Impaired Nursing Practice: Ethical, Legal and Policy Perspectives

by Eleanor J. Sullivan

One moral issue of concern to the nursing profession, individual nurses and the public is impaired practice resulting from abuse of alcohol and other drugs. Nurses who abuse substances not only place themselves at risk for physical, emotional and professional harm, but also create hazards for the institutions in which they work as well as the public. Response to the problem has been, and continues to be, inconsistent and is based on inadequate understanding, stereotypical attitudes and conflicting societal standards. Nursing administrators, co-workers and the profession must critically analyze a multitude of ethical issues involved in impaired practice in order to develop models of caring for patients while also caring for the caregivers. Resolution of these dilemmas must be based on thoughtful analysis and critical application of the competitive ethical principles of autonomy, justice, beneficence and nonmaleficence. This essay will explore some of the ethical dilemmas involved in the identification, reporting, treatment and monitoring of nurses impaired by substance abuse and will propose answers to questions generated by the analysis.

Nurses whose practices are impaired as a result of alcohol or drug abuse are of concern to the profession, employers, other nurses and the public. The devastation that alcohol or drug abuse causes in the workplace is matched only by the danger impaired nurses pose to patients in their care. Such a serious problem requires thoughtful response to provide assistance to nurses suffering from addictive illness and to protect patients.

While today alcohol and drug abuse are considered treatable illnesses, social stigma still surrounds the problem. This stigma is more pronounced toward nurses (and other health care professionals) and toward women for several reasons. First, the disease is often more severe when nurses become addicted because they are apt to use drugs (e.g., narcotics) that are more potent than those generally available to the public (Sullivan, 1987). Second, nurses may lose their job or license as a consequence of their illness, a sanction others may not experience. Third, the stigma of addiction is more severe against women than men. This attitude affects nurses disproportionately since 97 percent of nurses are female. Finally, because nurses are knowledgeable about drugs, they are expected to know better than to become addicted, even though knowledge does not prevent nurses from acquiring diabetes or hypertension. Even after rehabilitative treatment, nurses experience difficulties in returning to work because of persistent stereotyping and inadequate understanding of the problem.

Responses to Impaired Practice

The problem of impaired practice has generated responses from two groups: employers of nurses and state boards of nursing. Employers concerned about protecting their patients have sometimes punished nurses addicted to alcohol or drugs. Employers have fired addicted nurses, reported them to the state board of nursing, or called the police. This has resulted in untold numbers of nurses being lost to the profession; some nurses have even spent time in prison (Personal communication, 1993).

State boards of nursing have one duty: to protect the public from unsafe nursing practice. They are not charged with assisting the nurse who has an alcohol or drug abuse problem. The board of nursing fulfills its obligation by regulating nursing education and the licensing examination, and by monitoring the safety of nursing practice. To do this, boards rely on the reporting obligations of employers and nurses. Many states have mandatory reporting laws which obligate any nurse with knowledge of impaired practice to report it; otherwise the nurse's own license is in jeopardy. Following an investigation, a board of nursing may put the nurse on probation (requiring regular progress reports), suspend

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the license temporarily (usually one to five years) or revoke the license entirely. In this way the board fulfills its obligation to protect the public.

If employers are concerned about protecting their patients and if state boards of nursing are charged with protecting the public, who, then, is responsible for assisting nurses with alcohol or drug problems? To address this need, the nursing profession has responded.

In the early 1980s, nursing began to recognize the nature of addictive problems. The American Nurses Association (ANA) House of Delegates proposed in 1982 that nurses with addictions should be offered rehabilitative treatment prior to losing their licenses or their jobs. Since then, many states have developed peer assistance programs for impaired nurses. Some states offer minimal assistance such as educational programs or referral information. Others provide extensive peer assistance programs using professional staff and a network of volunteers to intervene, refer and monitor nurses with addictive problems. Some of these programs contract with state boards of nursing to offer assistance in lieu of reporting directly to the board. If a nurse successfully completes the two-year rehabilitation program, he or she is not subject to disciplinary action by the board. If, however, the nurse does not comply with the rehabilitation program, an investigation and subsequent disciplinary action may ensue. The assistance program gives the employer an alternative to punitive action against the nurse while maintaining accountability to patients and the public.

