

# **MY RIGHT TO REFUSE UNSAFE WORK:**

## **A Guide for ONA Members**

**June 2017**

**Please note:** As of June 2017, when this Guide was revised, ONA is aware that as a result of the violence initiative, all regulatory colleges will be reviewing the right to refuse unsafe work. This Guide will be amended when the regulatory colleges have completed their work.



The Ontario Nurses' Association (ONA) is the Union representing 64,000 registered nurses and health-care professionals and more than 16,000 nursing students, providing care in hospitals, long-term care facilities, public health, the community, clinics and industry.

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# **MY RIGHT TO REFUSE UNSAFE WORK:**

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### **An Unsafe Situation**

ONA members need to be able to protect their patients/clients and themselves from increased risk of harm, including risk of exposure to such health care sector hazards as infectious diseases, repetitive strain injuries, violence, etc. The employer is responsible for providing a safe practice setting where every precaution reasonable in the circumstances is taken to protect workers. This includes providing the appropriate equipment, staffing and training for safe and effective infection control, safe patient handling, protection against violence, etc. The employer should make all workers aware of and current on such things as hazard information, material safety data sheets, employer policies and provincial directives regarding infectious diseases.

While health care workers are protected under Ontario's *Occupational Health and Safety Act*, they are among those workers who, under that legislation, have limitations on their right to refuse unsafe work. There is another right to refuse apart from the statutory right. This will be discussed on page 7 of this guide.

### **The Statutory Right to Refuse**

In Ontario, the *Occupational Health and Safety Act* establishes the right to refuse unsafe work without fear of reprisal. According to Section 43 of the *Act*, the circumstances in which a worker can refuse include circumstances where the worker has reason to believe that:

- Any equipment, machine, device or thing the worker is to use or operate is likely to endanger himself, herself or another worker
- The physical condition of the workplace or the part thereof in which he or she works or is to work is likely to endanger himself or herself; or
- The physical condition of the workplace is in contravention of this Act or the regulations and such contravention is likely to endanger himself, herself or another worker.
- Workplace violence is likely to endanger himself or herself; or
- Any equipment, machine, device or thing he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contravention is likely to endanger himself, herself or another worker.

Section 43 also sets out the procedures to be followed when a worker refuses unsafe work. Section 50 sets out the complementary right of a worker not to be fired, disciplined, threatened, etc. for exercising this right.

### **Statutory Limits on ONA Members' Right to Refuse**

As stated, for most of ONA's members, the right to refuse unsafe work is restricted. The workers subject to the restriction include those working in:

- “(i) a hospital, sanatorium, nursing home, home for the aged, psychiatric institution, mental health centre or rehabilitation facility,
- (ii) a residential group home or other facility for persons with behavioural or emotional problems or a physical, mental or developmental disability,

- (iii) an ambulance service or a first aid clinic or station,
- (iv) a laboratory operated by the Crown or licensed under the *Laboratory and Specimen Collection Centre Licensing Act*, or
- (v) a laundry, food service, power plant or technical service or facility used in conjunction with an institution, facility or service described in subclause (i) to (iv)."

These employees still have a right to refuse, but not:

- (a) when a circumstance...is inherent in the worker's work or is a normal condition of the worker's employment; or
- (b) when the worker's refusal to work would directly endanger the life, health or safety of another person.

[Section 43 (1), *Occupational Health and Safety Act*]

Here is one example that the Ministry of Labour (MOL) uses to explain the exemption:

An experienced medical lab technologist could not, in the course of his or her regular work, refuse to handle a blood sample from a patient with an infectious disease.

But the technologist could refuse to test for a highly infectious virus where proper protective clothing and safety equipment are not available.

Dealing with infection is likely "inherent in the worker's work" in a health care facility, but doing so without proper protective equipment, where such exists, is not "inherent."

There is now at least one ONA work refusal that supports this approach. During SARS, an ONA member exercised her right to refuse unsafe work when the employer requested she care for a SARS patient without being fitted with the required N95 respirator. The MOL upheld her work refusal and ordered that this worker not be required to care for a SARS patient until she was properly fit tested with an N95 respirator. The MOL ordered the employer to further comply with Section 10 of the *Health Care Regulation* (fit-testing section) and to develop a plan to immediately fit-test all workers.

### Examples:

1. Infectious diseases: most ONA members have a right to refuse to work where unsafe conditions exist *and* they are not adequately protected through infection control procedures and equipment. Individual circumstances, such as lack of adequate respiratory protection, will need to be addressed at the institutional level and the member will need to make a judgment call, realistically weighing the risks against the client's need for care.
2. The same principle applies to other hazards such as patient handling. Patient handling is likely "inherent in the worker's work" in a health care facility, but transferring patients without adequate equipment, where such exists, or without adequate staffing is not "inherent." Again, our members will need to make a judgment call based on individual circumstances, such as lack of proper lifting equipment and/or staffing, realistically weighing the risks against the client's need for care.

ONA believes that a member who has to refuse work because adequate protection was not made available to her/him would, therefore, avoid the exemption under the *Act* and have the benefit of the right to refuse.

For many of our members, the *Occupational Health and Safety Act* does not impose restrictions on their legal right to refuse unsafe work. Under the *Occupational Health and Safety Act*, our

members who do not work in the facilities specified above, such as public health, community care access centres and community, and industry and clinic nurses have the same right to refuse unsafe work as the broader workforce. Of course, all of our regulated professionals' rights are circumscribed by their obligations to their professional colleges, such as the College of Nurses of Ontario (see page 5).

## **Steps to Promote Workplace Safety**

The right to refuse work is an important one, but it should not be the first line of defence against unsafe conditions. Identifying hazards and finding solutions to reduce/eliminate the risk before it becomes an immediate danger is your best line of defense to protect yourself and to prevent exposures/injury/illnesses in the workplace. Being proactive before the hazard places a member in immediate danger will help to avoid work refusal situations.

Therefore, when time permits and the danger is not immediate, first report your health and safety concerns to your supervisor, your Joint Health and Safety Committee, and, if necessary, to the Ministry of Labour. You are expected to take these steps, if possible, to protect yourself before you have to consider refusing to work.

Your Joint Health and Safety Committee should be working *now* to verify that appropriate safe work conditions, infection control measures, violence policies, safe patient handling programs, safe staffing levels and all measures, as outlined in Section 8 and 9 of the *Ontario Regulation 67/93 – Health Care and Residential Facilities* (attached at **Appendix 2**), are taken to protect your health and safety. These can include developing Respiratory Protection programs, Safe Lift programs (which include purchasing an adequate supply of mechanical devices/ceilings lifts etc.), Infectious Disease Prevention programs (which include replacing old needle and sharp devices with safety engineered devices, pandemic planning), Violence Prevention programs, etc.

If your Joint Health and Safety Committee is unsuccessful in its efforts to resolve your concerns, you or a member of the committee should call the Ministry of Labour.

## **The Decision to Refuse Unsafe Work**

Subject to the restrictions outlined above, an ONA member can refuse to work if she or he has reason to believe that she or he or another worker is likely to be endangered by:

- Any equipment, machine, device or thing she/he is to use or operate.
- The physical condition of the workplace or the part thereof in which she or he works or is to work.

OR the member has reason to believe that:

- Any equipment, machine, device or thing she or he is to use or operate, or the physical condition of the workplace or the part thereof in which she or he works or is to work is in contravention of the *Occupational Health and Safety Act/Regulations* and such contravention is likely to endanger herself, himself or another worker.

OR the worker has reason to believe that workplace violence is likely to endanger himself or herself (N.B. this particular 2010 addition to the circumstances for refusal differs slightly from the others in that it only entitles the worker to refuse when he or she is endangered by workplace violence, not when another worker is endangered)

## Steps to Follow in Refusing Work

### First Stage:

- The worker must immediately tell the supervisor or employer that the work is being refused and explain why. The member should ensure that she or he documents all of the details pertaining to her/his work refusal.
- The supervisor or employer must investigate the situation immediately, in the presence of the worker and a Joint Health and Safety Committee member who represents workers, if there is one or another worker chosen by the union because of her or his knowledge, experience and training.
- The refusing worker must remain in a safe place that is as near as reasonably possible to the workstation and available to the employer or supervisor for the purposes of the investigation until the investigation is completed. (No other worker shall be assigned to do the work that has been refused unless, in the presence of a JHSC worker member who, if possible, is a certified member, or another worker chosen by the union because of her or his knowledge, experience and training, the worker has been advised of the other worker's refusal and of his or her reasons for the refusal.) If the situation is resolved at this point, the refusing worker will return to work.
- Following the investigation, the worker can continue to refuse the work if she or he has reasonable grounds for still believing that the work continues to be unsafe.

