INTRODUCTION

Aggression and violent incidents occur regularly in the Australian health industry and nurses experience the highest levels (Alexander, Fraser & Hoeth, 2004). The incidence of workers’ compensation claims by nurses involved in violent incidents exceeds that of both police and prison officers (Perrone, 1999). A recent study conducted in two Queensland Emergency Departments reported that over a five month period 70% of participating nurses (n = 50) had been subjected to a total of 110 episodes of violence by patients (Crilly, Chaboyer & Creedy, 2004, p.67). Violence occurs in all areas of health, but some studies have identified practice areas where it is more endemic (Alexander, Fraser & Hoeth, 2004). For example, in the United Kingdom (UK) incidents of violence occurred over two and a half times more frequently in mental health and learning disability units than in other areas of the health service (National Audit Office, 2003). Another UK study of 97,000 National Health employees found that midwives experience more harassment or violence than other healthcare workers (Robinson & Perryman, 2004).

Verbal aggression, including swearing, has been reported as one of the most common types of work related violence against nurses (Deans, 2004). Recent studies highlight that patients used verbal aggression against staff in 85% of reported incidents of violence (Foster, Bowers, & Nijman, 2007; Nijman, Bowers, Oud, & Jansen, 2005). In another study verbal abuse of nurses was inflicted predominantly by patients’ relatives (72.9% of cases), followed by patients and doctors (Kisa, 2008, p.204). The majority of reported episodes of violence in a Queensland study involved being sworn at (61%), followed by being pushed (10%), hit (3%) or kicked (3%) (Crilly, Chaboyer & Creedy, 2004, p. 67). The association between swearing and verbal aggression has been described previously (Stone & Hazelton, 2008).

The impact of verbal aggression on nurses is far reaching and significant. Possible effects include increased stress, emotional exhaustion, decreased morale, loss of productivity, difficulty with retention and recruitment, and a negative impact on delivery of healthcare (Kisa, 2008; Alexander, Fraser & Hoeth, 2004). It is of particular concern that verbal aggression is considered by many nurses to be “part of the job” (Alexander, Fraser & Hoeth, 2004), and its incidence continues to be under reported.

In a recent Australian survey of 107 nurses working in mental health and paediatric settings, 72% agreed that swearing at nurses should not be tolerated (Stone, 2009). The majority of nurses surveyed agreed or strongly agreed that swearing in the workplace associated with threats, physical aggression or personally demeaning comments was distressing (Stone, 2009). Also, 90% reported being distressed if a patient’s relative or carer swore at them (Stone, 2009). As well as the emotional implications of being sworn at, there are also legal ramifications.

Legal Implications

Terms such as “offensive language” and “verbal aggression”, used interchangeably in everyday speech, have distinct legal meanings. Cursing or swearing might feature in both offensive language and verbal aggression, but is not a necessary feature of either. Furthermore, the law deals differently with written and spoken language, and charges relating to offensive language have frequently been brought under laws relating to obscenity.

In Australia “swearing” is the most commonly used term and will be used throughout this discussion paper. Swearwords are derived mainly from religion, sexual and bodily functions, and racial epithets. Which words qualify as swearwords is dependent on context and culture. In law, the definition of offensive language is more complex. What constitutes obscene speech is determined by the discretionary power of the police and the magistrates of the court (Brown, Farrier, Egger, McNamara, & Steele, 2006), and is subject to evolving changes in society and the political whims of the day. Legislation is intended to protect people from the detrimental effects of speech including offensive language (Jay, 1999) and to control behaviour in public places (Brown, Farrier, Egger, McNamara & Steele, 2006). Whether swearing in the healthcare setting is adequately controlled by the current laws is debatable and will be discussed further.

There is a perception that the high rate of verbal aggression
against nurses mirrors a rising trend in the use by society of swearing and offensive language. Between 1997 and 1999, a time when recorded crime rates for all major offence categories in New South Wales were stable or falling, according to the NSW Bureau of Crime Statistics and Research (1999) the number of offensive language incidents increased by 38% from 5,215 to 7,181 - a change attributed to higher levels of enforcement behaviour. A few years later the figures varied from 5,519 in 2003 to 5,874 in 2005, well down compared with previous years (Moffatt, Goh & Poynton, 2005, p.72). However, the Bureau’s 2008 report indicated they are again on the rise, from 5,459 in 2007 to 6,102 in 2008 (NSW Bureau of Crime Statistics and Research, 2008).

In Australia, legislation passed in 1902 imposed fines of up to £5 for “threatening, abusive or insulting words,” and complaints about swearing date from the beginning of British settlement (Taylor, 1995, p.227) when the “bad” language of the convicts, including the females, was noted by many observers. In 1970, in response to law and order campaigns following anti-Vietnam War demonstrations, the NSW Summary Offences Act was introduced (Brown, Farrier, Egger, McNamara & Steele, 2006, p.808). This Act included penalties for the use of “unseemly words”, but various reforms resulted in changes and in 1979 its eventual repeal. The Summary Offences Act reintroduced in 1988 contained express provisions for the crime of offensive language, including a possible three months prison sentence (Taylor, 1995, p.231).

