A review of complaints processes and outcomes conducted for the College and Association of Registered Nurses of Alberta

September 2019

Harry Cayton ***Professional Regulation and Governance***

The Reviewers

Harry Cayton CBE BA BPhil Dip Anth FFPH

Harry Cayton was chief executive of the Professional Standards Authority in the UK from 2007 to 2018 and now works as an advisor on professional regulation and governance. He has written extensively about professional regulation and created the approach to regulatory decision-making, Right-touch regulation, which has been adopted by regulators around the world. Harry is experienced in reviews and inquiries and has worked with regulators in the UK, Ireland, Canada, Australia and New Zealand. He has advised governments on regulatory issues in Hong Kong, Australia, Ontario and British Columbia as well as the UK. In 2017 he oversaw a review of the Engineers and Geoscientists of BC, and a special inquiry into the Nursing and Midwifery Council in the UK. In 2018 he completed a Statutory Inquiry into the College of Dental Surgeons of BC at the request of the Health Minister. His report was published in April 2019. He has recently worked with Kate Webb and Deanna Williams on a performance review of Professional Engineers Ontario.

Harry Cayton is a trustee of the charity Comic Relief, a Board member of the Press Recognition Panel, Patron of Arts4Dementia and an advisor to Pilau Restaurants Ltd.

Kate Webb BA MA

Kate Webb is a regulatory policy specialist who has worked across the UK health, legal services and energy sectors. With a background in consumer and patient advocacy, she has over 10 years' experience of oversight regulation. At the Professional Standards Authority she helped develop Right-touch regulation with Harry Cayton, and delivered thematic policy reviews across a wide range of topics, including of governance, cost effectiveness, and fitness to practise. While at the Authority, Kate also advised UK government health departments and the UK parliamentary health committee on the performance of the professional regulators, and on proposals for policy and legislative reform. As a member of the senior leadership team at the Legal Services Board she led the 2017 investigation into the independence of the Solicitors Regulation Authority, and worked with UK government officials on developments to better regulation policy. Kate has also worked on consumer energy policy at Ofgem, authorisation rules for CILEx Regulation, and on a review of regulatory performance of Professional Engineers Ontario with Harry Cayton and Deanna Williams.

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Executive Summary

This executive summary is not a substitute for reading the review report. It does however provide a brief overview of the report's contents.

This review of CARNA's complaints and discipline processes and outcomes was commissioned by CARNA in June 2019. It was conducted by the reviewers between July and September 2019.

CARNA's complaints and discipline processes and outcomes were assessed against ten Standards of Good Regulation, as adapted with the agreement of CARNA from the Standards of Good Regulation developed by the Professional Standards Authority in the UK.

The review finds that CARNA meets six out of ten standards and does not meet four.

The lack of transparency of CARNA's processes and decision-making is a consistent challenge to its ability to meet the Standards of Good Regulation as regards complaints and discipline.

CARNA does not make it as easy as it could for patients or members of the public to complain about a nurse and makes it almost impossible for them to find out if a nurse who may be treating them has or has had any restriction on their practice.

Internal policies and procedures while sometimes well thought out and comprehensive in content are not always dated and complete or consistently used or applied. There is a lack of overarching internal quality assurance of decision-making.

Secrecy around complaints resolution agreements means that it is not possible to assess their appropriateness or to hold CARNA publicly accountable for its protection of patients and the public.

The Complaints Review Committee and the Hearing Tribunal do not demonstrate independent scrutiny of CARNA's decisions.

A majority of the tribunal panellists have recently written to the Council with views about the new bylaws that suggest they are more concerned with the well-being and interests of nurses than the well-being and interests of patients.

CARNA does not measure the outcome of its decisions or the effectiveness of its remediation arrangements.

Strengths in CARNA's performance include a strong staff concern to achieve to good practice, thorough internal record keeping, effective case management and a commitment to negotiate consent agreements.

The report welcomes CARNA's proposed bylaw changes to increase openness and encourages their rapid implementation. This will be a great improvement and modernisation of CARNA's practice of regulation.

The report makes 14 recommendations for action and improvement. These cover increased transparency and improvements to CARNA's website, a more consistent approach to risk assessment, the introduction of internal quality assessment of decisions, reform of the hearing tribunal and more rigorous selection and training for its members and greater measurement and monitoring of the outcome of conditions on practice and remediation.

The reviewers thank CARNA staff and all those who gave evidence for their helpfulness, patience and willingness to engage with us.

1. The review and our approach

Background

1.1. In May 2019 the College and Association of Registered Nurses of Alberta (CARNA) commissioned Harry Cayton through a Professional Services Agreement to review their complaints processes and outcomes as a key part of their regulatory functions. The review was conducted by Harry Cayton and Kate Webb.

1.2. The review report was specifically to provide:

- A review of CARNA's complaints processes and outcomes against its legislative requirements and the Standards of Good Regulation (as developed by the Professional Standards Authority for Health and Social Care[1]), including a comparison with best professional regulatory practice
- Consideration of CARNA's current complaints practices and the processes, procedures and policies of comparable regulators and the Standards of Good Regulation
- A review of effective outcomes in the light of the principles of Right-touch regulation
- Recommendations for improvement
- Delivery of a draft report with recommendations, to be provided by the end of August 2019
- Following quality assurance and review by CARNA, delivery of a final report by 13 September 2019.

Activities undertaken for the review

1.3. The review was conducted between July and September 2019.

1.4. Alongside a desk review of substantial documentary evidence provided by CARNA, Harry Cayton visited CARNA on July 3, 2019 and between July 23 and July 26, 2019. During this period, he:

- Examined a limited sample of randomly selected complaints case files, which included records of investigation, outcomes and reasons for decisions taken
- Met with staff and observed internal meetings within the complaints directorate

[1] The Professional Standards Authority. Standards of Good Regulation (accessed 29 August 2019) The Professional Standards Authority (2016) Standards of Good Regulation (accessed 29 August 2019)

- Met with the President of the Council
- Met with independent legal counsel to the hearing tribunal and the complaints review committee
- Met with the Registrar, with the senior management team and individually with senior members of staff
- Met with a small number of external stakeholders at their request
- Met with officials from the Alberta Ministry of Health.

1.5. The names of the individuals we met with appear in Annex A.

1.6. In reviewing and assessing CARNA's performance against the standards, we have looked for evidence from a range of sources:

- Legislation: detailing the powers, duties and responsibilities placed on CARNA. In this review this includes the Health Professions Act, the Registered Nurses Profession Regulation, and CARNA's Bylaws.
- Policy: detailing how CARNA meets its obligations under legislation and uses its regulatory powers.
- Practice: outlining how the policies are put into operation on a day to day basis.
- Oversight: considering how CARNA monitors and reviews its own activities.
- Evaluation: measuring impact and outcome to show CARNA's effectiveness.

1.7. Although this was a relatively limited review given the time available we consider that the information which we have been given, the examination of CARNA's complaints processes in practice, and our discussions with its chief executive and registrar, directors and staff have enabled us to come to a fair assessment of its performance against the Standards of Good Regulation for complaints and discipline.

The Standards of Good Regulation

1.8. This review is an assessment of CARNA's performance of one of the core regulatory functions. The Standards of Good Regulation cover four functions of professional regulation. The setting of standards of competence and conduct, registration of professionals, education and continuing competence, and complaints and discipline. This review is concerned only with the last.

1.9. The Standards used in the review are listed in Annex B. They were adapted and agreed in consultation with CARNA senior staff. They provide a benchmark against which CARNA's performance can be assessed to judge how legislation, policy, practice and oversight contribute to deliver CARNA's principal objective to uphold standards of nursing and promote patient safety and protect the public.

1.10. The standards used in this review were adapted from those developed by the UK's Professional Standards Authority for Health and Social Care.[2] They describe the outcomes expected from good regulators working to protect and serve the public interest. The Standards of Good Regulation have been in use for 12 years and have been the basis for over 100 performance reviews of professional regulatory bodies in eight different jurisdictions. They have proved both adaptable and reliable.

1.11. Each regulator works under a particular combination of legislative provisions, regulations and bylaws, and operational policies and processes. For this reason, the standards do not prescribe how a regulator should operate, but instead are focused on the outcomes that its regulatory functions should deliver, and the impact it should have on the safety of patients and protection of the public.

1.12. The Standards cover the breadth of the complaints function from receipt of complaint, through initial assessment, investigation and referral to disciplinary hearings, decision and sanction. They describe the outcomes we would expect to see when a regulator is working to protect the public and operate a fair and effective complaints function.

1.13. As well as being informed by prevailing good practice and the public interest objective, the Standards are also influenced by broader principles of good regulation. These are:

- Proportionality: regulators should only intervene when necessary. Remedies should be appropriate to the risk posed and costs identified and minimized
- Consistency: rules and standards must be joined up and implemented fairly
- Targeting: regulation should be focused on the problem, and minimize unintended consequences
- Transparency: regulators should be open, and keep regulations and regulatory processes simple and user friendly
- Accountability: regulators must be able to justify decisions, and be open to public scrutiny
- Agility: regulators must look forward and be able to adapt to and anticipate change.

1.14. These core principles are important. There is a public interest in all regulators, whatever their remit, carrying out their duties in an efficient and effective manner, and seeking to avoid inconsistency, disproportionality, and a lack of transparency and accountability.

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[2] The Professional Standards Authority. Standards of Good Regulation (accessed 29 August 2019) The Professional Standards Authority (2016) Standards of Good Regulation (accessed 29 August 2019)

Right-touch regulation and complaints handling

1.15. The standards used in this review reflect the approach to regulation set out in the Professional Standards Authority paper, *Right-touch Regulation Revised*.[3] Right-touch regulation means using only the regulatory force necessary to achieve the desired effect. It sees regulation as only one of many tools for ensuring safety and quality and therefore that it must be used judiciously. Professional regulation exists not to promote or protect the interests of professionals but to enhance patient safety and protect the interests of the public. The general approach to regulation set out in that paper underlies the Standards of Good Regulation and our judgements about the performance of CARNA.

1.16. CARNA has stated its commitment to demonstrating right-touch regulation in its performance as a regulator. We address this in paragraph 4.2.

