



COVID-19 Guidance: Declining a Patient Assignment

Updated March 16, 2020

ONA has received requests from nurses as to their options for declining a patient assignment if they believe the available personal protective equipment (PPE) is inadequate to ensure the nurse's own safety.

Following is a best practices protocol for those circumstances:

- 1) All nurses should be familiar with current OHA guidelines relating to PPE and COVID-19 precautions, (<https://www.oregon.gov/oha/PH/DISEASES/CONDITIONS/DISEASESAZ/Emerging%20Respiratory%20Infections/COVID-19-Provisional-Guidance-Healthcare-Infection-Prevention-Control.pdf>) ;
- 2) Before taking an assignment, the nurse should determine whether adequate PPE is available for the patient being assigned. If the patient is a diagnosed COVID-19 patient or person under investigation (PUI) and the nurses believe that the assignment is unsafe to themselves because of lack of PPE, based on OHA guidelines, the nurse should identify the issue with their charge nurse.
- 3) If charge nurse cannot correct the issue, and the nurse wishes to decline the assignment, then they should do so by identifying the deficiency to the nurse's supervisor by reference to OHA guidelines.
- 4) If they are ordered to accept the assignment by a supervisor, and the nurse again wishes to decline, the nurse should identify the non-compliance with OHA guidelines and ask if they are being directed to assume care under threat of insubordination.
- 5) If the nurse is directed under threat of insubordination and refuses, then the nurse risks discipline and professional license discipline. However, in general, employees can decline an assignment if the employee, with no reasonable alternative, refuses in good faith to expose themselves to a dangerous condition that could cause death or serious injury.
- 6) A nurse who violates a directive **must** be able to identify the risk to their safety and should identify the non-compliance with OHA guidelines at that time. This will put them in the best position to avoid an insubordination charge or to be successful in challenging discipline.
- 7) Similarly, the Oregon State Board of Nursing appears to be interpreting its statute and rules in a manner that would require a nurse **to accept an assignment** unless there are objective bases for risk to health or safety. Again, a nurse who believes the assignment poses a danger to their health must be able to identify the **objective**

basis for that concern based upon OHA guidance. It is our current understanding that a nurse who declines an assignment risks license discipline unless they can identify the scientific basis for their refusal. For a nurse to refuse to accept a patient assignment they must have a scientific basis for refusal of care for a patient. According to OSBN this means:

- a. Patient must be presumptive or positive for Covid-19 if basis of refusal is related to care for Covid-19 patient without the appropriate PPE¹ and further:
 - b. Must also have scientific basis as to why an individual's caring for a patient would be unsafe for that patient, themselves and other patients. This cannot be based on an individual nurse's emotions or personal fear of the unknown.
- 8) The situation of a nurse who assumes care and then determines that significant risk to their own health is posed by the assignment will be in a more difficult position due to a heightened standard for patient abandonment concerns. However, a nurse who believes their own safety is placed in imminent risk by continued care should follow the outline above if they wish.

Special circumstances for vulnerable caregivers:

For a nurse who is vulnerable to complications from COVID-19, we recommend that the nurse take proactive steps now to avoid risk of exposure. Thus, nurses in vulnerable age ranges (currently over 60²) or with other complicating health conditions should ask as an accommodation now to not be assigned to COVID-19 diagnosed or suspected cases. This would be a request for accommodation under the Americans with Disabilities Act ("ADA"). For patients with underlying health conditions, a provider's support for this requested accommodation should be obtained. Where the requested accommodation is denied, the nurse should follow the guidelines referenced above for declining a specific assignment.

¹ If facility is out of PPE because the facility chooses not to purchase PPE and it is available for purchase, then nurses should contact the OSBN, as the Chief Nursing Officer is ultimately responsible for ensuring nurse and patient safety for investigation. However, this is different than if facility is out of PPE because of supply chain interruption. If PPE is not available at the facility, requests for OHA PPE stock should be directed to County health departments. This request can be made by the facility or by the nurse.
(<https://www.oregon.gov/oha/PH/DiseasesConditions/CommunicableDisease/ReportingCommunicableDisease/Documents/reportdisease.pdf>).

² These criteria are subject to change based upon updated guidelines from CDC. CDC guidance should be consulted by any potentially effected nurses.