All states in Australia criminalise offensive language with the exception of the Australian Capital Territory, but the descriptions differ and may include “offensive,” “threatening,” “obscene,” “indecent,” or “abusive” (Walsh, 2005). Offensive language is not defined in the legislation but some interpretation has been provided in the common law. The higher courts usually attribute the ordinary meaning within a modern day setting. “Offensive” has been taken to mean “displeasing, annoying or insulting”, and “calculated to wound the feelings, arouse anger or resentment or disgust or outrage in the mind of a reasonable person.” A person’s feelings may be hurt or wounded, but this will not necessarily be legally defined as offensive to a degree sufficient for a conviction.

In New South Wales the use of offensive language in or near, or within hearing of, a public place (such as a hospital), is considered an offence1. The legal test used to determine whether language is offensive is an objective one2 that is ascertained by the magistrate and entails questioning whether it is more likely than not that a reasonably tolerant bystander within hearing of the language in question, in the particular circumstances, would be offended3. The current community attitudes and the response of police as witnesses have been held as central in assisting the magistrate in the determination of what is offensive (Bronitt & McSherry, 2005). Courts have held that the reasonable person is to be envisaged as “reasonably tolerant and understanding and reasonably contemporary in his [sic] reactions”4 and should not be “thin-skinned”5. The courts do not have set guidelines to determine whether or not a word is offensive but instead examine the particular circumstances within the context in which the language was used. This may include the time of day, the intention of the person using the language and the tone used to express that language (Walsh, 2005).

The NSW Summary Offences Act 1988 replaced previous breach of peace legislation such as the Vagrancy Acts 1851, including amendments providing for use of threatening, abusive or insulting words (Brown, Farrier, Egger, McNamara & Steele, 2006): Police were empowered to act when behaviour regarded as “offensive, insulting, abusive or indecent” occurred in a public place (Brown, Farrier, Egger, McNamara & Steele, 2006). Originally the Act provided penalties of a $600 fine or jail sentence of up to three months for public order offences including offensive behaviour. Following recommendations from the Royal Commission into Aboriginal Deaths in Custody (Wootten, 1991), which reported high numbers of Aboriginal people being arrested, charged and judged under the Act for offensive language, it was again amended to remove the option of imprisonment purely for conviction on that charge (Brown, Farrier, Egger, McNamara & Steele, 2006).

It is a defence to a charge of using offensive language if the accused person can prove a reasonable excuse. A “reasonable excuse” is the reasonable person test and based on the balance of probabilities6, the magistrate taking into account the actions of the person sworn at, the background, and other related events involved in the particular circumstances just prior to the actual time of the offence7. This defence is rarely used though in the case of Jeffs v Graham8 a woman, because of her drunken state was found not to have voluntarily used offensive language, and was therefore not guilty. Intention or knowledge need not be proven for offensive language convictions, however in the rare case of use of the reasonable excuse defence it might be claimed that the offender honestly and reasonably believed that the language used was not offensive according to contemporary standards of the day (Bronitt & McSherry, 2005).

Most people (79%) charged with offensive language and convicted in Australian courts are fined (Brown, Farrier, Egger, McNamara & Steele, 2006 citing NSW Bureau of Crime Statistics and Research 2004). Currently offenders in NSW may be fined up to six penalty units9 a maximum of $66010, or they may be directed to perform community service11.

Healthcare Policies

Current health policies concerning verbal aggression are punitive or inconsistent which can cause problems in managing swearing and offensive language in clinical settings. Nurses may be uncertain of their rights and responsibilities, and difficulties arise for managers in deciding where to draw the line in dealing with patient to staff, staff to staff, or staff to patient swearing. The importance of this issue is evident given the high reported rates of verbal aggression in the health workplace, the impact it has on nurses and the related provision of healthcare (Alexander, Fraser & Hoeth, 2004; Kisa, 2008). Nurse to patient swearing is not discussed in this paper but is a topic that would benefit from further discussion.

Nurses should be aware that swearing may occur as part of

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1. Summary Offences Act 1988 (NSW) s3,4A
2. Summary Offences Act 1988 (NSW) section 4A
4. Ball v McIntyre (1966) 9 FLR 237 at 245
5. Re Marland (1963) 1 DCR 224
6. Connors v Craigie unreported Supreme Court of NSW Common Law Division – BC29403208
7. Connors v Craigie unreported Supreme Court of NSW Common Law Division – BC29403208
8. (1987) 8 NSWLR 292
9. Summary Offences Act 1988 s4A
10. Crimes Sentencing Procedure Act 1999 (NSW) s17
11. Crimes Sentencing Procedure Act 1999 (NSW) s41

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an underlying medical or mental health disorder. Nurses work in a high stress environment with people in pain and in crisis. Swearing being the language of strong emotions, it is likely to be used by patients to express the intensity of their experience with the most powerful words they know. Nurses tend not to be “thin-skinned” and are “reasonably tolerant and understanding”. Therefore it is highly unlikely that a patient who swore at a nurse would be found guilty of offensive language. To what extent should nurses have to deal with swearing as “part of the job,” even if it is considered part of everyday language (Brown, Farrier, Egger, McNamara & Steele, 2006, p.810)?

