

Duty to Provide Care

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The College of Licensed Practical Nurses of Manitoba (CLPNM)¹, College of Registered Nurses of Manitoba (CRNM) and College of Registered Psychiatric Nurses of Manitoba (CRPNM) developed this document.²

¹ The CLPNM also has a practice direction on the duty to provide care. For licensed practical nurses (LPN), this guidance document is intended to provide more explanatory information, but is not intended to replace the practice direction. If there is any conflict between this document, and the practice direction, the practice direction takes precedence for LPNs in Manitoba.

² For the purposes of this document, the term “nurse” refers to the three regulated nursing professions in Manitoba: LPN, registered nurses (RN) and registered psychiatric nurses (RPN).

Purpose

The purpose of this document is to help nurses and their employers understand nurses' professional and legal responsibilities related to the duty to provide care. This document is also intended to describe factors that contribute to, and impact on a nurse's ability to meet their duty to provide care.

Professional nursing practice standards, practice directions, and codes of ethics, all of which establish practice expectations for each of the three nursing professions in Manitoba, underpin the guidance provided within this document.

Definitions

Duty to provide care: a nurse's professional and ethical responsibility to provide safe and competent nursing care to a client, for the time-period that the nurse is assigned to provide service.

Abandonment: When a nurse discontinues care after receiving a client assignment without:

- Negotiating a mutually acceptable withdrawal of service with the client;
- Arranging for suitable alternative or replacement services; or
- Allowing the employer a reasonable opportunity to provide for alternative or replacement services.

Introduction

The duty to provide care has longstanding significance for the nursing profession. Once a nurse has accepted an assignment of care, the nurse holds the ethical and legal responsibility to continue to provide care for the assigned time-period. To do otherwise, could be considered abandonment.

The following sections outline various considerations regarding the nurse's duty to provide care while also meeting their other practice standards. These considerations are discussed separately for clarity although connections between them are recognized and must be kept in mind.

A shared responsibility

The colleges recognize that a nurse's ability to meet the duty to provide care depends, in part, on employer resources and supports. The employer contributes to safe client care by:

- Negotiating safe staffing levels with nurses to facilitate nurses' capacity to meet their standards of practice and provide safe client care;
- Considering the competencies and qualifications of nurses when determining work assignments;
- Ensuring the competencies of staff are used efficiently and supporting nurses to work within their level of competence;
- Ensuring nursing staff have access to information about their role and their expected level of service;
- Establishing policies, procedures, and/or guidelines to assist nurses when they are asked to provide care on an unfamiliar unit or area;

- Providing appropriate orientation, education and training for nurses who are asked to work in unfamiliar areas; and
- Working with nursing staff to perform a risk evaluation (based on individual nurse-based factors, team-based factors and environmental factors) when human resources are limited or not optimal for meeting client needs.

Individual Nurse-Based Factors

Nurse fatigue

Personal responsibility and accountability for fitness to practice is a nursing practice expectation. This includes self-reflection to maintain an awareness of one's health and wellbeing, recognize one's limitations, and identify any potential risk to client health and wellbeing.

All nurses must be cognizant of the relationship between fatigue and errors. It is important to remember that fatigue is cumulative. The following are just some factors, which can lead to greater risk:

- The number of hours worked; e.g. longer than 12-hour shifts carry an increased risk;
- Type of shift work; e.g. nighttime shifts carry greater risk than daytime or evening shifts;
- Number of consecutive days worked; e.g. more than 5 consecutive work days; and
- Lack of rest, sleep, physical or emotional recovery between shifts.

The colleges recognize that each nurse is an individual and each nurse will have a different capacity. For example, one nurse may be able to work at optimal capacity beyond a 12-hour shift, posing no increased risk to clients, while another nurse may not. For this reason, it is important that the assessment of risk be conducted on a nurse-by-nurse basis and include the nurse's own self-assessment.

