Excessive Hours of Work:
Professional and Union Considerations

Joint Guidelines developed by the
Association of Registered Nurses of Newfoundland & Labrador
and
Newfoundland and Labrador Nurses’ Union

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ARNNL and NLNU would like to thank all contributing members for their effort, commitment and collaboration. Without their participation and support, the development of this document would not have been possible.
The Association of Registered Nurses of Newfoundland & Labrador (ARNNL) and the Newfoundland & Labrador Nurses’ Union (NLNU) share an ongoing concern about registered nurses (RNs) working excessive hours and the impact this can have on quality of care and, client and nurse safety. Working excessive hours is an issue that has professional, labour and liability implications.

This document provides RNs in direct care, management, and other leadership roles with information to consider when working, or requesting others to work, excessive hours. Strategies that nurses may utilize when addressing concerns related to excessive hours of work are proposed. Also included is a decision-making framework (appendix A) to assist RNs to determine when to consult the ARNNL and NLNU.

The information provided is based upon the Newfoundland and Labrador Registered Nurses Act (2008), Standards for Nursing Practice (ARNNL, 2007), and the Code of Ethics for Registered Nurses (Canadian Nurses Association [CNA], 2008). The information also incorporates other legislation, labour laws, and collective agreements that address the health, safety and rights of employees. This document reflects the premise that nurses owe a “duty of care” to clients and are responsible to provide safe, competent and ethical nursing care under all circumstances; yet, at the same time, nurses have the right, as well as the responsibility, to take care of themselves.

Background
Research demonstrates the relationship between excessive hours of work, fatigue\(^1\) and, client and nurse safety (Canadian Nurses Association [CNA] & Registered Nurses Association of Ontario [RNAO] 2010). Between 1997 and 2005, RN overtime rates increased by 58 percent (CNA, 2006), with RNs from all practice areas reporting they worked, an average of 6.4 hours of paid and unpaid overtime per week. Nationally, this equates to 349,800 overtime hours per week or the equivalent of 10,054 full-time nursing jobs (CNA, 2006). The Nurse Fatigue and Patient Safety Research Report (CNA & RNAO, 2010) identifies inadequate recovery time between worked shifts as a causal factor for fatigue. Key survey informants further identified that the risk of physical injury increases with fatigue. The 2005 National Survey on the Work and Health of Nurses (Statistics Canada, 2006) has highlighted the physical toll that workplace challenges, such as overtime, are having on nurses. The national survey identified that 12 percent of nurses who reported absenteeism indicated it was due to injury.

\(^1\)Nurse Fatigue definition - The subjective feeling of tiredness (experienced by nurses) that is physically and mentally penetrative. It ranges from tiredness to exhaustion, creating an unrelenting overall condition that interferes with “an individual’s” physical and cognitive ability to function to their normal capacity. It is multidimensional in both its causes and manifestations; it is influenced by many factors: physiological (e.g., circadian rhythms), psychological (e.g., stress, alertness, sleepiness), behavioural (e.g., pattern of work, sleep habits), and environment (e.g., work demand). Its experience involves some combination of features: physical (e.g., sleepiness) and psychological (e.g., compassion fatigue, emotional exhaustion). It may significantly interfere with functioning and may persist despite periods of rest (CNA & RNAO, 2010).
Summarizing the potential impact, Maddalena and Crupi (2008) state “working in areas that are short staffed, working excessive paid and unpaid overtime, being called into work on days off, and the inability to take vacation time are all common place and contribute to fatigue and burn out” (p.45). The ability to provide nursing care in such an environment can lead to moral distress and directly influence the quality of the professional practice environment (CNA, 2008).

Compounding the issue of overtime is a shortage of health care professionals. Working short staffed was identified as the second most important reason for reported levels of fatigue (CNA & RNAO, 2010). The Canadian Nurses Association’s (2009) report on the health human resources landscape, Tested Solutions for Eliminating Canada’s Registered Nurse Shortage, provides new projections for how the shortage will grow by almost five times over the next 15 years. The report shows that if the health needs of Canadians continue to change according to past trends, with no policy interventions implemented, Canada will be short almost 60,000 full-time equivalent RNs by 2022. Nurses are worried that the growing shortage of RNs will result in requirements to further increase the number of hours of work and thus exacerbate existing concerns about the quality and safety of client care and the health and well-being of nurses.