### Second Stage:

- The worker, union or employer must cause a Ministry of Labour inspector to be notified. The inspector should come to the workplace to investigate the refusal and consult with the worker and the employer (or a representative of the employer). The worker representative from the first stage will also be consulted as part of the inspector's investigation.
- While waiting for the inspector's investigation to be completed, the worker must remain during the worker's normal working hours in a safe place that is as near as reasonably possible to the workstation, and available to the inspector for the purposes of the investigation, unless, subject to the provisions of a collective agreement, the employer assigns some other reasonable work during normal working hours. If no such work is practicable, the employer can give other directions to the worker.
- The inspector must decide whether the work is likely to endanger the worker or another person. The inspector's decision must be given, in writing, to the worker, the employer and the worker representative identified above, if there is one. If the inspector finds that the work is not likely to endanger anyone, the refusing worker will normally return to work. (See below for what happens if the worker does not).
- Although the *Act* does not cover this point, the Ontario Labour Relations Board (OLRB) has ruled that a refusing worker is considered to be at work during the first stage of a work refusal and is entitled to be paid at her or his appropriate rate under the *Act*. The *Act* does state that a person acting as a worker representative during a work refusal is paid at either the regular or the premium rate, whichever is applicable.

## Protection against Employer Reprisals

- The employer is not allowed to penalize, dismiss, discipline, suspend or threaten to do any of these things to, or impose any penalty on or intimidate or coerce, a worker who has used this process in good faith. Note that to exercise an initial right to refuse, the worker does not need to be correct; she or he only needs to have “reason to believe” that unsafe circumstances exist.
- A worker may continue her or his work refusal after the Ministry inspector decides it is safe, but she or he is taking a great risk. If disciplined at this stage, she or he will need to convince a tribunal that she or he is correct and the inspector is wrong in order to avoid the consequences (e.g. discipline for insubordination).
- If you are disciplined or threatened after exercising your rights described above, consult your Local Executive/Labour Relations Officer for advice and assistance.
- If a member has been disciplined contrary to the *Occupational Health and Safety Act*, there is a choice to be made by the union: the matter can be decided either by arbitration under a collective agreement, or by a complaint to the Ontario Labour Relations Board. In either case, the burden of proof is on the employer.

## The Regulatory College and Unsafe Working Conditions

Nurses and other regulated health care workers also have to consider their standards of practice established by their professional College. Even if in a particular circumstance you have the right to refuse unsafe work under the *Occupational Health and Safety Act*, what will the College do? The College has different statutory considerations when looking at refusal of unsafe work. These will be addressed in a number of scenarios outlined in **Appendix 1**.

As a follow-up to SARS, the College of Nurses of Ontario (CNO) developed a new standard, “Refusing Assignments and Discontinuing Nursing Services” (attached at **Appendix 3**). This publication can also be found on the CNO website at [www.cno.org](http://www.cno.org).

As an indicator, on its website, the College has published the following statement regarding SARS that can be applied to other unsafe working conditions:

While nurses are committed to meeting the needs of clients, **provision of professional nursing services does not include working in situations where nurses' health is at risk and no precautions have been taken** (emphasis added). CNO believes that nurses can protect themselves from risk of exposure to SARS by using appropriate infection control measures. Nurses need to be aware of these measures, and use their knowledge and judgment to determine how to best protect themselves and clients from SARS.

Nurses have the right to refuse assignments that they believe will subject them or their clients to an unacceptable level of risk (*CNO, 2003a, pg. 9*). Nurses working in unsafe situations assume a level of risk and may need to determine for themselves if the risk is too high. Personal safety, professional and ethical issues need to be considered, but as with most ethical choices, there is no single answer that clearly resolves the issue. Nurses must consider their rights as well as their responsibilities and use a problem-solving approach.

If you choose to refuse an unsafe assignment, you can still meet professional obligations to the client by informing your employer of why you are refusing, documenting your decision-making process and attempting to provide the employer with enough time to find a suitable replacement. If the reasons for the refusal are resource or support-based, following these steps will demonstrate your commitment to a quality practice setting:

- Assess the situation to determine the problem, the key individuals affected by the problem and the decision needed.
- Gather additional information to clarify the problem.
- Identify the safety, professional and ethical issues.
- Identify who should make the decision (e.g., you alone; you and the Occupational Health and Safety Representative; you and your colleges).
- Identify the range of actions that are possible and their anticipated outcomes.
- Decide on a course of action and carry it out.

This decision-making process can be applied in most unsafe work situations. Using this process also shows a commitment to ongoing reflective practice.

The College could require you to demonstrate that you have taken all available steps to protect yourself before you exercise your right to refuse. Ensure that you are documenting every step that you take.

If there is a complaint or report to the CNO arising out of your refusal to work, you should contact ONA's Legal Expense Assistance Plan (LEAP) Team Intake for immediate information and advice. On written notification from the College, you will be provided with an advocate to represent you. Also advise your Bargaining Unit President/Labour Relations Officer. You are advised not to speak to the College before you have contacted LEAP.

**Note:** For the responses of other professional colleges' positions regarding the right to refuse unsafe work, see **Appendix 4**.

### **Exception to the Obey and Grieve Rule – The Right to Refuse Beyond the Statutory Provision**

Years before there existed a statutory right to refuse unsafe work, arbitrators developed what came to be known as the "obey now and grieve later" rule. These arbitrators said that the workplace is not a debating society: the general rule is that when the employer gives a direct order, it must be obeyed even if the order is contrary to the collective agreement. The issuance of the order and any discipline imposed for failing to comply with it can be challenged through the grievance procedure, but in the meantime the order must be complied.

Arbitrators developed a limited number of exceptions where they may reverse the discipline imposed when an employee refuses an employer's order. One of those exceptions is when the order involves the performance of work which will injure the worker. If a worker can establish the likelihood of injury, she or he may succeed in overturning discipline for refusing the order.

Up to the point that an *Occupational Health and Safety Act (OHSA)* inspector is called, the statutory right provides more protection for work refusal than the exception to the arbitral "obey now and grieve later" rule. As has been pointed out, under the *OHSA*, an employee only has to have a reasonable belief that the work is dangerous up to that stage.

After an inspector rules that the work is safe, however, an employee must be correct to justify continued refusal, whether she or he wants to rely upon the *OHSA* or the arbitrator's rule.

It is possible that the arbitral rule provides more protection at this point. The *OHSA* expressly cannot be used to protect against employer discipline where the refusal would directly endanger a patient. However, it is possible to argue that an arbitrator should find that the exception to the "obey now and grieve later" rule continues. Consider, as an example, the outbreak of a new pandemic where protective equipment would delay but not avoid death for the health



practitioner. An arbitrator might be more likely to protect the right of such an at-risk worker to refuse to expose herself or himself through the arbitration rule than through the statute.

These are the type of arguments that ONA representatives can and will make to defend members who have been disciplined for refusing to work under unsafe conditions. Before they actually refuse, however, members must realize that none of these arguments are guaranteed to succeed. Each member must weigh the risks of refusing against the risks of performing the work.

## **Questions**

If you have any questions regarding this guide and your right to refuse unsafe work, contact your Bargaining Unit President and/or Labour Relations Officer.

## Appendix 1

**“I do not believe I am adequately protected. Can I refuse?”**

### Scenarios

#### Scenario 1

*I have been assigned directly to a TB patient and have been provided only with a surgical mask, not the N95 respirator. I have read that the ordinary surgical mask does not provide sufficient protection. I have raised the issue with my supervisor who said I have no choice as they have run out of proper masks. I have to work now, and I don't have time to call a Joint Health and Safety Committee member. Can I refuse to work?*

#### **Answer – The Occupational Health and Safety Act**

We believe that in this circumstance the Ministry of Labour should support your work refusal. It would be ONA's position that while an infectious agent may be expected in a workplace, it is not inherent in your work that you work in an area where an infectious agent is present, without being protected by known personal protective equipment. There is strong evidence of the airborne transmissibility of TB and of the need for at least an N95 respirator to protect you from “a highly infectious virus” when dealing with a TB patient.

Remember that to exercise an initial right to refuse, the worker does not need to be correct, she or he only needs to have “reason to believe” that unsafe circumstances exist.

However, a worker may continue her or his work refusal after the Ministry inspector decides it is safe, but she or he is taking a great risk. If disciplined at this stage, she or he will need to convince a tribunal that she or he is correct and the inspector is wrong in order to avoid the consequences.

#### **Answer – College of Nurses of Ontario**

We believe that in this circumstance the College *should* support your work refusal. Nurses have the right to refuse work where unsafe conditions exist and they cannot be adequately protected through infection control measures i.e. provision of a N95 respirator when providing care to a TB patient.

According to the College of Nurses, nurses can withhold services if they can:

1. Provide an appropriate rationale.
2. Notify the employer of the risk/protection concerns when infection control is inadequate.
3. Hand over the care responsibilities for assigned clients to the supervisor.

