When nurses can draw the line in the O.R.

By L. E. and F. A. Rozovsky

The nurse may dislike working with the surgeon who has a reputation of being verbally abusive of staff in the O.R. The nurse has been on the receiving end of the surgeon's childish but violent tantrums. The nurse has heard that the physician threw a used syringe across the O.R. last week because the nurse assisting him was not "quick enough." Several staff nurses have reported feeling "ill" after their last several shifts in a particular operating room. Some O.R. nurses feel that they are not qualified to assist in a particularly delicate operation. A few O.R. nurses strongly disagree with their supervisor over scheduling on the basis that staff are stretched to the limit. They are tired and bound to "make mistakes," jeopardizing patient care and safety.

In each of these cases, nurses may be quite justified in their concerns for their own safety and the well-being of patients. But do these "concerns" merit a refusal to participate in scheduled operative procedures? On what basis can staff say "no" to fulfilling their responsibilities without jeopardizing their positions? Are there any practical solutions which can be put in place that can avert litigation? The answers to these questions suggest that in fact practical solutions can be found which offer the hope of averting labor disagreement, securing patient well-being and patient safety.

The legal limits of "drawing the line"

There are several legal principles which govern the duties of operating room nurses. These include:

- provincial nursing practice acts
- nursing collective agreements
- occupational health and safety laws
- provincial hospital acts and regulations
- health facility guidelines
- common law or case law regarding the requirements for negligence litigation
- selected federal legislation such as the Narcotic Control Act and the Criminal Code.

Guidelines vary

Knowing when O.R. nurses can draw the line requires familiarity with each of these sources of law. For example, does relevant provincial law permit nurses to refuse to carry out specific tasks demanded of them by physicians? If so, under what circumstances may they do so? Under the provincial nursing practice act when can nurses decline to carry out specific assigned tasks? Does the collective agreement between the union and the health facility include provisions governing the right of nurses to refuse to work in operating rooms which are suspected of being unsafe? If the collective agreement is silent on this issue, do provincial occupational health and safety laws contain provisions on these matters? Has the department of nursing or of surgery issued their own guidelines on refusal to participate in procedures deemed hazardous to staff?

The answers to these questions may not be the same across the country. Indeed, given the differences from facility to facility, the answers may vary within a province. Operating room nurses, therefore, are not in a position to take for granted that what is the prevailing legal view in one facility or province applies to them in their health facilities.

That it may be appropriate to "draw the line" in one situation and not another is reinforced by yet another legal principle: the law of negligence. The law measures the conduct of O.R. nurses by prevailing standards of care. The law will ask whether it was average, reasonable and prudent care for nurses to refuse to participate in operative procedures. If

the answer is no, the law will ask whether the failure of nurses to take part in surgery resulted in reasonably foreseeable harm.

Not a clear-cut issue

The same questions can also be asked from a different perspective. For example, was it average, reasonable and prudent care for nurses in these circumstances to participate in specific operations? If the response is negative, the law will ask whether the nurses conduct resulted in reasonably foreseeable harm to ensue.

From a legal point of view "drawing the line" is not a clear-cut matter. It requires examining the issue from many legal perspectives and then attaining a resolution that provides a practical answer to the question.

A better response would be to anticipate these problems and to develop a flexible, responsive policy and procedure to address these issues as they occur. Such a response comes within the category of preventive law or risk management. Such a policy and procedure would take into account nursing practice acts, occupational health and safety laws, labor agreements, and the legal requirements found in the rules of negligence.

The practical side

In developing a practical response to concerns about "drawing the line," four factors should be addressed. These are:

- Policy and procedure
- Education
- Communication
- Documentation

Policy and Procedure Formulation

Gaining wide-spread acceptance of a policy and procedure for any purpose requires a participatory approach between management of a health facility, nursing personnel and the medical staff. Such an exercise in itself may help to "clear the air" and facilitate welcomed and needed change.

The policy and procedure should address the reasonable limits of nurses taking part in operative procedures, staff health and safety, etc. It should delineate the mechanism by which nurses can refuse to take part in surgery. By the same token, the policy and procedure should pinpoint the consequences of refusing to take part in operations in which such a decision is unacceptable under the policy.

In shaping such a policy and procedure, it is important to obtain practical legal advice. This is particularly useful in transforming broad legal provisions into relevant internal management requirements.

Education

Once policy and procedure have been developed, there should be practical in-service and orientation programs on the content and on the mechanism for "drawing the line." This is particularly important so that staff nurses know when and how they can decline to take part in operations or when they can refuse to work in certain operating room suites.

Communication

The policy and procedure should outline how the desire to "draw the line" should be communicated, when and to whom. This information should be made clear during educational programs.

Documentation

The refusal to work under specific circumstances should be documented in a manner outlined in the policy and procedure manual. It should be consistent with collective labor agreements, provincial occupational health and safety laws as well as relevant institutional rules and procedures. This is as important for safeguarding the rights of the operating room nurse as it is for securing the position of the health facility.

It is understandable that O.R. nurses are often frustrated by what they encounter in their work. Situations will occur in which they feel that they must "do something" about it. Sometimes "doing something" is for their own well-being or that of their patients. However, when nurses "draw the line" and say that they refuse to work in particular circumstances, they should do so with a view towards their legal rights and responsibilities. By implementing a practical policy and procedure for "drawing the line" health facilities and nurses can establish better working relations and avoid legal entanglements. In the end, patients, health facilities and staff will all benefit from such measures. ■

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