Whether a nurse is working their regular schedule, considering whether to volunteer for an additional shift or having to work overtime, nurses hold the ethical responsibility to minimize client safety incidents and work with others to prevent harm. The onus on the nurse is to reflect and self-assess their own ability to meet client care needs in complex and challenging circumstances. If the nurse feels unsafe to work and is currently working or expected to work, they would need to inform their employer, manager, or nursing supervisor so a plan can be put in place to maintain client care and safety. Communication between the nurse, the team and manager is paramount.

Individual nurses' scope of practice

Nurses must consider their duty to provide care when they assess a client's care needs. Nurses must always use their clinical judgement including anticipation and assessment of whether a client's health care needs may extend beyond the individual nurse's scope of practice. In such scenarios, the nurse is expected to seek access to resources and/or referral to another healthcare provider.

The health care resources needed may come from within the client's health care team or may require referral beyond the client's immediate care team. The nurse is expected to work with the client and the client's health care team to determine where to most effectively access the required health care resources. Nursing actions include gathering assessment data for timely and appropriate communication, consultation with the clinical resource nurse, nurse-in-charge or on-call prescriber, and if necessary referral for additional care.

The nurse is expected to continue to provide care for the client until resources arrive. Given the circumstances and their level of competence, nurses are expected to provide the best care they can, using the resources they have available.

A nurse would only withdraw from care provision or refuse to provide care if they believe that providing such care would place them or the client at an unacceptable level of risk. Deciding what to do in such a situation is usually associated with conflicting thoughts and feelings. The nurse should use an ethical decision-making process and consider these factors at a minimum:

- Specific circumstances of the situation;
- Legal and professional obligations; and
- Contractual obligations.

Throughout such a situation, it is important that the nurse problem-solve with co-workers and management as well as communicate with the client.

Personal values conflict

Duty to provide care includes recognizing one's own personal values and beliefs about client care situations and taking measures to avoid any negative impact on client care, nursing practice and the practice environment. Duty to care means that when providing care, the nurse meets practice expectations including the ethical responsibility to honour the dignity of all clients through recognizing and respecting the intrinsic worth of each person.

Practice expectations include supporting the client in their own health care decision-making. Nurses recognize that informed clients have the right to be independent, live at risk and direct their own care.

Duty to provide care also means that the nurse does not compromise care by withdrawal of care if a nurse does not agree with a client's lifestyle, choices or values. Nurses need to be aware of their personal biases and withhold their personal judgment about a client or the client's lifestyle. This includes intervening, instead of remaining silent, if others fail to respect the dignity of any client.

Conscientious objection

In health care, conscientious objection is understood as a healthcare professional's refusal to provide service that is within their competence. Generally, it is acceptable to conscientiously object when:

- The nurse has a longstanding and deeply held belief that the requested intervention is morally wrong and/or would compromise the nurse's personal moral integrity;
- The situation is not urgent or emergent; and
- There is another healthcare provider who will safely provide the required care in a timely manner.

Conscientious objection is driven by moral concerns and informed by reflective choice; it is not based on fear, prejudice or convenience.

The duty to provide care for a nurse with a conscientious objection does not include withholding client care. The nurse must remain aware of the client's right to make informed choices about their health and health care. The nurse's duty to provide care includes:

- Acknowledging the client's request and assuring the client that their request will be conveyed;
- Informing both their supervisor and employer about the client's request;
- Making a timely referral, in good faith, to a non-objecting provider who is able to carry out the client's request, and following up on that referral;

- Maintaining a therapeutic relationship with the client;
- Continuing to provide care unrelated to specific request;
- Informing the employer about their conscientious objection; and
- In accordance with professional standards and organizational policy, documenting in the client health record any request for information related to the client's request, the interaction with the client, the care provided and/or any resources given to the client.