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Great strides have been made over the last decade in informing the nursing community about addictive problems. Three major books on the subject have been published since 1988 (Sullivan, Bissell and Williams, 1988; Haack and Hughes, 1989; Catanzarite, 1992). In addition, nursing education about addictive problems in all populations has expanded largely due to the efforts of several federal agencies including the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the Center for Substance Abuse Prevention through their initiatives on curricular and faculty development. In order to aid nurses with addictive problems, health care organizations have offered conferences on impaired practice, developed educational videos and adopted constructive policies.

The Ethical Issues

The major ethical issue in impaired practice is the conflict between the rights of nurses for fair and humane treatment and the rights of patients for safe and competent care. When nurses' rights are in opposition to patients' rights, ethical dilemmas surface. The challenge is to balance these rights so that the needs of both are protected.

Rights

Nurses' rights include the right to practice one's profession, the right to maintain one's license (a property right), the right to employment practices that do not discriminate against addictive illness, the right to fair disciplinary treatment, the right to have workplace modifications to accommodate rehabilitation, and the right to privacy.

Patients, who are vulnerable, have the right to safe, skilled care administered by a nurse who is mentally and physically able to perform certain nursing duties. The public (patients collectively) has a right to expect that those who have completed an accredited course of study in nursing and who have passed the licensure examination will provide competent nursing care.

Employers, as guardians of patients in their care, have the obligation to enforce standards set by professional codes and institutional policies that prevent exposure of patients to present or future harm. By failing to act on evidence that a nurse is performing in a negligent or dangerous manner, the administrator does not meet a professional obligation (and, sometimes, a legal one) to safeguard patients. Other nurses have an obligation to protect the organization, as well as the rights of patients to safe care, by reporting impaired practice when they observe it. Likewise, colleagues, supervisors and administrators have a moral obligation to find ways of responding on both personal and professional levels to help the impaired colleague.

Duties and Obligations

In ethics, when we talk about rights we must also pay attention to duties and obligations. With

regard to impaired practice, nurses have various rights as well as duties and obligations. Nurses have a duty to protect patients (and the public) from unsafe practice. The ANA *Code for Nurses* (Section 3) states that "the nurse acts to safeguard the client and the public when health care and safety are affected by the incompetent, unethical or illegal practice of any person." Nurses whose practice is impaired by the use of alcohol or drugs endanger patients in their care. All nurses, then, have the obligation to intervene in cases where patients are put at risk by unsafe practice.

Reporting another nurse for impaired practice is difficult. The behavioral and personal indicators of the disease are often obscure. Also, because denial is a primary feature of alcohol and drug dependency, one would expect the addicted nurse, as well as family, friends and co-workers, to ignore even obvious indicators of illness. Over time, however, certain patterns of behavior emerge that suggest impaired practice (see Sullivan, Bissell and Williams, 1988). Just use, or even abuse, of alcohol or drugs is not cause for involvement by others. Only a nurse whose practice is impaired requires intervention in the workplace.

Inselberg argues that the ANA *Code* is concerned with patients' welfare and does not require colleagues or the profession to assist nurses in need (Inselberg, 1991). This point is well-taken. While nurses are charged with protecting the patient by intervening with impaired colleagues, according to the *Code* they are under no obligation to provide rehabilitative assistance to their peers. Colleagues then are often reluctant to report impaired practice. Moreover, they fear that nurses will lose their jobs, licenses or both. These concerns can be addressed by both public and private policies.

Policy Implications

In the public realm, the policies of state licensing boards on impaired practice can facilitate the nurse's rehabilitation without breaching the board's obligation to protect the public. In Kansas, for example, nurses may be referred to assistance programs in lieu of reporting to the board of nursing. If a board report is made, the investigation and hearing process takes several months to a year. During that time the nurse can complete initial rehabilitation, enroll in an outpatient or follow-up program and participate in self-help groups (e.g., Alcoholics Anonymous, Narcotics Anonymous). By the time the board hearing occurs, the nurse may be able to demonstrate significant recovery, thereby allowing the board to monitor this recovery while permitting the nurse to continue practicing. Such attention to the individual nurse's progress in rehabilitation allows the board to assure the public that impaired practice is no longer occurring.

