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May 7, 2018

By facsimile: (780) 422-0970

Alberta Labour Relations Board
501, 10808 - 99 Avenue
Edmonton, Alberta
T5K 0G5

Attention: Ms. Tannis Brown,
Director of Settlement

Dear Madam:

**Re: An application for determination brought by United Nurses of
Alberta and Jessica Wakeford affecting Alberta Health
Services, The Alberta Union of Provincial Employees and
Health Sciences Association of Alberta - Board File No. GE-
07762**

INTRODUCTION

I am counsel for Alberta Health Services ("AHS") in this matter. The following is AHS' reply to the application for determination brought by the United Nurses of Alberta ("UNA"), dated April 5, 2018 (the "Application").

AHS takes no position on the merits of the Application.



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AHS is concerned, however, with the implications of both the Applicants' standing to bring the Application on behalf of other nurse practitioners employed by AHS, and this Board's limited jurisdiction on the constitutional issue. In the event of a successful Application, these limitations may result in an untenable labour relations scheme within both AHS and the broader health care sector.

While AHS remains neutral in its position on the merits of the Application, AHS will take this and further opportunity to provide the Board with information about the work of nurse practitioners employed by AHS, in order to assist the Board with determining the issues before it.

Contacts for AHS for purposes of this proceeding are as follows:

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REPLY TO PARTICULARS

With respect to particulars in sections D and E of the Application, AHS replies as follows:

1. Paragraphs 3 and 4 are admitted.
2. Paragraph 5 largely recites from the provisions of the *Code*, which speak for themselves. AHS neither confirms nor refutes that "in no other jurisdiction in Canada are nurse practitioners statutorily excluded from collective bargaining."
3. Paragraph 6 is largely admitted, although AHS has no information to confirm that UNA was in the process of bargaining on behalf of nurse practitioners with AHS' predecessor regional health authorities.
4. Paragraphs 7-10 cite from the Alberta Hansard record which speak for themselves.
5. With respect to paragraph 11, AHS neither admits nor denies that the Alberta Hansard record excerpts demonstrate a legislative intent to prevent nurse practitioners from bargaining collectively and that the exclusion is for an improper, unconstitutional purpose. Different meanings and intentions can be ascribed to the excerpts referenced. Ascertaining the Government's intent, including determining the relevancy of the intent, is a matter for argument and is an issue to be determined by this Board upon hearing the submissions of all parties.
6. AHS neither admits nor denies paragraph 12. This is an evolving and dynamic area of the law and is a matter for argument. The Board shall determine this issue upon

hearing the submissions of all parties. While AHS is not taking a position on the merits of the issue, AHS will endeavour to assist the Board with ensuring relevant jurisprudence is brought to the attention of the Board for its consideration.

7. Paragraph 13 is admitted.
8. With respect to paragraph 14, AHS disagrees that the work of nurse practitioners is similar to that of registered nurses. While AHS acknowledges that in order to become a nurse practitioner, one needs to have firstly worked as a registered nurse, the differences between registered nurses and nurse practitioners employed by AHS are significant and will be addressed in the next section under the general reply to the Application.
9. Paragraph 15 is admitted, with the qualification that completion of a Master's level program is now a minimum entry to practice requirement.
10. Paragraphs 16 -18 recite provisions from the referenced *Regulation* and the College and Association of Registered Nurses of Alberta ("CARNA") publication and speak for themselves.
11. Paragraph 19 is admitted.
12. With respect to paragraph 20, AHS has no information that either refutes or confirms the particular.
13. Paragraph 21 is admitted.
14. With respect to paragraph 22, AHS admits that Ms. Wakeford works for AHS on a community consult team for palliative care, and that physicians or nurse practitioners refer individuals to the team to assist them in managing their symptoms. AHS neither admits nor denies that "in this way, Ms. Wakeford provides direct nursing care to patients as a nurse practitioner". This issue is a matter for argument that shall be determined by this Board based upon the submissions of all parties.
15. Paragraphs 23-25 are admitted.
16. With respect to paragraph 26, AHS has no information that either refutes or confirms these particulars.
17. With respect to paragraph 27, AHS has no information that either refutes or confirms Ms. Wakeford's concerns, although AHS wishes to clarify that all AHS employees have mechanisms by which they can raise concerns about client care and this presents no jeopardy to any employee's security of employment. AHS welcomes and encourages such dialogue.

