ASSESSING POTENTIAL THREATS TO THE CONFIDENTIALITY OF EMPLOYEE HEALTH INFORMATION IN OCCUPATIONAL HEALTH NURSING PRACTICE IN MANITOBA

by

Beverley J. Cann

A thesis submitted to the University of Manitoba
in partial fulfillment of the requirements for
the degree of Master of Nursing at the University of Manitoba

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Abstract

This descriptive cross-sectional survey examined potential threats to the confidentiality of employee health information in occupational health nursing practice in Manitoba. Nurses' perception of a problem maintaining confidentiality was probed. Objective measures of the difficulty of maintaining confidentiality included sources and frequency of inappropriate requests for information and methods of occupational health records handling. Factors related to the nurse or his/her working environment which may affect ethical decision-making were explored.

Data were collected using a self-administered mail questionnaire developed by the researcher. Ninety-four nurses were surveyed. An 86.2% response rate was achieved.

Over half of the nurses surveyed indicated that they perceived maintaining confidentiality of employee health information to be a problem. Those who perceived this to be a problem were more likely to receive requests, particularly inappropriate requests, from employers. Subjects identified remedies for improving the protection of privacy. Resources used by nurses when making difficult ethical decisions were identified. Most respondents tended toward a patient advocacy role conception rather than a bureaucratic role conception in ethical decision-making. Other factors which may affect ethical decisions such as colleague support, decision-making authority, confidence, education, experience, and power-lessness were explored. Based on this study's findings,

recommendations for nursing practice and further nursing research are suggested.

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To Leonard, Duncan, Kelly and Mom.

Chapter 1

Introduction

Free and open communication is vital to the therapeutic relationship between health practitioner and client. A widely held assumption among health professionals is that individuals seeking care and advice will speak more freely and openly if they are confident that information will not be revealed to outside parties (Gallop, 1977). Moreover, the public has come to expect that personal and medical information, gathered during the course of events in a doctor's office or hospital, will remain confidential. Increased technological capabilities to record, store, retrieve, and move information as well as increased access to records sought by insurers, attorneys, employers, and government has generated concern over inappropriate disclosures of information (Warshaw, 1976; Westbury, 1985).

Against this backdrop of general concern, specific interest in the confidentiality of employee health information has precipitated long-standing discussion and debate in the occupational health literature. Beyond being a matter of simply dealing with rapid technological developments, maintaining the confidentiality of employee health records is a matter of moral consequence. Hospitals and similar institutions, private doctors' offices, clinics, and government health departments are assumed to be committed to maintaining confidentiality of medical records. To this end, health care institutions take great care to protect the

privacy of health information. Although breaches of confidentiality sometime occur, this is clearly not an expectation of the public and health care providers. The expectation to maintain the privacy of health information, however, is not necessarily attendant in work sites where occupational health services are provided. In fact the expectation may be just the opposite. It is commonplace for managers to expect access to employee health information (American Association of Occupational Health Nurses, 1988; Rogers, 1988).

The ultimate goal of industry is production for profit. The work of occupational health professionals is logically viewed as ancillary to this goal (Rogers, 1988; Rosenstock & Hagopian, 1987). As a result, nurses employed in industry may encounter pressure to divulge employees' personal and medical information to help the company protect its business interests (Rest, 1988). This poses an ethical dilemma for occupational health nurses, the resolution of which may have significant consequences for their clients and for nurses themselves.

From the worker's (the client's) perspective, the inappropriate release of health information constitutes not only an invasion of privacy, but also it may cause harm if the information is shared unadvisedly (Rosenstock & Hagopian, 1987). As for nurses, they are being asked to do something which may be against individual conscience and which breaches a professional code of ethics. They may be forced to choose between principled behaviour on the one hand, and the fear of

reprisal for that same behaviour on the other hand. Professional reputations among co-workers, employees, and employers can be enhanced or sullied. On a more personal level, nurses' actions can affect employment, income, status in the professional community, and the respect gained from those for whom and to whom they are responsible (Rest, 1988).

The occupational health literature, most of it emanating from the United States, frequently discusses the legal and ethical obligations of occupational health professionals to employers and workers concerning medical information (Annas, 1976; Bundy, 1969; Gallivan, 1963; Miller, 1977; Rabinow, 1988; Rosenstock & Hagopian, 1987). General consensus has emerged on two points. The first is that the employee/worker must provide written informed consent before health information is released to the employer or other third party (American Association of Occupational Health Nurses, 1988; Canadian Nurses Association, 1991; Ontario Occupational Health Nurses Association, 1987). The second point recognizes the need for employers to be provided with enough health information about an employee to make administrative decisions. Such information, however, is to be limited to that describing work capabilities or limitations and must not include information of a more specific nature such as diagnosis or other particulars of the employee's health status (American Occupational Medical Association, 1983; Canadian Medical Association, 1982; Ontario Occupational Health Nurses Association, 1987).