Private organizations such as hospitals and other health care agencies also are morally and legally responsible for the safety of their patients. They too can establish policies that facilitate rehabilitation rather than punishment. An employer can set the example for management by establishing an explicit policy that states a nurse or other employee with addictive illness will be offered treatment before being dismissed. The policy should also state that if the nurse refuses treatment or shows indications of a return to impaired practice, disciplinary action will follow.

Legal Mandates

Several legal mandates require policy development. These include mandatory reporting, confidentiality, providing a safe working environment and protecting workers from discrimination. Resolution of these issues and cooperation between public and private entities help ensure that the rights of patients and the rights of nurses are both protected.

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When state law requires reporting impaired practice, the employer is bound by legal mandate, regardless of how the organization has handled the situation and in spite of the nurse's improvement. What is the employer's ethical responsibility in this case? What should one do when there is no assistance program available? Mandatory reporting without assistance meets the obligation to protect the public but does not help the nurses. Everyone involved in impaired practice issues must struggle with balancing obligations to the individual nurse, one's patients, the institution and the law. There have been reports of employers who violated state mandatory reporting laws because the nurse was recovering and a system to monitor that recovery was in place at the institution (Personal communication, 1984). These ethical dilemmas surface espe-

cially when the needs of one group are met at the expense of another.

Federal law (42 U.S. Code, 290ee-3 and 290dd-3) mandates that treatment providers keep patient records and information confidential. Previously, employers were not bound by these restrictions. The 1990 Americans with Disabilities Act, however, requires employers to keep drug abuse (although not alcohol abuse) histories private, with access limited to a need-to-know basis. For example, the impaired nurse may need special accommodations (such as scheduling) that allow attendance at counseling and self-help group meetings. With drug-related problems, the nurse might not be allowed to administer narcotics for a period of time (usually one year), so co-workers would need to be informed in order to provide adequate coverage for administration of medications to patients. Even in this situation, policies and procedures can be sensitive to the nurse's dignity. For instance, the nurse could have the option to tell co-workers the circumstances rather than allowing management to do so.

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While the employer has always had an ethical obligation to provide a safe, healthy work environment for employees, they have only recently been required by public policy to protect the work environment from on-the-job drug use. Although the requirements of the Drug-Free Workplace Act of 1988 (41 U.S.Code, 701 et seq.) are limited to federal contractors and do not address alcohol abuse, they are a beginning in public policy on drug use in the workplace. In fact, the law itself has stimulated some employers to examine their policies regarding treatment of employees with alcohol or drug abuse problems.

Through the Americans with Disabilities Act, public policy also protects recovering employees. Alcohol and drug dependency are defined as disabilities, and employees who are identified with the disorders are protected as long as abuse of alcohol or illegal drugs is not occurring. Recovering individuals may not be discriminated against in hiring, firing or promoting policies. The 1990 law went farther than previous legislation in that it requires "reasonable accommodation" for individuals designated as "disabled." Policies that provide unpaid leave for the nurse to enter a rehabilitation program and opportunities to attend required support groups and counseling are examples of employers' accommodations. The government's effort to protect rehabilitated workers and the environment for non-using workers suggests that public policy is being established to support the human rights of individuals.

Drug Testing Policies

Testing body fluids for the presence of alcohol or drugs is a fairly recent strategy to control the escalating problem of drug abuse. This strategy is feasible because testing technology is now relatively accurate and reliable. Although blood testing is the method to determine blood alcohol levels, it is invasive and hence relatively rare. Testing urine to determine the presence of drugs (legal and illegal) is the method commonly used.

Drug testing is used by employers to screen potential employees, for cause following a suspicious incident, and to monitor returning employees after rehabilitation. Individuals in some occupations (e.g., railroad engineers, pilots) whose work may endanger others have been targeted for random testing. In general, testing of health care professionals is not common, but the recent decision (now temporarily on hold) by the Veteran's Administration to give random drug tests to all employees (including nurses and physicians) and students will affect literally thousands of nurses and other employees.

