

**Review of the College &  
Association of Registered Nurses  
of Alberta's Approach to Fitness  
to Practise**

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## INTRODUCTION

CARNA is responsible for ensuring that registered nurses in Alberta are capable of providing safe and competent care. This includes ensuring that registered nurses in Alberta are fit to practise.

The purpose of this review is to evaluate CARNA's current approach to fitness to practise. There are three sections. In the first section, we outline the fitness to practise framework set out in the *Health Professions Act* and the *Registered Nurses Profession Regulation*. In the second section, we describe CARNA's current approach to fitness to practise as we understand it. In the third section, we offer a review of CARNA's approach by answering the following questions:

- A. How does fitness to practise relate to incapacity?
- B. If a fitness to practise issue arises when a regulated member is applying for renewal of their practice permit, is it necessary for them to be asked to take out former or inactive membership?
- C. If an individual does not meet the fitness to practise requirement, why should their application for registration or reinstatement be allowed and why should they be approved for a practice permit?
- D. When should CARNA impose conditions on an individual's practice permit?
- E. What types of conditions should CARNA impose on an individual's practice permit?

## THE FITNESS TO PRACTISE FRAMEWORK

Pursuant to section 131 of the *Health Professions Act*, a council may make regulations respecting requirements and applications for registration and practice permits, conditions on practice permits and other matters under the *Act*. As an exercise of this statutory authority, sections 12 and 22 of the *Registered Nurses Profession Regulation* create a "fitness to practise" requirement. More specifically:

- section 12 requires that an applicant for registration as a regulated member must, on the request of the Registrar, submit evidence satisfactory to the Registrar, confirming the member's fitness to practise; and
- section 21 requires a regulated member applying for renewal of that member's practice permit to provide evidence satisfactory to the Registrar of the regulated member's fitness to practise.

What it means for an individual to be "fit for practise" is not defined in the *Regulation*. However, CARNA uses the following definition for "fitness to practise":

All the qualities and capabilities of an individual relevant to their practice as a nurse, including but not limited to freedom from any cognitive, physical, psychological or emotional condition and dependence on alcohol or drugs that impairs their ability to practise nursing.

This definition comes from the Canadian Nurses Association and is consistently used by CARNA in each of the following documents:

- the Code of Ethics, which goes on to require: “Nurses maintain their **fitness to practise**. If they are aware that they do not have the necessary physical, mental or emotional capacity to practise safely and competently, they withdraw from the provision of care after consulting with their employer. If they are self-employed, they arrange for someone else to attend to their clients’ health-care needs. Nurses then take the necessary steps to regain their fitness to practise, in consultation with appropriate professional resources” (G.5. at p 17);
- the Practice Standards for Regulated Members, which requires that “The nurse ensures their fitness to practice” (Indicator 5.9 at p 8);
- the Entry-to-Practice Competencies for the Registered Nurses Profession, which requires nurses to “[understand] the significance of fitness to practice in the context of nursing practice, self-regulation, and public protection” and “[identify] and [implement] activities that maintain [their] fitness to practice” (101 and 102 at p 22); and
- the *Working Extra Hours: Guidelines for Regulated Members on Fitness to Practise and the Provision of Safe, Competent, Ethical Nursing Care*. These *Guidelines* help to outline key factors for consideration in making decisions about working extra hours. The *Guidelines* recognize that regulated members have a professional responsibility to ensure their fitness to practice and go on to require regulated members to, when deciding to work extra hours, act on their obligation to maintain fitness to practice and withdraw or refuse requests to work extra hours when fatigue or other factors negatively affect their fitness to practise safely (pp 5, 7).

## **CARNA’S CURRENT APPROACH TO FITNESS TO PRACTISE**

Much of CARNA’s current approach to fitness to practise is set out in its Fitness to Practise Policy.