As professionals, nurses must adhere to provincial standards and uphold ethical values (see appendix B). As employees, nurses must also meet the terms of their employment contract and related labour laws. Nurses in management and other formal leadership positions face the difficulty of appropriate staffing when resources are lacking. Consequently, dealing with matters related to excessive hours of work can result in nurses, at all levels, being confronted with apparent conflicts between coexisting responsibilities and reality. Thus, professional and employment consequences when working excessive hours must be addressed.
Professional and Contractual Framework
This section provides information for RNs on their professional and contractual obligations when working excessive hours.

Excessive Hours

The phrase ‘excessive hours’ has not been specifically defined in any nursing resource, nor are there professional guidelines or legislation that stipulate the maximum number of hours a RN can work in Newfoundland and Labrador (NL).

An RN in NL may work under one of a number of collective agreements with a variety of hours of work arrangements. For example, the provincial collective agreement (NLNU, 2009), identifies overtime as work in excess of an employee’s normal hours of work. The normal hours of work under this agreement are eight-hour shifts or 12-hour shifts, totaling 37.5 hours per week for a nurse working full-time. This agreement references ‘required’ overtime and contractual clauses which address adequate rest periods. Overtime can be required at any time with no limit on the number of hours of overtime. For example, an employee can be mandated to work on her/his days of rest and she/he can be mandated to stay beyond the end of their regularly scheduled shifts. However, an employee should not be mandated to work overtime “if another qualified employee is willing to work that overtime, provided that there is no additional cost to the employer and provided the employee is available” (article 9.05 p.23). As well, an employee cannot be compelled to work ‘double shifts’ (e.g., back-to-back shifts) without her/his consent.

Generally speaking, and even when an employer requires mandatory overtime in possible breach of the collective agreement, an employee is expected to “work now, grieve later.” There are exceptions to the “work now, grieve later” principle such as, a refusal based upon the Newfoundland and Labrador Occupational Health and Safety Act, 1990, but these are not the norm.

ARNNL has no mandate regarding the maximum number of hours or overtime, as this historically is a legislative and employment issue. As a part of its public protection mandate however, the Association identifies that a nurse’s physical and mental state must be such that the nurse is able to provide safe and competent nursing care. The nurse must therefore determine if she/he is ‘fit’ to work the overtime hours. There is no set definition of being fit. Fitness includes assessment of the potential impact of fatigue or other causes of physical or emotional distress that could compromise care or safety for the cli-
ent, co-workers, or the nurse. *The Code of Ethics for Registered Nurses* (CNA, 2008), under the value Accountability, states:

Nurses maintain their fitness to practice. 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 or, if they are self-employed, arranging that someone else attend to their clients health-care needs. Nurses then take the necessary steps to regain their fitness to practice (p.18).

Consequently, it is up to the individual nurse to assess her/his ability to work overtime hours and for the manager/employer and the nurse to work collaboratively to reach a resolution.

**Liability Protection**

All practicing RNs in NL must have liability protection in the event of an unfortunate occurrence and a client is harmed (RN Act, 2008). Liability protection is not affected by the number of hours worked, the length of a shift, or the number of consecutive shifts worked. Liability protection is a condition of licensure. RNs licensed to practice in NL have liability protection through the Canadian Nurses Protective Society (CNPS)\(^2\). The CNPS is a non-profit legal service. Most nurses are also provided liability protection through their employer. The law holds the employer legally responsible for the acts of its employers that occur within the course of their employment (CNPS, 1998).

**Workers Compensation**

The NL Workplace Health, Safety and Compensation Commission (WHSCC) oversee the no-fault insurance system commonly known as worker’s compensation. The WHSCC provides short-term and long-term benefits to employees who are injured through work-related activities. These benefits may include wage loss benefits, rehabilitation benefits, loss of earnings capacity benefits, etc. Benefits are not determined by hours of work, (e.g., if a RN is injured on the job during regular working hours or while working overtime). The NLNU provides representation in the worker’s compensation process.

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\(^2\)For more information on CNPS RNs should visit [www.cnps.ca](http://www.cnps.ca) user name: ARNNL password: assist
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Occupational Health and Safety Legislation

Employees can refuse ‘unsafe work’ that they reasonably believe to be dangerous, either to themselves or to others in the workplace, as per the Newfoundland and Labrador Occupational Health & Safety Act (1990). Unsafe work means any work that is dangerous to the health and safety of employees or others in the workplace. There is a specific process to follow when refusing unsafe work. The employee must:

1. Report the unsafe work and remain on-site for the manager/employer to investigate the situation.
2. Contact an occupational health and safety representative or, where personal safety or client safety is involved, the NLNU or ARNNL as appropriate for guidance.
3. Formally challenge or report the unsafe work to the Occupational Health & Safety Inspections Division.