1.17. Regulators investigate complaints and adjudicate on professional misconduct and incompetence matters to protect the public from poor practice and to uphold professional standards. Performing these functions well involves taking prompt and effective action against those registrants whose conduct, competence or capacity fall short of what is expected. Openness, transparency and fairness are essential aspects of this work, as they help others to understand the process, help improve public protection, and to build trust and confidence in the regulatory process and the regulator itself.

1.18. Regulating well in a dynamic practice area such as nursing also means responding to emerging risks and threats, and committing to continuous improvement and learning from experience. This is shown through established processes for quality assurance, monitoring and evaluation, in regular review of policies, and in actively considering areas for improvement following public scrutiny of regulatory issues in other sectors or locations.

1.19. Policies and processes are important, but good regulation is also influenced by the culture and approach of the regulator. Regulation will perform well when it demonstrates a commitment to prevailing good practice and commands the trust and confidence of both the public (as patients, complainants, employers and government) and its registrants. If regulation is poorly designed or poorly delivered it will be unable to do this; it will not protect or serve the public interest, and will impose costs on society, practitioners and the public that fail to deliver sufficient regulatory benefit.

1.20. In this way wider organisational matters also affect regulatory performance in complaints and disciplinary processes, such as:

- Appropriately funding and resourcing the organization and its functions

[3] The Professional Standards Authority (2015). *Right-touch regulation – revised* (accessed 29 August 2019)

- Providing training for staff and panellists, members of committees and council, for example against unconscious bias, and in information security
- Regularly recruiting and appointing independent decision makers and advisors to avoid regulatory capture and group think, and resistance to reform in ongoing pursuit of good practice
- Managing tension in organizational objectives, through governance policies and procedures, management of bias and conflicts of interest. For self-regulatory bodies, such as CARNA, there is a particular challenge arising from the need to protect the public as a regulatory college while also having a role as an association to promote the profession. The primacy of the public protection objective cannot be forfeited because of the interests of the profession.

1.21. When these matters are not well handled, they can present challenges even when policies and practices are well designed, which in turn can pose risks to public protection.

A note on the text of this review

1.22. A glossary of acronyms appears in Annex C. We have used the word 'registrant' throughout to denote nurses who are registered and regulated by CARNA. We note that CARNA uses the term 'registered member'. We think it is useful to make a distinction between a member of the Association and a registrant regulated by the College.

Acknowledgements

1.23. We could not have conducted this review without the assistance and co-operation of many people. The staff of CARNA, under the leadership of Joy Peacock, have been unfailingly helpful in answering our every question and providing us with documents and explanations. Many people gave us evidence and they are listed in Annex A. We are grateful for their time and thoughtful contributions. We should like to acknowledge in particular David Kay and Georgeann Wilkin. Patient and efficient administrative support was provided by Carrie Mittelstadt, Barbra-Ann Sheppard and Jena Yamach. We thank them all.

2. CARNA's professional conduct function

2.1. This chapter describes CARNA's professional conduct function with reference to the legislation, regulation and bylaws governing it, and activity and practice described by CARNA's website and annual reports. This chapter is about CARNA's legislation, except where noted it is not about CARNA's interpretation of its legislation.

Legislative basis

2.2. The Health Professions Act 2000 (HPA, current version April 2019[4]) is the primary governing legislation. As well as setting the legal framework the HPA provides CARNA with powers to make supplementary regulations (Registered Nurses Profession Regulation, current version May 2019[5]) and Bylaws (current version March 2019[6]).

2.3. The professional conduct function is broadly split into two areas of activity: complaints and hearings. Across these two areas, through the HPA, CARNA has powers to act to protect the public if there are serious concerns about conduct or incapacity of a registrant. The HPA also provides opportunities for parties to request reviews or appeal decisions that are made.

2.4. The HPA requires CARNA to make two appointments to lead this function: the complaints director and the hearings director. The hearings director cannot participate in hearings, reviews or appeals. CARNA must make contact details for both directors (and any delegates) available to the public.

Complaints activity

2.5. CARNA is required by the HPA to publish data and information about complaints in its Annual Report. This gives an indication of the caseload and levels of activity in this function:[7]

Year	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018
Number of complaints	269	252	265	293	251[8]

4 Health Professions Act (accessed 26 August 2019)
5 Registered Nurses Profession Regulation (accessed 26 August 2019)
6 CARNA Bylaws (accessed 26 August 2019)
7 CARNA. Annual Report 2017/18 (accessed 26 August 2019)
8 CARNA informs us that there were 288 complaints received in the year to August 31 2019

2.6. In 2017/18 CARNA reported:

> *'The volume of complaints received in the 2017/18 membership year decreased 14.3 per cent over the previous year. Although there was a decrease in the number of complaints, the complaints continue to increase in complexity resulting in additional resources being used to manage complaints in a comprehensive, fair and timely manner. The conduct department is continuing to evaluate new approaches to complaint resolution processes and using the principles of right-touch regulation to manage complaints.'*[9]

Making a complaint

2.7. Section 54 of the HPA describes how to make a complaint. Complaints must be made to the complaints director in writing and signed by the complainant. The HPA permits complaints to be made about former registrants if less than two years have passed since the nurse became a former registrant.

2.8. The HPA identifies some specific sources of complaints:

- Under section 51, if a registrant[10] has intentionally provided false information as part of the continuing competence programme, the Competence Committee, Registration Committee or Registrar must make a referral to the complaints director.
- The Competence Committee must make a referral to the complaints director if, through the continuing competence programme it is of the opinion that the registrant displays a lack of competence, or is incapacitated, or conduct constitutes unprofessional conduct, and this cannot be readily remedied by the programme.
- Under section 53, the Registrar may also refer a registrant to the complaints director following having received an investigation report carried out under the continuing competence programme. The Registrar has scope to handle minor issues through specific actions instead of making a referral.
- Section 56 allows the complaints director to treat other information – such as referrals under the continuing competence programme, oral reports, employer reports, or non-compliance with incapacity directions – as a complaint and handle in the same manner as a written allegation.
- Employers are required, under section 57, to report to the complaints director if a registrant's employment is terminated or suspended, or the registrants resigns, because of what the employer considers to be unprofessional conduct. There is a broad definition of employment:

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9 CARNA. Annual Report 2017/18 (accessed 26 August 2019)

10 The HPA uses the term 'regulated member', that is to say a person registered with CARNA who is providing professional nursing services.

professional services on a full-time or part-time basis, where paid or unpaid, as an employee, consultant, contractor or volunteer. Failure to report to the complaints director puts employers at risk of a fine (up to $4000 for a first offence).

Processing a complaint

2.9. Section 55 of the HPA gives the complaints director a number of options for handling the complaint:

a. Encourage informal resolution between complainant and the registrant either directly or, with consent of both parties, in a process led by the complaints director

b. Refer to an alternative complaint resolution process

c. Request an expert assessment and report on the subject of the complaint

d. Conduct an investigation, or appoint an investigator to conduct an investigation

e. Dismiss the complaint if satisfied that complaint is vexatious or trivial

f. Dismiss the complaint if satisfied that there is insufficient (or no) evidence of unprofessional conduct

g. Make a direction under the assessing incapacity process.

2.10. The HPA prohibits the use of informal and alternative complaint resolution routes (a and b) if the allegations include sexual abuse or sexual misconduct.

2.11. The complaints director must give notice to the complainant within 30 days of receipt of the complaint about the action that will be taken.

2.12. If the complaint is dismissed (under options e or f) the complainant has the right to apply for a review by the Complaint Review Committee (CRC) (see paragraph 2.30).

Investigations

2.13. The HPA makes provision for investigation of complaints in sections 61–64. The complainant and registrant must receive updates on investigations every 60 days. Reasonable efforts must be made to interview the complainant.

2.14. Investigators have powers to require a person to answer questions under oath, to provide the investigator with documents (or other material) relevant to the investigation, and to enter buildings where professional services are provided. These powers are supported by additional powers allowing the complaints director to go to court to seek an order directing compliance in these areas.

2.15. If the complaints director refers the complaint to the alternative complaint process (see paragraph 2.24), the investigation will not proceed.

2.16. The report of the investigation is be submitted to the complaints director. On reviewing the report the HPA states that the complaints director may:

- Direct that the investigation is continued
- Refer the matter to a hearing
- Dismiss the complaint, if the complaint is trivial or vexatious, or there is insufficient evidence of unprofessional conduct

2.17. The CARNA website also notes that following the investigation, the complaints director can resolve the complaint via an informal route, if the complainant agrees (see paragraph 2.19).[11]

2.18. If new information comes to light following a referral to a hearing, the complaints director can withdraw the referral if the tribunal has not begun.

Complaint resolution agreements

2.19. Under section 55(a.1) of the HPA, CARNA has adopted a specific form of informal resolution, led by the complaints director which leads to a Complaint Resolution Agreement (CRA).

2.20. CARNA's website describes the use of CRAs as follows:

'When the Complaints Director determines that there is reasonable evidence of unprofessional conduct and the member accepts responsibility and agrees to appropriate remediation, the Complaints Director may ask the member to enter into a complaint resolution agreement (CRA).

'Use of this agreement process requires consent from the complainant. Prior discipline history is also considered.'[12]

2.21. CRAs may be preceded by an investigation, but this is not a requirement. CRAs are never published. All conditions on practice required by CRAs are available to employers through their portal on the website and to a member of the public who makes a request (online or offline) about a named nurse.

2.22. CARNA's use of CRAs is documented in policy statements, with guiding principles and criteria. The complaints director must determine the allegations that constitute unprofessional conduct. The 2017/18 Annual Report notes:

'A CRA is an informal non-disciplinary resolution process. While hearings can take several months to resolve a matter, CRAs usually take 30–60 days to negotiate and sign. Remediation activities can often be completed within a few months or less.'[13]

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[11] CARNA website. About Investigations. (accessed 16 August 2019)
[12] CARNA website. About Complaint Resolution Agreements (accessed 16 August 2019)
[13] CARNA. Annual Report 2017/18 (accessed 26 August 2019)

2.23. CARNA may also use CRAs to conclude cases that have been referred to a hearing tribunal but not yet heard.[14] CARNA has told us this option is seldomly used.