CARNA’s website also includes a section on fitness to practise under the heading “Registration requirements”. The webpage provides:

### **HOW TO MEET THIS REQUIREMENT**

- 1) You must do one of the following on initial application, when renewing your registration, and when returning to practice:
  - Declare your FTP.
  - Let CARNA know if you are:
    - Unable to practise due to a physical or mental health condition, substance abuse and addiction or if you are on medical leave.
    - On a leave of absence due to a mental, physical or substance abuse issue at renewal time.
- 2) As an RN, you are responsible for maintaining your own FTP throughout the year. Here are some helpful tips:

- If your colleagues raise concerns about your practice, take care to assess your practice.
- You can withdraw from practice or request modification(s) if you are experiencing a short or longer term illness.
- You are not required to inform CARNA of your FTP status during the practice year.
- If physical or mental health conditions are affecting your FTP, you may require medical advice, treatment and monitoring.
- If stressors in your life are affecting your FTP you can seek assistance through counselling. You may want to review your employer resources/benefits for coverage.
- If you have concerns about your FTP you should consult your health-care provider to determine if you can practise safely.
- If you are self-employed, you may need to arrange for another appropriate health-care professional to provide care for your client.
- You may wish to access your employer's Occupational Health Nurse (OHN). They can/will collaborate with you, your primary care provider and your workplace to develop a plan which may involve modified hours or duties. Only information about your ability to return to work and any workplace modifications and/or accommodations can be shared with your manager. OHNs are required to ensure that your personal health information remains confidential and no medical information be disclosed to your manager.

Further information may be requested by emailing [registration@nurses.ab.ca](mailto:registration@nurses.ab.ca). If you are uncertain if you are fit to practise, please call CARNA for advice.

The webpage also provides:

#### **Important note**

You may be disciplined if you work while unfit to practise.

You can be investigated and disciplined for unprofessional workplace behaviours even if those behaviours are related to an underlying health problem. The unprofessional workplace behaviours are disciplined, not the underlying health problem. However, the underlying health problem is taken into consideration at the time of a hearing.

The *Health Professions Act* gives the Complaints Director the authority to act on matters related to incapacity. If the Complaints Director has grounds to believe a regulated member may be incapacitated, an Order to cease practising will be made along with requirements to undergo appropriate health assessments and treatment. Once the Complaints Director receives medical clearance from all of the health-care providers, the Order will be lifted and the member will be able to return to work.

The webpage also provides definitions or information for “incapacitated”, “fatigue”, “substance abuse” and “disability”.

When it comes to actually applying the Policy and the information on CARNA’s website, applicants (when applying for initial registration) and regulated members (when applying for renewal of their practice permits) are asked the following eligibility questions which are relevant to their fitness to practise:

9. Are you affected by a physical or mental condition or disorder that impairs your ability to provide the professional services required of a registered nurse in a safe and competent manner in your practice?

10. Are you currently on medical leave? (Please note: this excludes maternity leave).

11. Are you affected by an addiction to alcohol, drugs or other chemicals that impairs your ability to provide the professional services required of a Registered Nurse in a safe and competent manner in your practice?

If an applicant or regulated member answers “yes” to one or more of these questions, an RN consultant may then ask them to complete and submit a “Clarification of Fitness to Practice Form” (the “Clarification Form”). The Clarification Form is to be completed by the individual and does not require the involvement of a health care practitioner. It states the following:

You have indicated that you have a fitness to practice issue. Please clarify below how your condition relates to your ability to practice nursing. We do not collect information on specific diagnosis. Also, when considering your response, the following definition of fitness to practice may be useful: **All the qualities and capabilities of an individual relevant to his or her capacity to practice as a registered nurse, including, but not limited to, freedom from any cognitive, physical, psychological or emotional condition or dependence on alcohol or drugs that impairs his or her ability to practice nursing.**

In the case of a regulated member who is applying for renewal of their practice permit, if the information provided on the Clarification Form indicates that the regulated member is not fit to practise, the regulated member’s application will be rejected and they will be asked to choose between taking out former or inactive membership. After this, the former or inactive regulated member may apply to CARNA for reinstatement.

In the case of an applicant who is applying for initial registration, or in the case of a former or inactive regulated member who is applying for reinstatement, the RN consultant may then ask them to complete and submit an “Assessment of Fitness to Practice Form” (the “Assessment Form”). The first part of the Assessment Form includes a disclosure authorization to be completed by the individual.

The second part of the Assessment Form is to be completed by a physician, nurse practitioner or specialist. Thus, unlike the Clarification Form, which does not require the involvement of a health care practitioner, the Assessment Form does require the involvement of a health care practitioner. The second part of the Assessment Form provides as follows:

1) I confirm that:

- I have been the treating physician of above named patient for a sufficient period of time to be familiar with his/her health conditions/status or,
- I have a specialized practice in substance misuse and saw him/her on referral.