When nurses withhold patient care services, careful decision-making is required. Be sure to document the situation carefully step-by-step. In the event the College of Nurses becomes involved, all circumstances pertaining to the situation will be considered on an individual case-by-case basis.

## **Scenario 2**

*I am assigned directly to a TB patient and have been given the proper personal protective equipment recommended by the Ministry of Health and Long Term Care, Health Canada, the Centre for Disease Control and all official bulletins. With all the news reports, I still do not feel confident that I am protected. Can I refuse to work?*

### **Answer – The Occupational Health and Safety Act**

There is really no “reason to believe” that unsafe circumstances exist since the proper personal protective equipment has been provided.

We also think the Ministry of Labour would NOT support a work refusal in this instance, as they may find exposure to a disease, for which you have proper protective equipment, is inherent in the work and that removing yourself from the work may directly endanger the patient.

### **Answer – College of Nurses of Ontario**

The College may find that you have abandoned your patient in this scenario.

### Scenario 3

*I am a radiation technologist and have not been provided with lead gloves to use when irradiating young patients in PACU, NICU and Pediatrics. I know that the health care regulation under the Occupational Health and Safety Act requires the provision of protective gloves when positioning a patient during irradiation. I have raised the issue with my supervisor who said that no gloves are available on those units. I have to work now and I don't have time to call a Joint Health and Safety Committee member. Can I refuse to work?*

#### **Answer – The Occupational Health and Safety Act**

We believe that in this circumstance the Ministry of Labour should support your work refusal. It would be ONA's position that it is not inherent in your work that you work without being protected by known personal protective equipment, particularly equipment that is specifically prescribed by regulation.

Remember that to exercise an initial right to refuse, the worker does not need to be correct, she or he only needs to have "reason to believe" that unsafe circumstances exist.

However, a worker may continue her or his work refusal after the Ministry inspector decides it is safe, but she or he is taking a great risk. If disciplined at this stage, she or he will need to convince a tribunal that she or he is correct and the inspector is wrong in order to avoid the consequences.

#### **Answer – College of Medical Radiation Technologists**

We believe that in this circumstance, the College *should* support your work refusal and not consider it an act of professional misconduct.

## Scenario 4

*I am assigned to work the night shift and we are short staffed. During rounds, I find that a heavy patient has fallen out of bed. I am alone and cannot access other staff to help me lift this patient. I know if I try to lift this patient on my own, I will likely injure myself and then not be able to care for any of the other patients. I call my supervisor and tell her that I believe lifting this patient will injure me and that I cannot do this task without help. She orders me to try and lift the patient or face discipline.*

### **Answer – The Occupational Health and Safety Act**

We believe the Ministry of Labour would uphold your work refusal, providing that you really could not access help and you continue to make your patient as comfortable as possible on the floor and provide care until help arrives. Furthermore, your supervisor may be in violation of section 50 of the *Act* for threatening to discipline you.

Remember, that to exercise an initial right to refuse, the worker does not need to be correct, she or he only needs to have “reason to believe” that unsafe circumstances exist.

However, a worker may continue her or his work refusal after the Ministry inspector decides it is safe, but she or he is taking a great risk. If disciplined at this stage, she or he will need to convince a tribunal that she or he is correct and the inspector is wrong in order to avoid the consequences.

Situations like this should be anticipated and can be avoided by the employer. In this case, we would strongly recommend that you start **now** to avoid a work refusal by involving your Joint Health and Safety Committee (JHSC), and the Ministry of Labour, if necessary. JHSCs can make written recommendations to the employer about proper staffing levels and implementing a safe lift program that includes purchasing proper mechanical device equipment, which may also include a ceiling lift, and ensure that training is part of any program developed.

### **Answer – The College of Nurses of Ontario**

We believe the College would support the nurse because nurses have the right to refuse assignments that they believe will put them or their clients at risk. However, nurses should have a justifiable rationale for their refusal. In this scenario, a two-person lift being attempted by one nurse could put both the nurse and client at risk.

Nurses must inform employers why they are refusing the assignment (e.g. the facility does not have the proper lifting equipment that would ensure the nurse’s safety). The College recommends that the nurse documents all the steps taken prior to refusing the assignment (e.g. telephone call to supervisor and her response, attempts to get help from other units, etc.).

Employers are responsible for creating a work environment, including staffing, that supports safe, effective care.

## Scenario 5

*I am a community care nurse. We are not provided with cell phones or other means of communicating. I am to drive to a remote area to provide care to a recovering surgical patient. The home is located five kilometres down a dirt road. I was there last week in good weather. The road is narrow and not well kept and I had some difficulty keeping the car on the road. The weather forecast today calls for freezing rain. I believe it is not safe for me to visit this patient this afternoon. I have expressed my concerns to my supervisor who simply tells me to drive carefully. Can I refuse to work?*

### **Answer – The Occupational Health and Safety Act**

We believe the Ministry of Labour would uphold your work refusal. Unlike hospital and homes workers, community care access centres, community, health unit and industry and clinic workers are not identified among those who have a limited right to refuse unsafe work under Section 43(1) (2) of the *Occupational Health and Safety Act*. As such, if you have *reason to believe* that the *physical condition* of the workplace is *likely to endanger* you, then you can legally refuse to work. In this case, you have personal knowledge of the physical condition of the road, and in good weather, you experienced difficulty. The weather forecast of freezing rain gives you reason to believe that you will likely be endangered.

Remember that to exercise an initial right to refuse, the worker does not need to be correct, she or he only needs to have “reason to believe” that unsafe circumstances exist.

However, a worker may continue her or his work refusal after the Ministry inspector decides it is safe, but she or he is taking a great risk. If disciplined at this stage, she or he will need to convince a tribunal that she or he is correct and the inspector is wrong in order to avoid the consequences.

Situations like this should be anticipated and can be avoided by the employer. In this case, we would strongly recommend that you start **now** to avoid a work refusal by involving your Joint Health and Safety Committee (JHSC) and the Ministry of Labour, if necessary, in developing safe driving programs and contingency plans. JHSCs can make written recommendations to the employer about vehicles, intake interviews, alternate safe means of providing care, alternate safe means of transportation, etc.

### **Answer – College of Nurses of Ontario**

Nurses need to demonstrate a problem-solving approach when making decisions about refusing an assignment. The College will only support a refusal if the nurse can demonstrate how she or he problem solved (e.g. telephone call to local municipality to see if road will be sanded by the afternoon, telephone call to client’s family to see if someone would be with client in the afternoon and if they would be comfortable with the nurse doing a phone visit).

## Scenario 6

*I am a nurse trying to return to modified work after sustaining a workplace back injury for which I have been off receiving WSIB loss of earnings benefits for six months. The WSIB decided I am able to return to some work, and I am anxious to return to work, but my doctor has cautioned that I must be careful and has provided written restrictions, including that I must have mainly sedentary work and graduated hours. The employer has offered me a charge nurse position in which I am primarily seated at the nursing station, with some walking. The nursing station only has old, stiff chairs to sit on, and I experience pain while seated for only 10 minutes. My shift lasts 4½ hours. I have complained to my supervisor. She told me to find a cushion and to stand up when needed. Can I refuse to work?*

### **Answer – The Occupational Health and Safety Act**

We believe the Ministry of Labour would uphold your work refusal. The Ministry applies a “susceptible worker” policy when called in on a work refusal of a worker, “who, because of a particular health condition, exercised a right to refuse in a situation where the “average” worker might be able to work.” (*Ministry of Labour Operations Division Policy and Procedures Manual*, November 2007, Section 4.12, “WORK REFUSALS Susceptible Worker,” pages 45-46). The Ministry also has a particular policy to deal with WSIB claimants (Section 4.12A, “WORK REFUSAL-EMPLOYER RETURN TO WORK PROGRAMS,” page 47-49) and the WSIB has a protocol for such work refusals.

There have been cases suggesting that you would be expected to provide medical evidence of your condition and need for restrictions. (*Ballanger and McDonnell Douglas Canada Ltd. (Re) (unreported, October 25, 1989, AP 88-60, Ont. Dir. App., E. Smith), at pages 12-13.*) Worthy of note is one particular case where a worker with “degenerative disc disease” was entitled to refuse to work in moulded plastic chairs because they caused him back pain. The “assessment of whether the work in question is likely to endanger calls for a consideration of the refusing worker’s particular sensitivities or limitations that are of a physical or medical nature.” (*Elgin-Middlesex Detention Centre (Re) (unreported, August 16, 1995, OHS 95-30, Ont. Adj., S. Novick) at p. 16.*)

The Ministry of Labour “susceptible worker” policy directs an inspector who upholds a “susceptible worker” work refusal that, “the inspector should be prepared to place particular emphasis on advising the workplace parties about the prohibition against reprisals.” If an employer and/or a claims adjudicator threatens suspension of WSIB benefits for refusing unsafe work, this should be treated as a reprisal for exercising your legislated right to refuse.

