As we continue to ask Providence Willamette Falls Medical Center (PWFMC) to provide adequate and safe rest and meal break coverage, some nurses who are speaking up have been questioned by managers and administration in ways that are less than collegial, and in some cases, have been intimidating to those nurses. It’s important for every nurse to know the laws we are all subject to, and the legal basis for which we are asking the hospital for adequate and safe rest and meal break coverage.

Under Article 14.7 of our Collective Bargaining Agreement (CBA), we are entitled to one (1) 30-minute unpaid lunch and three (3) 15-minute paid rest breaks in a 12-hour shift (two 15-min breaks in an 8 hour shift).

When we are not able to take our breaks because of high acuity/intensity patient assignments, and no available nurse to watch our patients, the hospital is not holding up their end of the collective bargaining agreement.

Additionally, one of the Oregon Health Authority (OHA) findings from our survey was that the hospital was deficient in being able to prove that minimum numbers of staffing were maintained. This is required by unit staffing plans while nurses and CNAs are on their breaks (violation of Oregon Administrative Rules (OAR) OAR 333-510-0110 Section 2 subsection f). In other words, if your staffing plan calls for 5 nurses and 2 CNAs for a census of 20 patients, but a nurse and a CNA are both on lunch, then the
actual staffing on the floor is 4 RNs and 1 CNA, which is a violation of the staffing plan. Anna Davis, Nurse Staffing Policy Analyst at the OHA, continues to maintain that a hospital unit is out of compliance with staffing plan laws, such as maintaining minimum staffing requirements, unless the hospital can show how the staff were replaced during a rest and/or meal break. This could be easily remedied with a float nurse.

The hospital has posited in both their response to the OHA and in their proposal for the rest and meal breaks policy that nurses “do not assume care of their partner’s patients while on break,” an assertion to which nurses all across PWFMC have resoundingly objected. The language recommended to include in our nurse staffing plans per Administration to our Staffing Effectiveness Committee in our OHA response states, “Break relief nurse (Care Partner/CN/House Supervisor) will not assume role of primary nurse, and language will be clarified to demonstrate that nurse will only be responsible for answering call lights or scheduled interventions, and will not assume total care for those patients he/she is covering.”

The proposed policy language contradicts the Nurse Practice Act, specifically with regards to OAR 851-045-0070 section 1 subsection (j): that if our care partner does not assume care of our patients while we are off the floor on a break, that constitutes "leaving a client care assignment during the previously agreed upon work time period without notifying the appropriate supervisory personnel and confirming that nursing assignment responsibilities will be met," as well as the Rules set forth in OAR 851-045-0040 section 5, "Standards related to the licensed nurse’s responsibility to assign and supervise care."

Furthermore, confirmation of this position was obtained after nurses consulted with Ruby Jason, the Executive Director of the Oregon State Board of Nursing (OSBN); her response to this draft language was this: “Any nurse who agrees to accept a patient (covering breaks, lunches, covering for a nurse who left the unit with another patient for a procedure, etc.) does indeed take accountability for that patient under their license and as such becomes responsible and accountable for any interaction, intervention that they experience with the patient. ‘Answering call lights’ means a patient needs something, anything from a question about their care to informing the nurse that they have pain or any required intervention. That intervention would rest in accountability and responsibility under the license of the nurse who answered the call light. A patient care assignment is much different in an organization than in the context of the practice act. The Practice Act does not care whose ‘assignment’ it is, the Practice Act is based upon which licensee performed the activity involving the patient. If there is a patient complaint regarding an interaction with a patient, we would not excuse the involved RN by saying that ‘it was not your patient anyway, you were just covering.’ Anytime a nurse interacts with a patient they are doing so under their license, not the license of another nurse. Also, it is the Board and not any organization who decides what is and what is not nursing practice. Hospital policy cannot supersede the practice act.”

The OSBN position was presented at the last Staffing Effectiveness Committee meeting. The language in our staffing plans was adjusted accordingly so that our staffing plans could be agreed upon. However, many nurses who decline taking breaks at PWFMC, maintain they cannot be sure their patients are going to be taken care of while they are on break. If the nurse agreeing to cover for their “care partner” cannot be sure they can cover the needs of their own patients and their partner’s patients, nurse are saying NO to the “care partner” (aka buddy) system. When managers question why you have not taken a break and say “it’s the law, you have to take your break.” Answer them with “it is also the law that we ensure safe responsibility is taken for our patients when we are on break.” As mentioned before, a dedicated float nurse would alleviate this problem instantly.
Know Your Weingarten Rights!

What are Your Weingarten Rights?
In the case National Labor Relations Board vs. J. Weingarten, Inc., the Supreme Court ruled an employee who reasonably believes an investigatory interview will result in discipline has the right to have a union representative present. This is legally protected activity under the National Labor Relations Act (NLRA) and is your fundamental right as part of an ONA bargaining unit.

All nurses in ONA bargaining units have the right to ONA representation during any investigatory interview that could lead to discipline. By invoking your Weingarten Rights, you ensure you have an advocate by your side during difficult conversations. Having an ONA steward or labor representative supporting you gives you a contract expert to advise you during any conversations with management that may lead to discipline.

While we hope you never need to exercise these rights, it’s important that we all know our rights in order to protect ourselves and our coworkers.

You Have a Right to Representation
Every nurse has discussions with supervisors about job performance. When this happens to you, there is an important question to ask your boss, “Could this meeting lead to discipline or affect my personal working conditions?”

If the answer is “Yes,” stop the meeting and invoke your Weingarten Rights by saying: “If this discussion could in any way lead to my discipline or termination, or affect my personal working conditions, I request an association representative, steward or officer be present. Unless I have this representation I respectfully choose not to participate in this discussion.”

How to Use Your Weingarten Rights
Take immediate action when you are called into a meeting or discussion you believe may lead to discipline.

- Ask the supervisor or manager who is present, “Could this meeting lead to discipline or affect my personal working conditions?”
- If the answer is “Yes,” stop the meeting immediately.
- Invoke your Weingarten Rights by saying: “If this discussion could in any way lead to my discipline or termination, or affect my personal working conditions, I request an association representative, steward or officer be present. Unless I have this representation I respectfully choose not to participate in this discussion.”

Need help remembering your Weingarten Rights?
Request an ONA badge backer from your labor representative, Karly Edwards, at Edwards@OregonRN.org. ONA badge backers identify you as a registered nurse, fit most lanyards and contain the full Weingarten statement on the reverse side.