When employees refuse unsafe work which is not remedied by the employer, they should be transferred to other equivalent work without loss of pay. If employees cannot be reassigned to other work, they should be paid even while refusing unsafe work. Employers are not permitted to discipline or terminate employees for refusing work that employees reasonably feel is unsafe.

Abandonment

Although the term ‘abandonment’ has not specifically been defined by ARNNL, the term is linked to an established duty of care. CNPS identifies that nurses “do not have a duty to treat everyone they meet but if a person relies on their professional skill and knowledge, a legal duty to take reasonable care is established” (CNPS, 2006). If a duty of care has been established and the RN is requested/mandated to work extra hours (including on-call) she/he is required to determine and acknowledge their capacity to fulfill the request. If she/he can work the overtime, but for a limited period, (e.g., four hours versus 12 hours) or, in a limited capacity (e.g., limited client assignment), their first responsibility is to immediately notify the manager/employer of the situation and clearly state what she/he is able to work. It is the employer’s responsibility to arrange for a replacement. Until a successful compromise is accomplished that assures client safety is not jeopardized, the nurse should not leave. Doing so could be considered abandonment. The College of Registered Nurses of British Columbia (CRNBC,
2007 & 2008) has developed detailed guidelines to address concerns regarding abandonment which are provided, for information, in appendix C.

Both NLNU and ARNNL recognize there will be times when a nurse is unable to work requested excessive hours. This may not constitute abandonment. Refusal to come to work for an unscheduled shift does not necessarily constitute abandonment.

Strategies to Address Concerns Regarding Excessive Hours of Work

A summary of strategies that reflect a professional approach that all nurses should utilize when addressing concerns related to excessive hours of work are presented below. For managers, this includes consideration of skill mix, client care assignments, and resource allocation. For direct care providers this includes consideration of assignment and delegation, participation in staffing decisions, and when necessary, advocating for staffing levels that meet client population needs (ARNNL, 2006a). The Canadian Nurses Association’s position statement Taking Action on Nurse Fatigue (CNA, 2010) also outlines strategies that can be used to mitigate and manage nurse fatigue. Additionally, appendix D provides RNs with tips for saying “no”, when warranted, in an assertive yet professional manner.

Strategies for Registered Nurses in Direct Care

**Short Term**

- Identify, to your immediate manager, any limitations/restrictions to your ability to safely provide a level of care. Include an accurate reflection and portrayal of your level of fatigue.
- Request an appropriate assignment based on your capacity.
- Prioritize activities that are necessary to be done and activities that can safely wait to be dealt with later in the shift or during the next shift.
- Determine which tasks can be safely delegated or assigned to others (e.g., support staff). If delegating, provide guidance as necessary.
- Seek assistance as needed, in a timely manner.
- Notify the manager if your situation changes (e.g., increased client acuity).
- Maintain client trust and confidence. Inform clients there may be delays, etc., in a manner that does not associate blame or negate the importance of safe and competent care.
- Ask to be informed about the status of your manager’s efforts to obtain a replacement.
- As needed, document concerns using a professional practice issues form or an appropriate agency form or process.
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Long Term
- Advocate for changes or improvements in the workplace. Work with management, NLNU and ARNNL where appropriate, to help find solutions to staffing concerns.
- Learn to be aware of and recognize signs, symptoms and responses to personal fatigue and initiate personal measures to reduce fatigue as appropriate (CNA, 2010).
- Familiarize yourself with ARNNL’s process as outlined in the RNs Professional Duty to Address Unsafe and Unethical Situations (ARNNL, 2008).

Strategies for Registered Nurses in Management and Leadership Roles

Short Term
- Assess the appropriateness of cancelling other forms of leave, if permitted, prior to obliging someone to stay extra hours.
- Support nurses working overtime by offering such things as access to snacks, rest breaks, assistance with addressing client concerns and flexible scheduling.
- Seek out strategies to minimize workload where possible, such as decreasing non-nursing tasks (e.g., use of other staff to assist with services such as portering, clerical and/or housekeeping duties).
- Work with nurses to address all concerns of client safety.
- Encourage and support nurses to work within their professional, ethical, and legal boundaries of practice.
- Keep the nurse informed about the development of solutions to address the situation.
- Monitor the situation on an on-going basis and report to senior management in a timely manner.

Long Term
- Promote and initiate measures to create practice environments that support professional accountability and personal health and safety (ARNNL Quality Professional Practice Environment Standards, 2006b).
- Plan for staffing with sufficient numbers of nurses and/or support staff, taking into consideration client needs and the practice setting/client population.
- Adopt and/or promote the utilization of an evidence-based approach to determine, implement and evaluate staffing levels, skill mix and models for care delivery, and the impact of these on client, nurse and patient safety.
system outcomes (e.g., *ARNNL Staffing for Quality Care in Institutional Settings*).

