



After a physical assault by a patient: What are your options?

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WORKPLACE VIOLENCE is a significant problem in healthcare, and far too many nurses sustain physical assaults when performing their clinical assignments.¹ All 50 states address physical assault as a criminal violation and 32 make physical assaults against nurses a felony—a serious criminal offense meriting over 1 year in jail or prison as a penalty. (The remaining states address assault but may not specify assault against nurses or uniformed healthcare workers.) In this article I'll discuss three remedies open to nurses who experience an assault by a patient: worker's compensation, criminal action, and civil litigation.

Navigating a worker's compensation claim

In most states, if you are injured at work by any external cause, such as a physical assault or other form of physical contact against your person, you are entitled to worker's compensation benefits as specified

by state law. This remedy generally covers medical benefits (including psychological and psychiatric care if needed), wage benefits up to a maximum allowable state wage calculation amount (both total and partial wage loss are covered), permanent injury benefits, disfigurement benefits, and, in extreme cases, death and burial benefits.¹ Worker's compensation is your initial and primary remedy for a workplace assault.

To preserve your claim to worker's compensation benefits after a physical assault, always submit an adverse event report and seek medical attention according to hospital policy and procedure. You may need this documentation to establish that you were injured in a work-related incident.

Pursuing criminal charges

The second remedy available to you is to engage the criminal justice system in your jurisdiction. If you have a law enforcement agency at

your facility (hospital police or constables), report the assault to this agency first. These law enforcement officers will make the decision to engage outside agencies such as the local township, county, or state police as necessary. If your facility has no such agency, you should call the police yourself.

Ask for a copy of any police/law enforcement investigation reports and make sure copies of any reports are forwarded to your facility's human resources department. This places your employer on notice about any injuries to you as required under worker's compensation law. The local law enforcement agency will make a decision as to the seriousness of the assault against you and communicate with the local prosecutorial agency (district attorney, state's attorney, or state attorney general) for a decision on the proper criminal charges.

After the perpetrator is arrested, he or she will be formally arraigned and enter a plea to the criminal

charges, such as guilty or not guilty. If the defendant pleads not guilty, the matter will proceed in the criminal court system in your jurisdiction. Your role will be that of a state's witness as the victim of the crime.

As the prosecutor and the defense go through the criminal litigation process, you may or may not be contacted by a state's victim advocate in your jurisdiction. This person works for the prosecutors' office and acts as a liaison between you and the prosecutor as your case proceeds through the criminal justice process.

Be prepared for the prosecutor to discuss options for the criminal action, including proceeding to a jury or nonjury trial or negotiating a plea agreement in which the defendant agrees to plead guilty to a lesser charge or penalty. For example, the charge may be reduced from a felony (such as first- or second-degree assault, assault against a healthcare professional, or aggravated assault) to a less serious misdemeanor charge, such as simple assault, offensive touching, or disorderly conduct. The prosecutor may seek a lesser charge to secure a conviction by plea, avoiding the risks of losing the case on more serious charges at trial. This outcome is the most likely result after an assault against a nurse. A plea agreement does not change your eligibility for worker's compensation benefits or, importantly, your ability to exercise your third option: civil tort litigation.

Seeking a civil remedy

Your third option is to sue the person who injured you. This remedy is available to you through the tort laws in your state. You would sue the offending party in

civil court for personal injury under the common law theories of assault and battery.

Under tort law, *assault* is the creation of fear of an imminent, impending, unwanted physical contact, and *battery* is the actual unwanted physical contact that results in harm or injury. This encompasses both physical and psychological harm.² Assault and

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battery are intentional torts, meaning, as suggested by the term, that the unwanted conduct is intentional and results in harm.

You may also fold in the unintentional tort of negligent infliction of emotional distress. Although there are potentially other actions you could take against your employer, these legal avenues are generally foreclosed by worker's compensation laws except in unusual circumstances.

To seek civil legal remedies, you would retain a personal injury lawyer and sue the defendant for injuring you. Once the defendant is served with the lawsuit, he or she has the opportunity to answer the lawsuit and you would proceed through the civil court process until mediation, settlement, or trial.

One caveat about suing for civil damages: If you also receive worker's compensation for the same injury, most states require an offset against your tort recovery up to the amount paid by your employer or the insurance company for any benefits paid to you. For instance, if you received \$50,000 in worker's compensation benefits and you settle the civil lawsuit for an award of \$65,000, your recovery of the tort

settlement of \$65,000 could be offset up to \$50,000 after payment of your attorneys' fees and litigation expenses.³

In sum, if you have had the unfortunate experience of suffering an assault at work, you do have options for bringing legal closure. Of the three remedies discussed above, worker's compensation is most widely used. Nurses may experience

unwanted pressure from their employers regarding the pursuit of criminal or civil remedies against patients, but an employer may not foreclose you from pursuing actions available to you under the law without potentially creating a separate legal avenue for you against your employer.

It is my hope that you never have to utilize the avenues presented here, but statistics suggest many of you will. Until next time, stay safe and keep it legal! ■

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