Remember that to exercise an initial right to refuse, the worker does not need to be correct, she or he only needs to have “reason to believe” that unsafe circumstances exist.

However, a worker may continue her or his work refusal after the Ministry inspector decides it is safe, but she or he is taking a great risk. If disciplined at this stage, she or he will need to convince a tribunal that she or he is correct and the inspector is wrong in order to avoid the consequences.

### **Answer – College of Nurses of Ontario**

We believe the College would have no jurisdiction in this work refusal, as it is strictly a labour and occupational health and safety issue.

## Scenario 7

*I work in a psychiatric ward and my colleagues and I have been subject to abuse in the past in one form or another. I have approached my employer with my concerns, yet nothing further has been done to protect my health and safety. Tonight I must care for a violent patient by myself as we are short staffed and I have reason to believe that I will be injured. I have requested security to be present on the unit for the shift and the request was denied by the manager. Can I refuse to work?*

### Answer – The Occupational Health and Safety Act

2010 amendments to the *OHSA* clarify that violence and threats of violence by a *person* are real health and safety issues covered by the legislation. The Ministry of Labour and others did not always share ONA's view that risks of exposure to violence, and any resultant illness and injury, were always prohibited by the *OHSA* and that workers always had a legal right to refuse unsafe work in such circumstances. That confusion was put to rest by new definitions of violence and harassment and the express articulation of the right to refuse work if a worker believes s/he is at risk of *physical* injury from "workplace violence" which is defined as:

- (a) *the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker,*
- (b) *an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker,*
- (c) *a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.*

From June 15, 2010 onward, if a worker refuses to work when threatened by such violence, the MOL will be expected to respond in accordance with the *OHSA*. However, because of your regulatory body, you must do so carefully (e.g. see note below about the College of Nurses).

Keep in mind that the Ministry is reluctant to write orders for additional staffing even though its Policy 10.9 gives guidance to inspectors to address staffing levels (e.g. buddy system, emergency response teams, scheduling). Case law supports our position that the Ministry of Labour can write orders for additional staffing. In Decision No. 01/93-A (*St. Thomas Psychiatric Hospital and Ontario (Ministry of Health) (Re) (unreported, April 29, 1993, AP 01/93A Ont. Adj., D. Randall)*), the adjudicator supported the inspector's decision to order safe staffing levels.

If the Ministry of Labour makes a decision not to write orders for additional staff or other violence prevention measures, speak to your Local Executive/Labour Relations Officer immediately to consider appealing the non-issuance of an order by the Ministry of Labour (NB: you only have 30 days to appeal from the date of the Ministry's decision).

Remember, to exercise an initial right to refuse, the worker does not need to be correct, she or he only needs to have "reason to believe" that unsafe circumstances exist.

However, a worker may continue her or his work refusal after the Ministry inspector decides it is safe, but she or he is taking a great risk. If disciplined at this stage, she or he will need to convince a tribunal that she or he is correct and the inspector is wrong in order to avoid the consequences.

Situations like this should be anticipated and can be avoided by the employer. In this case, we strongly recommend that you start **now** to avoid a work refusal by involving your Joint Health



and Safety Committee (JHSC) to assess compliance with violence prevention requirements of the *OHSA*, and by calling the Ministry of Labour, if necessary.

Amendments to the *OHSA* that were effective June 15, 2010, include explicit provisions that require an employer to develop a policy with respect to violence, and a program with specific measures and procedures (including on-going risk assessments) to control risk of exposure to, and prevent physical injury from, workplace violence, including domestic violence spillover from home to work..

JHSCs should assess compliance with these and other provisions of the law and where necessary make written recommendations to the employer to ensure proper staffing levels, appropriate protective measures, and that procedures and equipment are in place to protect you and your colleagues.

### **Answer – College of Nurses of Ontario**

We believe solo nursing on a potentially violent psychiatric unit puts both the nurse and other clients at risk, therefore, the College should support the nurse. But the nurse needs to notify the employer of her concerns, advocate for quality patient care, request additional staffing and document. Give the employer as much notice as is possible so other arrangements can be made for client care.

## Scenario 8

*A number of us work in a small hospital outside the Greater Toronto Area and are concerned that our hospital could be next to receive a SARS patient. We do not feel that the employer is taking every reasonable precaution to ensure our safety. We hear that the public and health care workers in many Toronto hospitals are being given N95 respirators. Our employer said we don't need them and won't provide them. Can we refuse to work?*

### **Answer – The Occupational Health and Safety Act**

We think the Ministry of Labour would NOT support a work refusal in this instance because the danger is not immediate. In one case an adjudicator commented:

“The work refusal provisions are not intended to be a substitute for the internal responsibility system with recourse to an inspector through a complaint. “[S]ection 43 is to be used only in urgent circumstances” and not “just because you want a quick answer” to a health and safety concern.” (*OPSEU and Ontario (Ministry of the Solicitor General and Correctional Services) (Re) (unreported, July 7, 1997, Ont. G.S.B., N. Dissanayake)*, at page 20.

A work refusal is an individual right. While many workers may legitimately refuse at the same time where each has a sincere belief that she or he is in danger, a work refusal by a group should not be pre-planned or “staged.”

In this case we would strongly recommend that you start **now** to avoid a work refusal by involving your Joint Health and Safety Committee and the Ministry of Labour, if necessary, to verify that appropriate protection measures, procedures and equipment are in place to protect you and your colleagues. The Ministry of Labour has advised inspectors to respond quickly to complaints from workers who have a limited right to refuse unsafe work, for as one adjudicator said, “...workers who engage in inherently dangerous work for the benefit of the public have a right to expect that their employers and the Ministry of Labour will be especially vigilant in ensuring all reasonable precautions consistent with the performance of their duties are taken.” (*OPSEU, Local 321 and Ministry of Labour (Re) (unreported, May 4, 1992, AP 09/92, Ont. Adj., R. Blair)*, at p. 2)

### **Answer – College of Nurses of Ontario**

In the event the College becomes involved, all circumstances will be considered on an individual case-by-case basis. However, in this case, a negative outcome is likely if work was refused before taking all available steps to ensure the safety of yourself or your patients.

Document all steps that you took in order to obtain personal protective equipment before you exercised your right to refuse, as you may need this information to prove to the College that you took every available step to ensure patient safety prior to exercising this right.

## Scenario 9

*I work in a locked unit for dementia patients in a nursing home and my colleagues and I have been subject to abuse in the past in one form or another. I have approached my employer with my concerns, yet nothing further has been done to protect my health and safety. One large, male resident has recently had such violent episodes that we have had to restrain him physically and chemically. His medication was reduced today and he is showing signs of agitation again. Tonight I must care for him by myself as we are short staffed and I have reason to believe that I will be injured. I have requested security to be present on the wing for the shift and the request was denied by the manager. Can I refuse to work?*

### **Answer – The Occupational Health and Safety Act**

2010 amendments to the OHSA (known as “Bill 168” before passage into law) clarify that violence and threats of violence by a *person* are real health and safety issues covered by the legislation. The Ministry of Labour and others did not always share ONA’s view that risks of exposure to violence, and any resultant illness and injury, were always prohibited by the OHSA and that workers always had a legal right to refuse unsafe work in such circumstances. That confusion was put to rest by new definitions of violence and harassment and the express articulation of the right to refuse work if a worker believes s/he is at risk of *physical* injury from “workplace violence” which is defined as:

- (a) *the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker,*
- (b) *an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker,*
- (c) *a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.*

From June 15, 2010 onward, if a worker refuses to work when threatened by such violence, the MOL will be expected to respond in accordance with the OHSA. However, because of your regulatory body, you must do so carefully (e.g. see note below about the College of Nurses).

Keep in mind that the Ministry is reluctant to write orders for additional staffing, but there is some case law that supports our position that the Ministry of Labour can write orders for additional staffing. In Decision No. 01/93-A (*St. Thomas Psychiatric Hospital and Ontario (Ministry of Health) (Re) (unreported, April 29, 1993, AP 01/93A Ont. Adj., D. Randall)*), the adjudicator supported the inspector’s decision to order safe staffing levels.

If the Ministry of Labour makes a decision not to write orders for additional staff or other violence prevention measures, speak to your Local Executive/Labour Relations Officer immediately to consider appealing the non-issuance of an order by the Ministry of Labour (NB: you only have 30 days to appeal from the date of the Ministry’s decision).

Remember, to exercise an initial right to refuse, the worker does not need to be correct, she or he only needs to have “reason to believe” that unsafe circumstances exist.

