

Working Understaffed: Professional and Legal Considerations



Nurses Association of
New Brunswick

New Brunswick
Nurses Union



Syndicat des
infirmières et infirmiers
du Nouveau-Brunswick

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INTRODUCTION

Background

The nursing profession has traditionally accepted responsibility to assure that safe and accessible health care is available to the public at all times, including times when nurses¹ are in short supply. The profession continues to accept such responsibility and also recognizes the need to identify strategies to promote the availability of the best nursing care during these critical times.

The Nurses Association of New Brunswick (NANB) and the New Brunswick Nurses Union (NBNU) share an ongoing concern about working understaffed and how it impacts nurses' every day work life and the level of care they can safely provide. Both organizations continue to voice this concern to government.

Working overtime, working in unsafe practice situations, and floating to an unfamiliar unit are examples of issues that combine labour, professional and regulatory issues. Working understaffed is one of the most common situations in which nurses experience dilemmas in meeting their professional and legal obligations to provide care.

Purpose

The purpose of this document is to provide information on the professional and legal accountability for nursing practice and to offer strategies to assist nurses in dealing with the most common situations when working understaffed.²

Guiding principles

1. In responding to potentially unsafe work situations, each nurse is expected to consider the specific circumstances of the situation, the professional obligations as well as any contractual obligations with the employer.
2. As members of a self-regulating profession, registered nurses practise in keeping with current legislation, policies and standards relevant to the profession and the practice setting. Additionally, nurses are responsible for responding to and reporting situations in the workplace that could place clients at risk and/or interfere with a nurse's ability to meet professional standards.
3. The *Standards of Practice for Registered Nurses* (NANB, 2005), the *Code of Ethics for Registered Nurses* (2002) and the *Nurses Act* (1984) address patient safety and the professional accountability of nurses. Various federal and provincial legislation and agency policies speak to issues of health, safety and rights for clients. Various legislation, policies, and collective agreements address the issues of health, safety and rights of employees.

1 In New Brunswick, the titles "Nurse," Registered Nurse," "Nurse Practitioner" and the marks "N," "RN" and "NP" are reserved to members in good standing with NANB [*Nurses Act*, 1984/rev 2002, SS 12(1) & (1.1)].

2 Understaffed: A condition where either there are insufficient numbers of staff or an inappropriate skill mix to adequately meet patient needs.

SITUATION 1

Continued shift or overtime

At the completion of the nurse's shift, the supervisor/nurse manager tells the nurse that she/he has to stay to work because no replacement was found for a nurse who called in for sick/bereavement/emergency leave.

Can the nurse refuse to work overtime? Is the nurse abandoning clients if she/he does not stay?

Mandatory overtime is not part of collective agreements in New Brunswick **except** in emergency situations. Emergency situations are defined in collective agreements as "a sudden generally unexpected occurrence or set of circumstances demanding immediate attention."

Nurses are expected to promote proper client safety and to support colleagues when need be. This does not require the nurse to accept additional shifts in non-emergency situations. The nurse **must inform the employer** in a timely manner that she/he is not able to assume any additional shifts so that the employer can ensure adequate staffing. A **"Work Situation Report" or appropriate agency form** must be filled out as a follow-up to ensure that these situations are avoided in the future. The *NANB Framework for Managing Professional Practice Problems* (2002) provides a process for analysing, reporting and resolving such situations.

A nurse's physical and mental state must be conducive to providing the required standard of care to treat clients¹. Accepting extra shifts while in an altered mental or physical state due to fatigue² could result in compromised care or safety for the client, co-workers, or the nurse. The *Code of Ethics for Registered Nurses* (2002), under the value "Accountability," states:

If nurses determine that they do not have the necessary physical, mental or emotional well-being to provide safe and competent care to persons, they may withdraw from the provision of care or decline to engage in care. However, they must first give reasonable notice to the employer, or if self-employed to their patients, and take reasonable action to ensure that appropriate action has been taken to replace (p. 16).

Nurses may stay and provide help for a few extra hours to ensure that client safety is not compromised, however, the nurse must know when it is time to stop in order to not compromise client safety.

Consequently, should a replacement not show up at the end of a shift and should a nurse decide to leave, this might severely compromise client safety and it could be considered negligence or professional "misconduct." The nurse must notify the employer/manager of the situation immediately and clearly state how long she/he is able to stay. It is the employer's responsibility to arrange for a replacement. Document what actions were taken by your employer/manager in finding an adequate replacement.

1 *Standards of Practice for Registered Nurses* (2002), standard 5.9, speaks to the responsibility of the nurse to maintain "fitness to practice," or "fitness to engage in the practice of nursing," which are "all the qualities and capabilities of a member relevant to their capacity to practise as a nurse"(p. 12).

2 The NBNU document *What Day Is It?* (2006) offers information on self-assessment and self-care.

For the staff nurse

You may:

- Prioritize activities that are absolutely necessary to be done and activities that can safely wait to be dealt with later in the shift or during the next shift. Using the information gathered, write down those activities that need to be accomplished during the shift to determine which tasks can be left for the next shift.
- Determine which tasks can be safely delegated or assigned to support staff and provide guidance to support staff about new assignments.
- Re-assess whether it is still appropriate to provide after-hour services for other departments, such as ECG, phlebotomy and physiotherapy.
- Document concerns in writing to the nurse manager or supervisor.

For nurse managers and administrators

- Determine the appropriateness of calling back non-nursing staff to assist with services such as portering, clerical functions and/or housekeeping duties.
- Before obliging someone to stay extra hours, the appropriateness of cancelling other forms of leave should be considered.
- Monitor the staffing situation on an on-going basis and report to senior management in a timely manner.

