Red Rule Discipline Continues
Employer Continues to Discipline Unintentional Errors

We continue to see nurses and others disciplined inappropriately over unintentional errors that did no patient harm. As we discussed in our March newsletter, we recognize that a few employees should be disciplined when the action is egregious or potentially injures a patient or someone else.

ONA exists to ensure the highest patient care possible. If a nurse becomes complacent or deficient, we ensure they are provided a fair hearing as well as the tools and support to become a high-performer.

However, our employer continues to discipline nurses over errors that should receive oral coaching. To be clear,

Hospital Profits Plunge In 2017
Flat Revenue Cut Profits by Two-Thirds

After several years of increasing profits, Sky Lakes’ profit margin plunged below the state average in 2017. From 2013 to 2015, profit margins typically doubled the state average (see chart at right).

However, in 2017, Sky Lakes’ profit margin was only 3.3 percent, which is below the state average of 3.9 percent. These data are derived from annual reports to the Oregon Health Authority (OHA), the state agency responsible for overseeing hospital finances. Profit margin, or “operating margin,” is
Red Rule Discipline Continues (continued from page 1)

discipline means being “written up” with a warning in our personnel files, which can lead to termination. Oral coaching is when a supervisor discusses the error with an employee and points the direction to success.

In the last year, nurses and others have received 47 disciplinary actions around red rule violations. Many have been unintentional errors.

For example, in one case, a nurse forgot to put the label on a specimen sample before sending it to the lab. She realized her error a few seconds after sending it, headed it off at the lab, and fixed the error by explaining to everyone involved. Yet, she received a stage one discipline (verbal warning with written documentation).

Another nurse did not place the label on the specimen jar but placed it in the bag instead. The lab called and identified the patient from the label. They explained the label must be placed on the specimen, not just in the bag. The nurse sought out immediate training from a colleague and performed the task perfectly at the next opportunity, less than two hours later. She also received a stage one discipline (verbal warning with written documentation).

We have talked with other nurses who had similar experiences. In all of these case, the nurse’s error was not intentional. Either they made a mistake, which each of them owned, or there was a gap in training.

Administration is supposed to follow their own Performance Management Decision Guide, which is an algorithm or decision tree to assist in correcting performance deficiencies. At the compliance test stage, the question asks, “Is there evidence the individual chose to take an unacceptable risk OR has a trend in poor performance or decision making.” If the answer is YES, the actions to consider include disciplinary action. If the answer is NO and there are no gaps in training, the actions to consider include console, coach, increased supervision, or performance improvement plan, but disciplinary action is not listed. If the process uncovers training gaps, the guide suggests, “possible system induced error,” which requires the employer to find and fix the problem.

In virtually every case we have heard about, the error was unintentional, and the nurse involved has a stellar track record. The appropriate course of action should be oral coaching or other non-disciplinary outcomes. We are pursuing grievances in several of these cases.

What do you think? Should high-performing nurses be punished for unintentional errors?

Safe-Guarding Our Rights Through Solidarity

Union Reps May Attend QCs; Dedicated Security Guards in ED 24/7

In recent weeks, ONA stewards have asserted our rights more aggressively around two major contractual violations by the employer:

- We assured nurses’ rights to representation during Quality Control (QC) investigations
- We ensured emergency department (ED) will have a dedicated security guard 24/7

RIGHT TO REP IN QCs

Our stewards have seen many nurses denied their rights to representation in investigatory meetings that could lead to discipline. Some managers have told nurses that the QC meetings are a separate investigation and Weingarten rights do not apply. Instead, they have conducted a second investigatory meeting, often re-doing the first one.

Clearly, these nurse managers are not familiar with federal law, which provides any nurse with the right to a witness in a QC, if it might lead to discipline. Our leaders strongly advocated and explained this violation in several meetings with our employer. Because the employer knows that nurses are unified and willing to stand up for their rights as witnessed in
calculated as operating income divided by total revenue.

Sky Lakes profits, or “operating income,” in 2017 was only $8 million, which is two-thirds less than the $21.2 million profit from the previous year. Operating income is the annual profits in dollars of a hospital, calculated as total revenue minus total expenses. Total revenue is all hospital revenue derived from patient services. Total expenses include all hospital expenses associated with providing those patient services, such as salaries, employee benefits, purchased services, supplies and professional fees.

In 2017, flat revenue at Sky Lakes was unable to keep pace with expenses. Last year’s total revenue of $243 million was virtually unchanged from the $247 million revenue in 2016 (see chart at right).

