatchewan regulators against the investigate

powers of their regulatory counterparts across Canada, the results of that scan revealed that template legislation has the weakest provisions regarding regulatory investigative authority. For example, unlike other Canadian jurisdictions, there is no authority to compel witnesses or evidence for an investigation under template legislation. There is also no power to go to court for a search order to inspect premises and remove records. The template legislation could be amended to allow investigation committees the authority to properly investigate complaints, as is the case in other provinces. The proposed provisions would also have to address the issue of accessing electronic records when conducting investigations.

Unlike the investigative provisions under template legislation, *The Medical Profession Act, 1981* does already authorize the CPSS to summon people (including those who are not members of the profession) for an interview, apply to the courts for search orders, and obtain subpoenas. However, despite these powers, the CPSS indicates that authority under *The Medical Profession Act, 1981* to investigate possible unprofessional conduct or lack of competence is not as robust and up-to-date compared to their regulatory counterparts across Canada.

The Medical Profession Act, 1981 also requires updating to allow the regulator's preliminary inquiry committees the authority to properly investigate complaints, as is the case in other provinces. The CPSS notes that the provisions of *The Medical Profession Act, 1981* related to investigative powers were developed at a time when documents existed exclusively as paper documents. However, over the last four decades, most medical records, and many other records, now exist electronically. Therefore, *The Medical Profession Act, 1981* could be updated to allow the CPSS to more effectively obtain access to electronic information when conducting investigations.

- **Allowing regulatory bodies to continue their investigations of members where the member's conduct is potentially criminal in nature.**

Some template legislation requires the regulator's investigation committee to suspend its investigation if it concludes that the member may have committed a criminal offence. NIRO indicates this is inappropriate because typically the most serious professional misconduct is of a criminal nature (e.g., sexual assault) and so is most in need of investigation/discipline. Further, a regulator can usually handle the matter more quickly than the justice system and the continuation of a regulatory investigation does not impede the ability of the justice system to prosecute an accused, nor does it impact the accused's rights under the justice system.

Therefore, NIRO is requesting amendments to allow regulatory bodies to continue their investigations. NIRO also proposes that the amendments would allow each regulator's investigation committee to advise law enforcement where appropriate if it has credible evidence that a member's alleged misconduct could constitute a criminal offence.

- **Authorizing regulatory bodies to establish processes for selecting members of council in bylaw rather than legislation.**

The legislation could authorize regulatory bodies to establish the process for selecting members of council in bylaw, rather than establishing it in legislation. This would allow regulators to establish selection criteria for members of that regulatory body that are either elected or appointed. This would help ensure that council members understand the role of the council and the regulator and could reduce the instances of members putting their names forward solely to advocate for the membership. This particular request does not impact the government's authority to appoint public representatives to the councils of regulatory bodies.

- **Authorizing regulatory bodies to use non-disciplinary alternatives to address concerns about behaviour that do not warrant formal discipline.**

Amending the current legislation would provide regulators with the flexibility to deal with member conduct that does not require formal discipline using alternative measures (e.g., cautions). Similar authority already exists for self-regulating health professions in other Canadian jurisdictions.

- **Ensuring legislation governing NIRO members contains a "duties and objects" clause.** The inclusion of this standard clause clarifies the expectation that regulators will act in the public interest, not in the interests of their members. Some later versions of template legislation already contains this type of provision but earlier versions do not. Further, legislation that pre-dates template legislation does not include a duties and objects clause. The inclusion of such a provision in all of the statutes reinforces the legislative mandate of health professional regulatory bodies in Saskatchewan.

II. Complementary Individual Proposals to the NIRO Proposal

- Alongside the proposal referenced above, the following NIRO members submitted their own separate complimentary proposals regarding regulatory reform specific to their own regulatory organizations:
 - the College of Physicians and Surgeons of Saskatchewan (CPSS);
 - the Saskatchewan Registered Nurses Association (SRNA);
 - the Registered Psychiatric Nurses Association of Saskatchewan (RPNAS); and
 - the Saskatchewan Association of Speech-Language Pathologists and Audiologists (SASLPA).
- **These individual complementary proposals are intended to:**
 - **Address deficiencies specific to *The Medical Profession Act, 1981* to ensure the CPSS is able to fulfill its regulatory mandate:**

The Medical Profession Act, 1981 pre-dates template legislation and so the CPSS has submitted its own proposal to address regulatory deficiencies within the legislation. The CPSS proposal contains seven (7) requests, which are similar to the nine proposals in the NIRO request referenced above with two exceptions because no legislative changes are required to: 1) allow the CPSS Council to approve bylaws without membership ratification; and 2) explicitly allow the CPSS to create hearing panels for disciplinary matters because the authority for both already exist in *The Medical Profession Act, 1981*.

○ **The seven (7) proposed changes submitted by the CPSS, which align with the NIRO proposal are:**

1. To appropriately address concerns about a physician's fitness to practice, other than by formal discipline.
2. Authority to temporarily suspend a member's licence or impose restrictions on a member's licence if circumstances where the member's continued practice would pose a risk of harm to the public while the investigation process is ongoing. *The Medical Profession Act, 1981* has effective provisions for a suspension of a physician's licence but there is no ability to impose a restriction on a physician's ability to practice. This means that it is an "all or nothing" situation even in cases where the public could be effectively protected by placing restrictions on a physician's practice (e.g., chaperon) rather than issuing a suspension. The legislation could be amended to provide the CPSS with the flexibility to either issue order of suspension or an order restricting the physician's ability to practise where interim measures are required to ensure public protection;
3. Unlike the investigative provisions under template legislation, *The Medical Profession Act, 1981* does authorize the CPSS to summon people (including those who are not members of the profession) for an interview, apply to the courts for search orders, and obtain subpoenas. However, despite these powers, the authority under *The Medical Profession Act, 1981* has not been updated since those provisions were originally drafted.

