With the growth of unionization in the health care field, arbitration has become more prevalent as a means of settling grievances. The authors view five such cases involving health care personnel.

Provision for grievance arbitration has been found in the majority of union contracts in the health care industry. While experience with arbitration is limited in health care compared to the private sector, interest in the process has been growing (perhaps along with the parallel growth of unionization). Arbitration is the terminal step in the grievance procedure, as arbitration awards are enforceable in federal district courts.

For the most part, arbitrators called in to hear grievances in the health care industry have gained their experience in the private sector and particularly, in manufacturing. Many of the concepts they utilize in connection with rendering their awards are applicable to health care. However, there are many unique features of the health care industry, such as, the high proportion of women employees (about 81%), the great disparity of skills between employees at the same institution, and the special patient-hospital-professional relationships.

The most frequently arbitrated issues in health care (as well as in the private sector) involve the issues of discipline and discharge. Most contracts in health care call for discipline or discharge only for "just cause" or "proper cause." What constitutes just or proper cause leaves wide latitude for decision making on the arbitrator's part. Thus, such cases normally afford arbitrators the best opportunity for taking into account any unique aspects or considerations inherent to the health care field. Moreover, the facts and circumstances involved in discipline and discharge cases vary so widely, they usually do not set precedents. This article examines reported arbitration cases involving discipline and discharge for improper professional conduct.¹

Case 1

In the case of Auburn Faith Community Hospital and the California Nurses Association,² a registered nurse who worked in Intensive Care/Coronary

¹ The sources of the cases used in this paper include the Bureau of National Affairs Labor Arbitration Reports, the American Arbitration Association's Labor Arbitration in Government, (a monthly reporting service) and E. R. Baderschneider and P. F. Miller, eds., Labor Arbitration in Health Care (New York: Halsted Press, 1976). Not all arbitrated cases are reported as are court cases. In fact, less than 25% of all arbitration decisions may be so published. Subsequent references such as "66LA882," for example, are read as follows: "the 66th volume of the (BNA) Labor Arbitration Reports at page 882." "LAIG 1028" is read: "Labor Arbitration in Government case number 1028."

² 66LA 882.
Care was disciplined twice and finally discharged for the same offense. The nurse had complained about inadequate staffing in her area to her immediate supervisor, the head nurse of the unit, and further threatened to take the matter to the physician responsible for the unit.

The nursing supervisor (not to be confused with the head nurse) had initially issued an oral warning to the nurse, and told her that if she accepted the discipline, no written record would be kept and that the nursing director would not be involved. On this basis, the nurse accepted the discipline. When the nursing director heard of the incident, she directed that a written report be placed in the nurse’s personnel file and that the nurse be placed on 90-days probation. Upon learning of the second disciplinary action for the same offense, the union filed a grievance. In reply to the union grievance, the hospital director ordered the nurse discharged.

The labor arbitrator in his decision invoked the principle of double jeopardy as borrowed from criminal law. The nurse had accepted the nursing supervisor’s discipline, therefore, the nursing director could not also place the nurse on 90-days probation. The arbitrator stated that although not all rules applicable to industrial job holders should be applied to job holders in health care, especially to nurses, the proven fairness of the double jeopardy rule should not have boundaries in its scope or application.

In invoking the rule of double jeopardy, the arbitrator stated . . . “a professional nurse is to be accorded the highest possible degree of due process in all matters relating to her job security.” The arbitrator also noted that the nurse, through a Professional Performance Committee, acted within a contractual right to make recommendations relevant to the maintenance of the highest levels of patient care. Moreover, the arbitrator pointed out that if there are problems concerning the adequacy of staffing which cannot be resolved by lower echelons of management, higher echelons of management should be advised since such an issue is (1) important to the maintenance of the highest levels of patient care or (2) it could have endangered patient safety.

Thus, the arbitrator reinstated the grievant with the same position and title, and without loss of seniority or other rights and privileges. However, the grievant was not given backpay due to her conduct on her last night of duty. Also, all written disciplinary material in her personnel record concerning this matter was ordered to be removed and destroyed.

Case 2

In another case, this one involving Lakeview General Hospital (Battle Creek, Michigan) and the Service Employees International Union,3 concerned a licensed practical nurse who had unintentionally alarmed a patient by telling her that the hospital had only twice before performed the type of operation the patient was scheduled to undergo. For this action, the LPN was suspended without pay for 30 days. The LPN filed a grievance.