However, a worker may continue her or his work refusal after the Ministry inspector decides it is safe, but she or he is taking a great risk. If disciplined at this stage, she or he will need to convince a tribunal that she or he is correct and the inspector is wrong in order to avoid the consequences.

Situations like this should be anticipated and can be avoided by the employer. In this case, we strongly recommend that you start **now** to avoid a work refusal by involving your Joint Health

and Safety Committee (JHSC) to assess compliance with violence prevention requirements of the *OHSA*, and by calling the Ministry of Labour, if necessary.

Amendments to the *OHSA* that were effective June 15, 2010, include explicit provisions that require an employer to develop a policy with respect to violence, and a program with specific measures and procedures (including on-going risk assessments) to control risk of exposure to, and prevent physical injury from, workplace violence, including domestic violence spillover from home to work.

JHSCs should assess compliance with these and other provisions of the law and where necessary make written recommendations to the employer to ensure proper staffing levels, appropriate protective measures, and that procedures and equipment are in place to protect you and your colleagues.

**Answer – College of Nurses of Ontario –**  
***(This scenario is similar to scenario 7 wherein the College said:)***

We believe solo nursing on a potentially violent psychiatric unit puts both the nurse and other clients at risk, therefore, the College should support the nurse. But the nurse needs to notify the employer of her concerns, advocate for quality patient care, request additional staffing and document. Give the employer as much notice as is possible so other arrangements can be made for client care.

## **Appendix 2**

### **Ontario Regulation 67/93 Health Care and Residential Facilities**

#### **Section 8 & 9**

##### **General Duty to Establish Measures and Procedures**

8. Every employer in consultation with the joint health and safety committee or health and safety representative, if any, and upon consideration of the recommendation thereof, shall develop, establish and put into effect measures and procedures for the health and safety of workers. O. Reg. 67/93, s. 8.
9. (1) The employer shall reduce the measures and procedures for the health and safety of workers established under section 8 to writing and such measures and procedures may deal with, but are not limited to, the following:
  1. Safe work practices.
  2. Safe working conditions.
  3. Proper hygiene practices and the use of hygiene facilities.
  4. The control of infections.
  5. Immunization and inoculation against infectious diseases.
  6. The use of appropriate antiseptics, disinfectants and decontaminants.
  7. The hazards of biological, chemical and physical agents present in the workplace, including the hazards of dispensing or administering such agents.
  8. Measures to protect workers from exposure to a biological, chemical or physical agent that is or may be a hazard to the reproductive capacity of a worker, the pregnancy of a worker or the nursing of a child of a worker.
  9. The proper use, maintenance and operation of equipment.
  10. The reporting of unsafe or defective devices, equipment or work surfaces.
  11. The purchasing of equipment that is properly designed and constructed.
  12. The use, wearing and care of personal protective equipment and its limitations.
  13. The handling, cleaning and disposal of soiled linen, sharp objects and waste.
- (2) At least once a year the measures and procedures for the health and safety of workers shall be reviewed and revised in the light of current knowledge and practice.
- (3) The review and revision of the measures and procedures shall be done more frequently than annually if,
  - (a) the employer, on the advice of the joint health and safety committee or health and safety representative, if any, determines that such review and revision is necessary; or
  - (b) there is a change in circumstances that may affect the health and safety of a worker.
- (4) The employer, in consultation with and in consideration of the recommendation of the joint health and safety committee or health and safety representative, if any, shall develop, establish and provide training and educational programs in health and safety measures and procedures for workers that are relevant to the workers' work. O. Reg. 67/93, s. 9.

### **Appendix 3**

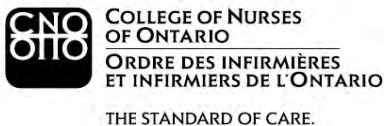
#### **College of Nurses of Ontario: Refusing Assignments and Discontinuing Nursing Services**

**(attached)**

## Refusing Assignments and Discontinuing Nursing Services

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## VISION

Leading in regulatory excellence

## MISSION

Regulating nursing in the public interest

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*Refusing Assignments and Discontinuing Nursing Services* Pub. No. 41070

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Ce fascicule existe en français sous le titre : *Le refus d'affectations et l'interruption de services infirmiers*, n° 51070



## Introduction

The College of Nurses of Ontario (the College) frequently receives questions about whether nurses<sup>1</sup> have the right to refuse assignments or discontinue care to clients, and if doing so constitutes abandonment of clients.

Situations that prompt these questions can include job actions or strikes, requests to work overtime and unsafe working conditions. These situations generally involve a conflict between a nurse's professional obligations to clients and her/his personal obligations. This conflict can create an ethical dilemma for the nurse.

As is true with most ethical dilemmas, very often there is no one answer that clearly resolves the issues. However, using an ethical problem-solving approach can help nurses consider the relevant factors and work out the best solution.

This practice guideline was developed to help nurses work through these ethical dilemmas. It provides an outline of the relevant practice standards, legislation, and professional and ethical accountabilities. As well, it describes a decision process that can help nurses resolve ethical dilemmas and conflicting obligations while meeting their responsibility to provide safe care.

Nurses are expected to demonstrate leadership and accountability when weighing their professional and personal obligations, and to make decisions in the best interest of the public.

This document replaces the guideline *Job Action* and the document *Accountability of RNs and RPNs During a Work Stoppage*. It offers a section on how creating quality practice settings can prevent or help to resolve these issues. Finally, this document offers several case studies illustrating how nurses can resolve dilemmas around providing nursing care.

Job actions, strikes, working overtime and working in unsafe practice situations are examples of issues that combine labour, as well as professional and regulatory issues. As the regulatory body for nursing in Ontario, the College has the mission to protect the public's right to quality nursing services by providing leadership in self-regulation to nurses. The College does this, in part, by establishing practice standards and guidelines and enforcing standards for Registered Practical Nurses, Registered Nurses and Nurse Practitioners. Practice guidelines, such as this one, support nurses in making safe, effective decisions by helping them understand their responsibilities in relation to aspects of nursing care. Although the College has no role in labour disputes, it does have a role in ensuring that nurses, both staff nurses and nurse administrators, fulfil their professional obligations to clients.

Employers are responsible for establishing a working environment, including staffing, that supports safe, effective client care. The *Employment Standards Act, 2000* applies in all work settings. In addition, in unionized workplaces, collective agreements establish the benefits, privileges, rights and obligations agreed upon by the union, the nurses as employees and the employer. Further, the *Occupational Health and Safety Act*<sup>2</sup> outlines provisions for refusing to work when health and safety of the worker is in danger. However, section 43 (1) (b) of OHSA states this right does not apply if the worker's refusal to work will directly endanger the life, health or safety of another person. Section 43 (2) (d) outlines the workers to whom the non-application clause applies; and it would likely include the majority of nurses.

Nurses are accountable for providing safe, effective and ethical care to their clients (College of Nurses of Ontario, 2004b). To resolve conflicts between professional and personal obligations in a way that protects the public's right to safe care, nurses need

<sup>1</sup> In this document, *nurse* refers to a Registered Nurse (RN), Registered Practical Nurse (RPN) and Nurse Practitioner (NP).

<sup>2</sup> For more information, see the *Occupational Health and Safety Act*. The Act is available at [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca).



to be aware of the relevant standards and legislation and ensure that they consider all aspects of the situation.

## Standards

The College has published two documents, *Professional Standards, Revised 2002* and *Ethics*, that outline the accountabilities and responsibilities of nurses relevant to refusing assignments and discontinuing nursing services.

### Professional Standards, Revised 2002

This document describes in broad terms the professional expectations for all nurses in every area of practice.

A nurse demonstrates accountability by:

- providing, facilitating, advocating and promoting the best possible care for clients;
- seeking assistance appropriately and in a timely manner;
- taking action in situations in which client safety and well-being are compromised; and
- maintaining competence and refraining from performing activities for which she/he is not competent.

In addition, a nurse in an administrator role demonstrates accountability by:

- ensuring that mechanisms allow for staffing decisions that are in the best interest of clients and professional practice; and
- advocating for a quality practice environment that supports nurses' ability to provide safe, effective and ethical care.

## Ethics

This document describes the ethical values that are most important to the nursing profession in Ontario.

Nurses demonstrate regard for client well-being and maintain commitments by:

- using their knowledge and skill to promote clients' best interests in an empathetic manner;
- putting the needs and wishes of clients first;

- identifying when their own values and beliefs conflict with the ability to keep implicit and explicit promises and taking appropriate action;
- advocating for quality client care; and
- making all reasonable efforts to ensure that client safety and well-being are maintained during any job action.

The *Ethics* document informs nurses of the need to recognize and function within their own value system, and the need to work collaboratively with colleagues and promote an environment of collegiality.

