

# Dismissing an employee without the legal hassles

By L.E. and F.A. Rozovsky

It is bound to happen sometime in every hospital. Supervisory staff determine that a surgical nurse's performance is totally inadequate and, despite a series of warnings, the situation does not improve. The decision is made to dismiss the nurse and to replace him or her with another person considered more competent for the job.

In many instances there may not be any "fallout" from firing the nurse. Although disappointed, and perhaps embittered by the dismissal, the nurse decides to live with the decision and seek other employment. However, in a growing number of cases, nurses are not sitting back and "taking it." Rather, they seek the advice of their unions or they retain legal counsel to fight what is considered "wrongful dismissal" situations.

The trend toward increasing numbers of wrongful dismissal cases is not restricted to the health care industry. Indeed, it is a trend noted in a wide variety of sectors. As in other fields of work, there needs to be careful planning and well-delineated policies and procedures for the proper way of dismissing an employee. To do otherwise is an invitation to litigation.

## The proper way to dismiss

It is not enough to say that someone is "not cutting the mustard" or that a nurse's conduct is substandard. There must be demonstrative proof to substantiate such a claim. Furthermore, there must be adherence to the principles of natural justice; that is, throughout the process leading to the dismissal decision, the rights of the nurse must be respected. This can be done in terms of giving her warnings and written notification regarding dissatisfaction with professional performance. Once the decision is

made to dismiss the nurse, she has the right to know the reasons for her dismissal.

The successful dismissal of a nurse can be facilitated by the development and implementation of a comprehensive policy and procedure on the topic. Not only should the policy and procedure outline the process for dismissal, it should also specify the requirements for documenting the evidence and the reasons for the termination decision. To this end, policy and procedures should include:

### 1. Delineate employee job description

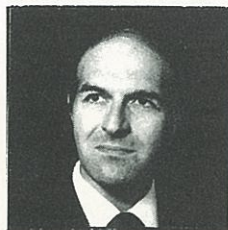
Spell out what is expected of the employee, including when it is permissible for the nurse to exceed the usual bounds of her job specifications.

### 2. Delineate means for assessing professional performance appraisals

Spell out how the performance of nurses will be

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evaluated, by whom and how frequently. It is important not to use a variety of performance appraisal methods since the results could obscure the true nature of a nurse's professional proficiency.

### 3. Specify "process" from warnings to dismissal

With the exception of severe departures from established norms, a nurse is not likely to be dismissed on the first encounter with management. Rather, the process is marked by a number of personal conferences, friendly and formal verbal warnings, written notices, and then a formal dismissal action. The appropriate mechanisms for processing a dismissal should be made known to all concerned.

### 4. Specify documentation requirements

Should a dismissal be challenged, the documentary evidence leading up to the firing could prove essential to both parties. Without sufficient documentation, a hospital is bound to find itself in a very difficult position in terms of ridding itself of the unwanted nurse. Therefore, it is important to follow the procedures set forth in the manual to ensure appropriate processing of the dismissal and the background information needed for a disputed firing.

### 5. Terms of reference vis-a-vis the collective bargaining agreement

If a collective agreement specifies the groundwork for employee dismissal, these conditions should be incorporated into a consistent approach to processing the dismissal of an employee.

### 6. Utilize legal advice in a proactive manner

Make certain that the hospital's solicitor is contacted if at any time in the process questions arise about certain aspects of the dismissal. It is far better to use legal counsel in this protective manner than to wait until a serious crisis occurs requiring complex legal manoeuvres.

### 7. Secure all evidence in the event of a lawsuit for wrongful dismissal

Once it is clear that a lawsuit will be filed based on wrongful dismissal, make certain that all evidence is secured in an appropriate manner. This item should be outlined in the policy and procedure manual governing disclosure of information to third-

parties or release or reports to the plaintiff and his or her solicitor.

### Dismissing from the inside

In some cases, hospitals find it more expedient to delegate the 'messy business' of employee firing to a so-called "termination firm." Termination firms are one of a number of business management companies which have sprung up to handle the sometimes unsavory task of dismissing an employee. In each instance, the termination follows a specific format, including evidentiary requirements to justify the dismissal; adherence to health facility policies and procedures, and collective agreements.

It is questionable whether hospitals need to go through the added expense of hiring a termination firm. If the hospital follows its own requirements, there should be little difficulty in carrying out the dismissal. Moreover, there is no guarantee that the involvement of the termination firm will preclude litigation based on wrongful dismissal. On balance it would seem therefore that there is little need for delegating the dismissal process to a professional termination firm.

### Conclusion

Maintaining a qualified working staff with a high level of morale is very difficult in an atmosphere dominated by a wrongful dismissal lawsuit. The ripple effect is bound to have an impact on patient care. To avoid such problems it would be far better to take a proactive approach which establishes a practical but effective means of getting rid of the unwanted employee. ■

First Provincial Conference,  
Operating Room Nurses  
Association of Ontario

Constellation Hotel  
Airport Road  
April 23 - 26, 1988