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Executive Office of Health and Human Services  
Department of Public Health  
Bureau of Health Professions Licensure  
Board of Registration in Nursing  
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MARYLOU SUDDERS  
Secretary  
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Commissioner

December 27, 2018

Secretary Marylou Sudders  
Executive Office of Health and Human Services  
One Ashburton Place, Room 1109  
Boston, Massachusetts 02108

**Re: Chapter 208 of 2018, an Act for Prevention and Access to Appropriate Care and Treatment of Addiction (the "Act"), Harm Reduction Sites and Licensed Nurses**

Dear Secretary Sudders,

Pursuant to your request for the Board of Registration in Nursing (*BORN*) to review policies, procedures and regulatory changes that would be required in order to authorize licensed nurses (1) employed as nurses, (2) volunteering as nurses, or (3) volunteering as bystanders in a harm reduction site, four topics for consideration have been identified:

1. Needles and Illicit Drugs
  - a. A Massachusetts Controlled Substance Registration (MCSR) for a facility or health care provider does not authorize any activity related to Schedule I controlled substances. Therefore, any harm reduction facility, employee or volunteer would be placing their MCSR at risk.
  - b. Although these facilities and individuals could be effectively exempted from Massachusetts statutes prohibiting this activity, it is unlikely that federal authorities will provide similar exemptions from applicable statutes and regulations, placing at risk the DEA authorization of registered harm reduction facilities or individuals.
  - c. Federal law enforcement authorities have communicated that such facilities and individuals will be subject to prosecution under federal law.
  - d. No law prevents purchase, possession or distribution of hypodermic needles, regardless of age.
  - e. A nurse employed or volunteering at a Harm Reduction site is not authorized to provide illicit drugs to a visitor at the facility, or assist in the administration or use of illicit drugs to or by individuals using Harm Reduction sites.

- f. A waiver or exemption from 244 CMR 9.03(14) Asepsis and Infection Control is recommended for the nurse that may come in contact with a visitor's injection site at the time of an emergency, as no assurance can be had as to the cleanliness of the wound or sterility of an outside needle prior to that contact.

## 2. Illegal Activity – Reporting and Assisting

- a. BORN regulation mandates a nurse to report certain drug-related activity when another licensed nurse is engaged in activities set forth on 244 CMR 9.03 (26)(b) and (c).
- b. As this is a common standard among licensed professionals and citizens at-large, rather than providing a reporting exception for nurses specifically, any statute authorizing the operation of Harm Reduction sites should include a provision making otherwise illegal behavior lawful, so the need to report it does not arise, for example:  
“The possession or use of illicit substances shall not be unlawful within a Harm Reduction facility.”
- c. Nurses working or volunteering at a harm reduction site could be deemed to be aiding unlawful activity by simply standing by and observing, ready to render aid as needed.
- d. A waiver or exemption from the applicability of the 244 CMR 9.03(7) (nurses “shall not aid any person in performing any act prohibited by law or regulation.”) would be a necessary protection.

## 3. Responding to Emergencies, like accidental overdose

- a. Several statutory provisions allow for the possession and administration of naloxone to reverse an opioid overdose, including M.G.L. c. 94C, § 19B.
- b. Given this explicit authority, no change to law or regulation is required for a nurse employed or volunteering in a Harm Reduction site to respond to an emergency in the following manner (“Basic Nurse Response”):
  - i. Call 911;
  - ii. Administer naloxone as needed until emergency responders arrive; and
  - iii. Assess the individual's change in status and communicate it to emergency responders.
- c. Except for administration of naloxone, nurses may possess and administer medications only pursuant to prescriber orders.  
See M.G.L. c. 94C, §§ 1 and 7(d); 244 CMR 9.03(37) and (38).

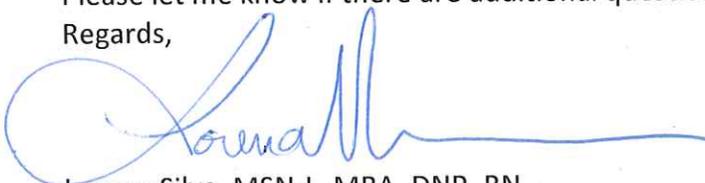
## 4. Civil and Professional Liability

- a. M.G.L. c. 112, § 12FF provides immunity for acts or omissions resulting from a good faith attempt to render emergency care by administering naloxone or any other opioid antagonist, except in case of gross negligence or willful or wanton misconduct.
- b. In addition to this generally applicable provision, naloxone provisions appear more specifically in statutes authorizing specific activities by health care professionals, like pharmacists acting under the statewide standing order.  
See M.G.L. c. 94C, § 19B(f)
- c. A similar provision is recommended for any legislation establishing harm reduction sites.

- d. Beyond 244 CMR 9.03(7) and (37), as noted above and below, no changes to policies, procedures or regulation are required to ensure the Basic Nurse Response by nurses employed or volunteering in a Harm Reduction site, and to protect nurses who do not act above and beyond the Basic Nurse Response.
- e. A nurse, including an advanced practice nurse with prescriptive authority, who responds to an emergency with life saving measures beyond administration of naloxone may require additional liability protection, as it may indicate a nurse to patient relationship with individuals using harm reduction sites, the establishment of which subjects the licensee to statutes and regulations governing nursing practice.
- f. A review indicates that including a provision of limited civil and professional immunity for nurses to align with layperson Good Samaritan provisions when operating within a Harm Reduction site would allow such activities without putting their license in jeopardy. The following language is recommended:  
"Any nurse who, acting in good faith, engages in volunteering activities within Harm Reduction sites shall not be subject to any criminal or civil liability or any professional disciplinary action in relation to:
  - (a) the possession and administration of naloxone,
  - (b) assessment of an individual who appears to be experiencing an overdose,
  - (c) contacting emergency services, or
  - (d) failing to take additional steps beyond administration of naloxone, assessment and contacting emergency services in the absence of an established nurse-patient relationship and treatment orders from a duly authorized practitioner who is physically present at the site."
- g. Including those mentioned above, exemption or waiver from the following statutes and regulations may be useful for nurses employed as nurses, volunteering as nurses, or volunteering as bystanders in a harm reduction site:
  - i. M.G.L. c. 94C, § 1 Administering controlled substances
  - ii. M.G.L. c. 94C, § 7 Administering controlled substances
  - iii. 244 CMR 9.03(7) Aiding unlawful activity
  - iv. 244 CMR 9.03(9) Responsibility and accountability
  - v. 244 CMR 9.03(10) Acts within scope of practice
  - vi. 244 CMR 9.03(14) Infection control
  - vii. 244 CMR 9.03(26) Mandated reporting
  - viii. 244 CMR 9.03(37) Unlawful acquisition and possession of controlled substances
  - ix. 244 CMR 9.03(38) Administering controlled substances

Please let me know if there are additional questions.

Regards,



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Executive Director, Board of Registration in Nursing