Unreasonable personal risk

There may be some circumstances where provision of care would cause unreasonable personal risk to a nurse. An unreasonable risk might be the result of a threat to personal well-being or lack of safety resources. For example, a client may explicitly threaten to hit the nurse or another client and the immediately available resources are insufficient to prevent harm.

In accordance with *The Manitoba Workplace Safety and Health Act* and Regulation, nurses have the right to refuse work that they reasonably believe constitutes a danger to their safety and health or to the safety and health of another person. In this circumstance, the nurse's duty to provide care includes meeting client care needs and providing for the client's safety, to the extent that the nurse is able to do so, without incurring unreasonable personal risk. It also includes reporting any dangerous working conditions to their employer, supervisor or other person in-charge.

It is essential that the nurse communicate and problem-solve with co-workers and management throughout such a situation, while also following employer policy and workplace health and safety legislation.

Team-based Factors

Working during a shortage or with limited human resources

Ideally, the staff complement should reflect the capacity of the full team to provide the necessary care to clients. If the team is working below capacity, it can impede the ability of nurses to provide timely and optimal treatment. When providing nursing care with limited human resources, the duty to provide care includes the nurse's responsibility to adjust priorities and meet client care needs through teamwork and collaboration.

In addition to prioritizing workload and communicating with their employer, when team capacity is compromised, nurses may need to increase their client load, work additional hours, and/or practice in an unfamiliar area. These options may lead to an increased level of risk; however, nurses remain accountable to provide safe client care through the application of their knowledge, skill and judgement. Therefore, individual nurse-based factors are important for the nurse and employer to consider together when making decisions about how to address client care needs.

Teams that are highly functioning can rely on each other to support each other's ability to meet the duty to provide care during times when nursing resources are limited. Nurses in these types of environments can consult with someone more knowledgeable when a client situation demands expertise beyond their competence, giving the nurse access to the team's collective competence. Collective competence is more than the functioning of people on the team; it occurs when individual team members function with

awareness of one another and the various resources in the system that either support or inhibit them from working together. In situations where team members do not work effectively together, health care risks increase.

When team-based resources are not optimal, all nurses are encouraged to participate in finding solutions even when all options appear exhausted. The goal is to work with their team and employer to support safe client care with available resources.

Environmental Factors

Practice environment

Nurses and employers must maintain awareness of factors in the practice environment that impact client care. The environmental context or setting is where nursing practice takes place. A nurse may work in an organization that makes a full orientation available, a mix of collaborative health care providers, timely consultation, well-defined policies and regular professional development opportunities. Conversely, a nurse may work in an environment where less of these resources are available.

Activity within the practice environment is another relevant factor to consider. Activity can comprise of numerous discharges or admissions, multiple off-site diagnostic procedures, several different on-site procedures or any other number client care needs. Nurses in the community may experience added activity with caseloads requiring multiple home or site visits across large distances. The more activity in the practice environment, the more nursing care can be impacted, which may lead to increased client risk.

Lack of familiarity with equipment, procedures, or policies, make for a more challenging practice environment. This is exemplified in areas where nurses are required to float to unfamiliar areas, programs, facilities, or units.

Employers can support the nurse's ability to meet the duty to provide care by making the following available in the practice environment:

- Basic orientation to the unit/practice environment;
- A client-safety culture;
- A readily available go-to person who can answer questions on how the practice area/unit functions and where to find supplies/equipment;
- An assignment with clear and defined role expectations;
- Readily available access to consultation with a point-person such as an in-charge nurse or senior staff member; and
- Protocols for escalation of care concerns.

Closure or change of service

Nurses will need to know how to meet their duty to provide care when the level of service offered in their practice setting changes. Employers and health care organizations determine the type of service offered including any decisions regarding change in the level of service provision by the organization. Nurses, who are employees of a health care organization, are expected to work within the parameters and policies set by the organization while also meeting their regulatory standards and practice expectations.

Self-employed nurses have the additional responsibility to set and communicate the parameters of service they can provide to clients, ensuring these services are within their competence.

