

Nurses with disabilities: Know their rights

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Registered nurses (RNs) with physical disabilities experience discrimination in the workplace. Researchers have found that nurses with disabilities often leave the nursing profession because they feel discriminated against or they fear they will jeopardize patient safety. However, there are no documented incidents of patient injury related specifically to a nurse's disability.

To date, several exploratory research studies focusing on nurses with physical and/or sensory disabilities have demonstrated that these nurses experience discrimination in the workplace. Among other important findings, the studies revealed that nurses are frequently unaware of their legal rights under the Americans with Disabilities Act (ADA) of 1990 or its 2008 Amendment (ADAAA). The American Nurses Association (ANA) new Code of Ethics (2015) clearly supports the necessity of treating others fairly and with respect (Provision 1), promoting health, wholeness, safety, professional growth, and competence (Provision 5), and ensuring an ethical and safe work environment (Provision 6). The intent of this article is to increase nurse awareness regarding disability rights and commitment to treat our colleagues with disabilities fairly and without discrimination.

Findings about nurses with disabilities

It is not known exactly how many nurses have physical disabilities. The US Census estimates that about 10% of all working-age adults in the United States have a disability. According to 2014 statistics from the ANA, the average age of nurses in the United States is 50, and the percentage of working nurses over age 50 is 53%. The incidence of chronic conditions increases with age, and chronic illness increases the likelihood of disability. Consequently, the issue of disability among nurses has relevance to *all* nurses whether or not they currently have a disability. Moreover, the issue of disability has relevance to nurses who work with or supervise nurses with disabilities.

Common themes emerge from the research on nurses with disabilities:

- Nurses with physical and/or sensory disabilities often leave nursing because they fear they will jeopardize patient safety or they feel discriminated against.
- Nurses may try to hide their disabilities if that is possible and compensate for the disability if it is not.
- Nurses with a disability frequently feel singled out even though they may have felt a sense of belonging prior to acquiring the disability.
- There is a tendency to return to school to increase job choices and enable the nurse to select positions that require less physical effort.
- Some nurses ultimately leave nursing because they feel they are not supported by colleagues and administrators or they are unaware of their legal rights.

Initial research by Neal & Guillett (2008) explored the perceptions of nurses with self-reported physical disabilities. This study exposed perceptions of discrimination by the nurse participants. Their tendency to hide their disabilities whenever possible was consistent with reports from nurse recruiters who were also interviewed in the original study. The nurse recruiters commented that they weren't aware of having interviewed any nurses with disabilities, and admitted that a nurse with a disability might not receive a reasonable accommodation despite the mandates of the ADA.

Subsequent studies by Neal-Boylan, and colleagues (in 2011 and 2012) have examined the experiences of nurses with sensory disabilities (seeing, hearing, and communicating) and have compared nurses and physicians with disabilities and their work-life experiences. These studies validated the themes listed earlier.

A 2014 study by Neal-Boylan explored the experiences of nurses with disabilities who had found satisfactory employment and whether their job descriptions matched their actual work. In fact, these nurses rarely received job descriptions upon being hired, and their job descriptions, when provided, rarely matched the actual work of the job. The nurses who had found jobs in which their disabilities had little or no relevance had employers who were nurses who also had a disability or chronic illness or were *not* nurses. Nurses who worked for non-nurses tended to feel supported and described the supervisor's attitude as one of trusting the nurse to know what they needed to do and be able to do it. Nursing supervisors who had a chronic illness or disability themselves tended to be more empathetic and emphasize what the nurse brought to the job over the potential limitations of the disability. A 2015 study by Neal-Boylan and Miller included an analysis of legal cases involving RNs with physical disabilities post-ADA (1995 to 2013).

Disability law in the United States

The ADA was designed to confront discrimination against people with disabilities. Title I of the ADA, which addresses discrimination in employment, prohibits an organization with at least 15 employees from committing a negative action against an otherwise qualified person because they have a disability. Despite the protections afforded under the ADA, disabled employees complaining of discriminatory treatment at the hands of their employers often found that courts did not consider them to be disabled.

Disappointed with the way courts had interpreted the definition of disability, Congress amended the ADA in 2008, expressly noting that they had expected the courts to interpret the meaning of "disability" the same way they had done so under section 504 of the Rehabilitation Act of 1973. Congress went so far as to note in the purposes set forth in the ADAAA that the focus of the inquiry should be on whether the employer has met its statutory obligations as opposed to whether the employee's impairment constitutes a disability.