Alternative complaints resolution

2.24. CRAs are not the only route to informal resolution. Under section 58, if the complainant and the registrant both agree, the complaints director can refer the complaint to the alternative complaint resolution (ACR) process. A member of CARNA must participate in or conduct this process.

2.25. If new information comes to light during the ACR process that indicates the issue is substantially different to the initial complaint, the complaints director must be informed. The complaints director may then start an investigation, or if an investigation has started, refer to the investigator, dismiss the complaint or refer to the hearings director for a hearing.

2.26. If both the complainant and the registrant agree, in writing, to a proposed settlement of a complaint, the person running the process must report to the Complaint Review Committee (CRC). The CRC's role is to consider ratification of the settlement, following its review of the case. The complaints director may treat failure to comply with a ratified settlement as a new complaint.

2.27. The Regulation sets out how the ACR process should run, including securing agreement about the procedures and objectives for the process. Subject to provisions in the HPA, all information shared during the process is confidential.

2.28. Bylaws govern publication of matters relating to ratified settlements. If the settlement permits it, the CARNA may reveal the identity of the investigated person or the complainant. No further proceedings can be taken with respect to the complaint covered by a ratified settlement.

2.29. We were told that CARNA has rarely used and currently does not use the statutory ACR process.

Review of decisions: Complaints Review Committee

2.30. If the complaints director dismisses a complaint, the complainant has the right to apply for a review of the decision. The hearings director will convene a meeting of the CRC which will determine if the decision is reasonable on the balance of probabilities. The CRC may affirm the CD decision, request a further investigation or refer the matter to a hearing.

2.31. The CRC is established by the HPA. The CRC is composed of at least two registered members and one public member. The Bylaws, although not the Act, determine that it will be chaired by a registered member.

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[14] CARNA. Complaint resolution agreement policy.

2.32. Following its review, the CRC can refer to a hearing, refer for further investigation, or confirm the decision to dismiss the complaint. The Bylaws gives the CRC the power to direct the complainant to pay costs if it is of the opinion that either the original complaint or the request for a review of the decision was trivial or vexatious.

2.33. The 2017/18 Annual Report notes that in 2017/18 six requests for a review by CRC were received. All were rejected by the committee.

Interim sanctions

2.34. During an investigation or proceedings, section 65 of the HPA gives the complaints director and the hearing tribunal powers to recommend that the Registrar places conditions on the registrant's practice, or suspend the registrant. This can happen at any point between the complaint being made and the hearing tribunal making an order. The registrant can appeal these decisions to Court.

2.35. Since October 2017 16 registrants have had conditions imposed on practice under section 65 due to risk to the public.

Incapacity

2.36. Under section 118, the HPA gives the complaints director the power to act if they consider a registrant is incapacitated, or not fit to practise. The complaints director can order them to cease practising and direct the registrant to submit to physical and/or mental health examinations and receive a report of the examination, whether or not a complaint has been made.

2.37. Following receipt of the report, the complaints director can require the registrant to submit to such treatment as has been recommended in the medical report and may require the registrant to cease providing professional services during this time. Non-compliance with this approach may be treated as a new complaint under section 56. An order to cease practising can only be removed if the complaints director is satisfied the registrant is no longer incapacitated.

2.38. The registrant can appeal the complaints director's directions to the Council, and this appeal must be conducted as soon as reasonably practicable.

2.39. Between October 2017 and July 2019, 14 registrants were directed by the complaints director to cease practising until certain conditions were met due to incapacity.

Hearing tribunals

2.40. Within 90 days of a referral of a complaint from the complaints director, the hearings director must set a date for a hearing (unless an extension is granted).

At least 30 days before the hearing, the hearings director must give notice to attend to the registrant and advise the complainant of the date, time and location. The hearing date is not published.

2.41. The hearings director designates members of hearing tribunals from two lists. Public members are appointed to lists by the Alberta Lieutenant Governor in Council, for a maximum of six years (as two three-year terms). The Council appoints registrants to a membership list. The Regulation sets terms of office for the Council list at four years.

2.42. The hearings director appoints at least two registrants to each hearing tribunal. Public members are appointed and must make up at least 25% of the voting membership of the tribunal. CARNA's Bylaws state that the chair of a tribunal must be a registrant. This is not a requirement of the HPA.

2.43. The HPA was amended to make specific provision for the make-up of the tribunal in cases involving allegations of sexual abuse or sexual misconduct. In these cases, all members of the tribunal must have undergone training on trauma informed practice and sexual violence. The HPA gives the hearings director the opportunity to call on a registrant from another college to sit as a public member in these cases, for the purposes of ensuring at least one member of the tribunal has the same gender identity as the patient.

2.44. Under section 71, there is a specific provision that prevents anyone who has investigated, reviewed or made a decision on a complaint or matters relating to it from sitting as a member of council, tribunal or committee that may be hearing or reviewing the same complaint.

2.45. Subject to the HPA, the Regulation and Bylaws, the hearing tribunal can determine its own rules, but none have been made. CARNA is introducing a code of conduct that applies to those appearing before the hearing tribunal.

Admission of unprofessional conduct

2.46. Under section 70, at any point from the time a complaint is made to CARNA through until the hearing tribunal makes a decision, a registrant can make an admission of unprofessional conduct to the hearings director. If the tribunal accepts the admission, any investigation or ACR process is suspended.

2.47. When admissions of unprofessional conduct are made in cases referred to a hearing tribunal and the tribunal has accepted the admission, the tribunal is asked to consider a 'consent agreement' if one has been agreed. These agreements arise from negotiations between representatives of the complaints director and the registrant most usually supported by a labor relations officer (LRO) provided by the United Nurses of Alberta (UNA).

2.48. At the hearing, the tribunal will decide if the admitted conduct does amount to unprofessional conduct, and if so, whether to make any order and impose sanctions.

Hearings, decisions and orders

2.49. Hearings are held in public unless the tribunal passes a motion, on its own or on application from any person, to hold part or all of the hearing in private. This could be because of probable prejudice of civil action or prosecution, for safety reasons, for privacy reasons, or other reasons. If held in private, the reason must be noted in the record. Even if held in private, the complainant may attend unless otherwise directed by the tribunal.

2.50. The tribunal will be advised by independent legal counsel and can request expert advice on any matter relating to the subject matter of the hearing. The hearing can proceed in the absence of the registrant if the tribunal is satisfied that the registrant has been given notice to attend.

2.51. The tribunal will decide whether the registrant's conduct amounts to unprofessional conduct. If the hearing is contested this may involve calling of witnesses. CARNA told us that the majority of cases proceed by consent.

2.52. Following a decision of unprofessional conduct, either contested or by consent, the tribunal can make an order, under section 82, including:

- Caution
- Reprimand
- Impose conditions on practice
- Not practising until successfully completing a specified course of studies or supervised practical experience
- Require a program of counselling or treatment
- Require the person passes a specific course of study or supervised practical experience
- Suspend practice permit
- Cancel registration and practice permit
- Waive or repay fees charged for professional services
- Pay costs relating to the investigation and hearing
- Pay a fine to CARNA
- Or any order appropriate for the protection of the public.

2.53. An order under section 82 can also make provision for monitoring compliance with any sanctions imposed.

2.54. Under the CARNA Bylaws, the hearing tribunal can determine how information about a conduct case is published or distributed, although CARNA is currently proposing changes to this power (see paragraph 2.79).

2.55. The HPA requires that if the case relates to sexual abuse or sexual misconduct and the tribunal makes a finding of unprofessional conduct it must immediately

order the suspension of the registrant's practice permit, pending a substantive order. The tribunal must order the cancellation of the registrant's registration if the unprofessional conduct relates to sexual abuse. The tribunal must order the suspension of the practice permit for a specified period of time if the unprofessional conduct relates to sexual misconduct.

2.56. Copies of the written decision must be shared by the hearings director with the registrant, the complainant, the complaints director and the Registrar. The registrant has the right to appeal the decision to the Council.

2.57. If the tribunal considers that there are reasonable and probable grounds to believe that a criminal offence has been committed, the tribunal must direct the hearings director to share a copy of the decision with the Minister of Justice and Solicitor General.

2.58. In 2017/18, 50 hearings were held. The Annual Report notes that all proceeded by consent agreement between the registrant and CARNA and that each resulted in a finding of unprofessional conduct and sanctions.

Appeals of tribunal decisions and Ombudsman complaints

2.59. The decision of the hearing tribunal remains in place pending an appeal to the Council, unless a person or committee designated by the Council stays the application. A decision not to stay the decision can be appealed to the Court.

2.60. The registrant must appeal in writing to the Council stating the reason for the appeal, within 30 days of the registrant receiving the decision of the tribunal.

2.61. Within 45 days of the notice of appeal being given to the hearings director, the Council must set the date for the appeal if the registrant is suspended or has their registration cancelled. In all other cases, the date must be set within 90 days of the notice being given to the hearings director.

2.62. The appeal to Council is heard by an Appeal Panel. This Panel is made up of two registrants and one public member of the Appeals Committee. The duties, powers and constitution of the Appeals Committee is set out in the Bylaws.

2.63. The Appeal Panel may make any finding that was open to the hearing tribunal, quash, confirm or vary the order made by the tribunal or make a finding or order of its own, refer the matter back to the tribunal to receive additional evidence, or refer it to the hearings director to be reheard in front of a new tribunal. The Panel can also direct the registrant to pay costs associated with the appeal.

2.64. The 2017/18 Annual Report notes that there were three appeals in the year (one was later withdrawn).

2.65. The Council's decision on appeal may be appealed, by the complaints director (on behalf of CARNA) or the registrant, to the Court of Appeal. The court can make any finding that it considers should have been made, or quash, confirm or

vary the finding or order of the Council, or refer the matter back to the Council. The court also has powers to make costs awards.

2.66. The HPA also gives any person the power to make a complaint to the Ombudsman about anything under the HPA. A hearing can be reheard on recommendation of the Ombudsman.

Monitoring compliance

2.67. There are no specific legislative or regulatory provisions for monitoring compliance with sanctions. CARNA told us that monitoring arrangements are established in each case through orders made by the hearing tribunal under section 82 of the HPA.

