

Professionalism Extends Beyond the Workplace

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While driving home from a party, a nurse was involved in a one-car accident. The nurse pled no contest to a misdemeanor count of driving under the influence of alcohol (DUI). Though the nurse was off duty and had no prior disciplinary actions, no prior DUI convictions, and no apparent alcohol abuse or dependency issues, the board of nursing (BON) determined that the DUI conviction was evidence of unprofessional conduct and placed the nurse's license on probation for 3 years. Subsequently, the BON's action was upheld by the appellate court. This article reviews the case and the legal and ethical foundations of the BON's decision.

A nurse who decided to drive home after having some drinks collided with the center divider of a highway. Luckily, no one was injured in the one-car accident. Authorities measured the driver's blood alcohol level at 0.16%, twice the legal limit. The nurse pled no contest to a count of driving under the influence of alcohol (DUI; Egelko, 2012).

The DUI incident did not occur while the nurse was on duty, and it appeared to be an isolated event. A substance use evaluation determined the incident was not indicative of a substance use disorder. The nurse was not a bad nurse or a bad person. However, the nurse did make a bad decision to drink and drive, and that decision resulted in unprofessional behavior. The California Board of Nursing (BON) and the California Appellate Court determined that the nurse's behavior outside of working hours was evidence of unprofessional conduct and placed the nurse's nursing license on probation for 3 years (Sulla v. Board of Registered Nursing, 2012).

DUI Conviction: Evidence of Unprofessional Conduct

To understand why the BON—and subsequently, the court—regarded the nurse's DUI conviction as conclusive evidence of unprofessional conduct, consider the principles of nursing professionalism, the nursing code of ethics, and the California Nursing Practice Act.

Commonly, nursing is referred to as a profession, not a job. Unlike a job, a profession is a chosen, paid occupation requiring prolonged training and formal qualification (Gokenbach, 2012). As such, nurses are professionals and can be defined as individuals expected to display competent and skillful behaviors in alignment with their profession. Therefore, the values of the profession must drive the professional's beliefs and behavior (Gokenbach, 2012). Obligations of professionalism and practice implicitly and explicitly embedded in codes and regulations require nurses to

conduct themselves with respect, confidentiality, moral courage, and cultural sensitivity and to act as good citizens of the world (Butts, 2013).

Codes of ethics provide explicit guidelines for the profession. The American Nurses Association's *Code of Ethics* clearly delineates duties to self and others as well as the responsibilities to preserve integrity and safety, to maintain competence, and to continue personal and professional growth (American Nurses Association [ANA], 2011). Further, the code states that moral self-respect accords moral worth and dignity to all, including oneself. Identifying common ethical concerns, such as professional growth and maintenance of competence in the field of nursing, the code also notes the "preservation of wholeness of character, and personal integrity" as ethical guidance to all members of the profession (ANA, 2011; see Table 1).

All can agree that driving while under the influence of alcohol endangers not only the driver, but other drivers and pedestrians. This behavior demonstrates a lack of respect for the integrity and safety of oneself and others. Therefore, driving while intoxicated is a behavior that fails to align with the nursing profession's moral obligation of professionalism or of a good citizen of the world.

The California Nursing Practice Act explicitly requires a nurse to exhibit behaviors consistent with professionalism within and outside the workplace. The act specifically directs nurses on the professional expectations concerning the use of alcohol and convictions related to alcohol misuse. See Table 2 for specific legislative language regarding alcohol use and convictions (California Nursing Practice Act, 2011).

The actions of a nurse will be judged by the standards of the profession as well as by the law that guides and governs the nurse. BONs are required to protect the public by reviewing the conduct of the nurse, applying the law to the nurse's actions, and determining a disciplinary sanction for any violations (Russell,

TABLE 1

Expectations of the Code of Ethics

Provision 5 of the American Nurses Association's *Code of Ethics for Nurses With Interpretive Statements* reads as follows:

Provision 5. The nurse owes the same duties to self as to others, including the responsibility to preserve integrity and safety, to maintain competence, and to continue personal and professional growth.

5.1. Moral self-respect. Moral respect accords moral worth and dignity to all human beings irrespective of their personal attributes or life situation. Such respect extends to oneself as well; the same duties that we owe to others we owe to ourselves. Self-regarding duties refer to a realm of duties that primarily concern oneself and include professional growth and maintenance of competence, preservation of wholeness of character, and personal integrity (American Nurses Association, 2011).

2012). The following summary of the findings of the administrative hearing, district court, and appellate court serves to further illuminate the disciplinary process regarding this incident of unprofessional conduct.