To be protected by the ADA, as amended, one must have a disability, defined under the law as:

- Having a physical or mental impairment that substantially limits one or more major life activities;
- Having a history or record of such an impairment; or
- Being perceived as having such an impairment.

Although the ADA did not explicitly alter this definition of disability, Congress did impose rules of construction that allow people who might not have been considered disabled under the courts' earlier jurisprudence to receive protection under the law. For example, the U.S. Supreme Court had earlier held that if a condition was mitigated in some way, then the person with that impairment was not to be considered "disabled" for purposes of the statute. Under this interpretation, a person with diabetes whose condition was controlled by insulin would not be eligible to receive reasonable accommodations under the law. Congress made it clear in the ADA that such mitigating measures were not to preclude an employee from being considered disabled under the law.

Similarly, the fact that a particular condition is in remission should not exclude the person who suffers from it from being considered disabled as long as a major life activity is substantially limited when the condition is not in remission.

As to what is meant by a substantial limitation of a major life activity, Congress rejected the U.S. Supreme Court's finding in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*. In that decision, the Supreme Court found that the meaning of a substantial limitation in a major life activity required a person to "...have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives." Congress also took the Equal Employment Opportunity Commission (EEOC) to task for equating the statutory requirement of "substantially limits" to "significantly restricted" in its regulations, noting that such a "high standard" is inconsistent with congressional intent to protect disabled persons from discrimination.

The cases by nurse claimants that were brought to court under the original version of the ADA often did not reach a jury because judges were prone to grant summary judgment to defendant employers on the basis that the nurse claimants could not prove that they had a disability. The ADA, with its more expansive reading of what constitutes a disability, should allow nurses to more easily clear that hurdle in bringing their cases before a jury. Moreover, Congress has now made it clear that, although employees must prove that they have a disability as defined by the statute, the primary inquiry under the law is whether the employer is fulfilling its statutory obligations to its employees. This redefinition of the ADA to protect employees, and not employers, can only be helpful to disabled nurses in the fight to eradicate disability-based discrimination in nursing.

Of course, nurses must still show that their condition limits their ability to work. Consequently, a nurse who is offered a different position within the hospital, for example, that requires less physical effort, but who chooses not to accept it, cannot then successfully sue for discrimination, as long as the new position is commensurate in salary and status to the nurse's original job. In addition, a nurse may have to show that he or she is "otherwise qualified" for the position. Thus, an employer may argue that there was no reasonable accommodation that would have allowed the nurse to perform the "essential functions" of the job. But just what are the essential functions of the job and who determines what they are? For example, is lifting an essential function for a RN? Should the employer be making that decision or should a court be guided by the expert testimony of a RN? Thus, although the current version of the ADA is not perfect, it does provide substantial protection for disabled nurses.

Recommendations

All nurses should acquaint themselves with the ADA and ADA, whether or not they currently have a disability. All nurse administrators must understand the ADA and ADA, as they might manage a nurse with a disability. If a nurse working in the United States believes that he or she is being

discriminated against because of a disability, then the nurse should file a complaint with the EEOC. Based on its review, the nurse should consider hiring an attorney who specializes in disability law and who is knowledgeable and current regarding the ADA and ADAAA. It is not safe to assume that all attorneys will be familiar with the details of the ADA or ADAAA. If the nurse's concern is found to have merit, the nurse, with the help of the EEOC or an attorney, will then file a complaint through the federal district court. (See [Resources for nurses with disabilities](#).)

Human Resources staff, nurse managers, and administrators must also be knowledgeable of the ADA and ADAAA to avoid inadvertently discriminating against their employees. It is wrong to assume that nurses otherwise qualified based on education, experience, and expertise, cannot perform a job safely merely because they have a physical disability. There are so many roles for nurses, many of which do not require strenuous physical activity, such as some positions in nursing education, case management, poison control centers, and nursing administration. To exclude nurses who are intelligent and think critically because they have a disability is not only illegal but contradicts our own rhetoric to be inclusive and diverse.

Finally, the profession as a whole should be aware of the legal process to ensure that nurses are called upon to be the expert consultants in these cases. Currently, physicians are often called upon to determine the essential functions of a nurse's job. The profession must take steps to take the physician out of this process altogether. Physicians are not qualified to assess nursing work. In addition, rehabilitation physicians and other professionals should consult with nurses before determining that a nurse is not fit to return to work. Increased awareness of the ADA and one's legal rights and responsibilities can help nurses to be prepared should they encounter discrimination.

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