The arbitrator, in reaching his decision, stated that the grievant’s remark was improper, uncalled for, and “utterly unjustifiable.” The hospital had no written rule regarding employee discussion of patient illness with patients. Yet, the arbitrator pointed out that the grievant, as an LPN, was pursuing a profession which has a high standard of ethics, and that she knew that this type of discussion with a patient was improper. The arbitrator sustained the suspension, but reduced it to two weeks.

Case 3

The case of Flint Osteopathic Hospital (Flint, Michigan) and the American Federation of State, County and Municipal Employees,4 involved the dis-

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3 LAIG 386.
4 This case was previously unreported but appears in E. R. Baderschneider and P. F. Miller, eds. Labor Arbitration in Health Care (New York: Halsted Press, 1976), pp 7-12.
charge of a nurse who had refused to take the responsibility for more patients than she felt she could adequately attend to without jeopardizing their health and safety. To make her point, the nurse proceeded to sign out for the day and leave the hospital.

Conflicting testimony was given at the arbitration hearing as to whether one nurse could care for 42 patients without endangering the patients, or even herself, in case of an emergency. The arbitrator, in reaching a decision, questioned not only the professional standards applied in judging the actions of the nurse, but also the employment standards which lead the employee to adopt a remedy through “self help” behavior.

He nevertheless found that the nurse’s self help action (when there was no immediate danger to herself), was inappropriate since a greater threat to her patients was produced by the fact that she left her duty station than had she stayed. However, because the nurse had had no prior disciplinary record and was considered “one of the most competent people on the staff,” she was reinstated. She was denied backpay and received a temporary loss of seniority for three months while serving a probationary period.

Case 4
An LPN was discharged who refused to administer a medication and behaved rudely toward a patient, in a case involving Elizabeth Horton Memorial Hospital and the Licensed Practical Nurses of New York, Inc. The LPN had a history of several years of unsatisfactory work and claimed to be upset over the recent surgery performed on her daughter.

The arbitrator in reaching a decision, made these observations “...the hospital isn’t a factory. Its product is human life. ...” The reason the hospital had not imposed disciplinary action earlier was because the staff had felt that by befriending her and having confidential chats with her, her behavior would improve. But, the arbitrator pointed out, ultimately the primary concern of any hospital is the patient’s well-being. The patients, more so than the nurses, are inclined to be “irritable, upset, afraid, and often depressed.” Furthermore, it is the duty of the nurses and the nursing team to display a certain professional attitude that aids in the speedy recovery of the patient.

In this case, the LPN’s supervisors tried, but to no avail, to make her into a better member of the nursing team. Past complaints about her included not only her behavior but also her lack of knowledge. The arbitrator found that the hospital had just cause to dismiss her.

Case 5
The final case considered in this paper involved Women’s General Hospital (Cleveland, Ohio) and the Service, Hospital, Nursing Home and Public Employees Union. An LPN who admitted she had refused to answer a patient’s call light and also “backhanded” the head nurse was reinstated with some retroactive pay. The reason for this was because the hospital failed to follow established procedure and also did not give her a hearing prior to discharge.

The arbitrator stated that the entire matter could very easily have been resolved if the nursing supervisor on duty at the time had investigated the incident at the time it occurred. It was the nursing supervisor’s responsibility to safeguard all employees’ rights, both the head nurse and the LPN. Both parties contributed to the problem in this case.

Conclusions
A significant aspect of “due process” is the right of individuals—through their union—to challenge and have reviewed by an arbitrator the penalties imposed
by management. The arbitrators in the cases mentioned here were given the power to modify or reverse those penalties which they found unjust. In judging due process, arbitrators accorded nursing professionals the highest degree of protection. They also stressed that the nurses' professional opinions should be respected and recognized by the hospitals.

At the same time, the arbitrators pointed out that a hospital's primary duty is to preserve and protect human life. The obligation to this duty transcends even the job security accorded nurse professionals. In every case, though, the arbitrators used the patient-employee, professional-institution relationship to temper and direct their decisions. (Some arbitrators using the same principles reach opposite decisions.) The emphasis in these cases was on the hospital; for through its action or inaction, the hospital can be accused of violating its part of the union contract by denying its role in patient care.

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