SITUATION 2

Client and nurses' safety/chronic understaffing

Because of chronic understaffing, nurses on a particular unit are often working short. Nurses are concerned about client safety and worried about liability if a client is harmed because of the shortage of staff, or the effects of accumulated fatigue.

Nurses have a "duty of care" which makes them responsible for providing safe and effective nursing care as best they can, under the circumstances. They are directly accountable for their own actions, decisions or non-actions. If a nurse feels that meeting the accepted standard of work will be difficult, she/he must articulate the problems to the employer and document safety concerns using the appropriate form/tool.

Steps to take when confronted with chronic understaffing

- Nurses are responsible for responding to and reporting unsafe situations. Notify the nurse manager/supervisor in writing. Use the "Work Situation Report" or other agency form to explain the specific consequences on patient care and on the working environment due to understaffing.
- Ask to be informed about the continued effort to get assistance.
- Work with management – and the union where appropriate – to help find solutions to the staffing concerns.

Short-term strategies to help you deal with the situation

- Assess the situation: Identify and prioritize the necessary nursing services required to meet the essential "needs" of the clients.
- Decide which aspects of care can be safely assigned or delegated to others. The registered nurse is responsible for the appropriate assignment or delegation of nursing work.
- Tell clients that due to reduced staffing there will be a change in the care plan and that services have to be prioritized.

Manager/supervisor/administrator

- Work with staff to address any concerns around client safety.
- Keep staff informed about the development of situations/solutions to fix the problem.
- Explore ways to decrease non-nursing tasks being carried out by nurses (for example, housekeeping, clerical and so forth).

SITUATION 3

Floating to an unfamiliar unit

More and more nurses are asked to go to work on a unit without orientation. A nurse has been asked to float to a unit that is unfamiliar. Can a nurse refuse to go? What are the nurse's options?

Can a nurse refuse to go?

The nurse's responsibility as an employee requires that she/he practise within her/his level of competence. However, requiring a nurse to work in an area that she/he is not familiar with may happen in emergency situations. The employer must deal with this situation if it is the result of chronic understaffing.

The nurse has the professional responsibility to take on only those nursing assignments for which she/he is competent: The nurse must assess whether she/he has the knowledge, skills and judgment needed to provide appropriate nursing services to the clients, taking into consideration own needs and the practice setting. This includes whether the nurse has received sufficient orientation to the clients and the environment. Clarify the assignment and assess own personal capabilities in relation to the assignment.

The *Code of Ethics* (2002), in the value of "Safe, competent and ethical care", says:

Nurses must practice within their own level of competence. When aspects of care are beyond their level of competence, they must seek additional information or knowledge, seek help from their supervisor or a competent practitioner and/or request a different work assignment. In the meantime, nurses must provide care until another nurse is available to do so (p. 9).

A refusal of an assignment might be justified when the risk of harm to the client is greater by accepting the assignment than by rejecting it. The right to refuse an assignment should be carefully considered and the nurse must balance such a refusal against the obligation to provide for client safety.

What are the nurse's options?

With the changing trends in health care, nurses are requested to work in areas other than their own unit. In the event that this occurs, the following steps are recommended:

- a) ensure that the supervisor/manager making the decision is aware of the workload on the unit;
- b) identify limitations/restrictions to immediate supervisor/manager (that is, lack of orientation and so forth);
- c) advise the in-charge nurse of your limitations/restrictions regarding the possible assignment (that is: lack of expertise/knowledge) when floated to a unit;
- d) request an appropriate assignment based on your limitations and experience;

- e) discuss your concerns with the in-charge nurse to re-evaluate your assignment in case of an inappropriate assignment;
- f) request a tour of the unit highlighting any pertinent areas (that is: equipment, supplies and so forth) upon arrival to a new unit;
- g) ensure that you have identified the appropriate persons to contact if you have any problems or questions; and
- h) complete a “Work Situation Report” or appropriate agency form if your assignment remains inappropriate after the above steps have been followed.

NANB’s *Framework for Managing Professional Practice Problems* (2002) offers a process for analysing, reporting and resolving such situations.

Manager/administrator

The nurse manager is responsible for staffing the unit with sufficient numbers of nurses and/or support staff who are competent to provide the required services, taking into consideration clients’ needs and the practice setting/client population. In that role, with staff unfamiliar with the care unit, it would be best to identify options jointly for patient care assignments.

When the nurse does not feel personally competent or adequately prepared to carry out a specific function, examine how the nurse can utilize own skills as an adjunct to existing staffing without assigning unfamiliar functions. Consider a buddy approach—assign the nurse with an experienced nurse to provide support in meeting the care needs of a group of clients.

Remember that nurses are individually accountable for the care of each clients. A manager/administrator cannot take that responsibility for them. The manager/administrator or designate is accountable for determining an appropriate work assignment.

Contacting NANB or NBNU

Should a nurse have any questions, please call:

- an NANB practice advisor at 1-800-442-4417 or 458-8731 (locally) or
- an NBNU labour relations officer at 1-800-442-4914 or 453-0820 (locally).

Addresses and facsimile numbers

<p>NANB 165 Regent Street Fredericton, NB E3B 7B4 Web: www.nanb.nb.ca E-mail: nanb@nanb.nb.ca Fax: (506) 459-2838</p>	<p>NBNU 750 Brunswick Street Fredericton, NB E3B 1H9 Web: www.nbnu.ca E-mail: nbnu1@nbnu.ca Fax: (506) 453-0828</p>
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