18. Paragraph 28 is admitted, with the clarification that AHS currently employs 366 nurse practitioners (as of February 26, 2018).

19. AHS neither admits nor denies paragraph 29. This issue is a matter for argument and is to be determined by this Board based upon the submissions of all parties.

REPLY TO APPLICATION

Standing and Jurisdiction

(a) The Applicants' Standing

20. AHS notes that UNA may not have standing to represent employees that are excluded from the *Code*. UNA's status as the exclusive bargaining agent of the included class of employees who are employed in direct nursing care or nursing instruction does not entitle it to also represent an excluded class.

21. It is the excluded employees' right to associate that s. 2(d) of the *Charter* protects. The Application contains no assertion that the nurse practitioners employed at AHS have expressed a desire as a collective group to have either UNA or Ms. Wakeford assert these rights on their behalf.

22. While the individual applicant, Ms. Wakeford, has joined UNA in the Application, AHS is not certain that this is sufficient to provide UNA with standing to act on behalf of all other nurse practitioners employed by AHS. UNA and Ms. Wakeford's standing is likely limited to the representation of Ms. Wakeford only, and is not extended to the remaining 365 Nurse practitioners employed by AHS. Any remedy therefore sought in the Application is therefore likely and necessarily limited in its application to Ms. Wakeford.

23. Accordingly, should the Application succeed, only Ms. Wakeford will be determined to be in the direct nursing bargaining unit, with the remaining 365 nurse practitioners still excluded from the *Code*. In addition to the inefficiencies of requiring the parties to collectively bargain for one employee within this unique classification, this creates a fragmented workforce within AHS which is contrary to the established standardized labour relations scheme within AHS as the regional health authority. This also defies good labour relations sense.

(b) Limited Jurisdiction of this Board on the Constitutional Issue

24. Notwithstanding the concerns on standing, AHS is also concerned with the impact of this Board's limited jurisdiction on the constitutional issue.

25. While this Board has the authority to decide constitutional issues, it cannot declare a law to be invalid. The Board's authority is limited in this respect to holding inoperative, for the purposes of the application before it, the sections that are deemed unconstitutional. This is not binding on third parties or on future decision makers and only applies to the application before the Board and the facts before it.
26. AHS wishes to note the impact of this limited authority. Even if this Board concludes that UNA and/or Ms. Wakeford have standing to act on behalf of all nurse practitioners employed by AHS, if the Application is successful, only those nurse practitioners employed by AHS would be included as employees within the *Code*.
27. Other health care employers employ nurse practitioners. As this Board cannot declare a law to be invalid, the exclusion of nurse practitioners within s. 1(1)(l)(iii) would remain operative outside of this Application, and would continue to exclude from the *Code* those nurse practitioners employed by other health care employers.
28. This creates a confusing and disjointed labour relations scheme within the broader health care sector in Alberta. While it is certainly the case that some employers have a unionized health care workforce while others do not, that is the product of either a trade union's disinterest in organizing those employees, or those employees' collective desire to remain unrepresented by a trade union. This is entirely different than a group of employees being prohibited by law from being represented by a trade union under the *Code*, depending only on which employer one works for.
29. A further aspect to consider is that UNA has an extensive history of negotiating its collective agreement with AHS joined with other health care employers as parties. Currently these other employers are Covenant Health, Lamont Health Care, and the Bethany Group (Camrose).
30. If the Application is successful, the nurse practitioners would be included within the collective agreement between AHS and UNA (and Covenant, if Covenant is granted party status), but excluded within the same collective agreement between UNA and the remaining employers. This presents a significant barrier to continuing the long standing practice of negotiating the multi-employer collective agreement. AHS is concerned that this result would promote inefficiencies by dividing these employer bargaining tables, and losing the gains that have been achieved by consolidating the bargaining efforts of all parties involved.
31. While this scenario may be remedied by subsequent applications to this Board to have the same constitutional issue decided vis a vis those other employers, this is a cumbersome and inefficient manner of addressing the issue, as well as an approach that taxes the resources of this Board.