Communication between management and staff is crucial when a unit closes or changes the type of service it provides. It is vital that employers communicate and that nurses make themselves familiar with:

- The nurse's position description;
- Expected level of service provision by the health care organization;
- Applicable employer policies; and
- Resources and referrals available for the client should their needs exceed that of the terms of service provision.

The nurse's duty to provide care includes health care planning, communicating with clients regarding changes in service level, and referring clients to other resources that are available. If an individual presents to a nurse's place of work seeking emergency care that is beyond the service level provided in that practice setting, the nurse is expected to apply employer policies, use critical thinking, and act as any reasonable and prudent nurse would in the situation.

Disaster or disease outbreak

A disaster involves extensive harm, either human, material, economic, or environmental, with negative impact(s) that go beyond the coping ability and resources of the affected community. Examples include, but are not limited to disease epidemics, fire, or floods.

Nurses must refer to their standards of practice, practice expectations, and code of ethics when they consider their professional role in a disaster and their duty to provide care. The nurse is expected to care for clients as best and as safely as they can, dependent on the resources they have available under the specific circumstances. A nurse would only withdraw from care provision or refuse to provide care if they believe that providing such care would place them or the client at an unacceptable level of risk.

The planning and provision of care in a disaster does not belong solely to nurses. Others, such as employers and government, all have reciprocal obligations in this regard.

Before any disaster, the nurse has the duty to become knowledgeable of their employer's plans and their expected role in a disaster. This includes participation as necessary in disaster preparedness planning with their organization.

Employers can support nurses' ability to meet their duty to provide care in a disaster or disease outbreak by providing clear communication, guidelines, and appropriate access to resources. Factors that support the nurse to provide care during a disaster include:

- Awareness that they will receive accurate and timely information about the disaster situation with updates about appropriate safety measures;
- Knowledge that their facility or region has emergency response guidelines and a process for resolving conflicts regarding work exemptions;
- Access to protective gear and equipment to provide care and ensure safety;
- Clear communication from the employer regarding expectations during a disaster response;
- Knowledge that there will be fair allocation of resources during a disaster response, where practical; and
- Knowledge that they will be supported in both the physical and moral responsibility to provide care.

During a disaster, nurses may encounter challenges in their efforts to meet their duty to provide care. In these circumstances, nurses' practice expectations include:

- Following safety expectations with the use of necessary personal protective equipment;
- Making themselves aware of plans, expectations, and roles, as provided by their employer;
- Using clinical judgement and ethical decision-making in the provision of safe, competent care; and
- Making fair decisions about allocation of resources.

Conclusion

Nurses hold both responsibility and accountability in their duty to provide care. Whenever a nurse takes on an assignment, they have the duty to provide care while meeting all other professional standards.

A number of factors, such as those discussed in this document, influence the nurse's ability to provide safe health care. The nurse must self-assess and manage any situation that could impact their ability to meet their professional standards.

Employers and nurses share responsibility for providing safe and competent care to the public. Employers are encouraged to ensure that there are clear policies in place and to provide the resources and supports that nurses require to meet their professional standards.

Resources

CNPS www.cnps.ca

Emergency room closures
Professional Liability in a Staffing Shortage

CLPNM www.clpnm.ca

Standards of Practice
Code of Ethics
Practice Direction: Duty to Care

CRPNM www.crpnm.mb.ca

Standards of Psychiatric Nursing Practice

CRNM: www.crnmb.ca

Practice Direction: Practice Expectations for RNs
Practice Direction: Practice Expectations for RN(AP)s
Practice Direction: Practice Expectations for RN(NP)s

Government of Manitoba Workplace Health and Safety www.manitoba.ca/labour/safety/

Manitoba Institute for Patient Safety www.mips.ca/

Patient Safety Culture Bundle for CEOs/Senior Leaders <https://www.patientsafetyinstitute.ca/>