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| <b>FAX</b><br><br>From: Taylor Janis LLLP<br>Suite 120, 301-14 <sup>th</sup> Street NW<br>Calgary, AB T2N 2A1<br>Telephone: 403-474-0411<br>Fax: 587-356-0422<br><br><br><b>TAYLOR JANIS<sup>LLP</sup></b><br>WORKPLACE LAW | <b>To:</b> Attention: Kristan McLeod<br>Chivers Carpenter                               |
|  | <b>Fax number:</b> 780.439.8543   |
|  | <b>Re:</b> Application for Intervener Status<br><b>RE:</b> NPAA Board File No. GE-07762 |
|  | <b>Date:</b> May 2, 2018  |
| <b>Number of Pages:</b> 11 (including cover)   |   |
| <b>Please see attached.</b>  |   |

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May 2, 2018

**By Fax (780) 422-0970 (10 pages)**

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

Attention: Tannis Brown, Director of Settlement  
Dan Galdamez, Labour Relations Officer

**Re: An Application for Intervener Status brought by the Nurse Practitioners Association of Alberta ("NPAA") pursuant to Section(s) 12 and 16 of the *Labour Relations Code* respecting a Charter application and/or an application for determination brought by the United Nurses of Alberta ("UNA") affecting Alberta Health Services ("AHS") – Board File No. GE-07762**

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We are counsel for the NPAA and we submit this application for intervener status in respect of the above matter.

**a) Contact Details of the Parties**

**The Applicant (Intervener):**

Nurse Practitioner Association of Alberta  
PO Box 71192 Northtown  
Edmonton, Alberta, T5E 6J8  
Email: [president@albertanps.com](mailto:president@albertanps.com)  
Attn: Teddie Tanguay, President

**The Respondents:**

United Nurses of Alberta  
700, 1150 – Jasper Avenue  
Edmonton, AB, T5K 0C7  
Fax: (780) 426-2093  
Attn: David Harrigan / Lee Coughlan

Alberta Health Services  
900, 9925 – 109 Street NW  
Edmonton, AB, T5K 2J8  
Fax: (780) 424-4309  
Attn: Dennis Holliday

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**b) Relevant section of the *Labour Relations Code***

- a. NPAA relies upon Section(s) 12 and 16 of the Code

**c) Particulars**

- a. The NPAA is the professional representative organization for Nurse Practitioners in Alberta. As all parties are well aware, to date as per Section 1(1)(i)(iii) of the *Code*, Nurse Practitioners are excluded from the definition of "employees", and therefore the NPAA has been in the role of the primary representative association for Nurse Practitioners within the Province of Alberta.
- b. In respect of the UNA application before the Board regarding Section 2(d) of the Charter, and the submission of the UNA that Nurse Practitioners are denied their freedom to bargain collectively, a repeal of this section of the *Code* will have broad implications for Nurse Practitioners, as they can potentially have multiple avenues of representation, depending on the legislative response to any such decision.
- c. At present, as all parties are aware, there is an existing legislative recognition of four recognized health care bargaining units in Alberta. These four units were created and premised on the exclusion of Nurse Practitioners from their representation in such a bargaining unit. However, there are any number of possible legislative responses which could occur as a result of allowing Nurse Practitioners to collectively bargain. And, as in any Charter application, the normal response of the Court is to grant a freeze period for the Government to consider what, in the circumstances, would be an appropriate way to proceed going forward in light of such a ruling. We would expect such would occur here.
- d. As a result, the NPAA (and any other representative organization) should be granted full Intervener status as it relates to the *Charter* challenge (and this is the accepted practice of the Board to so grant, per *IBEW, Local 424 v Basilian Industrial Services Limited*, 2008 CanLII 51099 (AB LRB)). This allows Nurse Practitioners (many of whom are represented by the NPAA) to fully participate in respect of any issues relating to their rights, and what their wishes would be in the circumstances regarding the "representative of their choosing". We would additionally note that the NPAA's experience and knowledge

regarding the role of Nurse Practitioners within the healthcare system will be invaluable to the Board during the hearing.