2.68. Compliance with sanctions imposed by the tribunal is managed through regular compliance meetings of the hearing tribunal. No provision has been made in the HPA, the Regulation or Bylaws for the duties, powers, or constitution relating to this regular meeting. The complaints director monitors compliance with CRAs.

2.69. Section 82 of the HPA gives the complaints director the power to treat non-compliance with an order as a new complaint (under section 56) or to refer to the hearings director for a hearing.

2.70. The 2017/18 Annual Report notes that 12 monthly and six special compliance meetings were held with the hearing tribunal.

Professional conduct: transparency

2.71. There are a number of provisions through the HPA that provide for publication of information relating to complaints, investigations, hearings and decisions.

2.72. Section 4 of the HPA requires that CARNA's annual report must include a statement respecting the number of complaints made, their disposition, including the number of hearings closed to the public, in whole or in part, the number of appeals and the number of registrants dealt with under section 118 (assessing incapacity). This statement must include number of complaints alleging sexual abuse or sexual misconduct, and the number of findings of unprofessional conduct based in whole or in part on sexual abuse or sexual misconduct.

2.73. Under section 33, provision is made for the register to include the names of registrants under suspension, and must include information about any conditions imposed on a registrant's practice permit, and the status of any registrant's practice permit (including suspensions and cancellations).

2.74. Detailed provisions around access to hearing tribunal information are made under section 119. CARNA must provide information about suspensions, conditions on practice, and cancellations of practice permits arising from the

complaints process to the registrant's employer, hospitals where the registrant works, ministers where relevant to professional services, any college where the registrant is also a registrant, to other regulators in Canada. Information about reprimands arising from improper billing practices should be shared with ministers.

2.75. If a member of the public makes a specific request about a named registrant, CARNA must provide information about conditions on practice, suspensions, cancellations, reprimands, records of hearings, or details about hearings. Other regulators can ask if a registrant or former registrant is under investigation.

2.76. The Registrar may refuse to disclose information or publish information if they are of the opinion that publication may cause harm to people, or is no longer relevant to the registrant's suitability to practise.

2.77. Section 135.92 of the HPA states that the College website must publish decisions of a tribunal relating to unprofessional conduct relating to sexual abuse or sexual misconduct. Any additional publication is governed by Bylaws. The Bylaws restrict publication and distribution of information on individual conduct matters to that permitted by the Act, the Regulation or as directed by a hearing tribunal.

2.78. Investigation reports are released to the registrant under investigation if the case is referred to a hearing. If the case is being resolved through a CRA, the report may be released if the registrant requests it. A request from a complainant to see an investigation report would be refused.

Proposed amendments

2.79. Prior to this review, CARNA consulted on proposals to change bylaws that would allow for greater publication and improved transparency around hearing tribunals.[15] Under the proposals, all findings of unprofessional conduct and CRAs would be published, including the registrant's name. The amendment would also allow the Registrar to publish information about hearings that are to be scheduled.

2.80. The bylaw amendments would permit investigation reports (subject to redactions) to be shared with registrants if the complaint goes to a CRC, or in interests of negotiating a CRA. The complainant may receive a copy (or a summary) for the purposes of a CRC review.

[15] CARNA. 2019. Proposed Bylaw Changes – Publication of Professional Conduct Decisions (accessed 26 August 2019)

3. Complaints, investigations and discipline against the Standards of Good Regulation

3.1. We reviewed CARNA's policies, process and practices in relation to complaints and discipline against ten Standards of Good Regulation. Information about how the Standards were agreed with CARNA is set out in paragraph 1.9.

Scope of review

3.2. In adapting the Standards to CARNA's mandate and responsibilities we considered their scope. In particular we considered the way in which CARNA has chosen not to use the ACR process set out in the HPA.[16]

3.3. As an alternative to ACR, CARNA has created 'Complaint Resolution Agreements' (CRA). These were introduced in 2015. CARNA has used the general power to 'encourage the complainant and investigated person…to resolve the complaint', as allowed by section 55(2)(a.1) of the HPA[17], to create its own process. This process has become the main means by which complaints are resolved. Such agreements are private and do not involve disciplinary action. We agreed with CARNA that CRAs are within scope of the Standards.

3.4. The HPA provides for a CRC.[18] Complainants may request a review of the complaints director's decision to dismiss a complaint either upon receipt of the complaint or following an investigation. The complainant and the registrant also have the ability to complain to the Ombudsman. All notifications of dismissal inform the complainant and registrants of these options. We agreed with CARNA that the CRC was within the scope of the Standards, but complaints to the Ombudsman are not.

3.5. Under the HPA[19] employers are mandated to report to the relevant regulatory college all suspensions and dismissals of staff. Further, Bill 21[20] enacted in 2019, introduces mandatory penalties for sexual abuse and misconduct. These aspects of regulation fall within the Standards.

3.6. Where CARNA has reason to believe that a registrant lacks 'fitness to practise' due to being incapacitated by ill-health it can take action under separate statutory arrangements from the complaints process.[21] The registrant may be suspended from practice and required to be medically examined or to be

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16 Section 58, Health Professions Act
17 Section 55(2)(a.1) The complaints director … may, with the consent of the complainant and the investigated person, attempt to resolve the complaint…
18 Section 68, Health Professions Act
19 Section 57.1, Health Professions Act
20 Bill 21 An Act to Protect Patients (accessed 29 August 2019)
21 Section 118, Health Professions Act

treated. They may appeal to the Registrar. We agreed that incapacity cases are within scope of the Standards.

Our assessment

3.7. The assessment in this chapter of the report is based on written evidence provided by CARNA staff, an examination of CARNA's polices and procedures as provided to the reviewers, interviews with CARNA staff and independent legal advisors and other stakeholders, observation of internal meetings and an examination of a small number of randomly selected case files.

3.8. In order for a regulator to meet the Standards they must demonstrate that they do so. Policies and procedures, which if implemented properly, would meet a Standard are welcome but unless there is evidence that those policies and procedures are both put into practice and produce the desired outcome the Standard is not met. Data collection and measurement is essential. It is also not sufficient to comply with legislation and bylaws if the legislative framework does not deliver outcomes that meet the Standard. Standards are usually met or not met but where certain parts of a standard are clearly met although the whole is not met we determine that it is 'partially met'.

3.9. We have concluded that CARNA meets six out of ten Standards. It does not meet four Standards.

Standard 1. Anybody can raise a concern, including the regulator, about a regulated member

3.10. A substantial majority of complaints received by CARNA come from employers; 63 per cent (158) in 2017/18.[22] Of these, some 80 per cent were due to the mandatory reporting requirement in the HPA which requires employers to inform the regulator of suspensions, terminations and resignations which may relate to unprofessional conduct. Fifteen per cent (38) come from co-workers, 10 per cent (25) from patients and families and six per cent (14) from other sources including a small number of complaints initiated by CARNA itself under section 56.[23]

3.11. The HPA requires complaints to be in writing and to be signed. This may be a barrier to some patients and family members. CARNA requests either a letter or the use of its own complaints form. Staff told us that the policy had changed in 2018 and that email complaints with electronic signatures were now accepted. They also said that staff would help those making verbal complaints to put them in writing. However at the time of preparing this report the website still states

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[22] CARNA. Annual Report 2017/18 (accessed 26 August 2019) p13
[23] *Op. cit*

unequivocally, 'Electronic signatures, verbal and/or anonymous complaints are not accepted.'[24]

3.12. There is no information on making a complaint provided in languages other than English and no indication on the CARNA website that interpretation into other languages might be available. CARNA staff told us that such help would be offered if requested. This is not sufficient to enable people whose first language is not English to feel easily able to raise a concern or complaint.

3.13. The data about complaints does suggest that they come from a wide range of sources, however the proportion from patients and families is small indicating that this group, the users of nursing services, may find the process daunting. CARNA reports that only 10 per cent of complaints come from patients or families[25]; this compares for example with 17 per cent for the British Columbia College of Nursing Professionals[26] and 29 per cent for the Nursing and Midwifery Council in the UK.[27]

3.14. It is possible for anyone to make a complaint. However, the language used to explain making complaints on the website is difficult to read and understand and no information is given about alternatives to a formal written complaint. There are many ways that CARNA could improve the accessibility of the complaints process, particularly to patients and families and these are addressed in Chapter 4. This Standard is met.

Standard 2. Information about complaints is shared by the regulator with other organisations within the relevant legal frameworks.

3.15. It is in the nature of concerns raised with a professional regulator that some will not be within their remit and that others will be of relevance to other agencies and even sometimes to the police. It is important that a regulator has a process, within the constraints of its legislation, to refer such matters on to other bodies in the interests of public safety.

3.16. The HPA is less than encouraging toward public access to information about health professionals. The College 'must' provide information about conditions on practice to employers, hospitals, Ministers and other regulators but only 'may' (subject to bylaws) provide it to members of the public who may have to pay a fee. CARNA's current Bylaws have strong confidentiality clauses relating to all decision-making stages of the complaints and disciplinary process which restrict the regulator's ability to inform other agencies of possible risk of harm of which the College is aware.[28] Where there has been a restriction on a registrant's practice the College 'may' publish it but very rarely does so in an

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[24] CARNA website. File a complaint (accessed September 14, 2019)
[25] *Op. cit*
[26] Personal communication, 12 August 2019, figures from 2018
[27] Nursing and Midwifery Council. 2019. Fitness to Practise Annual Report 2018-19 (accessed 29 August 2019)
[28] See for example; Bylaws 22.7, 23.7 & 24.7r

identifiable way. Bill 21 which has amended the HPA now requires it to do so in relation to sexual misconduct or abuse.

3.17. It is important for a regulator not only to fulfil its own role in the patient safety framework but to be aware of and to communicate effectively with other bodies which share that responsibility.

3.18. CARNA shares conditions imposed through hearing tribunal orders or conditions on a permit resulting from a consent resolution agreement with all Canadian nursing regulators and other nursing regulators with a relevant connection to the registrant. All known employers of the registrant are also informed. If the tribunal believes the person has committed a criminal offence, it is required by the HPA to provide a copy of its decision to the Minister of Justice and Attorney General. One would hope that if CARNA suspected a criminal offence it would inform the police long before a complaint reached a hearing tribunal. Information is shared with organizations such as a potential employer but only with the consent of the registrant. CARNA does not appear to have any policy of sharing potential risks of harm from nurses with other agencies prior to a consent agreement or tribunal decision.