When assessing a nurse, CARNA recommends the Physician, Nurse Practitioner or Specialist to consider fitness to practise as an absence of incapacitation as found in the Health Professions Act: “incapacitated” means suffering from a physical, mental or emotional condition or disorder or an addiction to alcohol or drugs as defined in the *Pharmacy and Drug Act* or other chemicals that impairs the ability to provide professional services in a safe and competent manner (*Health Professions Act RSA 2000*, Interpretation, 1, 1, s)

2) I certify that’s/he is currently:

- Fit to practise as a Registered Nurse
- Not fit to practise as a Registered Nurse,

3) Ongoing monitoring requirements:

- Yes, is recommended. Please provide recommendation re frequency and duration.

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- No, not recommended/required.

Comments, if any:

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Based on the information provided on the Assessment Form, the RN consultant then decides between the following options:

- allowing the application for initial registration or reinstatement and approving a practice permit;
- allowing the application for initial registration or reinstatement and approving a practice permit, but making the practice permit subject to certain conditions; or
- refusing the application for initial registration or reinstatement and refusing a practice permit.

If conditions are imposed on the practice permit, those conditions are typically based on the health practitioner’s comments on the Assessment Form.

## **REVIEW OF CARNA’S CURRENT APPROACH TO FITNESS TO PRACTISE**

### **A. How does fitness to practise relate to incapacity?**

The *Health Professions Act* contemplates that a regulated member may become “incapacitated”, which is defined as “suffering from a physical, mental or emotional condition or disorder or an addiction to alcohol or drugs as defined in the *Pharmacy and Drug Act* or other chemicals that impairs the ability to provide professional services in a safe and competent manner” (s 1(1)(s)).

Under section 118(1), the complaints director may direct a regulated member to submit to a specified physical or mental examination or both if the complaints director has grounds to believe that the regulated member is incapacitated.

Under section 118(2), “On receipt of the results of any mental or physical examination under subsection (1), and if recommended by the person or facility the complaints director may direct the regulated member to submit to treatment by a person or at a facility specified by the complaints director”.

Section 118(4) also allows for the complaints director to direct that the regulated member cease providing professional services until a report is received or until they are satisfied that the regulated member is no longer incapacitated.

Fitness to practise is closely related to incapacity. This is indicated by how similar the definitions of “incapacitated” and “fitness to practise” are:

- incapacity relates to physical, mental or emotional conditions or disorders and fitness to practise relates to cognitive, physical, psychological or emotional conditions; and
- incapacity relates to addiction to alcohol or drugs or other chemicals and fitness to practise relates to dependence on alcohol or drugs.

However, there are a number of differences as well:

<b><u>Fitness to Practise</u></b>	<b><u>Incapacity</u></b>
<ul style="list-style-type: none"> <li>• Concerns both applicants for initial registration and regulated members</li> </ul>	<ul style="list-style-type: none"> <li>• Concerns only regulated members (does not apply to applicants for initial registration)</li> </ul>
<ul style="list-style-type: none"> <li>• Individuals only asked to provide information about their fitness to practise at specified time (on application for initial registration or on practice permit renewal)</li> </ul>	<ul style="list-style-type: none"> <li>• Individuals may be asked about incapacity at any time (and it is common for concerns to be raised in connection with allegations of unprofessional conduct)</li> </ul>
<ul style="list-style-type: none"> <li>• Registrar can only seek additional information from individuals at specified time</li> </ul>	<ul style="list-style-type: none"> <li>• Complaints Director may direct individual to undergo physical or mental examination or both at any time so long as Complaints Director has grounds to believe that individual is incapacitated</li> </ul>
<ul style="list-style-type: none"> <li>• Registrar can only place conditions on practice permit at specified time</li> </ul>	<ul style="list-style-type: none"> <li>• Complaints Director may require individual to submit to recommended treatment or cease practicing at any time</li> </ul>

Of note, while incapacity only applies to regulated members and not to applicants for initial registration, the Registrar still has some power to order an applicant for initial registration to submit to a physical or mental examination. Section 28(3) of the *Health Professions Act* provides that if there are reasonable and probable grounds to be of the opinion that an applicant would create a danger to the public or be unsafe because of a disability or incapacity, the Registrar may require the applicant to undergo physical or mental examinations in order to determine whether the applicant would create a danger to the public or be unsafe.

One other difference between fitness to practise and incapacity bears noting. As mentioned above, when a regulated member who is applying for renewal of their practice permit discloses a fitness to practise issue, they will be asked to take out either former or inactive membership. After this, the individual may apply to CARNA for reinstatement. The individual will then be asked to provide further medical information and conditions may be imposed on the practice permit.