- e. In respect of the determination application, we would begin by noting that there is an inconsistency in an automatic inclusion of Nurse Practitioners within a bargaining unit in light of the entire concept that flows from the Charter challenge. The premise at hand is that the one section of the *Code* is serving to limit the rights of Nurse Practitioners to choose a "*representative of their choosing*". If this is the true premise behind the Charter application, and we would submit that it is, then to automatically assign Nurse Practitioners into any bargaining unit as a result of such a decision would be, for all intents and purposes, still limiting their right in all functional ways.
- f. Although the Board has, to date, chose to respect the existing four bargaining units in the Health Care sector, Nurse Practitioners have been operating as their own practical unit for a significant period of time. Even if the section of the *Code* were to be removed, that does not mean there should be any automatic inclusion. An appropriate determination application would consider (after allowing for the appropriate legislative response), first whether Nurse Practitioners do, in fact, wish to be represented by any representative organization, whether it is a Trade Union or a Professional Association. Secondly, there is an open question whether any of the existing certifications apply to Nurse Practitioners, or if those certifications are of such limited scope that Nurse Practitioners would not be covered.
- g. Only upon those legal determinations reaching a conclusion would the logical next step be to request a vote of Nurse Practitioners what, if any, representative organization should represent them. This can be done through a vote ordered by the Labour Relations Board, and we would submit this is the appropriate method in dealing with what flows from the Charter challenge. This is supported by the preamble in the *Code* itself, which states that "*WHEREAS it is recognized that legislation supportive of freedom of association, and free collective bargaining through trade unions when chosen by employees, are important components of Alberta's social and economic well-being*".
- h. To provide a brief background on this, we would note that Nurse Practitioners in Alberta have been in a constant state of evolution as a profession. The Boudreau Report of 1972 marked the political acceptance of the nurse practitioner role for the provision of extended scope services. By 1995, Registered Nurses in Alberta were allowed to provide

extended health services if they met the following requirements: 3 to 5 years of professional practice experience as a registered nurse, a baccalaureate degree in nursing and successful completion of an approved program which prepared them to provide those extended health services.

- i. From there, in the early 2000s, job descriptions began to use the title Nurse Practitioner. This title was then protected in 2004 when the *Health Professions Act* was enacted. The creation of this Act led Alberta to become the province with the broadest scope of practice for Nurse Practitioners anywhere in Canada. Flowing from this act, position descriptions were created which defined Nurse Practitioner, Nurse Practitioner Intern, Registered Nurse, Licensed Practical Nurse, Registered Psychiatric Nurse and Employed Nursing Students. Also, as of the Act in 2004, Nurse Practitioners were now required to have a Master's degree in Nursing. In a major milestone in establishing core competencies for Nurse Practitioners, the Canadian Nurses Association, in 2005, for the first time in Canadian History, published the *Canadian Nurse Practitioner Core Competency Framework*. With this, in September 2005, the CNA also produced the first national exam which would be used to license and credentialing Nurse Practitioners in Canada.
- j. Continuing in this evolution, there are now dedicated Masters of Nursing programs for Nurse Practitioners that provide graduate level clinical programs, with three dedicated streams of graduate education. In addition, the clinical practicum hours for those programs has increased to a required minimum 700 hours of clinical work. Including the successful completion of an approved NP program, all applicants wishing to register as a Nurse Practitioner in Alberta must also have 4500 hours of experience as an RN acceptable to the registrar of the College and Association of Registered Nurses of Alberta.
- k. As a result, the Nurse Practitioner profession has evolved from its original goal of extended health services into a medical hybrid focused on responding to the increased complexity inherent in our healthcare system. This has been recognized across Canada through broadened policies, role descriptions, and legislation changes. This can be seen in the various definitions of Nurse Practitioners used by the Canadian Nurses Association, The College and Association of Registered Nurses of Alberta, Alberta Health Services, as well as in the changes to the *Federal Tax Act*, which notes that Nurse Practitioners are defined as primary care providers.