3.19. The HPA does not enable or encourage active communication of safety issues to external agencies by professional colleges which is regrettable. Up to now CARNA's own Bylaws have been overly restrictive but will be significantly improved shortly. CARNA shares information within the restrictive framework of the HPA. This Standard is met.

Standard 3. The regulator will determine if there is a case to answer and if so, take appropriate action, or where appropriate, the regulator will direct the complainant to another relevant organisation.

3.20. When a complaint is received it is reviewed by an 'intake coordinator'. They consider the nature of the complaint to ensure CARNA's legislative requirements are met. If they are not then, CARNA tells us, they will help the complainant so that the complaint does meet the requirements or they direct them to another appropriate organisation. If the complaint does not meet the all criteria set out in legislation the complaint will not be accepted.

3.21. Intake coordinators have considerable delegated responsibility from the complaints director to make decisions as to the initial action taken on a complaint. In particular they have power to reject a complaint where the legal requirements are not met, or where there is mandatory reporting by an employer and they consider appropriate remediation and supervision is in place. There appears to be no quality assurance process for checking that the decisions of the intake coordinators are consistent or correct.

3.22. Complaints have to be entered separately into CARNA's two databases, one for registration and one for complaints. The reasons given on the complaints database for referring a complaint for investigation are rarely more than a few

words and do not indicate which practice standard the nurse may possibly have breached. Having to enter data twice does increase the risk of error.

3.23. We were told that intake coordinators will inform complainants if they consider their complaint should be directed to another body however CARNA keeps no record of this and there is no reference to it in the guidance to complainants on the website.

3.24. CARNA assesses complaints on receipt and takes appropriate action. Although it does not keep a formal record of complainants directed to other organisations and sources of help we have seen evidence that it does this. This Standard is met.

Standard 4. All complaints are reviewed on receipt and serious cases are prioritised and appropriate action taken.

3.25. We were told that the intake coordinator will review a complaint within 24 hours of the receipt and make a preliminary determination. If the complaint is assessed by the intake coordinator to be of an urgent nature or potential public risk a complaints director or deputy complaints director will be consulted for further direction. Intake files are also reviewed on a weekly basis at a team meeting and complaint management and priorities are determined.

3.26. It is not clear how risks of harm are assessed or quantified in a consistent manner and how or if they are recorded. There is no quality assurance process for these decisions. We have seen four different risk assessment documents which appear to be used by complaints staff at different stages in the process. None have a template for scoring or recording risk, although CARNA tell us this is in hand.

- A flowchart titled 'The Intake Triage Process'[29] indicates categories of risk that might be taken into account; 'concern is appropriately managed in the workplace', 'concern is not imminent public risk', but has no indication as to how such decisions should be made.
- This flowchart should presumably be understood by reading the document called 'Intake Policy Assessment' dated July 2019[30] although the criteria in the two documents are not the same. This second document sets out three levels of risk, 'Imminent danger to the public', 'Medium risk/medium harm' and 'Low risk/Low Harm'. A useful list of criteria for consideration appears under each category. There is no scoring sheet or template for recording how risks have been assessed.

[29] CARNA. (undated) Intake Triage Process.
[30] CARNA. July 2019. Operational Policies and Procedures; Intake Policy Assessment.

- A third document within the Operational Policies and Procedures is headed 'Guidelines for the use of section 118 (incapacity)'.[31] There is no cross-reference between this and the two previously mentioned documents.
- We were also given a second flowchart called 'Regulatory Decision Pathway'[32] which comes from the National Council of State Boards of Nursing in the USA. This sets out a different approach to triage of complaints, oddly starting with a question about mitigating circumstances* which should of course come at the end of the complaints process not the beginning. We have been told this flowchart is not a recognised CARNA document and we recommend that reference to it should be discontinued.

Although the 'Intake Policy Assessment' document is a sound basis for a formal risk assessment, we must conclude that CARNA's approach in this area is not thorough or consistent.

3.27. If a complaint is assessed as a priority it is assigned to an investigator as rapidly as possible. This may mean that other cases are delayed. The intake coordinator, deputy complaints director or complaints director may contact the complainant or the registrant to gather sufficient information to determine the potential for public risk. Intake coordinators do not routinely contact the registrant about a complaint before deciding to investigate it. If a potential public risk is identified the complaints director will make a request to the Registrar to impose appropriate conditions on the registrant's permit under section 65. This might include a suspension of the permit or a restricted or supervised practice setting. However note paragraph 3.43.

3.28. The complainant or the registrant may also provide information that gives the complaints director reason to believe that the registrant has either a physical or mental incapacity that may impair the registrant's ability to practise safely. The complaints director may make an order under section 118 directing the registrant to cease practice immediately and until they provide satisfactory evidence of fitness to practise.

3.29. CARNA has a procedure for prioritizing complaints where it believes there is an urgent public risk. It does not however have a clear, consistent or recorded approach to risk assessment or a process for quality assuring its decisions. This Standard is met.

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[31] CARNA. August 2010. Operational Policies and Procedures; Guidelines for the use of Section 118 (incapacity).

[32] National Council of State Boards of Nursing, USA. 2013. Regulatory Decision Pathway.
* NOTE: The environment in which a health professional works does of course have an impact on their performance. It is however a fundamental principle of being a regulated health professional that you take personal responsibility of your actions. If professional misconduct is found, only after that the working environment may be considered in mitigation. If a regulator finds that the circumstances in which a professional works have significantly undermined a professional's performance and patient safety they are under an ethical duty to inform other agencies.

Standard 5. The complaints process is transparent, fair, proportionate and focused on public protection.

3.30. The complaints process is set out on CARNA's website. For a complainant it is rather daunting, describing in formal language what CARNA cannot help with and listing requirements on the complainant. It does not describe any of the informal ways that CARNA has told us they would help a complainant such as assisting with writing up a complaint or providing support in languages other then English. There is a separate section on sexual abuse and misconduct complaints. It would be helpful if this was signposted more directly from the main 'How to make a complaint section' and if the information that staff are especially trained was given more prominence.

3.31. While a complaint is under investigation, information about the process of an investigation is not disclosed and is confidential, including to the complainant, unless the registrant agrees to disclosure.

3.32. Decisions on complaints are not transparent. Until the new Bylaws come into effect a complainant cannot see an investigation report (although the registrant can). The increasing use of non-disciplinary CRAs means that the outcome is never public.[33] Although a complainant has to agree to the CRA process they play no further part in the resolution process. The CRA is between the regulator and the registrant and is not shared with the complainant. In contrast, were the statutory ACR process to be used the complainant would have to consent to the agreement as well as to the use of the process, although in that process as well all matters are confidential.

3.33. The results of hearing tribunals, nearly all determined by consent agreement, are only published in brief summary. The name of the nurse and their place of work is withheld. The summaries appear in CARNA's magazine *Alberta RN,* not on the website itself. For a member of the public to find these summary reports they must click on a link on the webpage entitled 'Publishing Disciplinary Summaries', that will take them to a digital copy of the magazine, where they will find a page or two with anonymized brief summaries. Summaries are rarely longer than 200 words and do not give reasons for the tribunal's decision. CARNA itself states, 'Publications are not intended to provide comprehensive information about the complaint, findings of an investigation or information presented at the hearing.'[34] This highly limited and uninformative level of publication does not meet the requirements of transparency. It remains within the power of the hearing tribunal not to publish at all.

3.34. It is not possible for a member of the public to identify a nurse against whom a disciplinary finding has been made or to know where or if they are working; summaries only provide the nurse's registration number, while the public 'Find a Nurse' section of the website is only searchable by name and does not

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[33] There were 20 CRAs in 2014/15, 43 in 2015/16, 92 in 2016/17 and 71 in 2017/18. Source: CARNA Annual Reports.

[34] Preamble to section in *AlbertaRN* headed Publications ordered by Hearing Tribunals

include conditions on practice. In order to ask the Registrar to disclose information about conditions on a nurse, a member of the public must know their name. Section 85 (4) of the HPA allows a College to charge a 'reasonable cost' for this information. CARNA tells us that it does not charge a fee. Information may still be withheld.

3.35. In 2017/18 167 complaints were concluded. Forty-four were dismissed, 71 were settled by means of a private non-disciplinary CRA and of the 52 that were referred to a hearing all were concluded by consent agreement.[35] No consent agreements were overturned by the hearing tribunal and no requests for a review to the CRC were accepted. An examination of the four editions of *Alberta RN* in 2018 shows that only 36 anonymized summaries of disciplinary hearings were published. There were six appeals to Council noted in 2017/18. One request was withdrawn. A second has been stayed pending resolution of registrant's incapacity issues. In a third the decision of the hearing tribunal was confirmed. That resulted in an appeal to the Alberta Court of Appeal and a negotiated settlement (therefore again avoiding publication) was agreed.

3.36. If during the investigation process the investigator gathers information that causes concern about the registrant's fitness to practise safely (as a result of health issues) the complaints director will be notified and the file will be reviewed to determine if a section 118 order is required. Conditions imposed are intended to eliminate public risk but permit continued or limited employment (see paragraph 3.28).

3.37. We were unable to assess whether the complaints process is fair or proportionate because it is not transparent. No decisions are overturned. Identifiable information about sanctions is not published and the increasing use of CRAs is a trend towards increasing secrecy. This Standard is not met.

Standard 6. Complaints are dealt with as quickly as possible taking into account the complexity and type of case and the conduct of both sides and the need for an appropriate resolution. Delays do not result in harm or potential harm to patients and service users. If there is a risk of harm the regulator protects the public by means of immediate action.