Administrative Hearing

As a result of the DUI conviction, the California BON filed an accusation alleging that the conduct of the nurse warranted discipline under several provisions of the nursing practice act. The matter proceeded to a hearing in front of an administrative law judge (ALJ). During the hearing, attorneys for the nurse argued that a criminal conviction could not provide grounds for discipline unless the misconduct substantially related to the qualifications, functions, and duties of the profession (Sulla v. Board of Registered Nursing, 2010, p. 4).

The ALJ reviewed the behavior underlying the nurse's conviction and found that it did not reflect, to a substantial degree, a present or potential unfitness to practice nursing (Sulla v. Board of Registered Nursing, 2010, p. 5). However, the ALJ determined that the nurse violated two provisions of the nursing practice act that do not require a substantial relationship between the nurse's misconduct and professional fitness, § 2762 (b) and (c). The first provision provides that a nurse violates professional conduct by using "alcoholic beverages, to an extent or in a manner dangerous to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license" (Sulla v. Board of Registered Nursing, 2010, p. 5; see Table 2). The second provision defines unprofessional conduct as including "a criminal offense involving the . . . consumption . . . or self-administration of alcohol" (Sulla v. Board of Registered Nursing, 2010, p. 4; see Table 2).

Under the authority of these two provisions, the ALJ ordered the revocation of the nurse's license as a result of the DUI conviction (although the judge stayed the revocation subject to 3 years' probation).

The ALJ read the existing law as requiring professional conduct at all times by one licensed as a nurse. Further, the ALJ noted there was no requirement in the nursing practice act that a "substantial relationship" exist between the DUI conviction and professional fitness because the particular violation was explicitly recited in the nursing practice act (Sulla v. Board of Registered Nursing, 2010, p. 5).

Two Appeals

The nurse appealed the ALJ's finding and the BON's disciplinary action to the San Francisco Superior Court, which overturned the BON's decision, finding that the imposition of discipline required a substantial relationship between the conviction and the qualifications, functions, or duties of a registered nurse (Sulla v. Board of Registered Nursing, 2011).

The BON then appealed the decision, and in response, the nurse made two general arguments. First, the nurse asserted that due process requires a finding of a nexus, or logical relationship, between misconduct and professional qualification before the BON may impose professional discipline. Secondly, the nurse argued that the BON violated equal protection by imposing discipline after a single alcohol-related conviction, while the Medical Board requires two alcohol-related convictions prior to disciplining a physician. The Court of Appeals overturned the Superior Court and reinstated the original ruling of the ALJ imposing discipline on the nurse's license (Sulla v. Board of Registered Nursing, 2012).

Rationale of the Appellate Court

The appellate court maintained that the nursing practice act did not explicitly require the BON to establish a nexus between the conduct described and the licensee's professional fitness (Sulla v. Board of Registered Nursing, 2012, p. 1201). In addition to the explicit language of the pertinent statute (Table 2), the court extrapolated case law from three analogous instances of physician discipline by medical boards because the court had not previously considered similar actions by the BON.

First, the court cited a case clearly noting that a medical board may discipline physicians for personal drug use without showing that the drug use impacted the physician's professional ability (Sulla v. Board of Registered Nursing, 2012, p. 1202, citing *Weissbuch v. Board of Medical Examiners*, 1974). The court found that the constitution provided no basis for imposing a special requirement of nexus, especially since the legislative language explicitly defines unprofessional conduct as including a conviction related to alcohol misuse.

In the second case relied upon by the court, the facts revealed that three misdemeanor drunken driving offenses constituted conclusive evidence of professional misconduct and grounds for discipline. There, a logical nexus between misconduct and professional qualification existed because driving under the influence reflects a lack of personal and professional judgment, threatens public safety, and demonstrates a lack of medical

knowledge of the effects of alcohol and legal prohibitions against drinking and driving (*Sulla v. Board of Registered Nursing*, 2012, p. 1203, citing *Griffiths v. Superior Court*, 2002). In other words, an implicit nexus exists between alcohol-related misconduct and professional fitness, even if the transgression does not occur during the actual practice of medicine.

Finally, the court referred to a case upholding the discipline of a physician with several DUI arrests, but no convictions. In this case, the court required a nexus between the type of misconduct underlying the discipline and the ability of the physician to practice medicine (*Sulla v. Board of Registered Nursing*, 2012, pp. 1203–1204, citing *Watson v. Superior Court*, 2009). However, a logical connection exists if the conduct of the licensee endangers himself, another person, or the public generally (*Sulla v. Board of Registered Nursing*, 2012). Three DUI arrests, even without a conviction, represented sufficiently dangerous misconduct logically connected to an inability to professionally practice medicine (*Sulla v. Board of Registered Nursing*, 2012).

