

# Can I Refuse To Care For A Patient Who Has Ebola Or Any Other Viral Disease?

**Avoiding Liability Bulletin - November 1, 2014**

Shortly after two nurses from Texas Health Presbyterian Hospital in Dallas became infected with the Ebola virus after caring for Thomas Eric Duncan (who died from the disease on October 8, 2014), the American Nurses Association (ANA) was involved in voicing its position and its concerns for all nurses caring for patients with Ebola. On October 16, 2014, The Centers for Disease Control and Prevention (CDC) announced revised emergency preparedness and treatment guidelines to prevent the transmission of Ebola in the U.S.<sup>1</sup> The ANA supported these revised guidelines but indicated that the revisions were not “clear-cut guidelines that would ensure quality care and safety for team members and for patients”.<sup>2</sup>

On October 20, 2014, the CDC issued its Fact Sheet: Tightened Guidance for US Healthcare Workers on Personal Protective Equipment for Ebola. In summary, four principles were emphasized: rigorous and repeated training in the use of PPE; no skin exposure when PPE is worn, which includes a single use disposable full face shield; the presence of a trained monitor to actively observe and supervise each worker taking PPE on and off; and disinfection of PPE prior to taking PPE off.<sup>3</sup>

Despite these guidelines, you may still have concerns about your safety when caring for a person with a diagnosis of Ebola or a person being monitored for suspected Ebola. The concerns you have should not be due to the patient’s diagnosis alone, since nurses are obligated to provide non-discriminatory care and to respect for all individuals. Rather, some of the concerns being voiced by nurses include back orders and shortages of PPE supplies, inadequate training in the use of PPE, and that CDC guidelines are guidelines only and individual state departments of health may or may not require health care facilities to follow CDC guidelines.

So, what should you do if confronted with a patient care assignment of a patient with Ebola or suspected Ebola and you are unable to comply with the guidelines of the CDC or your state department of health? Can you refuse to care for the individual *under these circumstances*?<sup>4</sup> And what if your refusal, and your fellow nursing staff members’ refusals, ultimately results in the patient’s death?

Since 2009, the ANA, in its Position Statement “Patient Safety: Rights of Registered Nurses When Considering a Patient Assignment”,<sup>5</sup> has upheld the right of registered nurses to accept, reject, or object in writing to any patient assignment that puts patients or themselves at serious risk for harm. In addition registered nurses are duty- bound, legally, professionally, and ethically, to act as advocates for themselves and their patients by voicing concerns about patient assignments.<sup>6</sup> How that advocacy manifests itself can make all the difference in the world, not only for the registered

nurse but also the patient and the public at large as well.

When you are confronted with the care of a patient who has been diagnosed with Ebola or is being monitored for suspected Ebola and you lack in the protections needed for you and your patient, you should *carefully* consider the following:

1. Refuse the assignment, following the established policies and procedures of your employer (e.g., in writing, factual reasons);
2. Request that the required PPE, training and re-training, and the presence of a trained monitor be provided before care is undertaken;
3. If a member of a union, contact the union representative;
4. Seek outside legal advice for guidance about the refusal, should the employer not heed your requests;
5. Report the lack of CDC guidelines and/or the lack of adherence to state health department mandates (with guidance from your lawyer); and,
6. Provide factual information about the situation to media sources (again with guidance from your lawyer).

If you believe you cannot refuse the assignment to care for an Ebola patient despite the lack of protections for you and your patient, you should provide the care that you are able to meticulously following Blood and Bodily Fluid Protocols that were established after the HIV/AIDS health crisis.<sup>7</sup> But, keep in mind, these protocols will most probably not provide the protection you need against the Ebola virus. If you become infected, seek treatment immediately at a facility that provides its health care staff with the proper PPE and protocols for treating this virus.

If you do become infected and are successfully treated, consult a workers' compensation attorney in order to determine if you may have a claim for a virus that you came in contact with "out of and during the course of employment".<sup>7</sup> Although this particular aspect of the legal ramifications of contracting the virus while working is being debated, it can be argued that nurses and other healthcare workers are at an increased risk of contracting the virus because they have little choice but to expose themselves to the virus as part of their job responsibilities.<sup>8</sup>

The death of a patient from any source is a sad and unfortunate outcome and often leads to lawsuits being filed against the health care providers who cared for the patient. Your refusal to care for an Ebola patient without required safety measures for both you and the patient might get you named in a lawsuit but it is doubtful that any verdict would be brought against you.

The bigger "target" would be the employer, which is under an obligation to adopt and enforce required protocols, train healthcare workers, require adherence to other mandated aspects of general infection control procedures, and oversee these practices, to name a few.

Last, remember too, that a refusal to provide treatment to any patient, including a patient with

Ebola, may be reported to the state board of nursing. But, again, with sound, documented reasons for the refusal, the refusal being based on a non-discriminatory basis, and being able to show you did whatever you could do to correct inadequacies in the provision of nursing care of the patient, should mitigate against any imposed discipline.

## FOOTNOTES

1. "ANA calls on the CDC for clear safety guidelines to avoid Ebola transmissions", Nurse.com News, October 17, 2014. Available at [http://news.nurse.com/article/20141017/NATIONAL06/141017003?utm\\_content=sf32652109&utm\\_medium=spreadfast&utm\\_source=facebook&utm\\_campaign=so...](http://news.nurse.com/article/20141017/NATIONAL06/141017003?utm_content=sf32652109&utm_medium=spreadfast&utm_source=facebook&utm_campaign=so...) . Accessed 10/24/14.
2. Id.
3. CDC (10/20/14). "Fact Sheet: Tightened Guidance for U.S. Healthcare Workers on Personal Protective Equipment for Ebola", 1-3. Available at <http://www.cdc.gov/media/releases/2014/fs1020-ebola-personal-protective-equipment.html?sf32785388=1> . Accessed 10/21/14.
4. The American Nurses Association's Code for Nurses With Interpretive Statements (2001) clearly requires nurses "... to practice with compassion and respect for the inherent dignity, worth and uniqueness of every individual, unrestricted by considerations of social or economic status, personal attributes, or the nature of health problems". (Provision 1).
5. ANA (2009). Position Statement: Rights of Registered Nurses When Considering a Patient Assignment.
6. Code for Nurses, *supra* note 4.
7. Christopher J. Boggs (2014). "Is Ebola Compensable Under Workers' Compensation?"

Insurance Journal. Available at: [www.insurancejournal.com/news/national/2014/10/10/343250.htm](http://www.insurancejournal.com/news/national/2014/10/10/343250.htm)  
. Accessed 11/1/14.

8. Id.

**THIS BULLETIN IS FOR EDUCATIONAL PURPOSES ONLY AND IS NOT TO BE TAKEN AS SPECIFIC LEGAL OR OTHER ADVICE BY THE READER. IF LEGAL OR OTHER ADVICE IS NEEDED, THE READER IS ENCOURAGED TO SEEK ADVICE FROM A COMPETENT PROFESSIONAL.**

**Author:**

Nancy Brent