The OHA data do not reveal why revenue at Sky Lakes was flat in 2017. Last year, statewide hospital revenues increased by 2.5 percent over 2016. According to data reported to the oregonhospitalguide.com, patient volume has increased at Sky Lakes. Inpatient days increased to 19,813 in 2017 from 19,071 in 2016, and ER visits increased to 28,727 from 27,222 over those two years. Other indicators suggest the economy of Klamath County continued to improve slowly like the rest of rural Oregon last year.

While revenue was unchanged last year, the hospital’s expenses continued to rise. In the last five years, Sky Lakes’ expenses increased an average of nine percent, rising to $235 million last year.

We know that nurses wages are NOT the cause of dramatic increases in expenses over the last few years. Since 2013, nurse wages have only increased 2.5 percent annually as compared to the nine percent annual increases in overall hospital expenses (see table at left).

With reduced revenues and a much smaller profit, nurses note that the Sky Lakes board of directors unanimously voted to sue the state of Oregon over the siting of a social services building new downtown (Herald and News, August 24, 2018, page A1). We have heard from many nurses who are puzzled that the Sky Lakes board decided to use our limited resources to undertake legal action on a matter completely unrelated to the provision of health care in our community.

Indeed, the board’s chair, John Bell, owner of Bell Hardware in downtown Klamath Falls, has an obvious conflict of interest as he has argued that a social services site downtown would deter new business. Nurses tell us they think the board should focus on improving health care in a more collaborative fashion.

<table>
<thead>
<tr>
<th>Wage Increase</th>
<th>Effective Date</th>
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<tbody>
<tr>
<td>0.0%</td>
<td>January 1, 2013</td>
</tr>
<tr>
<td>1.0%</td>
<td>January 1, 2014</td>
</tr>
<tr>
<td>2.0%</td>
<td>January 1, 2015</td>
</tr>
<tr>
<td>1.0%</td>
<td>July 1, 2015</td>
</tr>
<tr>
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<td>January 1, 2016</td>
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<tr>
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<td>July 1, 2016</td>
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<tr>
<td>$1.50 to each step (3.5% on average)</td>
<td>September 4, 2016</td>
</tr>
<tr>
<td>2.0%</td>
<td>January 1, 2017</td>
</tr>
</tbody>
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Total increases of 12.5% divided by 5 years = average annual wage increase of 2.5%
last fall’s bargaining, they capitulated and will now follow the law to allow stewards to attend QCs. (Learn more about our Weingarten rights on page 6).

QCs are often investigatory meetings. As a result of ONA leaders’ efforts, managers and directors will begin informing nurses of their rights under federal law and our contract. Our united efforts to ensure this law and contract are followed was successful!

Recently, the employer informed us they will instruct all nursing supervisors that if a QC has a component that may lead to discipline, that managers and directors must follow our contract and inform the nurse of their rights to representation. This is a big change from past practice by Sky Lakes' nursing administration.

In the past, the employer used a noncompliant two-step process. QCs as the first step and the investigatory meeting as the second, if necessary, with a rep present and often re-doing parts of the QC. This noncompliant process left nurses in a dangerous spot. Essentially, nurses in QCs were providing information on which they could be disciplined without a representative present. Some managers have even labeled these QCs as “pre-investigatory meetings.” In one recent case, a manager asked the nurse to “help her look something up from one of your patients, because I am not familiar with the computer system.” The nurse said, “could this lead to discipline?” The response was “no,” but sure enough, the nurse received discipline.

To be clear, there is no such thing as a pre-investigatory meeting! If the manager knows a QC might lead to discipline, they must inform us of our Weingarten rights to union representation. Furthermore, as always, if a nurse in a QC meeting without a representative feels like it might lead to discipline, the nurse should stop the meeting and ask for a union representative. If a representative cannot be found in the moment, the meeting must be postponed until one is available.

DEDICATED SECURITY GUARDS 24/7 IN ED

It may seem strange to those who paid attention to bargaining last fall, but the employer neglected to ensure that dedicated security guards were in place in ED by July 1. In bargaining, they agreed to provide security guards 24/7 solely in the ED. Yet, when July 1 arrived, nurses and others noticed that security guards were in ED only intermittently. Our goal was to prevent the increasing rise in violence against patients and workers that ED nurses reported to us.

When we notified the employer in a pre-grievance communication, we were surprised the security manager offered an alternate interpretation of the contract. Although he was not present during bargaining, he stated that the intent of the parties was that the guard must be “primarily assigned to ED” and could round the rest of the first floor.

We were astounded that someone who was not at the bargaining table could boldly claim to know the intent of the parties, when our leaders were present during negotiations. We knew precisely what both sides had discussed.

In bargaining, our negotiators initially proposed metal detectors throughout the hospital. The employer rejected our offer and counter-proposed on November 17, 2017:

“There will be a security guard on a 24/7 basis assigned primarily to the Emergency Room.”