3.38. CARNA has provided us with targets for its timely performance of all stages of the complaints process and with data showing its actual performance. We have set this information out in the table below:

[35] CARNA. Annual Report 2017/18 (accessed 26 August 2019)

Target	Nine months to June 2019
Complaints reviewed within 24 hours	100%*
Action on complaint within 30 days	100%
Investigation starts within 30 days	69 days
Investigation completed within 6 months	6.5 months
Complaints director's decision within 30 days	83 days
Consent resolution agreement within 60 days	99%**
Hearing within 6 months	'usually'
Total 18 months	*Approx. 22 months****

* except at weekends
** excluding fitness to practise (incapacity) decisions.
*** estimate derived from current performance across current case load

3.39. The targets that CARNA has set itself are reasonable but it is clear from the table above that some important decisions are delayed. The delays in starting investigations and in the complaints director making a decision are significant, the former taking twice as long as the target and the latter nearly three times. Moreover these are matters that are entirely within the control of CARNA. The Conduct Department is aware of these problems with timeliness and has told us it is taking steps to address the problem.

3.40. Once a CRA has been agreed or a hearing tribunal has approved a consent agreement there will be a further period while the registrant is complying with whatever conditions have been placed on her or his practice. That length of time will vary considerably; CARNA suggests that it may be between two months and two years. Further study or coursework should be completed within three months but when supervision or mentoring is ordered, as increasingly is the case, this may extend to between six and twelve months. It is possible therefore that in some circumstances it will take two and a half years for a nurse about whom there has been a serious practice complaint to be restored to full practice. Whether this is really a Right-touch regulation approach does seem to be open to question. Right-touch regulation does not mean light touch but that regulation should be both efficient and effective.

3.41. CARNA has introduced an additional step in the process in that the hearing tribunal meets to sign off a registrant's compliance with conditions required in a

consent agreement.[36] Compliance meetings are held monthly, and more frequently if necessary (see paragraph 2.68). Despite conditions being agreed to in advance by the registrant and their supervisor or mentor, if there is one, it is a matter of concern that the compliance meeting regularly agrees to grant additional time to registrants and rarely if ever takes immediate action on noncompliance as it is entitled to do.

3.42. Conditions on practice arising from fitness to practise (incapacity) issues are very much an individual matter and it is not appropriate to set targets in this area. CARNA reports that drug screening remains in place for between two and five years.

3.43. The length of time it is taking for investigations to start and for the complaints director's decision to be made raises the possibility that decisions to take action under section 65 (interim sanctions) or section 118 (incapacity) are also delayed therefore resulting in harm or potential harm to patients. CARNA is aware of this issue. Although a complaint that raises a concern that might require intervention through either section 65 or section 118 conditions should be treated as a priority the detail in a letter of complaint may not identify any public risk and this may only become apparent when the complainant is contacted by the investigator. In one unusual case an investigation had been identified as a low priority and the file was in the queue for assignment of investigator for approximately six months before the risk was identified and acted on. CARNA tells us that they have increased the questions asked of the complainant on the initial conversation to ensure that they are aware of the extent of the practice concerns. They have directed investigators to review potential public risk on a regular basis during the course of the investigation and consult with the complaints director (or their deputy) if there are concerns. The bigger risk is during the intake process when there has been a decision to investigate and the investigation is delayed due to lack of resources. CARNA has recently implemented a preliminary inquiry process to address the concern of insufficient information being available at this early point.

3.44. There are, according to CARNA's reported data, several points in the process in which delays occur and those delays may result in risks to the public. CARNA is aware of this and seeking to address the issues however we conclude that at the moment this Standard is not met.

Standard 7. All parties to a complaints case are kept updated on the progress of their case and supported to participate effectively in the process.

3.45. As required by the legislation parties to a complaint are provided with updates at least every 60 days unless they request otherwise. This may occur through a phone call, email or mail. The 60 day notification will occur from the acceptance

[36] Conditions agreed as part of a complaint resolution agreement are monitored by the complaints director.

of the complaint until a complaints director decision or the decision of the hearing tribunal.

3.46. The complaints task management tool notifies the responsible staff member at the 45 day point that the notification will be due. Currently there is not an oversight process to ensure that this has happened although we have found no evidence that it has not. This Standard is met.

Standard 8. All decisions made at every stage of the process are administratively fair, well reasoned, consistent, protect the public and maintain confidence in the profession.

3.47. There are as indicated above (paragraph 3.38) numerous important decision points in the complaints and disciplinary process. Significant points at which the protection of the public, fairness and consistency are required are:

- Acceptance of a complaint
- Decision to investigate a complaint
- Decision of the complaints director to
    - dismiss a complaint
    - seek a CRA
    - refer a complaint to a hearing
- Decision of the complaints director to agree a CRA with the registrant
- Decision of the complaints director to forward a consent agreement to the hearing tribunal
- Decision of the hearing tribunal to
    - agree to,
    - amend or
    - reject a consent agreement
- Decision of the compliance meeting to
    - accept,
    - extend
    - or reject a registrant's evident of compliance with conditions.

3.48. The lack of a consistent approach to risk assessment at each stage has already been noted (see paragraph 3.26).

3.49. CARNA does not have a quality assurance system for checking its decision making throughout the process. It relies on the diligence of staff (which we do not doubt), on internal meetings to discuss decisions, and on the lack of challenge to its decisions by the CRC and the hearing tribunal.

3.50. It is also to be noted that the hearing tribunal decisions have rarely been appealed to the Ombudsman or Court of Appeal.[37] It was suggested to us by several people to whom we spoke that this absence of challenge confirms the rightness of the decisions. This is a circular argument. CARNA's approach is to reach consensual agreements and to avoid contested hearings. If the registrant has negotiated acceptable terms with her or his regulator they are not subsequently going to challenge them. In recent practice, the hearing tribunal has never overturned a consent agreement and the CRC has never accepted a complaint. This may be evidence that the original decisions were all correct but could also reflect a complacent system avoiding review, challenge or oversight.

3.51. We reviewed a small number of case files selected at random. Apart from the lack of detail in the recording of the decision to investigate (see paragraph 3.22) and the lack of a consistent, recorded risk assessment (see paragraph 3.26) the files we reviewed were detailed and gave clear and comprehensive reasons for decisions. Written decisions included a summary of the issues to be decided, evidence considered, analysis of that evidence, the decision, the reasons for the decision, and options available to the complaints director or the registrant. Templates are available to ensure consistency in the information provided and are used.

3.52. It appears that the hearing tribunal does little more than approve the consent orders that have been presented to it. On legal advice it attributes a very high level of deference to the agreements made between the registrant and the regulator. It may not pay sufficient attention to allegations that were been withdrawn and does not function as a committee of inquiry, testing the validity of the consent order before it.

3.53. Written decisions are prepared upon dismissal of a complaint and decisions of the hearing tribunal. Decisions regarding a referral to a hearing or to a CRA include detailed allegations of the alleged unprofessional conduct. These written decisions are only available internally and unlike some other regulators in Alberta CARNA has, up to now, declined to make investigation reports available to complainants.

3.54. This Standard is not met.

[37] CARNA informs us that in the last 10 years there have been three appeals to the Ombudsman and three to the Court of Appeal. Five were unsuccessful and one was settled by agreement.

Standard 9. All final hearing decisions, apart from matters relating to the health of a regulated member, are published and communicated to relevant stakeholders.

3.55. Neither the HPA nor CARNA's current Bylaws encourage or enable transparency or the full publication of the outcome of complaints. A 'hearing decision' or determination would include the allegations, the assessment of evidence, the tribunal's finding on facts, its consideration of mitigating or aggravating circumstances, its determination and sanctions imposed if any. A tribunal should give reasons for its decision. CARNA complies with the legislation as written but does not, as yet, have a culture of openness or transparency. CARNA is seeking amendments to its bylaws to enable it to publish more information about disciplinary decisions and be more open and transparent in its regulatory activity.

3.56. Significant improvements in publication practices are planned with the objective of increased transparency. Under the proposals, all findings of unprofessional conduct would be published, including the registrant's name. The amendment would also allow the Registrar to publish information about hearings that are to be scheduled.

3.57. The amendments to the bylaws would also permit investigation reports (subject to redactions) to be shared with registrants if the complaint goes to a CRC, or in interests of negotiating a CRA. The complainant may receive a copy (or a summary) for the purposes of a CRC request.

3.58. Currently publication decisions are made by the hearing tribunal on each case. As the vast majority of cases proceed by consent, publication is a brief summary of the unprofessional conduct and the order and the registrant's permit number. It does not include the registrant's name, only the registration number, unless there is an identified public risk if CARNA were not to do so. Summaries do not give any reasons for the decision and do not identify the nurse or their nurse's place of work. Summaries are not posted on the website, other than within the on-line copy of the *Alberta RN* magazine. Because *AlbertaRN* is only published quarterly it may take many months for a summary to be published. Orders are communicated to appropriate nursing regulators and employers. Information judged by CARNA to be confidential is redacted.

3.59. It is extremely difficult, if not impossible, for a patient or member of the public to identify a nurse who has conditions on their practice. This is because the brief summaries which are published only provide the permit number while the publicly available register, 'Find a Nurse', is only searchable by the registrant's name. The HPA provides that if a member of the public makes a specific request about a named registrant, CARNA must provide information about conditions on practice, suspensions, cancellations, reprimands, records of hearings, or details about hearings. However since information about registrants under investigation or subsequently consenting to conditions of practice is kept secret or on published in anonymized form it is difficult to see how the public can obtain this information.

3.60. Summaries as previously noted (see paragraph 3.33) are anonymized, brief and uninformative. No reasons for decisions are published. During 2018, 36 summaries were published in *Alberta RN.* CARNA's Annual Reports record 56 hearings in 2016/17 and 52 in 2017/18.

3.61. CARNA does publish general, unidentifiable statistics about complaints and their outcome in a clear and understandable manner in its Annual Report.

3.62. The lack of transparency of CARNA's processes and decision making is a consistent challenge to its ability to meet the Standards of Good Regulation relating to complaints and discipline. This Standard is not met.

Standard 10. Records are kept and information about complaints and discipline cases is securely retained and appropriately disclosed.

3.63. By the nature of its work CARNA processes very large volumes of highly sensitive personal data. The risk of harm related to breaches of confidentiality or of data loss is considerable. Health professionals are expected to have very high standards of confidentiality and data security so it is incumbent on their regulators to set an exemplary standard of practice in this area of their responsibilities.