## Legislation

The *Nursing Act, 1991* includes regulations<sup>3</sup> that define professional misconduct. Some of the definitions of professional misconduct may be relevant in situations in which nurses refuse assignments or discontinue nursing services. Although there is no specific definition of professional misconduct that includes the word abandonment, the definitions can guide nurses on what might constitute professional misconduct related to refusing an assignment or discontinuing nursing services. Each situation would be assessed on its own merit.

The relevant definitions of professional misconduct in the legislation are found in the following clauses.

- 1 (1) Contravening a standard of practice of the *profession or failing to meet the standard of practice of the profession*
- 1 (4) *Failing to inform the member's employer of the member's inability to accept specific responsibility in areas where specific training is required or where the member is not competent*
- 1 (5) *Discontinuing professional services that are needed unless:*
  - i. *the client requests the discontinuation,*
  - ii. *alternative or replacement services are arranged, or*
  - iii. *the client is given reasonable opportunity to arrange alternative or replacement services*

<sup>3</sup> Excerpts from the *Nursing Act, 1991*, O.Reg. 799/33.



*1 (29) Failing to fulfil the terms of an agreement for professional services*

*1 (37) Engaging in conduct or performing an act relevant to the practice of nursing that having regard to all the circumstances would reasonably be regarded by members as disgraceful, dishonourable or unprofessional*

### Refusing assignments

Refusing to work an extra shift or overtime is not the type of situation that was intended by the inclusion of clause 1 (5) (discontinuation of services) in the *Nursing Act* as a definition of professional misconduct; therefore, it is not considered abandonment. However, depending on the context and facts of a particular situation, nurses can be found guilty of professional misconduct under one of the other clauses.

### Discontinuing nursing services

Abandonment occurs when a nurse has accepted an assignment and discontinues care without:

- the client requesting the discontinuation;
- arranging a suitable alternative or replacement service; or
- allowing a reasonable opportunity for alternative or replacement services to be provided.

A nurse who discontinues services without meeting the above conditions could be found guilty of professional misconduct.

### Guidelines for Decision-Making

Resolving dilemmas caused by conflicting obligations requires the thoughtful consideration of all relevant factors and the use of an ethical decision-making process to ensure that the best decision is reached. Sometimes there is no one best solution, but only the best of two or more imperfect solutions.

Collaboration, respectful behaviour and collegial communication among everyone in the nursing and health team contribute to positive outcomes for clients and prevent problems from arising in determining how nursing services are to be delivered.

Communication is integral to all aspects of issue resolution. Communicating before a situation

develops will prevent or minimize risks to clients. It is important that nurses advocate for appropriate staff and for planning for work stoppages.

### Underlying principles

The following principles guide the nurse's decisions and actions when faced with situations in which she/he is considering refusing an assignment or discontinuing services.

- The safety and well-being of the client is of primary concern.
- Critical appraisal of the factors in any situation is the foundation of clinical decision-making and professional judgment.
- Nurses are accountable for their own actions and decisions and do not act solely on the direction of others.
- Nurses have the right to refuse assignments that they believe will subject them or their clients to an unacceptable level of risk (College of Nurses of Ontario, 2003, p. 9).
- Nurses are not required to work extra shifts or overtime for which they are not contracted.
- Individual nurses and groups of nurses safeguard clients when planning and implementing any job action (Canadian Nurses Association, 2002, p. 22).
- Persons whose safety requires ongoing or emergency nursing care are entitled to have these needs satisfied throughout any job action (Canadian Nurses Association, 2002, p. 22).

### Key expectations

In choosing the appropriate course of action, nurses are expected to do the following.

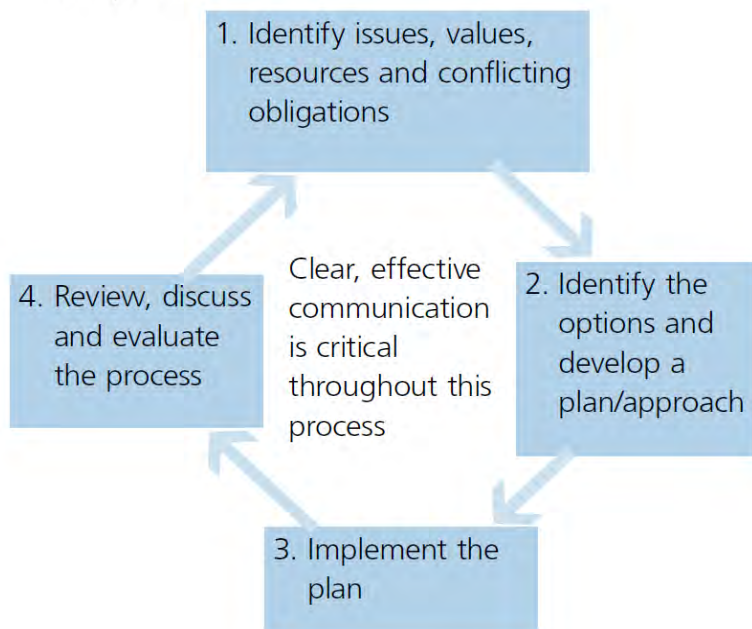
- Carefully identify situations in which a conflict with her/his own values interferes with the care of clients (College of Nurses of Ontario, 2004b, p. 10) before accepting an assignment or employment.
- Identify concerns that affect her/his ability to provide safe, effective care.
- Communicate effectively to resolve workplace issues.
- Become familiar with the collective agreement or employment contract relevant to her/his settings and take this into account when making decisions.

- Learn about other legislation relevant to her/his practice setting.
- Give enough notice to employers so that client safety is not compromised.
- Provide essential services in the event of a strike.
- Inform the union local and employer in writing of her/his ongoing professional responsibility to provide care, which will continue in the event of any job action (for example, strike or lockout).

### Decision-making process

This diagram illustrates the process a nurse should take to resolve dilemmas related to conflicting obligations. Some actions are short term, while others are proactive and long term. No attempt has been made to identify all possible actions.

The process includes four cyclical components. The process can begin at any point, but the best outcome requires consideration of all of the components.





### 1: Identify the issues, values, resources and conflicting obligations

- a) Have you previously agreed to accept the shift/ assignment?
- b) What are the conflicting obligations, beliefs and values? Sometimes talking to others (for example, a colleague, manager, College Practice Consultant) can help identify the values.
- c) What are your values and emotions as they relate to the situation? Are they influencing your ability to think clearly?
- d) Have you gathered the facts of the situation from credible sources?
- e) How have similar situations been handled in the past and what were the implications? Is there an organizational policy or relevant legislation in place?
- f) How will the care of the clients be affected if you leave?
- g) What are the specific nursing care needs and priorities of the clients?

### 2: Identify the options and develop a plan/ approach

- a) Identify possible alternatives or solutions other than refusing the assignment or discontinuing a service. Are other resources available (for example, protective equipment or expert resources)? Can you ask the administrators for help?
- b) Identify the risks and benefits for clients, nurses and others associated with each solution. How can those risks be minimized?
- c) Prioritize client care needs. Consult institutional policy/process, if available.
- d) Identify all available resources and various options to ensure staffing is appropriate to meet essential client care needs. For example, can you stay for a short time beyond the end of your shift, or can someone come in early for the next shift?
- e) Consider modifying the existing plan of care temporarily so the remaining staff can focus on essential care needs, monitor the client(s) for changes in condition and act appropriately.
- f) Weigh the options and decide on an approach.
- g) Communicate to the appropriate person(s) the

details of the problem and the planned solution.

### 3: Implement the plan

- a) If you decide to leave, ensure that the remaining staff are aware of immediate and essential client care needs.
- b) If you stay to provide care, monitor ongoing client care priorities and your own ability to practise safely.
- c) Document (for example, in professional responsibility forms, incident reports or personal notes) your decision, rationale and action taken. Include the date, time, who you communicated with and actions taken to safeguard the client(s). Keep a copy for yourself and give one to your employer and one to your risk manager.
- d) Document the care provided and any unmet client needs on the client record. Communicate outstanding care needs to the appropriate person.
- e) When floating to other practice areas, agree to provide only aspects of care for which you are competent (for example, vital signs, medication administration).

### 4: Review, discuss and evaluate the process

- a) When the immediate crisis is over, review the effectiveness of the decision/action (for example, the outcomes).
- b) Collaborate to plan strategies to prevent and/or manage similar situations in the future.
- c) Develop strategies to solve ongoing safety issues. Strategies may involve literature reviews, advocacy, etc.
- d) Express ongoing concerns about staffing from the perspective of the impact on client care and safety.

### Maintaining a Quality Practice Setting

Quality nursing care includes safe and effective planning for staffing and job actions. As partners in care, employers and nurses have a shared responsibility to create environments that support quality practice.

The College encourages practice settings to incorporate the following strategies to develop



and maintain a quality practice setting that helps nurses provide safe, effective and ethical care. The strategies also minimize situations in which nurses consider refusing assignments or discontinuing services.