- Advocate for the need to develop and implement measures to address the potential negative impact of RNs working excessive hours.
- Communicate relevant information to non-RN managers of RNs.

**Conclusion**

ARNNL and NLNU are available to provide consultative services to registered nurses. Although the mandate and focus of these organizations are different, both recognize and support the need for safe, competent, ethical care and safe, quality work environments. Appendix A can be used to help identify when an issue with excessive hours of work can or should be referred to ARNNL, NLNU, or both. ARNNL workplace representatives and NLNU shop stewards may also serve as resources for RNs seeking guidance on how to direct their concerns.
References


**Acknowledgement**

ARNNL and NLNU gratefully acknowledge the use of the Nurses Association of New Brunswick and New Brunswick Nurses Union’s publication *Nursing Shortage: Workload and Professional Practice Concerns* in the development of this document.
Appendix A

Decision-Making Framework for Consultation with ARNNL and NLNU

Request to work extra hours

Verification* — Not excessive —— Work the hours

Is Excessive

No Implications

Client Implications**

Inform Manager

if unresolved

Contact ARNNL

OPTION

Contact ARNNL (required if falls within duty to Report Rn Act 2000 s.20)

Initiate Professional Practice
(or agency identified) process

if unresolved

ARNNL

Nurse Implications***

Inform Manager

if unresolved

Contact NLNU

OPTION

Contact NLNU

Initiate grievance process

if unresolved

NLNU

*Verification includes (but not limited to):
- clarifying the request;
- determining if hours are excessive;
- determining if there are client or nurse implications;
- identifying required resources/response to address client or nurse implications;
- consulting with colleagues and others

**Client implications include (but are not limited to):
- client safety concern;
- care could conflict with standards, policies or scope of practice

***Nurse implications include (but are not limited to):
- fatigue or unfit to practice;
- care could conflict with standards, policies or scope of practice
- violation of collective agreement
Appendix B

**Code of Ethics for Registered Nurses (CNA, 2008)**
There are a number of resources available in the Code of Ethics, (see appendix D) to help nurses understand their ethical obligations and to apply the Code in the following circumstances:

- Responding Ethically to Incompetent, Non-compassionate, Unsafe or Unethical Care
- Ethical Considerations in Addressing Expectations That are in Conflict with One’s Conscience
- Ethical Considerations for Nurses in a Natural or Human-Made Disaster, Communicable Disease Outbreak or Pandemic
- Ethical Considerations in Relationships with Nursing Students

**Specifically applicable indicators derived from the Standards for Nursing Practice: (ARNNL, 2007)**

1.3 Practices in accordance with current legislation, standards, best practice guidelines, and policies relevant to the profession and area of practice.

1.7 Maintains a professional image that enhances public confidence and reflects positively on the nursing profession.

1.9 Responds to, and reports situations that may be adverse for clients and/or health care providers. When adverse events occur, uses opportunities to prevent harm and improve the system.

1.11 Documents adherence to responsibilities and accountabilities appropriately.

3.9 Recognizes any limitations to safe, competent, and ethical care and reports concerns, and consults and/or initiates appropriate changes as necessary.

4.1 Demonstrates honestly, integrity and respect for others.

5.2 Demonstrates respect for the knowledge, expertise, and contributions of colleagues and others.

5.5 Questions practices and contributes to improvements to support client and nurse safety.

5.7 Promotes and contributes to the development of quality professional practice environments.
Abandonment: College of Registered Nurses of British Columbia (CRNBC)

The following material is an excerpt provided from CRNBC Resources (2007-2008) for information only.

Abandonment

Abandonment occurs when the nurse has engaged with the client or has accepted an assignment and then discontinues care without:
- Negotiating a mutually acceptable withdrawal of service with the client; or
- Arranging for suitable or replacement services; or
- Allowing the employer a reasonable opportunity for alternative or replacement services to be provided.

Situations related to insufficient numbers of competent nursing staff or inadequate resources and supports are different than situations involving the responsibilities and accountabilities that an individual nurse has to clients. The former are employer responsibilities. The latter are the individual registered nurses responsibility to provide competent ethical care.

Many of the situations our members encounter are employment issues rather than nursing regulatory issues related to incompetent, unethical or unprofessional conduct and therefore do not constitute client abandonment. For example, a decision by a registered nurse to refuse an assignment or discontinue nursing services does not automatically mean the nurse has committed an act of professional misconduct. These could include situations in which the nursing care would place clients at an unacceptable level of risk, the activity is outside the scope of practice for registered nurses, or the required care is beyond the nurse, or the required care is beyond the nurse’s level of competence.

