



Canadian Nurses
Protective Society

infoLAW®

Legal Risks in Nursing

A nurse may become involved in legal proceedings as a witness, accused, grievor, or defendant. This *infoLAW* will focus on three areas¹: professional discipline, criminal prosecutions and grievances. For information on civil liability please refer to the *infoLAWs* on negligence² and malpractice lawsuits³.

Professional Discipline

Legally, nursing licensing bodies must ensure that their members are competent. These organizations set minimum standards of practice, ethics and professional behaviour. Failure to comply with these standards may result in a written complaint to the nurse's licensing body. Complaints may relate to any nursing areas. Examples include: medication errors, breaching confidentiality, practising medicine without a license, and patient abuse.

The discipline process begins with the receipt of a letter of complaint by the licensing body. A copy of the complaint and information about the complaints process are usually forwarded to the nurse. The nurse must then respond to the complaint. Depending on the nature of the complaint, an investigator may review the patient's medical records, applicable policies, and any other relevant documents. The complainant, nurse and witnesses may also be interviewed. The investigator then reports to the complaints committee which determines what action, if any, should be taken. Most cases are resolved at this level, with or without mediation; more serious cases are forwarded to the discipline committee for a hearing.

The discipline committee hears evidence presented by witnesses for the complainant and the nurse and decides whether the nurse should be disciplined. The results of a hearing can range from no disciplinary action to a verbal warning, remedial education, practice limitations/conditions, license suspension or revocation. Because of the potential impact on a nurse's practice, nurses should have legal representation from the outset. An employer will not usually provide legal representation to defend complaints. Assistance may be available from a union, CNPS Plus, or, for RNAO members, the RNAO Legal Assistance Program.

Criminal Prosecution

A nurse may be reported to the police for suspected criminal conduct. The police may commence an investigation and, if there is sufficient evidence, a charge will be laid pursuant to the provisions of the Criminal Code. Examples of criminal charges laid against nurses include: theft of narcotics, theft of patient or institutional property, assisted suicide, criminal negligence, threatening or inflicting bodily harm, and sexual assault. During their investigation, the police will interview the nurse and request a statement. Any information given to the police may be introduced as evidence against the nurse at a subsequent trial. Therefore, **before** answering any questions or providing any statements to the police, **a criminal lawyer should be consulted**.

If a nurse is charged with a serious offence the process is as follows. After the charge is laid, the nurse will be photographed, fingerprinted and may be held in custody. A bail hearing will be held,

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**More than
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protection**

if the nurse is detained, and, if this application is successful, the nurse may be released with or without conditions. At the next court appearance, the charge is read and a plea of guilty or not guilty is entered. Where the nurse pleads guilty there is no trial and a sentencing hearing is scheduled for a later date. If the nurse pleads not guilty a preliminary hearing may be held to determine whether the Crown has sufficient evidence to enter the matter for trial. If the case proceeds to trial, and the nurse is convicted, a sentencing hearing is scheduled. At that hearing, the judge may impose penalties ranging from a discharge to probation, a fine or imprisonment.

Due to the complexity of these proceedings and the serious consequences of a criminal conviction, a criminal lawyer should be retained at the investigative phase. Employers will not usually cover criminal defense costs. Funding may be available through your union or CNPS.

Grievance/Arbitration

Most grievances relate to such employment issues as harassment, compensation, layoff, and discipline. Generally, the grievance process is triggered by an aggrieved nurse sending a completed grievance form to the employer within the time specified in the collective agreement. Next, the nurse-grievor, the employer and union will meet to discuss the issues and attempt to find a solution. Many grievances are resolved this way; if they are not, the matter proceeds to mediation or arbitration.

The arbitration process is a referral to an independent tribunal for a hearing of the case. An arbitrator presides over this hearing. Witnesses for both sides are called to give evidence and be questioned by the union's and employer's representatives (who are often lawyers). The arbitrator will render a decision which is final. There may, however, be a right of appeal to a court of law.

Conclusion

One incident can give rise to more than one proceeding. If you are accused of criminal wrongdoing, you may be reported to your licensing body and your employer may suspend you. You could therefore be simultaneously involved in professional discipline, criminal and grievance/arbitration proceedings. You should contact CNPS for information and assistance if you are involved in any legal matter.

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1. Other proceedings include: civil lawsuits, inquests, public inquiries and human rights.
 2. *infoLAW*, Negligence (Vol. 3, No 1, September 1994).
 3. *infoLAW*, Malpractice Lawsuits (Vol. 7, No.2, September 1998).

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