All nurses are accountable for taking action in situations in which client care is compromised. This accountability includes identifying and advocating for strategies to minimize and resolve situations that could result in clients being left without needed nursing services. Nurse managers and administrators can demonstrate leadership by advocating for and implementing the following strategies.

### Care delivery processes

- Implement care delivery models that meet the needs of clients and families as well as the professional needs of staff.
- Reorganize care providers, units and clients to provide for the complexity of care needs and facilitate the safe delivery of care.
- Structure the environment to provide the most efficient method of care provision (for example, ready access to supplies).

### Leadership

- Involve staff nurses in generating ideas for interim and long-term solutions, including recruitment and retention.
- Ensure that a system is in place to contact replacement staff readily (for example, on-call system).
- Develop strategies for prioritizing client care needs to facilitate the reorganization of workload, if needed.
- Develop clear lines of communication for nurses to follow when staffing is short.
- Support nurses' professional judgment and decision-making regarding strategies to meet the needs of clients.
- Recognize the professional accountability of

nurses to refrain from practising when they are not able to provide safe care.

- Continually evaluate the staffing situation to differentiate between trends and episodic occurrences as each may require different strategies/approaches.

### Organizational supports

- Provide a safe environment for nurses and clients.
- Provide staffing that promotes the safety and well-being of clients.
- Develop clear policies related to what nurses need to do before leaving their shift if relief staff does not arrive.
- Advocate for nurses' involvement in the development of negotiated essential services agreements.<sup>4</sup>

### Communication

- Facilitate goal-directed communication with challenging clients, families, colleagues and other health care professionals (includes education and role modelling).
- Provide communication systems that are readily available to contact replacement staff (for example, cell phones and pagers).
- Communicate with staff to identify circumstances that might influence their decision-making in situations involving a high level of personal risk.
- Develop clear communication processes for sharing updated information quickly in the event of critical incidents.
- Ensure that critical incident debriefing and conflict resolution mechanisms are in place.

### Complaints about Nurses' Practice

As with any ethical dilemma, there is often no one clear solution to dilemmas related to refusing assignments and discontinuing nursing services. As a result, nurses often question what might happen if a complaint is made to the College about their practice.

<sup>4</sup> Essential services agreements include identification of the essential services; the number of employees in the bargaining unit; what employee positions enable the employer to provide essential services; and employees who the employer and trade union have agreed will be required during the strike or lockout (*Crown Employees Collective Bargaining Act, 1993*).



The College is required to investigate all formal complaints in which a nurse and the complainant are clearly identified. These include complaints of refusing assignments and discontinuing nursing services. All information relevant to the complaint is obtained, and the nurse has an opportunity to respond to the allegations. All information, including any written documentation that demonstrates the nurse's effort to advocate and her/his problem-solving rationale, is considered by the Inquiries, Complaints and Reports Committee (ICRC) before a decision is made about what action, if any, should be taken.

The College may also initiate an investigation into a nurse's practice without a formal complaint if there are reasonable and probable grounds to believe that the nurse has committed an act of professional misconduct (for example, from information obtained through an employer's report of termination). These investigations are reviewed by the ICRC, which may, when warranted, refer a case to the Discipline Committee for hearing. Any action taken by the College through the discipline hearing process about a nurse's registration is separate from any action initiated by an employer, the government or the courts.<sup>5</sup>

## Scenarios

These case scenarios illustrate some of the common situations related to refusing assignments and discontinuing nursing services. They do not describe every situation or practice setting but do demonstrate a problem-solving approach which nurses can apply in their own practice.

### Scenario 1

#### Working in an Unsafe Environment

Maria is an RPN asked to provide care on the night shift to a ventilated child in his home. When she receives the information, she realizes the child lives in an area of the city that is notorious for its high crime rate. Maria does not feel safe travelling to that area, and her husband does not want her to go.

Maria knows the child desperately needs the care. She also feels concern for any of her colleagues who might have to go in her place.

#### Identify the issues, values, resources and conflicting obligations

Maria is torn between her concerns for her own and her colleagues' safety and the care needs of the child and family. She knows that after accepting the shift she has an obligation to follow through. Maria decides that she needs more information and calls her manager to discuss her concerns and whether any safeguards are in place.

#### Identify the options and develop a plan/approach

Maria learns that there have been no safety-related incidents involving other nurses working at the home, but they have reported feeling unsafe. There is parking on the street but not always in front of the client's home. The client's father often waits for the nurse and is ready to let her in the house when she arrives. Both parents will be in the home during the entire shift. There are no other nurses available, and the manager insists that Maria go. To address her concerns, Maria calls the parents and arranges to use her cell phone to call the father and have him meet her at her car when she arrives.

#### Implement the plan

Maria decides to fulfil the assignment. All goes well, although Maria is nervous most of the time. Maria believes that more can be done to promote the safety of community nurses in general.

#### Review, discuss and evaluate the process

Maria requests a staff meeting to discuss the situation and look for creative solutions. She thinks that an intake assessment should include an evaluation of environmental safety and a plan to minimize the risk to nurses. She also suggests that the nurses receive some education about how to protect themselves on the streets at night. She suggests having a police officer speak with them.

<sup>5</sup> For further information, see the College's *Professional Misconduct* document.



## Scenario 2

### No Replacement Staff

Joanne, an RN in a long-term care facility, has 45 minutes left on her shift when the director of resident care asks her to work the next shift. The replacement nurse has called in sick, and there is no one to replace Joanne if she leaves.

This is the third time this month that Joanne has been asked to work an extra shift. She is tired and upset. She believes that her employer is not doing enough to attract more staff. Also, she was up most of the previous night with her sick daughter and is exhausted. She is still concerned about her daughter. The last time she worked an extra shift she promised herself that she would not stay again, but she is concerned about the safety and well-being of the residents.

### Identify the issues, values, resources and conflicting obligations

Joanne is accountable for the care she provides. Right now she believes it is not safe to provide care due to her fatigue. Joanne has an obligation as a nurse to protect the safety and well-being of the residents. Joanne recognizes her irritation with her employer and consults with a colleague who helps her see the situation more objectively. Her colleague reminds her of the legislation covering long-term care facilities that requires an RN to be in the facility at all times. This reaffirms her professional obligations and she calls the director of resident care to discuss the options.

### Identify the options and develop a plan/approach

Joanne quickly reviews the status of all of the residents and finds they are all stable. She prioritizes the care needs of the residents and determines which care providers can meet those needs safely. Based on her assessment, Joanne recognizes that she needs to stay until midnight to meet the immediate and more complex care needs of the residents. She agrees to stay to provide the midnight treatments but states she cannot stay any longer. The director tries to persuade Joanne to stay, but Joanne is adamant and tells the director that she will be leaving after the midnight treatments.

She informs the director of the remaining resident care needs including 0600 hr medications, and the administrative documentation that she will be unable to complete. She also informs the director of her plan to ensure that remaining unregulated staff can identify and communicate any concerns and access emergency services (e.g., 911).

### Implement the plan

Joanne informs the unregulated staff on the unit of her plan to leave after the midnight treatments and that the director is aware of this. She gives them guidelines for what to do if any untoward events happen (this includes calling the administrative person on-call and/or transferring the resident to the hospital). She documents her care and unmet client care needs. She also documents her assessment of the situation and the rationale for her decision in a personal note. She leaves a copy for the director.

### Review, discuss and evaluate the process

The following day, Joanne calls the director and asks if all of the nursing staff and administration can meet to discuss the ongoing shortage of staff. The purpose of the meeting is to identify ways to prevent and manage similar situations in the future. Openly discussing these situations helps identify the extent of the problem, possible contributing factors and solutions. If concerns have been expressed verbally and the situation remains unchanged, it would be important to outline clearly the problem in writing, explaining the impact on client safety. In this case, a copy should be kept by Joanne and a copy should go to both the director of resident care and the next level of management until the issue is resolved.

Joanne is surprised to learn that the director is considering reporting her to the College for abandoning the residents. Joanne feels that the director, as a nurse herself, had a responsibility to come in if there was no one else available. If a complaint was made to the College, the Inquiries, Complaints and Reports Committee would consider all aspects of the situation from Joanne's and the director's perspective. The Committee would also consider Joanne's efforts to advocate for a long-term solution to the staffing problem. All of Joanne's documentation would be reviewed as part of the investigation.