- I. There have been positions put forward by the UNA that Nurse Practitioners would fall under their certifications regarding Direct Nursing and Nurse Instruction, and from the HSAA that Nurse Practitioners would fall into their category of paramedical work. The NPAA would submit that none of these existing certifications encompasses the role that Nurse Practitioners have evolved into, and that the only way to appropriately determine where Nurse Practitioners fit within the healthcare system, once provided with a full right to bargain collectively, will be through a full and thorough legal debate by all parties with an interest in the matter. The NPAA is an important and integral part of such a legal debate, which is why the NPAA request full intervenor status.
- m. For the benefit of the Board in deciding that the NPAA should have full intervenor status, we would note that, per *United Nurses of Alberta v Alberta Health Services*, 2013 CanLII 63139 (AB LRB), that there are two tests regarding intervenor status. The first, known as the *Dynacare* test, is whether the affected party has a tangible and direct legal interest in the outcome of the application. The second test, which applies if an applicant is not considered an "affected party", is based on the following criteria:
  - i. Relationship of the person (or organization) to the application;
  - ii. The potential assistance that the intervenor may bring to the Board;
  - iii. The directness of the effect of any decision on the intervenor;
  - iv. Any other matters that are impacting the application.
- n. The words of the Board from the UNA case are particularly relevant here in the determination of intervenor status. The Board first notes at paragraph 13 the idea that, as it concerned the application there to determine which employees fell within which health care bargaining units, that "*The Board's decision may broadly impact upon the other bargaining units in the health care sector, and thereby affect AUPE in its role as a bargaining agent for LPNs*". In addition, the Board noted at paragraph 15, as to the factor of "any other matters that may impact the application", the Board notes that, in the context of this application, for this type of factual matrix, it is appropriate to allow a broader range of intervenors than would have been normal for a simple determination application, and that this was consistent with the Board's approach of allowing more expansive stakeholder involvement for cases which concern the treatment of the bargaining unit placement within the healthcare field.

- o. In stating this, the Board referred to the following quote *"When a party seeks to have the Board reconsider and, perhaps, overturn a practice of long standing, especially one that could have a potential impact upon numerous employers and unions, it is likely a determination application limited to only a small number of employees or groups of employees is not the route to follow. Instead, the reference of a difference would appear to be a preferable method of seeking to have the Board embark upon such an inquiry, leaving the Board free to determine if submissions should be invited from all affected health care stakeholders who may appear to have an interest in the proper bargaining unit placement of the affected employee or groups of employees"*.
- p. This supports the proposition put forward by the NPAA that determination of a bargaining unit should not be done piecemeal. The Board should do a fulsome investigation into what is the appropriate bargaining unit, using the well-established factors and involving all the various stakeholders and parties involved in healthcare. As will be illustrated below, when this principle is applied to the facts at hand, it illustrates the need to provide the NPAA with full intervenor status to fulfil this Board directive.
- q. Although we again submit it seems clear that providing full intervenor status to the NPAA would be appropriate in the circumstances, we would address both the Dynacare test and the secondary test (for parties who do not have a tangible and direct legal interest) in turn to illustrate this fact. First, as to the Dynacare test, and whether there is a tangible and direct legal interest in the application, we would note the following:

  - i. The NPAA acts as the professional body for a total of 278 out of the 521 NPs in the Province of Alberta (and 61 Student members), of whom 360 are employed by Alberta Health Services;
  - ii. NPAA membership is voluntary, and although not all NPs are presently members of the NPAA, the NPAA's mandate and actions are on behalf of all NPs as a designation, regardless of active membership;
  - iii. Available by request of the Board are the signatures of members of the NPAA who have indicated that the NPAA represents their interests in this matter;
  - iv. The NPAA interacts directly with Alberta Health Services to discuss issues for the NPs in Alberta, and the following is a list of advocacy work engaged in by the NPAA with Alberta Health Services, Alberta Health, and the College and Association of Registered Nurses of Alberta (along with other key stakeholders):