The Medical Profession Act, 1981 could be amended to allow preliminary inquiry committees the authority to properly investigate complaints, as is the case in other provinces. The CPSS notes that the provisions of *The Medical Profession Act, 1981* related to investigative powers were developed at a time when documents existed exclusively as paper documents. However, over the last four decades, most medical records, and many other records, now exist electronically. Therefore, *The Medical Profession Act, 1981* could be updated to allow the CPSS to more effectively obtain access to electronic information when conducting investigations.

4. Unlike other NIRO members, there is no provision in *The Medical Profession Act, 1981* that requires the CPSS to cease an investigative processing if the regulator determines

that the alleged misconduct is potentially criminal in nature. The investigative process can continue.

However, the CPSS does note that there is no provision in *The Medical Profession Act, 1981* that authorizes to notify the relevant authorities if it becomes aware during the course of an investigation that a member's alleged misconduct could also possibly be criminal. Currently, the CPSS's view is that a health regulatory body cannot disclose potential criminal conduct if that disclosure contains personal health information as defined in *The Health Information Protection Act* (HIPA) unless an exemption under HIPA allows the disclosure or the complainant consents to the disclosure of their personal health information. Therefore, in most cases the CPSS cannot disclose possible criminal conduct to law enforcement. The CPSS is requesting an amendment to *The Medical Profession Act, 1981*, to address this issue, noting that their regulatory counterparts in Canada already have this authority.

5. *The Medical Profession Act, 1981* could authorize the CPSS to establish the process for selecting members of council in bylaw, rather than only allowing council members to be elected and establishing the selection process in legislation. As with the main NIRO proposal, this request has no impact on government's ability to appoint public representatives to the CPSS Council;
 6. Similar to template legislation, *The Medical Profession Act, 1981* does not adequately authorize regulatory bodies to use alternative dispute resolution mechanisms to resolve concerns about a professional's practice that do not warrant formal discipline. *The Medical Profession Act, 1981* could be amended to give similar authority to what exists in regulatory legislation in other provinces;
 7. *The Medical Profession Act, 1981* lacks a "duties and objects" clause that establishes the expectation that the regulatory body will act in the public interest, and not in the interests of the members.
- **Increase the current number of public representatives on the RPNAS Council from one to three to align the RPNAS with other NIRO members.**

Most regulated health professional bodies have three public representatives on their respective councils but under *The Registered Psychiatric Nurses Act*, the RPNAS only has one public member. Therefore, the RPNAS has requested that the legislation be amended to allow for the appointment of three public representatives, similar to many other NIRO members. Additional public representatives ensures there is a strong public voice on the RPNAS Council, increasing the accountability and transparency of the RPNAS as an organization.

- **Change the name of the SRNA to the College of Registered Nurses of Saskatchewan (CRNS)**

The SRNA's request is intended to clarify the organization's legal duty as a regulator, not an advocacy body. Members of some regulators equate the term "association" with advocacy (e.g., Saskatchewan Medical Association) and expect the regulator to advocate on their behalf. Therefore, the SRNA is proposing an organizational name change to include the term "college" to clarify for its members and the general public that it is a regulatory body;

- **Change the name of SASLPA to the Saskatchewan College of Speech-Language Pathologists and Audiologists**

Similar to the SRNA's proposal above, the proposal from SASLPA is intended to clarify that its mandate is public protection, not member advocacy by amending *The Speech-Language Pathologist and Audiologist Act* to change the name of the regulator to the Saskatchewan College of Speech-Language Pathologists and Audiologists.

List of Statutes – NIRO Regulatory Reform Proposal

There are currently 27 regulated health professional bodies in Saskatchewan that are governed under 22 separate statutes. Most regulated health professions have their own separate statute although all six dental professions are regulated under one statute (*The Dental Disciplines Act*). Similarly, pharmacists and pharmacy technicians are regulated under one statute (*The Pharmacy and Pharmacy Disciplines Act*) and speech-language pathologists and audiologists are regulated under one statute (*The Speech-Language Pathologists and Audiologists Act*).

Most of these statutes are “template” or “model” statutes. However, some legislation falls outside the template legislation format, which was developed approximately three decades ago. In particular, *The Medical Profession Act, 1981* pre-dates template legislation and contains some unique provisions not found in any other health professional statute.

22 Health Professional Statutes

NIRO Proposal (21 Statutes)

The Chiropractic Act, 1994

The Dental Disciplines Act

The Dietitians Act

The Licensed Practical Nurses Act, 2000

The Medical Laboratory Technologists Act

The Medical Radiation Technologists Act, 2006

The Midwifery Act

The Occupational Therapists Act, 1997

The Naturopathy Act (to be replaced by Bill 172 - The Naturopathic Medicine Act)

The Opticians Act

The Optometry Act, 1985

The Paramedics Act

The Pharmacy and Pharmacy Disciplines Act

The Physical Therapists Act, 1998

The Podiatry Act

The Psychologists Act, 1997

The Registered Nurses Act, 1988

The Registered Psychiatric Nurses Act

The Respiratory Therapists Act

The Speech-Language Pathologists and Audiologists Act

The Social Workers Act (under jurisdiction of the Ministry of Social Services)

College of Physicians and Surgeons of Saskatchewan Proposal (Complementary to NIRO Proposal)

The Medical Profession Act, 1981