BC NURSES' UNION
Standing up for health care

Speaking Notes

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To: Workers' Compensation Board Review

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1. My name is Adriane Gear and I am a registered nurse and the Executive Councillor for Health and Safety for the BC Nurses' Union which represents over 48,000 nurses and allied health-care workers.

   I would like to thank the Janet Patterson WSBC review committee for the opportunity to speak to some of the issues and concerns our members consider most pressing and in need of legislative and policy reform in the BC Worker's Compensation System.

2. The BCNU recognizes that the committee is most interested in the perspective and concerns of the injured workers at this public hearing. As such, the BCNU will use this time to speak to the issue of mental disorder claims; discussing how the current law and policy negatively as well as unjustly impacts nurses who are injured in the workplace.

3. As the committee is aware, there have been recent changes to the law and policy with respect to the adjudication of mental disorder claims. The BCNU acknowledges the government's action to include nurses in the list of eligible occupations that have the presumption of a workplace mental injury when adjudicating mental disorder claims that arise from a traumatic workplace incident.

4. While these changes are positive, workers suffering from work-related mental disorders nonetheless still face a higher bar to compensation than those suffering from work-related physical injuries. We believe there is still a great need for amendments in this area of Worker's Compensation Law, such as the specific criteria for who provides the DSM diagnosis, the requirement that the workplace incident must be "*excessive in intensity and/or duration,*" "*the predominant cause test*" and the labour relations exclusion.

5. To illustrate, the requirement for a DSM diagnosis by a psychiatrist or a registered psychologist is one of the barriers faced by those seeking compensation for work-related mental disorders. A diagnosis by a specific type of medical provider is unique to section 5.1 of the Act. Additionally, there are often long waits for referred workers to access a psychiatrist or a registered psychologist. This is especially problematic for workers in rural communities, where there is a lack of psychological resources.

6. To elaborate on my second point, a work-related stressor is considered significant when it is "excessive in intensity and/or duration" from what is experienced in the normal pressures or tensions of a worker's employment." We believe this criteria creates an element of an old "assumption of risk" doctrine, where "normal" or "usual" work is effectively barred from compensation for mental stress. This is a special restriction on mental disorder claims that is not present for physical injury claims.

7. Furthermore, we believe the "*predominant cause test*" for significant work-related stressors creates a disparity between those seeking compensation for psychological injuries and those suffering from physical injuries under the same compensation system. To illustrate, for a physical injury to be compensable, the worker must establish the workplace incident was more than a trivial or insignificant aspect of the injury; however, the workplace incident need not be the sole cause of the injury. Whereas the "predominant cause test" for mental disorder claims requires that the significant work-related stressor or stressors is the primary or main cause of the mental disorder. It is our position the "*predominant cause test*" for establishing causative significance for a workplace psychological injury requires a higher bar for an injured worker to satisfy in order to have their claim allowed; therefore, discriminatory against workers suffering from psychological injuries.

8. Moreover, we believe the labour relations exclusions is often misinterpreted and misapplied by the Board. From our experience, the Board often engages in a broad interpretation for the meaning of "*a decision of the employer relating to the worker's employment*," leading to questionable denials. We are seeing WSBC treating physical injuries differently than mental health injuries and this labour relations exclusion bar does not exist in physical injuries. We believe the policy needs to be amended to specify the labour relations exclusions only applies where the worker's mental disorder is a direct reaction to a legitimate decision by the employer on the management of the workplace, not the workplace conditions as a whole.

9. To illustrate my points, let me introduce to you one of our nurse members (for the purposes of sharing this story, I have removed all identifying personal information and claim details):

   My name is Maria, and I am a 34-year-old female RN. I work in a Psychiatry Unit in BC. Like many other nurses working on a psychiatry unit, the patients I support often present with acute psychiatric disorders and severe emotional problems; needing psychiatric in-patient treatment and intervention. My unit is stressful, with typically 6-8 of the patients coded with a violence alert; it feels like on every shift one of my co-workers is getting injured by a patient.

   On September 4, 2018, I was providing care to a male patient with mental health issues who was known to be unpredictable, verbally abusive and physically aggressive. This patient required firm and consistent instructions as part of his care plan in order to make sure his behaviour did not escalate and become threatening.

   On this day, the patient's Inter-venous catheter was exposed, upsetting the patient. This patient swore at me, yelled at me and proceeded to hurl insults at me for at least 15 to 20 minutes. I was forced to leave the patient's hospital room twice so that I could escape his abusiveness and gather myself. Eventually the patient pulled the catheter out and flung it at me. I was so upset by the patient doing this, I immediately left the room, close to tears.