32. For all of the reasons described above, AHS questions whether this Board is the most appropriate forum to determine the constitutional issue as opposed to an application within the courts, which would permit a formal declaration of invalidity and a broad application if such is so found.

Nurse Practitioners

33. Nurse practitioners are registered nurses who have advanced education at a minimum of a Master's level, which enables them to autonomously and independently diagnose, treat and manage acute and chronic physical and mental illnesses.

34. CARNA is the regulatory body and professional association of nurse practitioners. It has the responsibility of setting the entry to practice competencies, standards of practice and licensing requirements for nurse practitioners.

35. Nurse practitioners must choose one of three streams of practice and are registered with CARNA on that basis: 1) Family/All ages, 2) Adult, and 3) Child. The nurse practitioner provides health services exclusively within that stream of practice which reflects the nurse practitioner's completed academic theory and clinical practice.

36. The nurse practitioner's scope of practice is established through the complement of the legislated restricted activities prescribed by the *Registered Nurses Profession Regulation*, Alta. Reg. 232/2005, and the standards, guidelines and policy positions issued by CARNA.

37. There are a number of significant functions that are within a nurse practitioner's expanded scope of practice that cannot be performed by a registered nurse, including:

- Advanced health assessment;
- Diagnosis;
- Ordering and interpreting diagnostic tests;
- Prescribing pharmacotherapy;
- Treatment and advanced interventions;
- Monitoring client outcomes;
- Follow-up care;
- Consultation and referral as required.

(CARNA, "Scope of Practice For Nurse practitioners", December 2017, p. 7).

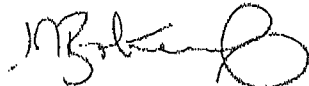
38. This advanced scope of practice is similar to that of physicians with respect to the functions of diagnosing patients, ordering and interpreting tests, and prescribing certain controlled drugs.

39. AHS currently employs 366 Nurse practitioners. These nurse practitioners work across the continuum of care, and with all ages, across Alberta.
40. Due to this expanded scope of practice, the work of nurse practitioners is very different to the work of registered nurses at AHS. Nurse practitioners direct the care of patients, while registered nurses administer the care that is directed by the nurse practitioners or physicians. Nurse practitioners are independent and autonomous in their practice, while registered nurses are dependent on physicians or nurse practitioners for medical care, which the registered nurses then implement.
41. Nurse practitioners' work is organized around the medical needs of the patient, which requires flexibility and adaptability in order to meet these needs. This flexibility and adaptability is key to ensuring Albertans receive the benefit and quality of this skilled group of professionals.
42. The needs of the patients are varied between each setting within which a nurse practitioner works at AHS. With the goal of maintaining flexibility, independence and autonomy in the nurse practitioner's practice, it is AHS' view that a 'one size fits all' approach to the organization of their work will be less effective in meeting patient and families' needs.
43. In the event this Application is successful, AHS will need to negotiate specific terms and conditions of employment for the nurse practitioners that reflect these differences in practice, which may represent a significant departure from the existing terms and conditions that apply to registered nurses.

Relief Requested

44. AHS requests that this Board consider whether it is the most appropriate forum to determine the constitutional issue, which issue must be determined in the first instance before this Board may embark on the determination aspect of the Application. AHS otherwise takes no position on the merits of the Application, and will serve as a source of information to assist the Board in reaching its decision on the issues raised in the Application.

Yours truly,
Alberta Health Services



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