Where to Draw the Line

The difficulty nurses and managers face in regard to swearing is where to draw the line. What nurses and other people find offensive varies (Stone, 2009). Perceptions of word offensiveness change over time and are influenced by gender and cultural elements. This militates against formulation of an objective standard applicable for nurses in a healthcare setting. For example, most Australians do not find the word ‘bloody’ to be offensive; a nurse taking exception to this word and making a complaint against a colleague for using it is unlikely to be supported. Even stronger words considered extremely offensive can be used with the intention of politeness within members of a tightly knit group (Daly, Holmes, Newton, & Stubbe, 2004).

In the current climate, where relations between service users and service providers are frequently adversarial, police, ambulance officers, school teachers and other frontline workers face similar dilemmas in relation to swearing and aggression. State and Federal authorities are divided on the extent to which police officers should be required to tolerate offensive speech, and training has been one of the issues debated (Robbins, 2007, p.53).

In 1999, Justice Heilpern’s judgement in a case of offensive language stated about ‘fuck’. “In short, one would have to live an excessively cloistered existence not to come into regular contact with the word . . .” and not to have become somewhat immune to what had previously been its legally offensive status. The judge in this case remarked that being told to “fuck off” for doing one’s job comes with the territory. The reference was to the police, but it would probably apply also to nurses who are regularly subjected to swearing: a nurse’s perception of a violent intent to harm might alter the situation (Luck, Jackson, & Usher, 2007). To many people swearing is an habitual part of their everyday language. Their use of language can pose problems for nurses and others such as schoolteachers and police, whose job it is to maintain “appropriate” standards.

Although many advocate a tolerant approach to swearing from patients and carers, there are firm limits. Racist, sexist and ageist language should be treated in a different light. The UK National Health Service launched the Zero Tolerance Zone Campaign in 1999 (Behr, Ruddock, Benn, & Crawford, 2005). New South Wales Health in 2003 introduced a Zero Tolerance to Violence and Verbal Abuse initiative (NSW Health, 2003) and updated this in 2005.

Its purpose is to ensure consistent appropriate action to protect staff, visitors and patients involved in all violent incidents (NSW Health, 2005). Occupational violence is defined as an incident in which employees are abused. Violence is defined as any incident in which an individual is abused, threatened or assaulted and includes verbal abuse. The policy states that all significant violent incidents should be reported to the police (NSW Health, 2005) but does not specify what is meant by this term, or if it includes use of offensive language. While criminal prosecutions are an option for verbal abuse of nurses, a conviction will depend on whether it accords with the legal meaning of “offensive language”.

The UK Zero Tolerance policy provides that future treatment will be withheld in some circumstances for violence against staff, but specifically excludes users of mental health services, and instructs that withdrawal of treatment should not be applied to “anyone who is mentally ill or under the influence of alcohol or drugs” (Behr, Ruddock, Benn & Crawford, 2005, p.7). The authors argue that this exclusion is unjustified in the face of evidence that mental health staff are more at risk of violence than those working in generalist settings, and that an ethical framework should be established to determine decisions about withdrawing and withholding healthcare. Furthermore, it is stigmatising in its presumption of a lack of retention of capacity to make rational decisions. Some mental health professionals are of the view that all acts of violence by patients should be reported and legal action pursued (Coyne, 2002).

Appropriate Interventions

Nurses who are sworn at or verbally threatened are required to follow local protocols and policies, which may mean involving police or in-house security. A person, including a patient, may be charged with using offensive language under the Summary Offences Act in NSW. If swearing is accompanied by threatening gestures, threats or acts of violence, or the fear of subsequent violence, then alternative action may be taken, possibly to seek through the police or local court an order to restrain the offender’s actions for a set period of time (in NSW called Apprehended Personal Violence Order). The Crimes (Domestic and Personal Violence) Act 2007 (NSW) empowers courts to issue such orders in appropriate circumstances to protect people from violence, including intimidation.

CONCLUSION

This paper is intended to clarify some of the complex issues regarding the law and offensive language. Nurses need support and training to deal with the verbal abuse that they encounter as part of their day to day work. Any incident involving swearing needs to be viewed and interpreted in context, and the response governed by principles of safe and therapeutic...
practice. Many nurses may leave their current employment because of abusive behaviour. Further research may determine its relevance to current difficulties associated with staff shortages. Future research might identify and evaluate interventions to deal with these problems. It must be acknowledged that swearing can be distressing, and specific management strategies can be developed to support nurses however the authors also acknowledge the underlying issues that may be driving this difficult patient behaviour.

References

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Neophyte Writers’ Group

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