   I went to talk to my supervisor about the incident that had just happened. My supervisor basically told me to deal with it; informing me that the problem was how I managed the patient. I felt unsupported and the experience was even worse as my supervisor told me this in front of my co-workers.

   The next day, I returned to work and was assigned the same male patient from the day before. I went right away to my supervisor to ask for another patient. I was told "no" and that everyone has to take their turn dealing with this patient. I basically had no choice but to work with the patient.

Like the night before, the patient was very agitated, and I wasn't sure about what. He was yelling, swearing and gesturing with his hands in the air; demanding to speak to the person in charge. I told him I wanted to check his IV site but would see about getting the nurse in charge to speak with him afterwards. While I stood beside his bed and checked his IV, he began to demand that I get the nurse in charge NOW as he didn't want to wait around anymore for this to be taken care of.

The next thing I know, this patient is swearing and trying to get off his hospital bed but he's being hampered by the IV. This makes him even angrier. Then he starts charging forward, swinging his arms wildly in the air and outstretching them towards me as he's getting off the bed. Suddenly the IV line breaks, solution splashes everywhere from the line and the patient quickly walks out the room yelling and swearing that he wants to speak with the manager of the place.

In that moment, I was scared, it happened all very quickly, and I believed the patient wanted to hurt me. After all he was known for being threatening; and here he was, heading towards me in an angry and aggressive way. Plus, this patient is over 6 feet and I am much smaller, standing less than 5'5". His sheer size alone was scary for me with him standing up, towering over me and being explosive.

I couldn't work after this experience; I felt numb, like I wasn't able to breath properly and was physically shaken. I remember being in a complete daze and not even sure how or when I left the hospital after this incident; just that I couldn't think straight. When I started thinking about returning to work for my next shift, I would begin to feel nauseous and dizzy; experiencing what felt like a panic attack. Within a few days of the incident, I called WSBC to file a claim. When I talked to WSBC I told them about the incidents on September 4 and 5th. I told them I hadn't wanted to work with this patient and had asked my manager to switch for another patient. I told WSBC, that we are understaffed on our unit, that we are told that we are expected to deal with difficult patients and equally share the workload. I informed WSBC that my manager had told me that this is the only way to make it fair for everyone and the purpose of our unit is to deal with challenging psychiatric patients.

After all that, WSBC denied my claim. I couldn't believe it, WSBC is here to help injured workers like me; workers who can't work because of a work injury. But no, WSBC told me that the events I described may have been upsetting and caused me emotional distress but were not out of the ordinary for my job. WSBC decided that there was no evidence the patient had tried to intimidate or threaten me; after all the patient was upset about another matter and even though he may have been charging towards my direction when getting off the bed and trying to leave the room, he did not harm or threaten me.

WSBC decided that in my work environment, we are expected to deal with difficult and challenging patients; that dealing with abusive and challenging behaviour is considered common and predictable for nurses. WSBC also determined that my employer could assign patients and workload based on operational needs - that even though I didn't like it, the manager is allowed to direct my work, make decisions relating to how I complete the work and how the work is managed. WSBC said my issues fall under the decisions of the employer. That my employer has the right to require that I care for these psychiatric patients that are known to be difficult and even at times, abusive.

I couldn't believe it, after all I had gone through, WSBC had minimized my horrible experience to workplace expectations of dealing with difficult patients and my employer having a right to expect me to

do so. I appealed this decision and with the help of my BCNU LRO, my appeal was won with my WSBC claim finally accepted.

10. While this story of Maria, may not seem to be a dramatic or horrific incident, stories of this type are all too common for my members; with claims being denied but for the most egregious actions by employers. Unfortunately, it is typically only the horrific workplace incidents that are currently accepted under the mental disorders policy; with the day-to-day mental abuses that nurses face being denied as compensable, found to be part of the occupational hazards and/or deemed to be labour relations issues. It is our position the current mental disorder policies create systemic barriers for injured workers; resulting in injured workers not being able to access the workers' compensation benefits legislated to support and assist them.

11. The BCNU recognizes the recent positive changes in the Workers Compensation law and policy, but there is still necessary and important work for this review committee to do. The BCNU recommends a review of the law and policy relating to the adjudication of mental disorder claims to ensure that WSBC treats mental disorder claims in the same way that physical injuries are treated. We believe this would better reflect a worker-centered compensation system for all injured workers; resulting in justice and equitable access to workers' compensation benefits.