On that day, we agreed to this concept in general, but argued that the guard must be solely in the ER. Together, both parties produced the language that exists in our collective bargaining agreement, Article 11, Section 6:

“The Hospital shall assign a dedicated security guard on a 24/7 basis to the Emergency Room. This guard may assist in other areas of the Hospital in an emergency, but the primary responsibility will be to the Emergency Room. This Emergency Room security guard commitment will become effective no later than July 1, 2018 to allow for hiring and training.”

Members of our negotiating team rotated as a recorder to keep bargaining. On November 17, Rose Keppinger was our recorder and her notes clearly support our interpretation that the guard was to be assigned physically in the ER 24/7, except in an emergency.

The employer initially proposed a March 31, 2018
Safe-Guarding Our Rights Through Solidarity (continued from page 4)

implementation date. We asked whether that would provide sufficient time to hire and train additional security guards. So, we proposed the July 1, 2018 implementation.

After July 1, we asked charge and other nurses in ED whether a guard was present 24/7. They told us guards are not present at all times, even excepting emergencies. So, we filed a grievance to hold the employer accountable to what they said there were going to do.

Again, the power we have developed with the tripling of our membership, increase in stewards and other leaders, and the potentiality of nurses united in action made a difference. When we unite with patient protection and care as our goal, no one can stand in our way.

At a recent grievance meeting, the employer reluctantly agreed to do what they had promised to do under our contract. A security guard must be in the emergency department and cannot round anywhere else on the first floor, except in an emergency. (Other guards can patrol that area and the other parts of campus.)

We agreed with their suggestion that the best place for that guard to spend most of their time is in the security office inside the emergency department, where they can monitor 16 cameras that cover the department. They plan to add a door to that office that would lead directly into ED workspace and two more cameras to ensure complete coverage.

They asked whether continuing their current procedure of manning the ED in one-hour shifts, with a rotation of the guards who are on duty, was acceptable. We agreed to that plan with the key understanding that a guard must be present in ED 24/7, as they agreed to do in our legally binding contract.

We appreciate that security is essential throughout the hospital. So, we were pleased to learn that the hospital did indeed fund four additional security guard positions this year, but they have had trouble hiring, training, and keeping those employees.

We were very disappointed that we had to file a grievance to get the employer to do what they said they were going to do last fall. We also are disappointed that they knew that they would not be able to fulfill the contract by the date we agreed to. Further, they took no action to inform us.

We hope in the future that the employer will come to us ahead of time to notify us they cannot comply with the contract. It does not build trust that they waited to see if we would discover non-compliance and force us to file a grievance to resolve it.

We are close to settling this grievance, but we want strong evidence from the employer to ensure compliance. We are asking for regular logs of when a guard “wanded” or swiped to show their presence in each of the four locations in ED four times an hour. We will continue to monitor services and hold them accountable.

Get Involved to Map Our Future Growth!

Our leaders are holding STRATEGIC PLANNING sessions to prepare for the growth of our bargaining unit at Sky Lakes. We invite you to participate by attending one of these sessions, which will assess our current state and map future potential:

Thursday, Sept. 13, 5:30-7:00 p.m.
Friday, Sept. 14, 8:30-10:00 a.m.

For locations and more details, please text or call Gary Aguiar at (503) 444-0690 or contact him via email: aguiar@oregonrn.org
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.

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.”

• Contact your ONA steward or ONA labor representative immediately, or call the ONA office at 503-293-0011.

• Wait for the ONA steward or labor representative to arrive or reschedule the meeting. Do not continue the meeting until your ONA steward or representative is present!

Every ONA nurse has the right to fair representation. If you have additional questions about your Weingarten Rights, contact your union steward or your labor representative.

Know Your Rights!

Got questions about how you are treated by your employer?

Opportunities for nurses to understand our rights under our contract.

Our workshops teach you **how to organize and focus nurse power!**

Topics:

• Workers’ Rights
• Member Benefits
• Build Nurse Power
• Discipline and Investigatory Meetings
• ONA Structure & Activities
• Grievance Process
• Rights and Responsibilities of Union Stewards

This curriculum is our exciting steward training material. However, nurses are NOT obligated to sign up as a steward to attend. We want as many nurses as possible to understand their rights and how we function. Decide later if you want to serve as a steward.

Sessions to be held these dates:

• Friday Sept. 14, 2:00-4:00 p.m.
• Saturday Sept. 15, 9:30-11:00 a.m.

**PLEASE RSVP ASAP!**

Text, call, or email Gary Aguiar:
(503) 444-0690 or aguiar@oregonRN.org