

Advice for NZNO members: Professional obligations when considering support for life preserving services during the redeployment and additional hours strike

General

The right to strike is a fundamental statutory right under New Zealand employment law. Participation in a lawful strike, in and of itself, does not constitute a breach of professional obligations. Members are free to make their own decision in this regard.

During a strike, the responsibility for contingency planning sits squarely with the employer, and not with individual members. However, the employer may still request assistance from members. The members will decide whether to accept any particular request from Te Whatu Ora to provide support for life preserving services ('LPS'). Members should consider both the right to strike, and their professional and ethical obligations before making a decision on this issue.

Ethical and Professional obligations

During a strike, if the nurse is on duty, their primary obligations are to the patients they are already responsible for. Before making a decision whether or not to provide support for LPS, the nurse may need to consider their ethical and professional obligations, including the following:

- NCNZ Code of Conduct (4.2 and 4.12)
- HPCA Act (requirement to practise within competence and ensure safe care)
- Common law principle of Duty of careⁱ

Situations when refusal to provide LPS support may be professionally justified

- If the nurse is not on duty.
- If a nurse believes that responding to an LPS request would:
 - leave their current patients unsafe,
 - require practice outside their scope or competence,
 - place their own safety at unacceptable risk,
 - contravene ethical or professional obligations, or
 - be unnecessary because other options are available,



Clear professional judgement and documentation – Protecting yourself

Where a nurse decides they should not safely leave their current patients to provide LPS support, NZNO recommends that they clearly document their rationale for that decision. This can be done in your own notes or via email correspondence to the request, which can be produced if needed. Documentation should include:

- the time the request was made,
- the patients you were responsible for,
- the risks you identified,
- why leaving would have been unsafe,
- whether safer alternatives were available,
- any discussion with colleagues or managers,

Situations where you may choose to assist with LPS

Based on their professional judgement, a nurse may decide to assist with LPS, for example:

- If the nurse is on duty, and they do not have a patient load or they can safely hand over the care of their patients, and the nurse has the skill and knowledge to provide LPS.
- Offer assistance in an emergency that takes into account your own safety, your skill and the availability of other options.

Note: The NCNZ Code of Conduct and HPCA Act do not apply to unregulated workers. Healthcare Assistant members should therefore consider their own ethical obligations, competencies and the common law principle of Duty of Care when making decision whether or not to assist with LPS.

ⁱ Duty of care has a particular significance in a medico-legal framework and has a different meaning from “the duty to provide care” and the “duty to give care”. It is a legally imposed obligation or duty (derived from common law) to “take care”. The duty of care only arises once a health practitioner accepts the care of a patient. A duty of care is about ensuring our actions (or omissions) do not harm someone else. Legally, all people owe a duty of care to people who could foreseeably be harmed by their actions or inactions. Once s/he has accepted a patient into his/her care a nurse, midwife or other health care worker always has a duty of care to prevent harm to a patient they are caring for.