1. Monthly meetings with Alberta Health to discuss inequitable remuneration for NP consults to physicians, PCNs not being compensated when NP's see out of province patients, funding models, NP pilot projects, recruitment of NP's into remote rural areas, and other issues;
2. June 1, 2017: The NPAA wrote on behalf of their members to the Labour Minister, Christina Gray, with a recommendation to modernize Bill 17 to include Nurse Practitioners in their terminology;
3. June 21, 2017: The NPAA met with RPAP regarding the Rural Physician Action Plan to discuss development of an NP project in rural Alberta;
4. August 31, 2017: The NPAA sent legal correspondence through the law firm Taylor Janis to the Government of Alberta requesting the Government to engage with NPAA as the formal negotiating body for Nurse Practitioners, and have been advised that Alberta Health will be responding;
5. October 31, 2017: The NPAA engaged in discussions with the Vice Presidents of AHS concerning the inappropriate pay band for NPs within AHS, and the discussions remain ongoing;
6. November 15, 2017: The NPAA attended, by invitation of Minister Sarah Hoffman, the Alberta Legislature for the declaration of Nurse Practitioner Week;
7. November 16, 2017: The NPAA supported a member of the Alberta Legislature regarding an NP who had lost their employment, and provided support to that member directly on the development of questions for the question period, The NPAA was recognized during the question period;
8. January 3, 2018: The NPAA executive met with the Deputy Minister of Health to discuss sustainable integration of NPs in Alberta (including primary, acute and long-term care). These discussions concerned salary, funding models, sustainability and role development;
9. January 8, 2018: The Board of Directors discussed with AHS Vice President and senior executive officials regarding the integration of Nurse Practitioners;

10. January 9, 2018: NPAA executive were invited to an official Alberta Budget Consultation Round Table where they advocated for budget development supporting the Nurse Practitioner role and the sustainability in Alberta;
  11. January 16<sup>th</sup> and 18<sup>th</sup>, 2018: NPAA met with AHS to follow up on previous discussions regarding NP compensation including wage, shift, stat and weekend differentials;
  12. January 19, 2018: NPAA met with the AHS PNAC committee to develop an orientation program for newly hired NPs in AHS;
  13. March 8, 2018: The NPAA was invited as a key stakeholder to the AHS workforce planning event;
  14. March 14, 2018: The NPAA executive met with Senior AHS management to discuss NP integration in primary care, which included discussions of the barriers to NP practice, NP funding models, NP sustainability and role development.
- r. The NPAA would submit it is clear they have a direct and tangible legal interest in this matter. However, in the alternative, if the Board does not find that there is a direct and tangible legal interest for the NPAA to be granted full intervenor status, we would also address the factors which govern intervenor status if there is no such finding, otherwise referred to above as the secondary test:
- i. **Relationship of the Person (or Organization) to the Application / The directness of the effect of any decision on the intervenor**
    1. As outlined above, the NPAA is the representative association for 278 Nurse Practitioners and 61 Nurse Practitioner Students within the Province of Alberta. Available by request of the Board are signatures of Nurse Practitioners verifying that the NPAA acts as their representative association;
    2. The facts outlined above in respect to how the NPAA should receive full intervenor status due to a direct and tangible legal interest are directly applicable to the question of their relationship to the application, as well as on the directness of the effect of any decision on the intervenor and may be relied on equally in this context;

**ii. The potential assistance that the intervenor may bring to the Board**

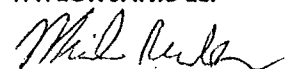
1. As the representative association for 278 Nurse Practitioners and a detailed and long history of lobbying on behalf of Nurse Practitioners (as outlined above), the NPAA brings a wealth of knowledge in respect to the work performed by Nurse Practitioners, the unique needs of their profession in the context of collective bargaining, the existing legislation and framework within which NPs operate, the past practices concerning NPs, and the existing contractual situations for those they represent;
2. The NPAA, more than any other association, union or group in the Province of Alberta, has the concentrated knowledge in respect to the NPs that would be greatly beneficial for the Board to have access to, and can provide answers that other parties to the application cannot. This knowledge, in respect to both the Charter application and the determination application, will prove crucial to the Board in coming to any conclusions on both issues.

**d) Remedy**

- a. NPAA seeks an Order that NPAA:
  - i. Be granted full intervenor status in Board file GE-07762;
  - ii. Be granted the right to call evidence (if necessary);
  - iii. Be granted the right to provide oral and written submissions on all issues before the Board.
- b. Please contact the writer if you have any questions or require any further information.

Yours truly,

**TAYLOR JANIS LLP**



**MICAH A. KOWALCHUK**  
Barrister & Solicitor

- Cc: NPAA**  
**Attn: Teddie Tanguay**  
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