Here are some situations involving registrants that could be considered abandonment:
- Failing to notify the supervisor of the nurse’s intent to leave, and leaving in the midst of a client care assignment without the supervisor’s knowledge.
- Leaving the assigned client care area for personal reasons and remaining gone or unavailable for a period of time such that the care of clients may be compromised.
- Leaving in the midst of a client care assignment without transferring the care to an appropriate care provider.
- Leaving work before the end of a scheduled shift without transferring the client care to an appropriate care provider.
- Sleeping, playing computer games or making excessive personal phone calls while on duty (which has the effect of being unavailable to provide direct care or indirect care through improper supervision of other care providers).
- Refusing to care for a particular client for whom the nurse has accepted responsibility, without transferring the care to an appropriate person or allowing the employer a reasonable opportunity for alternative or replacement services to be provided.
Here are some situations that would not be considered to be abandonment:

- Refusing to work additional hours or shifts beyond the posted work schedule when the nurse has given proper notification.
- Refusing to accept an assignment when the nurse has given reasonable notice to the appropriate person that she or he lacks the competence to carry out the assignment.
- Resigning from employment without giving notice, assuming that the nurse has completed her or his client assignment.
- Refusing to float to an unfamiliar practice area when there has been no orientation, preparation, or appropriate modification of assignment.

What can a nurse do when faced with these difficult circumstances? 1. Work now, grieve later

It is a longstanding principal of labour relations that a union member must ‘work now, grieve later’, with few exceptions (such as being asked to commit an illegal act). This does not mean that a nurse must remain silent and passive if, in his or her professional judgment, a situation is developing in which nursing resources are stretched so thin that the impact on patient care is a concern. Try to get reinforcements. Report the situation to management. Let your colleagues on shift know about the situation so they can help. Consider options such as reassignment of work, realigning priorities, enlisting aid of physicians in reassessing the level of care needed by patients, etc. The law requires that you do the best you can in the circumstances. Simply refusing another admission to a busy unit that is already understaffed may be considered insubordination worthy of discipline if some of these efforts to cope with the situation have not taken place.

2. Report effectively

It is extremely important for nurses to report each clear occurrence of a staffing shortage to management. The purpose of documenting staff shortages and their impact is to alert those who make staffing decisions so they can take further action.

Nurses cannot divest themselves of responsibility for their own actions, or failure to act, by claiming such in their written report to the employer. Nurses sometimes feel compelled to disclaim responsibility for any harm that may result if patients are affected by a staff shortage, or fear that they may be found negligent if harm occurs. Since nurses are accountable for their actions, or failure to act, a disclaimer statement would not provide any legal protection. Bear in mind that the standard of care, a concept from the law of negligence, is what the average, prudent, reasonable nurse would do in the circumstances. The law does not expect perfection. Circumstances such as a nursing shortage could be taken into consideration in a lawsuit for negligence. Nurses are not held accountable by a court for things outside their control, but for their own actions in the circumstances.
If your employer or union has developed a specific form for this kind of reporting, use it to state the facts and be specific. Avoid speculation, and encourage all of your colleagues to do the same since there is strength in numbers. Be persistent. Reporting a serious situation entails more work on top of a busy workload but it is necessary in order to bring it to the attention of those who can do something about it.


Appendix D

Saying No


It isn’t always easy to say no to requests being made by peers and healthcare team members. The manner in which a refusal is communicated can make a difference in how the message is received. Good team relations as well as excellent communication are important to establish a foundation of the work environment that allows you to say no.

How to say no like a professional

The positive traits that make nurses team players – a willingness to support colleagues, for one – may make it all the more difficult to say no to anyone who requests assistance. You have to practice saying no assertively. A reasonable explanation for saying no that’s assertively explained will be heard and accepted better than one that’s aggressively or negatively presented.

Six tips for saying no assertively:

1. Listen politely to the request being made. Avoid interrupting and objecting right away.
2. Restate the request if you need clarification.
3. Determine if you need time to verify if you can accept the assignment
4. If further deliberation results in having to say no, respond quickly to minimize delays for the nurse manager, who has to find someone else.
5. Offer suggestions or alternative solutions when you say no to a request if you have ideas that may be helpful.
6. If your “no” response isn’t being accepted, repeat it politely and assertively until it’s heard and accepted. Don’t become angry or defensive, and don’t feel guilty for protecting your own (and your patients’) needs.
