College of Registered Nurses of Manitoba

THE COLLEGE OF REGISTERED PSYCHIATRIC NURSES of MANITOBA

Duty to Provide Care

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The College of Registered Nurses of Manitoba (CRNM) and College of Registered Psychiatric Nurses of Manitoba (CRPNM), (the Colleges) developed this document

For the purposes of this document, the term “nurse” refers to 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 both contribute to, and impact, 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

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 alternative or replacement services.

Disaster: Extensive harm, either human, material, economic, or environmental, with negative impact(s) that go beyond the coping ability and resources of the affected community.

Disease outbreak: A sudden increase in occurrences of a disease when cases exceed normal expectancy for the location or season.

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.

Introduction

The duty to provide care is a professional responsibility that applies regardless of employment status or employment relationship. For example, a nurse who practises in a self-employed capacity, or as an agency nurse, has the same duty to provide care to their assigned clients as a nurse who practises as an employee of the health care facility.

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.

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 support. Employers and nurses share responsibility for providing safe and competent care to the public. Employers are responsible for the operation of the health care institution including staffing, equipment, supplies, policy development, and reporting systems. Employers are expected to ensure that there are clear policies and procedures in place and the resources and supports that nurses require to meet their professional standards are provided. 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.

It is essential that nurses act in a manner as would a prudent and reasonable nurse in similar circumstances while bringing forward to their employer any issues with these responsibilities.

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 should be considered.

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, recognizing one's limitations, and identifying 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,
- the type of shift work, e.g. nighttime shifts carry greater risk than daytime or evening shifts,
- the number of consecutive days worked, e.g. more than 5 consecutive workdays, and
- lack of rest, sleep, physical or emotional recovery between shifts.

The Colleges recognize that each nurse is an individual and 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 thinks they may be unsafe to work due to fatigue and is currently working or expected to work, they need to inform their employer, manager, or nursing supervisor so a plan can be put in place to maintain client care and safety. In situations where the nurse feels fatigued, and the employer does not have another replacement nurse to take over the client's care, a communication and risk mitigation plan between the nurse, the team and manager are paramount.

Individual nurse's level of competence

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 level of competence. 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 access the required health care resources most effectively. 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 believed 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.

Withdrawal from care may also need to be contemplated if there is a significant breakdown in the therapeutic relationship with the client and the nurse does not have the level of competence required for the client's health care needs.

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

The 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.

The 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 a service because it is against their conscience even though they have the competence to provide the service. 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 can 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. As another example, unreasonable personal risk may occur if there is a significant and irreparable breakdown in the therapeutic relationship where continuing to provide care may cause harm to the client's or nurse's wellbeing.

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 can 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 with less-than-optimal human resources, 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 and sharing information with their employer even when all options appear exhausted. Prioritization of care provided, quality documentation, and consideration of reallocation essential services is recommended. The goal is to work with the health care 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 be comprised 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 greater nursing care can be impacted, which may lead to increased client risk.

Lack of familiarity with equipment, procedures, or policies makes for a more challenging practice environment. This is exemplified in areas where nurses are required to work in 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 and procedures 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 competencies.

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,
- the expected level of service provision by the health care organization,
- the applicable employer policies, and
- resources and referrals available for the client should their needs exceed those 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 of disasters that can impact the duty to provide care include, but are not limited to disease epidemics/pandemics, fire, and plane crashes where capacity and health human resources available to respond are exceeded.

Nurses must refer to their standards of practice, practice expectations, and code of ethics (code of ethics refers to the CLPNM Code of Ethics, CRNM Code of Ethical Conduct, and the CRPNM 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 these types of circumstances**. A nurse would only withdraw from care provision or refuse to provide care if they believed 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 the 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 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.

Several factors, as 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.

Resources

CNPS www.cnps.ca

Emergency Room Closures
Legal Considerations in Times of Nursing Shortages
Professional Liability during the Shortage

CLPNM www.clpnm.ca

Standards of Practice and Conduct
Code of Ethics
Practice Direction: Duty to Provide Care

CRPNM www.crpnm.mb.ca

Standards of Psychiatric Nursing Practice
Code of Ethics

CRNM: www.crnm.mb.ca

Practice Direction: Practice Expectations for RNs
Practice Direction: Practice Expectations for RN(AP)s
Practice Direction: Practice Expectations for RN(NP)s
Code of Ethical Conduct

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