



Should Nurses Negotiate Their Own Contracts?

What we can learn from the “Smittown Nurses”

BY GENEVIÈVE M. CLAVREUL, RN, PHD

BY NOW MANY OF MY READERS have heard about the “Smittown Nurses.” If not, let me provide a very brief summary drawn from news reports and court documents. About two dozen Philippine nurses, in search of better employment opportunities, did what so many of their countrymen and women

do every year, which is to say they immigrated to the U.S. to work abroad. All accounts agree that they followed the standard procedure, passed all the required exams, licensure requirements, and background checks; and like so many foreign-educated nurses, they sought out and used a nursing

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placement firm to facilitate the process. As was apparently common practice, the Philippine nurses agreed to and signed contracts, which mandated, among other things, that the nurses would work for three years at their assigned facilities or be considered in breach of contract and owe the firm \$25,000.

Once the nurses were in the US, it appears that the relationship with the placement firm and associated facilities (that's correct, apparently the placement firm and the facilities were somehow connected) quickly began to sour. The nurses complained that when they first arrived, they did not receive the appropriate licensure so they were assigned clerking duties and paid at a lower rate than if they had worked as RNs.

Other complaints included failure to reimburse their travel expenses from Manila, not getting the shifts promised, failure to pay shift differential, and not providing adequate housing. Needless to say, many of these nurses began to feel frustrated and sought out help from various governmental and non-governmental agencies. It has been reported that they sought and received assistance from the Philippine Consulate in New York, but failed to get any assistance from the New York Nurses Union, and eventually sought out the help of an attorney.

The attorney advised the nurses that they had the right to quit and that they would not be considered in breach of their contracts since the company had breached the terms first. Not long afterwards, the nurses, at the end of their shifts, quit en masse. The Suffolk District Attorney pursued and received indictments on 13 counts against the nurses and their attorney. The counts as reported were one count of conspiracy in the sixth degree, one count of criminal solicitation in the fifth degree, five counts of endangering the welfare of a child, and six counts of endangering the welfare of a disabled person. Needless to say, this has the New York nursing community up in

arms, not to mention getting the attention of nurses across the US and in the Philippines.

The charges being leveled are without a doubt serious, and if the charges are upheld then the consequences can be grave, indeed. How did this situation come to the point where the nurses felt compelled to walk out, only to have criminal charges levelled against them? The "Smithtown" contract dispute is a good example of what happens when two parties who have very disparate expectations, fail to adequately communicate them, leading to a conflict that rarely has a good outcome. In this case, a third party, the patient, gets caught in the middle and is placed in potential jeopardy.

As the need for qualified registered nurses continues to grow, many nurses may be tempted to enter into contracts where the nurse has nothing to risk. However, as anyone who is intimately involved in contract development and negotiations can tell you, there is no such thing as a "no-risk" contract. However, interpretation can be subjective, so it is always important to read the contract carefully and ask questions. All too often nurses fail to read the full employment contract, taking for granted that it is a boilerplate document (which it often is). Or they come across a point that seems unclear, but they are afraid to ask for fear that it somehow makes them appear ignorant or pushy. It is important to note that if one party signs the contract, even though it contains terms that are disagreeable, then that party cannot argue that it is unfair. In this case hospitals have a right to produce a contract that is favorable to them and their clients.

My point is that far too many nurses seem to be of the impression that a hospital's employment contract is somehow "written in stone," when in reality, with a few exceptions, a nurse could strive to craft a contract that



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provides him/her with some additional perks. I can just hear the gasps of disbelief—negotiate a contract? Me? Isn't that being a little conceited? Don't you need to be an expert in contracts to do that? And so forth.

Step back for a moment and think about any of the recent nursing job fairs you may have attended. Most, if not all, of the potential employers were offering perks, such as sign-on bonuses or help with financing a home or car. How much different is it to ask for a contract with a work schedule that allows you to pursue an advanced degree, or to be home when your child returns from school, or to take that all important yearly family vacation? What it takes is a good understanding of what you consider to be negotiable/non-negotiable items.

Negotiating your own contract is not for the faint of heart. I first dabbled in it when I was nearing graduation from RN school. I had been working as an LVN while going to school and the hospital where I worked wanted me to stay on as one of their pediatric nurses. I wanted a different challenge. I took a chance and mentioned to the chief of pediatrics that I wanted to open our hospital's Pediatric Intensive Care Unit and to be appointed the head nurse of the unit. There was a bit of hemming and hawing, but after all was said and done, my request was granted and I opened the new unit on nearly the same day I passed my state boards.

This being said, it is also important to take time for a little reality check. Many human resource managers or Chief Nursing Officers are reluctant to stray from the boilerplate contract. The legal department will be asked to review the changes; specific concessions or compromises will need to be defended. However, it is their job to defend their decisions, not yours. You should also keep in mind that after this review period they may return with a counter-offer, which you should review and either sign, or return with your own counter-offer. Negotiating your own contract terms can be exciting as well as unnerving. Knowing your limitations, especially in tough contract negotiations, can serve you well.

Finally, it is important to recognize when asking to negotiate your contract might not be appropriate. One such situation is, of course, at a union-represent-

ed hospital. When the nurses vote in a union they give the union the power to negotiate on their behalf. However, you can have some input on this process. Two ways come to mind: one, by becoming active within the union in a leadership role, and, two, by becoming involved in the bargaining process.

Contract negotiation is a process of give and take. Sometimes what you want is just not possible. For example, you may want to be exempt from working all weekends and holidays. In all likelihood this request will be met with a firm no, since it is blatantly unfair to the other nurses. Should the other nurses discover that one of their cohorts was given this deal, the work environment could take a nasty turn. No good manager would allow for this to happen, and, therefore, would not accept such a term in a contract negotiation. One other point to always keep in the back of your mind is how your state's Nurse Practice Act affects your nursing responsibilities, as this is something you cannot negotiate out of in your contract.

Does this mean you should always negotiate your own contracts? Not necessarily. Nonetheless, those who feel they have the skills should try it the next time they seek employment or re-negotiate a current contract. In today's job market, nurses are definitely in great demand. Just remember to do your research and rehearse your pitch as thoroughly as possible.

Now back to the Smithtown Nurses. As of this writing, there has been no update on the status of these nurses. We can only hope we learn what happened. If the nurses were being victimized (as they attest) then their employer should be held accountable; if it is proven that the nurses did indeed abandon their patients, then they need to answer for their actions. Personally, I think that the Smithtown Nurses case is so convoluted that ultimately nothing will end well for all parties involved. Let us just hope that we can learn from it. **WN**



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