In contrast, when a regulated member presents with an incapacity issue, they are typically asked to enter into an undertaking not to practice while further medical information is collected. Conditions may then be imposed on their practice permit. To be clear, the individual is never asked to take out former or inactive membership.

**B. If a fitness to practise issue arises when a regulated member is applying for renewal of their practice permit, is it necessary for them to be asked to take out former or inactive membership?**

It is not necessary for a regulated member to be asked to take out former or inactive membership if a fitness to practise issue arises when the regulated member is applying for renewal of their practice permit. As an alternative to this, the regulated member could be asked to enter into an undertaking not to practice while further medical information is collected. As mentioned above, this is the approach generally taken by Conduct.

There are a number of reasons why Registration should consider switching to this approach:

- Fitness to practise and incapacity are closely related concepts and so it makes sense for Registration to take a similar approach to fitness to practise as Conduct takes to incapacity.
- From an administrative perspective, it is probably more efficient and straightforward not to have to change the individual's registration status, particularly in those cases where the individual ends up being approved for a practice permit down the road anyways.
- The fact that the primary and automatic response to a fitness to practise issue is to ask the individual to take out former or inactive membership may be problematic from a human rights perspective. As will be discussed in further detail below, when a regulated member has a fitness to practise issue, the *Alberta Human Rights Act* requires CARNA to consider whether there are any conditions that can be imposed on the individual's practice permit so that the individual can still have a practice permit, but also so that their fitness to practise issue can be managed. Registration's current approach may be alleged to be at odds with this obligation because it suggests that an individual with a fitness to practise issue likely should not be registered or permitted to practice and the only exception to this is where the fitness to practise issue can be adequately managed with conditions. However, the better starting point from a human rights perspective is that an individual with a fitness to practise issue likely should be registered and permitted to practice and the only exception to this is where the fitness to practise issue cannot be adequately managed with conditions.
- The fact that an individual will be required to take out former or inactive membership if they disclose a fitness to practise issue to Registration, but will not have to if they are reported for incapacity to Conduct, may create an incentive for individuals not to disclose a fitness to practise issue to Registration. For example, if a regulated member suspects, but is not sure, that they

may have a fitness to practise issue, they may not want to disclose this when they apply for renewal of their practice permit because they know that it will result in them having to take out former or inactive status before conditions on their practice permit are imposed. At the same time, they know that if they are eventually reported to Conduct for incapacity, they will not have to go former or inactive before conditions are imposed.

**C. If an individual does not meet the fitness to practise requirement, why should their application for registration or reinstatement be allowed and why should they be approved for a practice permit?**

Since fitness to practise is a requirement, this raises the question of why applicants or regulated members who do not meet the requirement are still issued practice permits, even if the practice permits are subject to conditions. For example, if an applicant did not meet the English language requirement, they would not be issued a practice permit with the condition that they learn English.

The answer to this question relates to CARNA's human rights obligations. The *Alberta Human Rights Act* prohibits discrimination on the basis of disability. A "disability" refers to any form of physical or mental disability and includes addiction.

To avoid a finding of discrimination, CARNA must provide accommodation to applicants or regulated members with fitness to practise issues. This means that when an applicant or regulated member has a fitness to practise issue, CARNA must still consider whether the individual can have a practice permit or a practice permit with conditions.

Having said this, CARNA is only obligated to provide accommodation to the point of undue hardship. The point of undue hardship is reached when there is nothing else reasonable or practical that can be done. In determining where the point of undue hardship lies, the risk to the public is the primary consideration. This means that CARNA is not obligated to provide an individual with a practice permit:

- if to do so would result in an unacceptable amount of risk to the public; or
- if there are no reasonable or practical conditions that could be placed on the practice permit to manage the risk to the public.