Drawing from these cases, the Court of Appeals maintained that a nexus or logical relationship existed between the professional fitness of a registered nurse and the alcohol-related misconduct because the nursing practice act specified the nexus by including in the relevant portion of the definitions of unprofessional conduct a conviction related to alcohol misuse. Therefore, the statute did not violate due process by conclusively presuming professional unfitness and authorizing the BON to impose discipline. In other words, whether a conviction is “substantially related” to professional qualifications is a question of law, not fact. It does not matter whether the ALJ found, as in this case, that the nurse’s conduct did not substantially relate to his professional qualifications. The BON may exercise authority to discipline according to statute without independently proving a “substantial relationship” (*Sulla v. Board of Registered Nursing*, 2012, p. 1206).

Also, the Court of Appeals quickly disposed of the nurse’s claim that the statute governing the regulation of nurses violated equal protection. The nurse argued that imposing discipline on nurses for a single alcohol-related incident violated the constitution because a similar statute governing the regulation of physicians required more than one such conviction to form the basis of disciplinary action (*Sulla v. Board of Registered Nursing*, 2012, p. 1207). The court explained that legislatures may treat members of various professions dissimilarly, unless such treatment is “palpably arbitrary and beyond rational doubt erroneous” (*Sulla v. Board of Registered Nursing*, 2012).

Implications

Guidance on the definition of acts that will be considered unprofessional is found in each state’s nurse or nursing practice act or rules and regulations. As seen in this case, the California Nursing Practice Act does not require that unprofessional conduct be

TABLE 2

California Nursing Practice Act: Alcohol Use and Convictions

On the subject of drug-related—including alcohol-related—transgressions, the California Nursing Practice Act states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof (California Nursing Practice Act, 2011).

substantially related to the practice of nursing. California is very specific in its definition of unprofessional conduct related to a conviction for alcohol misuse (California Nursing Practice Act, 2011, §2762 (c)). Among other states, both Missouri and New Hampshire also specifically include alcohol misuse as grounds for discipline within their nurse practice acts. (See Table 3.)

Arkansas provides specific acts in its legislative definition of unprofessional conduct:

- Failing to assess and evaluate a patient’s status
- Unlawfully appropriating medications
- Providing inaccurate or misleading information regarding employment history to an employer
- Failing a drug screen
- Failure to repay loans to the nursing student loan fund (Arkansas Administrative Procedures Act, 2008).

In addition, Arkansas law gives the BON great discretion by further defining unprofessional conduct as any other conduct that, in the opinion of the board, is likely to deceive, defraud, injure, or harm a patient or the public by an act, practice, or omission that fails to conform to the accepted standards of the

TABLE 3

Grounds for Discipline Related to Alcohol Use in the Missouri and New Hampshire Nurse Practice Acts

Missouri	New Hampshire
Violation of the drug laws or rules and regulations of this state, any other state or the federal government (Missouri Nurse Practice Act, 2012).	(p) Other drug-related actions or conduct that include but are not limited to: (1) Use of any controlled substance or any drug or device or alcoholic beverages to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that such use may impair his or her ability to conduct with safety to the public the practice of nursing (New Hampshire Nurse Practice Act, 2012).

nursing profession (Arkansas Administrative Procedures Act, 2008).

Vermont also provides the BON with discretion via its nurse practice act by defining unprofessional conduct as including "conduct of a character likely to deceive, defraud, or harm the public" (Code of Vermont Rules, 2012).

Conclusion

Nurses must never lose sight of the fact that they are licensed professionals, and the nursing license brings broad responsibilities (Trentham, 2011). There is a duty to be informed about the laws that guide and govern the nursing profession (Russell, 2012). Nurses also have the duty to recognize that as a part of the license to practice in the nursing profession, one is considered a professional at all times. As the court in this case noted, "driving under the influence reflects a lack of sound professional and personal judgment, threatens the safety of the public, and demonstrates both a disregard of the medical knowledge of the effects of alcohol and the legal prohibitions against drinking and driving" (*Sulla v. Board of Registered Nursing*, 2012, p. 1203 citing *Griffiths v. Superior Court*, 2002).

Quite simply, nurses do not leave their nursing license and professionalism at the workplace door.

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