



Keeping ourselves safe

Learning how to navigate safety issues in the workplace by utilising the Health and Safety at Work Act 2015; in light of your professional obligations and patient rights



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Aim

Empower members to
Speak up regarding
health and safety issues



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Health and Safety at Work Act 2015- A quick recap

- PCBU has a “primary duty of care” to all its workers
- All workers have the right to refuse to perform unsafe work
- Health and safety representatives must be elected by the workgroup- 1 out of 20 ratio
- Qualified health and safety representatives can issue Provisional Improvement Notices.
- Qualified health and safety representatives can direct others to cease unsafe work.
- All health and safety representatives can issue written recommendations to the PCBU
- Plus many other empowering (but little known) H&S rights!

But what about a nurses' duty of care?

What is the source of the duty of care?

Duty of care ≠ Duty to provide care

Health Practitioners Competence Assurance Act– Professional misconduct under section 100 – malpractice or negligence

Case law tells us that “negligence” is when you breach a duty of care

The Code of Conduct informs us what taking “care” is in the circumstances



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But what about a nurses' duty of care?

CODE OF CONDUCT (PRINCIPLE 4)

Maintain health consumer trust by providing **safe and competent** care

- Standard 4.1: “**appropriate** care and skill”
- Standard 4.7: “Deliver care based on **best available evidence** and **best practice**”
- Standard 4.12: “Offer assistance in an emergency that **takes into account your own safety**, your skill and the **availability of other options.**”



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But what about a nurses' duty of care?

TRANSLATION:

- You must provide care, but only if it is **REASONABLE IN THE CIRCUMSTANCES**.
- It is not **REASONABLE** to expect a nurse to ignore a known health and safety risk in order to provide care.
- If the circumstances (E.g. violence/aggression) prevents care, you must consider **ALTERNATIVE OPTIONS** to provide the care.



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But what about a nurses' duty of care?

TRANSLATION:

- There will be **no breach** of the duty of care if you refuse to provide care because it would have been **unreasonable** to expect you to provide the care, and you took steps to consider **alternative options** to provide the care.



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What if your rights as a worker conflict with patient rights?

CODE OF CONSUMER RIGHTS (RIGHT 4)

*Right to services of an **appropriate** standard*

- (1): “services provided with **reasonable** care and skill”
- (2): “services provided that comply with legal, professional, ethical, and other relevant standards.”



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Patient Rights

CODE OF CONSUMER RIGHTS (REGULATION 3)

3 Provider compliance

- (1) *A provider is not in breach of this Code if the provider has taken **reasonable actions** in the circumstances to give effect to the rights, and comply with the duties, in this Code.*
- (2) *The onus is on the provider to prove that it took reasonable actions.*
- (3) *For the purposes of this clause, **the circumstances means all the relevant circumstances**, including the consumer's **clinical circumstances** and the provider's **resource constraints**.*



Patient Rights

TRANSLATION:

*Patients have a right to **REASONABLE** care.*

*What is reasonable depends on the **CIRCUMSTANCES**.*

What is reasonable depends on best practice, and relevant standards.

*If the circumstances (aka violence/aggression) prevents care, you must consider **ALTERNATIVE OPTIONS** to provide the care.*



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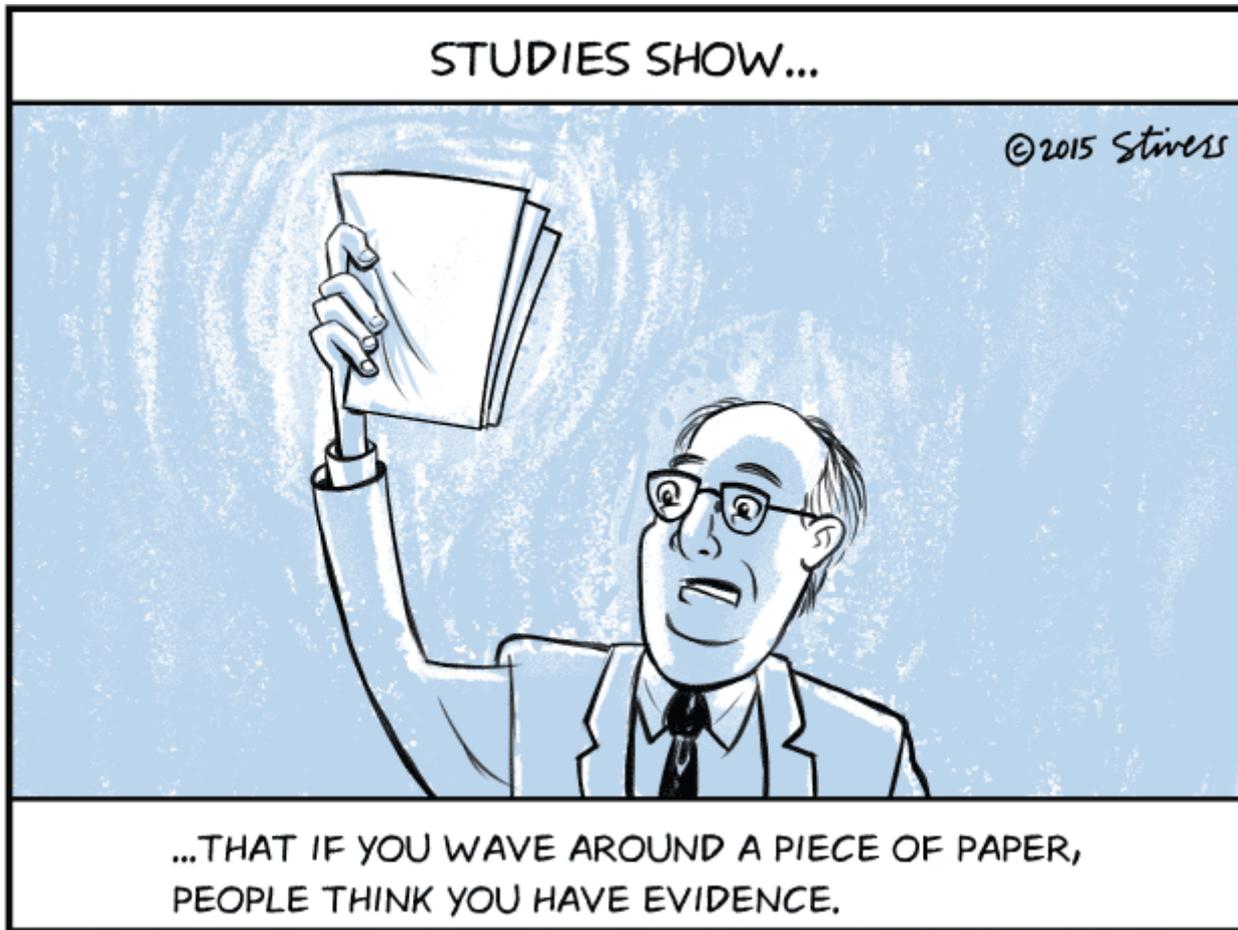
HOW TO RESPOND TO ALLEGATIONS?

DOCUMENT, DOCUMENT,
DOCUMENT



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HOW TO RESPOND TO ALLEGATIONS?





GROUP DISCUSSION

- Can you give any examples of times in your practice when you have ‘refused to perform unsafe work?’ What happened?
- What documentation did you make at the time about that refusal to provide care? Were the patient rights compromised? Would that be a breach of the Code of Patient Rights?
- Where does your “duty of care” come from?
- Does your duty of care require you to provide care to an aggressive patient?
- Is it possible to stop complaints being made?