**D. When should CARNA impose conditions on an individual's practice permit?**

As mentioned above, if an RN consultant is concerned that the fitness to practise requirement is not met, the RN consultant may decide to put conditions on the practice permit. This authority comes from sections 30 and 40 of the *Health Professions Act* and section 22 of the *Regulation*:

- section 30(2) of the *Act* applies to applications for initial registration and provides: "The registrar, registration committee or competence committee may impose conditions on an approval under subsection (1)(a) that in the opinion of the registrar, registration committee or competence committee are in the best interest of the public";
- section 40(2) of the *Act* applies to applications for practice permits and provides: "The registrar, registration committee or competence committee ... must consider an application for a practice permit and decide whether (a) to approve the application if the regulated member meets the

requirements ... and issue the member a practice permit subject to any conditions imposed by the registrar, registration committee or competence committee”; and

- section 22 of the *Regulation* applies any time the Registrar issues a practice permit and provides: “When issuing a practice permit, the Registrar may impose conditions, including but not limited to, the following: (a) practising under supervision; (b) limiting the practice to specified professional services or to specified areas of the practice of registered nurse; (c) refraining from performing specified restricted activities”.

When it comes to exercising its ability to impose conditions on an individual’s practice permit, a couple of things must be kept in mind.

First, just because an applicant or a regulated member discloses that they have a physical or mental health concern does not necessarily mean that there is a fitness to practise issue. The bar here is relatively high. The physical or mental health concern must impair the individual’s ability to practice nursing.

In determining whether the physical or mental health concern rises to the level of a fitness to practise issue, it can be useful to think about the similar and related concept of incapacity and whether the physical or mental health concern would render the individual incapacitated?

As a practical example, consider an individual with an arthritic knee. This constitutes a physical health concern. It may also affect the individual’s ability to practice nursing, for example, the individual might have to take frequent breaks from standing or walking. However, it is highly unlikely that this would constitute a fitness to practise issue (or incapacity).

Second, CARNA is responsible for ensuring ethical, safe and competent care by registered nurses in Alberta. Its primary purpose is the protection of the public. This tremendously important mandate might influence CARNA to take a cautious and proactive approach when it comes to fitness to practise. However, this tendency must be balanced against CARNA’s commitment to right touch regulation.

The following principles of right touch regulation are most relevant here:

- proportionate: in this context, this means that conditions should only be imposed when and to the extent that they are absolutely necessary to protect the public;
- consistent: in this context, this means that conditions must be imposed fairly and consistently;
- targeted: in this context, this means that conditions should only be imposed when they are absolutely necessary to protect the public and any conditions imposed should be the minimum necessary to manage the fitness to practise issue;
- transparent: in this context, this means that conditions and the process followed in imposing them should be simple, straightforward and easy to follow; and
- accountable: in this context, this means that the conditions imposed must be connected to and based on the specific fitness to practise issue. The RN consultant should be able to articulate and justify why each condition is necessary to protect the public.

With these two things in mind, CARNA should only impose conditions on an individual's practice permit when the individual has a true or sufficiently serious fitness to practise issue and when imposing conditions on the individual's practice permit is necessary to protect the public.

The following questions may help to inform this analysis:

- What is the nature of the fitness to practise issue?
- How likely is it that the fitness to practise issue will affect the individual's practice?
- If the fitness to practise issue were to affect the individual's practice, how serious would the likely consequences be?
- Can the impairment be safely and reliably managed by the individual or their employer?
- If the impairment were to affect the individual's practice, and the public learned that CARNA was aware of the impairment but allowed the individual to continue to practice, would the public lose trust in CARNA?

**E. What types of conditions should CARNA impose on an individual's practice permit?**

The answer to this question is closely related to the answer to the question of when CARNA should impose conditions on an individual's practice permit.

As mentioned above, not every physical or mental health concern will constitute a fitness to practise issue. The bar here is relatively high. The types of conditions imposed on an individual's practice permit should be similarly serious. This is particularly relevant when it comes to individuals who are working in accommodated positions or with modified duties. In most cases, it will not be necessary for these types of restrictions to be reflected as conditions on their practice permits. If we again consider the individual with an arthritic knee, just as it is highly unlikely that this would constitute a fitness to practise issue, it is also highly unlikely that the individual's practice permit would include as a condition that they take frequent breaks from standing or walking.

Also as mentioned above, it is again important to keep in mind that while CARNA is responsible for protecting the public, it is also committed to right touch regulation. This means that, as a general rule, CARNA should not be overly restrictive in the types of conditions that it imposes on an individual's practice permit. Instead, in deciding what conditions to impose, the RN consultant should ask: What is the least restrictive condition that can be imposed on the individual's practice permit so that the individual can still practice, but also so that the public is not exposed to an unacceptable amount of risk?

In deciding what conditions to impose, the RN consultant should also rely heavily on the information that is provided by the individual's health care practitioner.