Anecdotal evidence from informal discussions among occupational health nurses in Manitoba has suggested that maintaining confidentiality of employee health information is an ongoing concern. The literature has suggested that this is not a limited local problem. In an Ontario judicial inquiry, Krever (1980) found evidence of pressure exerted on occupational health professionals, especially nurses, to disclose information to employers. In the United States, Reif (1983) documented the indiscriminate and unauthorized release of medical information to employers by an occupational health clinic servicing industry.

Despite the plethora of general discussion of ethical issues and, in particular, confidentiality of employee health records, there has been little systematic study of general perceptions and practices regarding ethics in occupational health (Haines, 1989). A recent survey of members of the American Association of Occupational Health Nurses identified twelve research priorities. Of the twelve research priorities, "methods for handling complex ethical issues related to occupational health (e.g. confidentiality, truth telling)" (Rogers, 1989, p. 497) ranked third.

Those who have studied ethical conflicts found that these conflicts frequently involved confidentiality and that subjects used either a professional code of ethics or personal beliefs to resolve conflicts (Brandt-Rauf, 1989). Community health nurses (among whom occupational health nurses could be categorized) relied most heavily on nursing colleagues for

assistance when dealing with significant ethical problems. Other sources of guidance included religious values, life experience, laws, professional codes, and common sense (Aroskar, 1989).

Clearly, further study of the problem of maintaining confidentiality of employee health information was needed. No suitable instrument to assess the maintenance of confidentiality of employee health information by occupational health nurses existed. Moreover, although several instruments have attempted to measure moral judgement of nurses in ethical dilemmas (Crisham, 1981; Davis, 1981; Ketefian, 1981a, 1981b), none were appropriate for the proposed study. The purpose of this study was to develop a questionnaire to measure potential threats to the confidentiality of employee health information in occupational health nursing practice in Manitoba.

Study Objectives

The specific objectives of this study were:

1. to describe the magnitude of difficulty, among Manitoba occupational health nurses, of maintaining confidentiality of employee health information by determining:
   a) all sources and the frequency of requests for employee health information;
   b) the frequency of employer requests for employee health information which is unaccompanied by written authorization from the employee;

c) the frequency of employer requests for employee health information of a specific nature such as a diagnosis or other particulars of the employee's health status;

d) the type of specific employee health information that employers are most likely to request; and

e) the methods used by occupational health nurses to handle occupational health records.

2. to determine whether occupational health nurses perceive the maintenance of confidentiality of employee health information to be a problem, and, if so, to determine their self-identified solutions for improving the protection of confidential employee health information;

3. to identify resources used by occupational health nurses when faced with a difficult decision regarding the release of employee health information; and

4. to isolate characteristics of the individual nurse and the working environment which may be related to ethical decision-making regarding the protection of confidential employee health information.

Specific terms in the objectives are defined in Appendix I.

Assumptions Underlying the Study

Two basic assumptions operate in the study of maintenance of confidentiality of employee health information by occupational health nurses. The first is that privacy is highly valued in this society. The second is that nursing's

central moral concern is the welfare of human beings. The corollary of these two assumptions is that, since privacy is a positive human value, nurses would strive to protect individual privacy in their professional relationships with clients. In the present study, it therefore was assumed that occupational health nurses would endeavour to protect the confidentiality of health information of their clients (workers).

Significance of the Study

Research is limited on ethical issues in occupational health nursing. The present study contributes to an understanding of one ethical issue in occupational health - the confidentiality of employee health information.

The results of this study provide occupational health nurses practicing in Manitoba with insight into their own circumstances regarding the protection of confidential employee health information. An assessment of factors related to ethical decision-making among occupational health nurses was another outcome. Finally, the study provides support for changing practice and for strengthening current practice regarding the maintenance of confidentiality of health information.

Chapter 2

Literature Review

To appreciate the difficulty faced by occupational health nurses in protecting the privacy of their clients' health information, it is necessary to understand the source of their legal and ethical obligations to do so. Two associated factors must also be considered. One factor is the setting in which confidentiality is to be maintained, that is, the work site. The second factor is the role of nurses in protecting the privacy of health information. This review will begin with a description of the field of occupational health and the practice of occupational health nursing. The main discussion will review the legal and ethical dimensions of maintaining confidentiality of health information.