3.64. CARNA has numerous polices that deal with data protection and confidentiality.

3.65. The Complaints team have particular responsibilities for health data relating to both patients, some complainants and to registrants. Although case files are stored on a secure database, sensitive data is sometimes printed off for the purpose of discussion and or meetings and there is no clear desk policy so confidential papers may be seen by others. All staff we were told are trained in data security but there is no compulsory annual refresher training for staff or panellists who also have access to sensitive personal information. We understand that sensitive personal health records may be shared with Labour Relations Officers without the patient's knowledge or consent. This is inappropriate[38].

3.66. The Information Security Policy I01: *Employee responsibility for technology and management of confidential information* sets out in broad terms the care which individuals should take. We note that it was last updated in 2012 and that there is no mention of social media which, along with cyber security and cyber protection has become a high risk area in recent years. This policy is complemented by Privacy Policy P02: *Reporting a Breech of Personal information.*

3.67. Complaints investigators by necessity work away from the office. This creates specific risks to data security. CARNA requires remote workers to store files

[38] CARNA relies on a letter to CARNA from the Office of the Information & Privacy Commissioner dated August 27, 2008. This letter sates that it is 'not legal advice' but that sharing sensitive personal data with third parties is permissible in the circumstances. The OIPC says a confidentiality agreement should be signed by LROs. This is not required by CARNA.

and documents in a locked file cabinet, to use encrypted USB keys, to have a locked briefcase when transporting files and not to put them in checked luggage or leave them in a vehicle. Laptops have two-factor authentication, mobile phones are password protected, email communication that includes confidential information is encrypted and when a file is closed all documentation is returned to CARNA for filing or destruction. All master files are maintained in a central storage and destruction of any confidential material is done through shredding. These are reasonable security measures but could be improved by moving away entirely from the use of paper. Best practice would include no use at all of USB keys, no data to be saved on laptops and all work to be done on CARNA's own servers using two factor authentication and a virtual private network. We note CARNA's policies as regards encrypted email, so were surprised to learn that communications from the hearings team are often faxed between third parties. This is not a confidential form of transmission.

3.68. CARNA has informed us that it complies with the HPA requirements as regards record retention. But we were also told that retention policies are inconsistently applied and that the Council had decided that registrants' records should be kept for 99 years. Records Management is covered by an 'administrative policy'.[39]

3.69. We were informed that there were eight data breaches over the last year requiring reporting to the Office of the Privacy and Information Commissioner in CARNA as a whole of which two related to the Complaints Directorate.

3.70. It is understandable that there will be different risks as between, say, human resources, registration and complaints but an overarching policy and procedures would be desirable. So would modernisation of policies relating to cyber security.

3.71. This Standard is met but significant improvements in practice should be made.

[39] CARNA. 2015. Administrative Policies: A12 *Records Management Policy*

4. Assessment of performance and recommendations for improvement

4.1. Overall CARNA performs adequately against the Standards of Good Regulation as applied to its complaints and disciplinary processes. It meets six out of ten Standards.

4.2. CARNA states that it is committed to Right-touch regulation and that it is a key part of its regulatory philosophy. This is welcome. There are however a number of elements of the Right-touch approach which are hard to discern in CARNA's actual practice; in particular CARNA is not transparent and because it is not transparent it is not readily accountable. CARNA itself describes accountability as 'subject to public scrutiny and able to justify our actions'[40]. Since the vast majority of its decisions about complaints are kept secret from the public it does not justify its actions or open them to scrutiny.

4.3. There are three areas where CARNA's approach to its regulatory functions undermines its ability to meet the Standards. These are:

- Lack of transparency in its processes, decision-making and outcomes
- Inconsistency of internal policies and procedures, and
- Lack of measurement of its impact on the safety of patients and the quality of nursing.

4.4. Each of these is dealt with in more detail below. As an Association CARNA's legitimate concern for the well-being of nurses should not be allowed to influence its commitment to the well-being of patients when it is exercising its functions as a regulatory College.

4.5. CARNA's internal policies and procedures for complaints and discipline need co-ordination, revision and updating. We saw a very large volume of detailed policies and procedures, some were dated, some undated. Their status was not always clear. Some still had track changes in them but it was not obvious if they were drafts. Some seemed inconsistent with others. It was hard to judge if all these documents are fit for purpose when their status is unclear. Significant in their absence were a documented, consistent approach to risk assessment at each stage of the decision process (see paragraph 3.26) and an internal quality assurance programme.

4.6. The approach to information governance and data security could be improved by updating of policies to take account of social media and new cyber risks, along with the consistent application of best practice and regular staff training.

4.7. CARNA recognises that its complaints process is not transparent and is taking positive steps to improve this. There needs however to be an organisation wide

[40] https://www.nurses.ab.ca/about/what-is-carna/regulatory-philosophy

commitment to becoming a more open and publicly accountable regulator. The fact that CARNA is an association of nurses as well as their regulator creates an inbuilt conflict of interest between promoting the profession and protecting the public. It is to be hoped that the forthcoming Governance Review commissioned by the Council will address this issue, amongst others.[41]

4.8. Even when public access to information is possible, CARNA's practices make it difficult. For example, hearing tribunals are open to the public but CARNA does not publicise them in any way. Members of the public can ask for information about sanctions on individual nurses but only by name. Currently CARNA does not, except very rarely, publish the names of nurses who have received sanctions. An increasing number of complaints (about one third in 2018) are settled through non-disciplinary CRAs and these are secret.

4.9. The publication of sanctions and conditions applied by regulators to health professionals is a vital ingredient in maintaining public confidence in regulation and in the quality of care. Two important principles apply: one that justice should not only be done but be seen to be done; and two, that a patient cannot give informed consent to treatment by a health professional if they are unaware of any conditions on the registrant's practice. Openness is a friend to justice not its enemy.

4.10. It has been suggested to us that increased transparency will harm patient safety by making nurses anxious and less likely to admit to errors. We are not aware of any evidence to support this assertion. Nurses have a professional duty to report errors and should do so. Many jurisdictions have transparency in regulatory proceedings including the publication of names and identification of workplaces we are not aware of data that suggests that this does other than improve accountability and public confidence in regulation.

4.11. Given that all complaints in 2018 that were not dismissed were settled by one form or other of consent and that LROs from UNA are involved in negotiating such agreements with the regulator, greater transparency in this area is also needed so that CARNA can be accountable for protecting the public. Agreements that are not open to scrutiny give rise to suspicion that the well-being of nurses takes precedence over patients. Since consent requires both insight and recognition of professional or personal failing it is essential that the registrant engages personally in the process of agreement with CARNA.

4.12. There is an important formal difference in the role of a legal representative or a non-legal 'friend' supporting a registrant in disciplinary proceedings. In a document we have seen CARNA makes clear that

'*The Health Professions Act gives the complaints director broad authority under Part 4 to perform her duties, the complaints director must speak directly with the investigated person whenever she deems it is necessary and for whatever purpose is relevant to her responsibilities under the Health Professions Act …*

[41] CARNA. 2019. Request for Quote for Governance Review Consulting Services.

the member is advised they may have a support person from UNA present during the investigation. If the member has indicated they want UNA involvement during the investigation, the investigations officers are advised that they may discuss process issues with the investigated person, but the substance of the complaint should be discussed in the presence of the UNA support person. However, the investigated member is required to cooperate with the investigation and must respond to the complaints director and investigations officers directly when requested to do so'.

In an internal memorandum written by CARNA in 2008 there is a statement of its historical position dating back to the 1980s:

'*Throughout the entire time….there has always been a clear distinction made between legal and lay representation. Labour relations officers have always been 'lay' representation'.*[42]

4.13. CARNA needs to assure itself of a nurse's insight so it must engage directly with its own registrant. Of course, registrants should have access to legal representation or support from his or her union but lay support should not be a substitute for direct engagement with the nurse or treated as though it were legal representation. There is an important distinction in terms of fair process between legal representation and support from a 'friend' in disciplinary proceedings. Only a solicitor can 'represent' another person in legal proceedings and in doing receives certain privileges and is bound by Law Society standards, for instance in sharing of evidence. CARNA should therefore not provide to LROs who are not acting as solicitors the same privileges as those who are. Where a registrant is negotiating a consent agreement with the advice of a 'friend' CARNA should communicate directly only with the registrant. CARNA is preparing a code of conduct for lay persons supporting a nurse at proceedings which should clarify this issue. CARNA needs to make clear to he UNA that LROs who are not acting as legally qualified representatives cannot be given the same privileges, for instance in disclosure of evidence, as would apply to them if they were.

4.14. It is a matter of concern that apparently a majority of current members of the hearing tribunal panel do not accept the need for greater public accountability. They recently circulated a paper[43] to Council members objecting to any increased transparency through proposed changes to the Bylaws:

'*It is troubling that CARNA would <u>choose</u>* [their emphasis] *to publish member information NOT* [their emphasis] *pertaining to sexual abuse or sexual misconduct. That information goes well beyond CARNA's normal practice and should not be implemented'*.

They also wrote:

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[42] Internal CARNA memorandum dated January 25, 2008

[43] Paper titled 'Response to the proposed bylaw revisions', undated (August 2019)

'*There is a likelihood (or at a minimum, a high risk) that publication of details of upcoming hearings will result in more contested hearings. Members will feel obliged to defend themselves publicly against allegations rather than using consent agreements and alternate complaint resolution processes. Contested hearings are expensive, public, and put tremendous stress and pressure on Tribunal members, the member, and counsel. Further, the increased costs will be passed on to members in the form of increased registration fees*.'

4.15. The panellists' paper suggests that their priority is a registrant's privacy and avoiding 'embarrassment' to them. The new arrangements, they suggest, will be stressful for themselves as panelists and are likely to cost nurses more. These arguments have nothing to do with patient safety, public protection or the public interest. These hearing tribunal panellists appear not to know that CARNA does not use the alternate complaints resolution process (see paragraph 2.24). Their perspective suggests that publication is viewed as an additional sanction on a registrant rather than an administrative action that enables transparency and accountability. The Council of CARNA needs to consider what action to take when some of its own hearing panellists show such a misunderstanding of their role as the independent guardian and final arbiter of patient safety and the public interest.

