

Ethics and Law in Nursing: Friends or Foes?

written by Nancy Brent | June 19, 2017

Avoiding Liability Bulletin - June 19, 2017

You might find it difficult to reconcile how ethics and law impact nursing practice. You would not be alone in this feeling.

One approach that is quite interesting describes ethics and law as separate and “distinct” from one another, each with different concerns. This viewpoint is interesting, since often times when an ethical issue exists, resort to the judicial system occurs.¹

The following case² illustrates this model, and the complex interplay of ethics and the law. The case is based in no small part on the American Nurses Association’s Code of Ethics for Nurses³.

James Hitesman, RN, was terminated from his position at Bridgeway Care Center after he contacted various governmental agencies and the media to report his concerns about his employer’s response to high infection rates among patients at the facility. Hitesman believed that his termination was in retaliation for expressing his views to outside sources.

He filed a suit against the employer’s firing under the state’s Conscientious Employee Protection Act (CEPA) which stated that if an employee had a reasonable belief that the employer’s conduct constituted improper quality of patient care, or violated a law or public policy, a suit could be filed. That statute defined “improper quality of patient care” as including a violation of “any professional code of conduct”.⁴

The jury at the trial level returned a verdict in Hitesman’s favor. The jury’s decision was based on the evidence presented—that the plaintiff examined grounded his reasonable belief that improper quality of care was being given on the American Nurses Association’s Code of Ethics for Nurses, the facility’s Employee Handbook, and the Statement of Residents’ Rights policy.

No damages were awarded to Hitesman so he appealed that part of the verdict and the employer cross appealed its liability verdict.

The appeals court analyzed the specific facts of the case, including Hitesman’s “whistle blowing” conduct surrounding the concerns he raised about the quality of patient care. Hitesman sent several emails about his concerns to administration, he contacted the local Board of Health under a fictitious name, and he contacted the state department of health. Other legal issues involved in the case were also examined.

The appeals court opined that the ANA Code of Ethics or the Statement of Residents’ Rights Policy did

not qualify as a law, rule, regulation or declaratory ruling adopted to law or any professional code of ethics as is required by the CEPA.

In so doing, the court pointed out that the ANA Code of Ethics does not apply to the employer, despite it being “incorporated” into the facility’s handbook. Rather, the court continued, its guidelines are for nurses about fulfilling their responsibility as patient advocates. Moreover, it does not express any policy based upon a constitutional provision, statute, rule or regulation passed pursuant to law, not does it provide a standard that clearly delineates ‘acceptable’ versus ‘unacceptable’ conduct.⁵

Therefore, the court continued, Hitesman’s belief that the facility acted in violation of the ANA Code of Ethics was not objectively reasonable as a matter of law. Nor was his belief objectively reasonable that the Employee Handbook and the Statement of Residents’ Rights were violated.

The trial verdict in Hitesman’s favor was reversed. Hitesman and his employer reached an agreement that he would receive \$59,000.00 as compensatory damages, which equaled his lost pay.

This case probably raises more questions than it answers in regard to the relationship between ethics and the law. It becomes clear that there is no bright line between these two concepts being characterized as friends or being characterized as foes.

What it does clearly highlights is the complex interplay between ethics and law. Hitesman truly believed he faced an ethical issue and needed to bring that issue to the attention of the facility and others in order to protect the patients. Yet, the law’s legal “formula” for being able to do so was not proven by Hitesman or the situation in which he attempted to voice his ethical concerns.

If you find yourself in a situation where you are ethically and legally concerned about a patient care situation, you should consider the following:

1. Immediately consult a nurse attorney or attorney who concentrates his or her practice in employment law and who has represented other “whistle blowers”;
2. Gather all documents you consider important and bring them to your appointment with the attorney of your choice, including the ANA Code of Ethics and other applicable codes;
3. Strictly follow the attorney’s instructions as to how and to whom you should raise your concerns with, including those within your facility;
4. Know that your obligations under the state nurse practice act may require you to report any illegal, unsafe or unprofessional practice to the proper authorities, again with guidance from your attorney; and,
5. Regardless of any legal outcome by a court or jury, your adherence to the ANA Code of Ethics and other applicable codes is paramount.

FOOTNOTES

1. Margaret Douglas (2001), “Ethics and Nursing Practice”, in *Nurses And The Law: A Guide to*

Applications and Principles by Nancy J. Brent, RN, MS, JD. 2nd Edition. Philadelphia: W.B. Saunders, 34-35, citing Diane Kjervick, "Legal and Ethical Issues: The Connection Between Law and Ethics", 6 Journal of Professional Nursing (1990), 138-185.

2. Hitesman v. Bridgeway, Inc., 430 N.J. Super. 198 (2013).

3. American Nurses Association (2015). Code for Nurses With Interpretive Statements. Silver Springs, MD: author. (The specific section of the Code relied on by Hitesman was Principle 3.5, "Protection of Patient Health and Safety and Acting on Questionable Practice.")

4. Hitesman, supra note 2.

5. Id.

THIS BULLETIN IS FOR EDUCATIONAL PURPOSES ONLY AND IS NOT TO BE TAKEN AS SPECIFIC LEGAL OR ANY OTHER ADVICE BY THE READER. IF LEGAL OR OTHER ADVICE IS NEEDED, THE READER IS ENCOURAGED TO SEEK SUCH ADVICE FROM A COMPETENT PROFESSIONAL.