Occupational Health

As part of community or public health, occupational health is distinguished from other medical specialties by its focus on the environmental determinants of disease and methods of disease prevention. Prevention of occupational disease and injury is the primary objective of all activities in the practice of occupational health (Robbins, 1988), although disease recognition is also important. Recognition of occupational disease in individuals is accomplished primarily by taking an occupational history and, in populations of workers, by application of epidemiologic research methods.

Measures to prevent occupational disease and injury are divided into those that focus on the worker and those that focus on the workplace. The most effective disease prevention measures are those that affect the workplace, for example, engineering controls, changed work practices and substitution of less hazardous substances for more hazardous ones. Other measures primarily affect the worker by reducing the damage resulting from workplace hazards without actually removing the source of the problem. Examples are: education and advice, use of personal protective equipment, administrative measures, and screening for early detection of disease (Levy & Wegman, 1988).

Occupational Health Services

The resources and policies of any particular employer largely determine the existence and scope of occupational health services for that organization. With the exception of those associated with regulatory functions, occupational health services in Canada and the United States are provided almost wholly outside the traditional public health system. Employers independently develop and provide services of their own.

Important program elements in an occupational health service include: 1) ensuring a safe and healthful workplace through careful environmental monitoring and engineering controls; 2) matching the requirements of work with the capabilities and limitations of individual workers through job

design and selective job placement; 3) rehabilitation of ill or injured workers; and, in some cases, 4) health promotion programs such as blood pressure screening, smoking cessation and employee assistance programs which provide counselling services for workers experiencing substance abuse and other personal problems (Block, 1988).

In Manitoba, occupational health and safety is regulated under the Manitoba Workplace Health and Safety Act and applies to all workers and employers, save the federal government, federal crown corporations and their respective employees, which are subject to federal statutes. Historically the Act has been administered by a separate government department or by the Department of Labour. Although there is a general legal duty placed on the employer to provide a workplace that is safe and without risk to health, there is no specific legal requirement to provide occupational health services. The exception is in instances where the Minister may use his/her discretionary power to order such a service (Manitoba Workplace Safety and Health Act, R.S.M. 1987, c.W210, s.53, ss. 1-3).

Robertson (1987) argued that the provision of in-house occupational health services is infeasible for the majority of employers in Manitoba. She cited several reasons for this view. For example, the manufacturing sector contributed about 14% of the gross domestic product in 1982 making it an important contributor to the Manitoba economy. The manufacturing sector is comprised largely of small businesses,

with about 80% of companies employing fewer than 25 people each. Businesses in this sector tend to be independent rather than subsidiaries of larger firms. Also, the manufacturing sector is relatively diversified. Robertson (1987) suggested that the small size of these businesses makes it uneconomical for them to provide in-house occupational health services, and their diversified and independent nature prevents them from relying on the resources of a parent company or a dominant industry.

To be fully effective, occupational health services should be provided through an interdisciplinary team effort (Block, 1988; Brown, 1981; International Labour Organization, 1985). The scope of the field requires the knowledge and skills of a number of specialties. Core disciplines of the team include occupational physicians and nurses, industrial hygienists, and safety engineers. Ancillary disciplines are ergonomists, epidemiologists, and toxicologists. In reality, the interdisciplinary health care team exists infrequently in occupational health settings. In Manitoba, the potential for interdisciplinary occupational health teamwork is limited to a few large employers.

When a company can afford to provide occupational health services, an occupational health nurse is usually the lone provider. In 1984 in Canada, occupational health nurses numbered 4000, constituting the largest pool of occupational health professionals ("Test provides," 1984). In 1980 in Ontario there were approximately 1200 occupational health

nurses, 75% of whom worked in industry without collaboration with a physician (Krever, 1980). Approximately 90 occupational health nurses are employed in Manitoba (J. Dietrich, personal communication, February, 1990) and it is not known what percentage of these nurses function alone. Northrop (1987) estimated that in 75% of occupational health services in American work sites, the occupational health nurse was the sole provider. These statistics seem to indicate that nurses lack the support of nurse colleagues or other occupational health team members within the organization. This lack of support may have important implications for nurses in fulfilling their ethical and legal obligations.

Occupational Health Nursing

Historically, first aid was the primary service provided by "industrial nurses." Today the scope of services provided by occupational health nurses has broadened in breadth and depth. Using nursing knowledge and skills, the occupational health nurse's primary goal is to "...assist the worker to obtain and maintain optimal physical and psychological functioning" (Brown, 1981, p.4), a goal which is decidedly preventive in its orientation. Responsibilities may include: 1) administrative functions such as managing the occupational health service; 2) occupational health and safety program development; 3) provision of health education to individuals and groups; 4) health assessments such as pre-placement screening and return-to-work assessments; 5) emergency and