

WSNA/ST. JOSEPH BELLINGHAM HOSPITAL

Washington State Nurses Association

LOCAL UNIT NEWSLETTER

August 2005

News Alert

From the Desk of . . .

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WSNA Nurse Representative



Breaches of Confidentiality and Electronic Medical Records

After many nurses have been disciplined, and one nurse terminated, for breach of confidentiality and HIPAA violations, we requested a meeting with the hospital's Human Resource Department. On August 4, 2005, we met with Terry Brennan, Shawna Unger, and Ellen Whitcraft. WSNA representatives were Ina O'Donnell, Grievance Officer; Pat Lombard, Grievance Officer; Judy Hamner, Co-chair; and me, Hanna Welander, WSNA Nurse Representative.

According to Terry, "almost all" audits are patient initiated. Others are randomly audited. This randomization is done by Excel spreadsheet with random number generation; also records are audited if there is the same last name between employees and patients. There have been eight terminations and almost all of them have come from patient complaints.

Hospital management has sent e-mails and has posted numerous messages about the

changes. Currently there are educational sessions planned for every hospital unit.

As you know, there are three levels of breaches. Level 1 is an accidental access (transposed number) or leaving the computer logged in. Level 2 is curiosity or, according to Terry Brennan, "looking at the record without intent to do harm but knew it was wrong." Level 3 is for personal gain (such as selling information).

We learned that the physicians (who are not hospital employees) have a peer committee that review breaches. They institute one of the following: 1) suspension; 2) financial fine; 3) removal from staff; or 4) referral for prosecution.

We Want Answers!

1. How does the committee determine that multiple level 2 breaches constitute level 3?
2. How is the decision made to terminate a nurse?
3. Does the committee have a staff nurse? (The answer is no)
4. Currently the employee is not allowed to go before the committee and is "represented" by Susan Actor. How is the employee given an opportunity to defend their actions?

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5. Will hospital management consider a nurse committee?

Because we have grieved the nurse being terminated, we want to hold hospital management accountable to the process. WSNA believes that patient confidentiality is vital; however, we also believe in due process and just cause.

Seven Tests of Just Cause

In a case involving the propriety of a discharge, Arbitrator Carroll R. Daugherty outlined a series of questions as guides to testing whether “just cause” existed. Contracts usually do not define “just cause” because there is a large body of arbitration decisions defining what it is under particular circumstances. These decisions are not all inclusive nor necessarily correct; however, their usage can be helpful in determining the worth of a grievance and affording clues as to the best way to win a grievance involving discipline. The searching nature of the questions and the sequence in which they have been set forth invite usage.

1. Did the hospital give to the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee’s conduct?
2. Was the rule reasonably related to the orderly, efficient, and safe operation of the hospital?
3. Did the hospital, before administering discipline to an employee, make an effort to discover whether the employee did, in fact, violate or disobey a rule or order of management?
4. Was the hospital’s investigation conducted fairly and objectively?

5. At the investigation, did the “judge” obtain substantial evidence as proof that the nurse was “guilty as charged?”
6. Has the hospital applied its rules, orders and penalties evenhandedly and without discrimination to all employees?
7. Was the degree of discipline administered by the hospital in a particular case reasonably related to a) the seriousness of the nurse’s proven offense, and; b) the record of the nurse in his/her service with the hospital?

According to Arbitrator Daugherty, a “No” answer to any one or more of the above questions normally signifies that just and proper cause may not exist. In other words, the hospital’s disciplinary decision contained one or more elements of arbitrary, capricious, unreasonable, and/or discriminatory action to such an extent that the decision constituted an abuse of managerial discretion warranting the arbitrator to substitute his judgment for that employer.

There has also been discussion in some departments to expand the nurse’s job description so that they are able to access their patient’s records after they leave their care. We hope to be part of that process in order to facilitate the important nursing element called Evaluation!

Joan Garner, MN, RN, Director, Nursing Practice and Education, is currently researching the ethical and legal dilemma of this situation. In an e-mail, Laurie Badzek, Nurse Ethicist and JD at the American Nurses Association states that “Unless a case can be made that the nurse was providing some type of follow up that would

or did benefit the patient and not just the nurse's desire to know, then ethically I think the argument (may be) lost. Ethics would require that the action of the nurse not only be nonmaleficent (not harmful), but also that the action benefited (beneficence) the patient. What action would the nurse take if the patient was not doing well? Would (his)/her job require (him)/her to see the patient and make further recommendations for her care? Any other ethical concept or reason would need to be weighed against the patients rights—for example a nurse with a needle stick might be able to make a compelling argument that her need to know if the patient was HIV positive or that the patient be tested was sufficient to merit a disclosure from the patients record or to

require the patient to give a blood sample. . . Obviously, I think the nurse needed

education, not discipline. This seems to be an extreme case—if the nurse was fired over this one instance—is she the example, not the rule?"

Protect Your Job!

In the meantime, protect yourself! If you are disciplined for accessing electronic medical records, please contact your grievance officers right away or call the WSNA office at (800) 231-8482, Extension 3035.

UPCOMING EVENTS AND MEETINGS

*Annual Leadership Development Conference
Lake Chelan, WA
September 25 – 27, 2005*



Please see WWW.WSNA.org for a registration form.

Membership Reminder

It is the responsibility of each nurse to notify the Washington State Nurses Association of any change in work status which may include but are not limited to: **name, address, phone number, FTE increase or decrease, leave of absence, medical leave, maternity leave, leaving or joining a bargaining unit.** This change must be done in writing either by using a *Change of Information Card* or sending an email to wsna@wsna.org.

The Cabinet on Economic and General Welfare (E&GW) policy states, when a nurse is on an unpaid leave of absence, the dues are adjusted to the Reduced Membership Category during the unpaid Leave of Absence period. The accumulated dues payment is to begin within 90 day of return to work. The nurse will have up to twelve months to complete payment of these dues. *It is the responsibility of the nurse to notify WSNA of this change in work status.*

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