Drug testing raises many ethical, legal and policy dilemmas. The public supports a rigorous approach to identifying drug users, especially among professionals, to prevent harm to others. Labor unions and the American Civil Liberties Union vigorously oppose drug testing because of the threat to individual rights. Invasion of privacy (Fourth Amendment) and due process concerns (Fourteenth Amendment) conflict with the employer's obligation to provide a drug-free workplace. Specimen collection procedures and laboratory accuracy require vigilant attention. Fair employment practices (e.g., avoiding wrongful discharge, slander, libel) also must be followed to protect employees as well as employers.

Drug testing programs can protect employees and, at the same time, help employers meet their goal of providing a drug-free workplace that is safe for patients and employees alike. However, certain

guiding principles must be followed. These include: using test results to offer rehabilitation opportunities; informing affected individuals beforehand that testing will occur; maintaining confidentiality; using job performance measures with testing to identify substance abuse; utilizing scientifically sound testing procedures; adhering to strict standards for collecting and handling specimens; and using confirmatory tests following positive screens (Coombs and West, 1991).

Employers of nurses, assistance programs and boards of nursing commonly require random drug testing of recovering nurses. Such testing assures the interested parties that ongoing recovery is probably occurring and enables the nurse to demonstrate abstinence. When combined with other evidence demonstrating recovery activities (e.g., attendance at AA, participation in counseling), negative tests come as close as possible to confirming successful rehabilitation and thus ensure patient safety.

The cost of drug testing raises the question of who should pay for it. The actual cost of a urinalysis to determine the presence of drugs is about $100, but the total expense to a company and the employee is much more. This includes establishing a collection site, assigning employee(s) to collect specimens, managing the chain of custody, handling the necessary paperwork, and defending legal challenges. When drug testing is used to monitor recovery, the nurse often pays the cost, although some employers are willing to absorb it. If drug testing is used randomly or for pre-employment screening, the employer is responsible for the costs. Some argue that the expense of testing without cause could be better spent in educating employees and providing confidential counseling and referral services to employees through employee assistance programs.

Who Should Pay for Assistance to Nurses?

It has been estimated that the cost of an individual case of impaired practice exceeds $50,000 (LaGodna and Hendrix, 1989). These costs include employee disciplinary counseling, institutional disciplinary proceedings, termination, costs to the nurse, and board proceedings. These are the costs when the nurse does not receive treatment! Intervening so the impaired nurse can receive assistance and successfully return to practice is more cost-effective since disciplinary proceedings are less burdensome, turnover is prevented and the outcome is more often positive.

Assisting nurses also comes with a price. In the typical assistance program, expensive one-on-one staff time is required even with a cadre of volunteers. In some states, public funds have been allocated to help support the program, but in others the entire cost is underwritten by the nursing association with help from donations and volunteers. Since fewer than ten percent of all nurses belong to state nursing associations, these few are paying for assistance to every nurse with an impairment problem. Proponents of a greater base of support would like to spread the cost equitably across the profession by having all nurses support these services through increased licensure fees. Lesser-paid groups composed largely of women, however, are less able to generate funds and care for their own than are more affluent groups composed mostly of men. Others have suggested that addressing impaired practice is a societal responsibility, so public funds should pay for assistance programs. Perhaps, a combination of revenue sources can be utilized to provide more secure financing for services.

Conclusion

Addictive disorders are chronic, progressive, relapsing illnesses. People feel confused and frustrated when they see colleagues and employees in trouble. Those around the person commonly deny the problem, finding it hard to believe that the person they know could have an addiction. The good news is that nurses can and do recover from addictive illness and return to productive lives. This recovery is facilitated when co-workers and supervisors meet their ethical (and often legal) obligations to their colleagues, the public and the profession by identifying and intervening in cases of impaired practice. Lack of response to impairment creates hazards to the public, the institution and the individual nurse. In summary, nurses, employers, the profession and the public have a responsibility to assist nurses whose professional practice is impaired by addictive illness. The health and safety of patients and nurses demand it.

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