

Improving the Employer-Regulator Partnership: An Analysis of Employer Engagement in Discipline Monitoring

Farah Ismail, LL.B, MSc.N, RN, and Sean P. Clarke, PhD, RN, FAAN

Employers are essential partners with health professions regulators in ensuring public safety and are critical to the success of discipline monitoring programs. However, working with discipline orders and the regulatory process often causes confusion and stress for employers. This article reviews the perspectives of regulators and employers regarding discipline monitoring in nursing as well as the legal and practical considerations. The article concludes by suggesting future directions for regulators and employers.

Employers play a key role in ensuring the competent and ethical practice of nursing. Indeed, nursing regulators consider employers essential partners in the pursuit of public protection. Employers are often best situated to monitor their employees, maintain effective communication with them, and establish collaboration with regulators to ensure that nurses and practice settings are in compliance with standards of practice. Certainly, tracking nurses' compliance with disciplinary panel orders, particularly restrictions on practice and provisions regarding monitoring of practice, requires the involvement and cooperation of employers.

Studies reveal that the number of nurses sanctioned by regulators in the United States has increased during the past decade (Zhong & Kenward, 2009). In response to the increasing case volume, regulators have started to focus on employers as partners in oversight of the terms, conditions, and limitations on nurses' practice. Employers, however, have expressed fears and concerns about and frustration with their involvement (Budden, 2011; Tanga, 2011). Moreover, employers' understanding of their involvement varies widely across the range of institutions and clinical settings where nurses practice. Given these complexities, it is not surprising that employers' understanding of the goals of discipline orders and their role in monitoring compliance are sometimes incomplete and that employers often request guidance from regulators.

This article reviews the basis for disciplinary monitoring, analyzes the legal framework and the challenges faced by employers, examines strategies for increasing engagement, and identifies directions for improving employers' engagement. In this article, the term *employer* refers to the administrators, managers, and staff members who provide oversight and evaluation of nursing practice in an organization.

Legal Framework

The practice of nursing requires the application of knowledge, skill, and judgment because unsafe or unethical practice poses risks of harm to the public. Governments have delegated the responsibility for public protection to regulators who are responsible for disciplining nurses through an administrative proceeding when performance falls below the standards of conduct (Leslie, 2012, p. 71). An incident of professional misconduct or incompetence may result in a referral to the disciplinary process if regulators determine that the act constitutes a breach of the standards of practice or shows a lack of integrity. An administrative proceeding typically follows and often results in a disciplinary order that includes findings of fact, conclusions of law, and suspension of licensure (Kelly, 2010) or terms, conditions, and limitations on licensure.

Employers generally understand that it is their legal obligation to report criminal activity and substandard conduct to senior officials in their organizations in accordance with policies and procedures and in good faith and with reasonable belief that the information is true and not for personal gain (Cornock, 2011). If employers fail to disclose such information and patient harm results, they face potential legal exposure associated with negligent supervision (Tanga, 2011).

Most employers also know that they are required to verify the licensure status of an employee with the relevant regulator, to ensure not only that the nurse holds a valid license but that the employment is in compliance with any restrictions on the nurse's practice. Regulators rely on mandatory reporting as the main mechanism for employers to communicate concerns about a nurse's practice. In fact, many jurisdictions have mandated a reporting framework for employers whereby they must report an intended or actual termination of a nurse or a nurse's privileges for reasons of professional misconduct or incompetence.

When nurses are disciplined, administrative rulings often create another reporting obligation for employers: the duty to advise regulators when nurses are not in compliance with disciplinary orders. Employers may be reluctant to participate in this part of the process because of the perceived burdens and risks of employing nurses with practice issues, yet employers also fear legal exposure if they are unwilling to accommodate nurses' learning needs and reintegrate disciplined nurses into the workplace.

Remediation: The Basis for Disciplinary Monitoring

In general, regulators take harsh and decisive disciplinary action in cases of deliberate harm to patients, concealment of errors, and reckless conduct (National Council of State Boards of Nursing [NCSBN], 2012). In these cases, the regulator assists employers by advising them of any system issues uncovered during an investigation and encourages employers to provide supervision, mentoring, and specific remediation for reckless behavior (NCSBN, 2012).