4.16. The public have little opportunity for oversight of or challenge to CARNA's decisions because they have so little information about them. There is little point in a complainant going to the CRC since it always sides with the regulator. The apparent bias of the majority of hearing panellists in favour of nurses means that its hard to take on trust CARNA's assertion that its processes ensure 'the public will receive safe, competent, compassionate, ethical nursing care'.[44]

4.17. We do not doubt that a commitment to consensual agreements with registrants is an effective way of enabling remediation of occasional poor clinical practice or minor behavioural issues. For remediation to be effective there must be insight and acceptance of failings on the part of the nurse. There must also be an effective route to remediation through retraining and supervised practice. The move by CARNA to resolve virtually all complaints by consent does however cause us concern. Although the member needs to acknowledge that their behaviour was unprofessional it is hard to believe that every nurse in Alberta has insight, and that none having 'remediated' ever does a wrong thing again. The hearing tribunal should be operating as a committee of inquiry, testing the evidence, testing the consent agreement, testing the relevance of the sanctions, and testing the measurement of compliance.

4.18. CARNA has confirmed to us that it does not measure or collect outcome data from its decisions. After a search of its complaints files it was able to identify, for example, 86 registrants who had had further complaints investigated despite

[44] CARNA. Annual Report 2017/18 (accessed 26 August 2019) p15

previously completing remediation. CARNA does not track however if subsequent complaints are of the same or a different nature. There are nurses, it says, with an 'unresolved pattern of substandard practice'.[45] In the paper distributed to the Council the majority members of the hearing tribunal panel assert that CARNA is '…doing a wonderful job of protecting the safety of the public, ensuring the highest standard of nursing practice, and helping the profession to evolve.'[46] They have no evidence on which to base this assertion. Complacency is the opposite of intelligent inquiry.

4.19. The recent report of the Inquiry into the murder of patients by a nurse working in long-term care facilities in Ontario[47] has lessons which should be considered by the Council and executive management team of CARNA. Volume 2, section IV, Chapter 13, of the Inquiry Report, deals with the role of the College of Registered Nurses of Ontario (CRNO). Nurse Wetlaufer had come to the attention of CRNO many times over many years. At different times restrictions were placed on her practice then removed, CRNO was aware of her mental health issues. She lied on her application and renewal forms. Nevertheless she was allowed to continue working. The Inquiry Report does not attribute blame to CRNO nor any other body. CARNA should reflect on whether its own risk assessment would be sufficient and if a similar level of poor clinical practice and personal behaviour would be tolerated or if the implications of a nurse's mental health are fully taken into account in its processes. We are aware that CARNA is considering what lessons may be learned from the Ontario Inquiry Report for its own practices particularly around registration, risk assessment and incapacity issues.

4.20. The numerous different agencies in Alberta responsible for overseeing the quality of care and for dealing with complaints about the heath system present a confusing and complex picture for potential family complainants. Alberta, we recognise, is not unique in this regard. For example a complaint about the quality of care in a residential facility might be directed to the facility manager or its owners, to Protection for Persons in Care, Alberta Health Services, the Ministry of Health, any number of professional colleges for physicians, nurses, practical nurses, physiotherapists, dentists or opticians and so on, or to the Ombudsman or the Alberta Health Advocacy Office. Each of these may direct the family member to one of the others. Complainants thus experience a merry-go-round of bodies, each assessing a different aspect of quality and using different criteria to do so. It should not be left to patients or their families to join up the dots of patient safety.

4.21. The Health Professions Act in Alberta does not enable professional regulation in the province to perform in line with best contemporary practice. The legislation needs to be amended to make regulatory governance independent

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45 Evidence from CARNA in email 27 August 2019

46 *Ibid*.

47 The Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System, Final Report. Ontario, 2019

of professional associations, to encourage greater transparency of process and outcome and to enable better communication and co-ordination between agencies in the interests of public safety. We are aware that the Government of Alberta is considering legislative reform and we welcome its initiatives in this area.

Recommendations

4.22. We set out below our recommendations for improvement to CARNA's policies and practice in the management of its complaints processes and outcomes. The recommendations address the key areas of weakness as identified in this report. Our time working with CARNA gives us confidence that it is committed to improvement and change. We hope it will find these recommendations helpful and will implement them.

Recommendation 1: CARNA should improve the information available for potential complainants, particularly patients and families by

- Updating and simplifying the language on the website
- Making it clear that verbal complaints will be assisted
- Providing materials and interpretation in languages other than English and committing to cultural sensitivity

Recommendation 2: CARNA should consider its wider role in patient safety and be active in identifying potential risks that should be addressed by other bodies in the health system. It should communicate its concerns to them.

Recommendation 3: When a complaint has been received and assessed as warranting investigation it should be shared with the registrant and their perspective obtained before a decision to investigate is made.

Recommendation 4: CARNA should develop a consistent approach to risk to be used throughout the complaints and discipline process. It should be explicitly applied and recorded at each decision point to ensure that risks of harm are accurately assessed and that conditions on practice are appropriately chosen and applied.

Recommendation 5: When a decision is made to investigate a complaint reasons should be recorded more clearly on the database and an indication of which practice standards might have been breached given.

Recommendation 6: CARNA should improve the selection, induction and training for CRC and hearing tribunal members. Training should take place on an annual basis and there should be an annual appraisal of each member's performance. Chairs should be appointed and trained separately. The HPA does not require chairs to be registrants; this is something CARNA has chosen to do and should be discontinued. Chairs should be appointed on the basis of competence not their profession.

Recommendation 7: CARNA should complete and implement its code of conduct for tribunal members and for lay persons supporting nurses in proceedings. It should respond differently when a nurse has legal representation to when they have not. This is important in negotiating consent agreements and in any contested hearings. Hearing tribunal members should understand the difference and act accordingly.

Recommendation 8: CARNA has many appropriate policies and procedures relating to complaints and discipline but it does not have a consistent approach to quality assuring their implementation nor does it measure their outcome. It should implement a quality assurance programme for all decision points in the complaints and discipline process and should track and measure the outcome to all sanctions applied to registrants and amend its approach if necessary.

Recommendation 9: Hearing tribunals considering consent agreements should pay attention to any allegations that might have been made against a nurse but which have been withdrawn as part of the consent agreement process so they can independently assess if the consent agreement adequately addresses the nurse's failings and the risks to public protection.

Recommendation 10: CARNA should implement the powers available to it in the new Bylaws as soon as possible and should appoint new members to the hearing tribunal panel list to ensure its independence and freedom from bias. It should publish all conditions on practice and the names of the registrants to whom those conditions apply. Tribunal decisions should be published and accessible on the public register on the website. This should include all consent agreements except those relating to incapacity. CARNA should commit to an open and transparent culture in everything it does.

Recommendation 11: CARNA should completely overhaul its process for ensuring registrants' compliance with conditions on practice. It should dispense with compliance meetings of the Hearing Tribunal and create an active process for monitoring compliance including following up with employers and mentors. Action should be taken against registrants who, without exceptional reason, do not meet the terms of their agreements with the College within the time agreed. Monitoring of CRAs should be included.

Recommendation 12: CARNA should monitor the outcome and effectiveness of consent agreements and CRAs. It should take action to remove from practice, temporarily or otherwise, registrants who do not meet the terms of their agreement and those who have further complaints despite previous 'remediation'.

Recommendation 13: CARNA should ensure the governance review that it is commissioning should consider if being a nurses' association influences adversely the independence of its regulatory functions and its absolute commitment to patient safety and protecting the public interest.

Recommendation 14: CARNA should refresh, update and bring together its policies on data security, records retention and information governance. It should ensure that all staff and committee members are trained in data security and that information governance policies are consistently applied. As improvements to its information technologies come into effect it should digitise remote working, eliminate or minimise the use of paper and move towards a clear desk policy.

Annex A: People we spoke to in the course of this review

Ali Abdelrahman	Alberta Health
Betty Anderson	CARNA
Kim Anderson	CARNA
Sherry Botti	CARNA
Felix Cheng	CARNA
Lee Coughlan	United Nurses of Alberta
Lisa De Sousa	CARNA
Len Dolgoy	Independent Legal Counsel
Andrew Douglas	Alberta Health
Dennie Hycha	President, CARNA
Cindy Jones	CARNA
David Kay	CARNA
Michelle MacDougall	CARNA
Blair Maxston	Independent Legal Counsel
Collin May	Member of the public, complainant
Shelley McGregor	CARNA
Gwen Parsons	CARNA
Amy Payne	CARNA
Joy Peacock	CARNA
Darlene Ricard	CARNA
Rachelle Roberts	CARNA
Jane Steblecki-Corns	CARNA
Skye Van Giessen	CARNA
Kate Whittleton	CARNA
Georgeann Wilkin	CARNA
Donna Wilson	University of Alberta

Annex B: The Standards used in this review

These standards are based on those developed by the Professional Standards Authority for Health and Social Care (2016).

1. Anybody can raise a concern, including the regulator, about a regulated member.

2. Information about complaints is shared by the regulator with other organisations within the relevant legal frameworks.

3. The regulator will determine if there is a case to answer and if so, take appropriate action, or where appropriate, the regulator will direct the complainant to another relevant organisation.

4. All complaints are reviewed on receipt and (serious) cases are prioritised and an appropriate action taken.

5. The complaints process is transparent, fair, proportionate and focused on public protection.

6. Complaints are dealt with as quickly as possible taking into account the complexity and type of case and the conduct of both sides and the need for an appropriate resolution. Delays do not result in harm or potential harm to patients and service users. If there is a risk of harm the regulator protects the public by means of immediate action.

7. All parties to a complaints case are kept updated on the progress of their case and supported to participate effectively in the process.

8. All decisions made at every stage of the process are administratively fair, well reasoned, consistent, protect the public and maintain confidence in the profession.

9. All final hearing decisions, apart from matters relating to the health of a regulated member, are published and communicated to relevant stakeholders.

10. Records are kept and information about complaints and discipline cases is securely retained and appropriately disclosed.

Annex C: Glossary of acronyms

ACR	Alternative Complaint Resolution
CARNA	College and Association of Registered Nurses of Alberta
CRA	Complaint Resolution Agreement
CRC	Complaint Review Committee
CRNO	College of Registered Nurses of Ontario
HPA	Health Professions Act 2000
LRO	Labor Relations Officer
UNA	United Nurses of Alberta

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