*Note: Some collective agreements include mandatory overtime clauses. Nurses need to be aware of their employment agreements, while also considering their professional accountability to ensure they are able to provide safe care.*

## Scenario 3

### Proper Equipment

Liz is an RN working the evening shift in the emergency department (ED). The ED receives a call from the quarantine officer at the city airport alerting the staff that a client will arrive by ambulance from the airport in the next few minutes. The client's condition was getting progressively worse during the flight, and she is in significant respiratory distress. The quarantine officer says there is concern that the client may have a contagion and that hospital staff will need to take appropriate precautions. Liz anticipates that she will need specialized protective equipment, some of which is not available in the ED. The hospital's infection control practitioner is not in the building. The client arrives and requires intubation. Liz is still not certain whether the mask, face shield and other protective equipment that she was able to locate is sufficient. She is overcome with fear that she could be exposed to a serious, possibly deadly, virus. For a moment, she considers refusing to assist with the intubation.

### Identify the issues, values, resources and conflicting obligations

In this example, Liz does not have enough time to work through all aspects of the decision-making process, and there is no obvious answer to her dilemma.

### Identify the options and develop a plan/approach

Liz very quickly weighs the risk of harm to the client if she is not intubated against the potential risk Liz faces if she is exposed to a contagion.

### Implement the plan

Liz quickly determines that the client is at great risk if she is not intubated immediately and that the equipment Liz has will provide some protection. Liz

uses the available equipment and assists with the intubation.

### Review, debrief and evaluate

After her shift, Liz begins to reflect on her own values, beliefs and fears, and assesses whether she should continue working in the ED given its inherent risks. She realizes that after witnessing colleagues affected by the SARS crisis in 2003, she has become increasingly fearful for her safety in the workplace.

She concludes that providing emergency care to clients is the type of nursing that she wants to do. Liz is willing to accept a certain level of unavoidable risk in working in an unpredictable environment; however, she is not willing to expose herself to unnecessary risks that result from a lack of appropriate resources and equipment. She decides to advocate for the required resources before making a final decision about whether she can continue working in emergency nursing.

At the earliest opportunity, Liz meets with her manager and the infection control practitioner and presents her concerns both verbally and in writing. She explains the situation she was in and the ethical dilemma it created for her. She tells them that the experience highlights the need to be proactive in planning for similar situations and she advocates for the hospital to provide the specialized protective equipment that nurses need. Liz also offers to be involved in a discussion with the ED staff to reflect on the experience and the importance of working through the decision process ahead of time.

## Scenario 4

### Essential Services During a Strike

Beverly, RN, a nurse manager/supervisor, knows that collective bargaining talks have begun in her facility. There is an essential-services agreement between the employer and the union, but Beverly is aware there has been a short supply of essential-service workers during previous strikes and that she may have to provide direct care if a strike occurs. It has been years since Beverly was in direct clinical practice, and she is concerned that she may not be



competent to provide all of the care that will be needed. She is also concerned about the safety of the clients and whether there will be enough staff to provide safe care.

### **Identify the issues, values, resources and conflicting obligations**

Beverly realizes there are two issues: her ability to provide safe care and a potential lack of sufficient essential-service nurses to provide care.

### **Identify the options and develop a plan/approach**

As collective bargaining is just beginning, Beverly conducts a self-assessment and identifies her specific learning needs. She explores options for meeting those needs with her colleagues and seeks their assistance, as needed. She collaborates with staff to assess clients and identify care priorities. Beverly documents client priorities on the client's care plan.

### **Implement the plan**

Collective bargaining breaks down, and a strike occurs. During the strike, the essential-services agreement is not honoured, and there is a lack of essential-service nurses. Beverly relies on her prior learning and provides the direct care for which she is competent. She conducts ongoing assessment and re-prioritizes client care needs, as necessary. When she identifies a change in a client's condition that requires a care provider with greater clinical expertise, Beverly informs the facility administrator and the union to advocate for qualified nurses. She documents her assessment and actions.

### **Review, debrief and evaluate**

After the strike, Beverly evaluates the actions taken and the effectiveness of the essential services agreement. She asks to be involved in renegotiating the essential services agreement and provides her comments in writing.

## **Scenario 5**

### **Floating to Another Unit**

Noreen works on the medical unit of a small community hospital. Upon arriving for her scheduled shift, the supervisor asks her to float to

the obstetrics/gynaecology unit because the census on her unit is low. Noreen is anxious because she has never worked in obstetrics/gynaecology and feels she is not competent to provide care on that unit. A colleague tells Noreen to refuse the assignment.

### **Identify the issues, values, resources and conflicting obligations**

Noreen has accepted the shift, and the hospital is relying on her to provide care. Noreen, though, has a professional obligation to provide competent care. In fact, she could face allegations of professional misconduct if she fails to inform her employer of her inability to accept specific responsibilities that she is not competent to perform. Noreen tells the manager that she does not have the knowledge and skills to practise competently in obstetrics/gynaecology. The manager responds that Noreen does have some basic competencies that are transferable.

### **Identify the options and develop a plan/approach**

In collaboration with the manager, a plan is developed to modify the assignment to enable Noreen to provide only the elements of care that she is competent to provide. As a nurse herself, the manager knows that she has a professional responsibility to direct Noreen to perform only those functions she is competent in. It could be professional misconduct to do otherwise.

### **Implement the plan**

Noreen is very clear with the obstetrics/gynaecology nurses about her abilities and the areas in which she requires assistance. She also asks for a quick orientation to the unit and ensures that she is able to access assistance when necessary. The unit charge nurse seems impatient with Noreen's questions; however, Noreen persists because she recognizes the importance of continuing to ask for assistance. The shift goes well, but Noreen is concerned about the increasing frequency of requests to float to other units.

### **Review, discuss and evaluate the process**

Noreen has a number of ideas for how the facility could better handle staffing and floating issues in

the future. She speaks to her immediate manager after the shift and offers suggestions. Noreen suggests that a system be developed whereby staff members receive orientation to and education on specific units and then float only to those units. Noreen also suggests a discussion about the challenges for both the nurse who is floating and the staff on the receiving unit. She says it would be helpful to remind all staff about the importance of good communication and collaboration.



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## Appendix 4

### Other Professional Colleges' Positions regarding the Right to Refuse Unsafe Work

ONA members who are covered under the *Regulated Health Professions Act (RHPA)* must consider the standards of practice established by their respective colleges. ONA has researched the issue of the right to refuse unsafe work with various regulatory colleges.

In 2005, the University of Toronto Joint Centre for Bioethics released a report "Stand on Guard for Thee." Link: [http://www.icb.utoronto.ca/people/documents/upshur\\_stand\\_guard.pdf](http://www.icb.utoronto.ca/people/documents/upshur_stand_guard.pdf). This 2005 study was conducted in response to the SARS crisis. It examined the crisis from an ethical perspective and includes a discussion of health professionals' "duty to care" for the sick during a crisis. The report strongly recommends that regulatory colleges articulate strong codes or statements that specify how much risk a health-care worker is required to take during a pandemic like SARs. The report concludes by stating, "There is currently a vacuum in this field." ONA's review of the regulatory college websites confirms that, 12 years later, the vacuum still exists, as can be seen from the information below.

#### College of Medical Laboratory Technologists of Ontario

This college had no information on its website at <http://www.cmlto.com/> about the right to refuse unsafe work or pandemic scenarios.

#### College of Respiratory Therapists of Ontario

This college's website at <http://www.crto.on.ca/> provides an example where a respiratory therapist wonders about the right to refuse to come to work because patients have a dangerous disease like Ebola. The college states "each RT must balance various competing priorities and consider the welfare of the patient/client above all else" as outlined in the CRTO's Standards of Practice document.

It states, "If an RT refuses to provide care to a patient in this setting (or discontinues care once it is begun), they must first arrange for a suitable replacement ensuring the patient will not be negatively impacted in any way." This is a high standard for members to meet and appears to leave little room for the right to refuse unsafe work.

The CRTO website makes reference to the Ontario Health Plan for an Influenza Pandemic [http://www.health.gov.on.ca/en/pro/programs/emb/pan\\_flu/docs/ch\\_05.pdf](http://www.health.gov.on.ca/en/pro/programs/emb/pan_flu/docs/ch_05.pdf)

#### College of Medical Radiation Technologists of Ontario

This college's website <http://www.cmrto.org/> does not specifically deal with the right to refuse unsafe work. Instead, it makes a brief statement that every MRT must review with their manager and/or union representative, their ongoing professional responsibilities in the event of any work stoppage. The college reminds MRTs that their responsibilities, as set out in the professional standards, focus on the health care needs of their patients.

#### College of Occupational Therapists of Ontario

This college has created a Guide to Discontinuation of Service

[https://www.coto.org/docs/default-source/guides-guidelines/guide\\_to\\_discontinuation\\_of\\_services.pdf?sfvrsn=2](https://www.coto.org/docs/default-source/guides-guidelines/guide_to_discontinuation_of_services.pdf?sfvrsn=2)

The Guide points out that the client-therapist relationship can sometimes end in an unplanned way and that one reason for this might be "the OT's sense of personal safety and well-being is perceived to be compromised." Beyond that, the website contains no information about the right to refuse.