Only a minority of the cases handled by regulators are related to criminality or willfully reckless conduct. In most cases, remediation of practice is the obvious approach. *Remediation* is defined as the process of evaluating, counseling, and educating a nurse to improve nursing practice (Harding & Connolly, 2012, p. 50). The focus on remediation in disciplinary orders is based on the idea that nurses' continued competence and accountability for practice can be ensured through reflection on episodes of professional misconduct or incompetence. Consequently, remediation may not be suitable for nurses who engage in illegal and unethical acts if they cannot or will not accept responsibility for their actions (Collins & Mikos, 2008; Harding & Connolly, 2012). (See Table 1.)

In remediation, regulators typically develop an action plan to address the error, and they want to collaborate with the employer in implementing it. The plan may include provisions for close supervision, mentoring, and remediation of specific knowledge and skill deficits (NCSBN, 2012). Framed in a blame-free and nonpunitive context, remedial measures include learning about and reflecting on nursing practice standards. The actual learning and evaluation strategies include competency assessments through direct observation, discussion, certification, peer review, root-cause analysis, simulation, testing, skills validation, role-playing, orientation, and return demonstration (Harding & Connolly, 2012, p. 49). All these approaches can be implemented easily in the workplace when employers' roles are clearly defined. Clarifications are nonetheless needed to prevent role confusion and allow all to identify the disciplinary order as the authority for oversight of and modifications to a nurse's practice (Harding & Connolly, 2012, p. 51).

Challenges for Employers

Employers maintain sufficient numbers of qualified nurses to deliver safe, competent, effective care. As a result, employers may

be concerned about possible disruption of workflow by discipline monitoring. In particular, employers may not believe they have the time, money, resources, skills, and experience to effectively monitor nurses (Tanga, 2011). Smaller institutions may have insufficient staff to participate in the process (Budden, 2011).

In Budden's survey (2011), representatives from 1,733 hospitals, home health agencies, and nursing homes returned surveys. The response rate of 22% did not differ across facility type. The majority of employers indicated they had not reported any nurses to the board of nursing (BON) for possible disciplinary action in the past year; however, respondents from hospitals were more likely to report that they had contacted the BON than respondents from home health agencies or nursing homes. No further exploration of these differences was done, and small clinics and small health facilities were not included in the study. Although this study deals with a different type of engagement in regulation (i.e., reporting), it suggests that regulators seeking to engage employers in discipline monitoring may need to adjust their approach across practice settings because the oversight, collaboration, and commitment to practice remediation may differ across settings (Kelly, 2010).

Employers are also faced with special human-relations challenges when participating in discipline monitoring. Managers are required to orient, train, and support their nurses, yet employers involved in discipline monitoring must report deficiencies to the regulator, and such reports can have serious consequences. Employers may find it challenging to balance their empathy for and encouragement of nurses (Tanga, 2011) with their obligation to monitor and report. Employers may excuse, rationalize, or lament lapses in professionalism because of their relationships with nurses. They may find it challenging to be objective as they balance a nurse's rights to freedom and privacy against disciplinary orders. Clearly, employers can play an important part in reintegrating disciplined nurses and assisting them in demonstrating the ability to practice competently and safely (Harding & Connolly, 2012). However, the work and stress of monitoring can appear to overshadow the rewards of successfully assisting nurses back into the fold of their workplaces and the profession at large.

In their chapter, "Health care under the influence: Substance use disorders in the health professions," Kunyk and Els (2012) discuss the concept of wearing two hats. Employers who hire nurses with substance use disorders must often be involved in their treatment while monitoring their behavior and performance. Employers participating in discipline monitoring face a similar situation. They have an ethical duty to protect patients (Tanga, 2011), but they may struggle with their loyalties to staff members (Hooper, 2011, p. 18). These similarities in substance use monitoring and discipline monitoring should be noted by regulators.

Another challenge is the employers' lack of familiarity with regulatory processes. Unless employers have first-hand experience with discipline, they typically are unfamiliar with these processes, and their lack of understanding may result in a failure to fulfill reporting obligations (Tanga, 2011). Although remediation is often

Download English Version:

<https://daneshyari.com/en/article/2684590>

Download Persian Version:

<https://daneshyari.com/article/2684590>

[Daneshyari.com](https://daneshyari.com)