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Strategies for reducing the risk of nursing malpractice/negligence: An overview

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Abstract

Nursing negligence in India is both a criminal offence under the Criminal Procedure Code and a Civil Liability under the Law of Tort. The right to health and health care is a human right. Till the advent of consumer courts / forums, there were hardly any cases of nursing negligence. Public awareness of medical and nursing negligence in India is growing. Nursing negligence arises from an act or omission by a medical/nurse practitioner, which no reasonably-competent and careful practitioner would have committed. What is expected of a medical/nurse practitioner is a 'reasonably skillful behavior adopting the 'ordinary skills' and practices of the profession with 'ordinary care'. Therefore, the professions need to update their understanding of the concepts of nursing negligence and consumer protection act, and its amendments to be on a legally safer side. The review attempts to outline the salient features of nursing negligence and Strategies for reducing the risk of nursing negligence.

Keywords: Negligence, nursing, malpractice

Introduction

Nursing encompasses autonomous and collaborative care of individuals of all ages, families, groups and communities, sick or well and in all settings. Nursing includes the promotion of health, prevention of illness, and the care of ill, disabled and dying people. Advocacy, promotion of a safe environment, research, participation in shaping health policy and in patient and health systems management, and education are also key nursing roles ^[1].

Nurses are one of the largest groups of professionals working in the health care system and they play a very important role, which helps in the speedy recovery of patients. In India, so far, they have remained insulated from being made a party in legal suits, primarily due to in house settlement of complaints by the hospitals and ignorance on the part of the patients. Those working in government or government aided hospitals have been provided with reasonable immunity. However, this situation is not going to remain same for long, as various legislations enacted by the government, notably The Consumer Protection Act and the Right to Information Act, are already in place. Hence, reliance is being placed on malpractice/negligence suits in USA and on cases that have been documented in India ^[2,3].

Legal responsibility in nursing practice is becoming of greater importance as each year passes. Consumers are becoming increasingly aware of their legal rights in the health care, therefore a nurse should know his/her legal rights. Medical malpractice statistics for the USA in 2012 shows that 6,167 (4.2%) registered nurses, licensed practical nurses, licensed vocational nurses, nurse practitioners, nurse anesthetists, nurse midwives, clinical nurse specialists, advanced nurse practitioners, and doctors of nursing practice had a malpractice report made against them in the US (National Practitioner Data Bank 2012 Annual Report) ^[4]. In the health care field, the term malpractice originally encompassed only the negligent wrongs of a physician. In the past, a distinct division existed between a nurse and a physician. The nurse functioned within a much more defined framework. Rather than diagnose patients, treat symptoms, or prescribe medication, it was sufficient for the nurse to wait for and then simply implement a physician's order. In years past it was virtually unprecedented for a nurse to criticize a physician's order ^[5].

The role of the nurse, however, has changed. Today, nurses commonly assume functions previously performed only by the physician. In hospitals and clinics across the country, nurses have assumed the responsibilities such as the actual examination, diagnosis, and treatment of a patient, oftentimes without any direct supervision by a physician. As nursing has matured into an increasingly advanced, sophisticated, specialized, and independent profession, the nurse's role in providing patient care has also expanded – a reality that is

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particularly true in the face of the ever-increasing demand for cost-conscious health care. As a result, liability for basic nursing negligence has shifted to its “professional” counterpart – malpractice liability [6]. No other specialty relies more heavily on nurses to assess patients and evaluate treatment options than the field of obstetrical nursing, and the stakes for the patients and families involved could not be higher.

Conducted a quantitative approach, based on an ex post facto design study to identify the relationship between state-reported malpractice rates for nurse practitioners and state education requirements. The study was analyzed both the descriptive and inferential statistics, was employed to analyze any relationships from the previously mentioned factors in the study. The study found no statistical differences between malpractice rates and legislation on certification and continuing education. Malpractice rates for nurse practitioners were higher after legislation on certification. The responsibility of the nurse practitioner to assess implement, and evaluate patient care carries a high level of professional accountability. The recommendations for this study include the establishment of uniform legislative stipulations for nurse practitioner certification and continuing education across all states, and the establishment of a national database for nurse practitioners [7].

A systematic review on Nurses, Negligence, and Malpractice from 1995 to 2001. An analysis based on more than 250 cases against nurses. More and more nurses are being named defendants in malpractice lawsuits, according to the National Practitioner Data Bank (NPDB). The trend shows no signs of stopping, 1-3 despite efforts by nursing educators to inform nurses and student nurses of their legal and professional responsibilities and limitations. A charge of negligence against a nurse can arise from almost any action or failure to act that results in patient injury—most often, an unintentional failure to adhere to a standard of clinical practice—and may lead to a malpractice lawsuit [8].

Defining and Tracking Malpractice

The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) defines negligence as a “failure to use such care as a reasonably prudent and careful person would use under similar circumstances.” JCAHO defines malpractice as “improper or unethical conduct or unreasonable lack of skill by a holder of a professional or official position; often applied to physicians, dentists, lawyers, and public officers to denote negligent or unskillful performance of duties when professional skills are obligatory. Malpractice is a cause of action for which damages are allowed” [9].

Malpractice is defined variously under state nurse practice acts, institutional policies, and federal guidelines such as JCAHO standards, all of which may be taken into consideration in court. Several factors have contributed to the increase in the number of malpractice cases against nurses.

Delegation: As a result of cost-containment efforts in hospitals and health maintenance organizations, nurses are delegating more of their tasks to unlicensed assistive personnel. Delegation of some of these tasks may be considered negligence according to a given facility’s standards of care or a state’s nurse practice act.

Early Discharge: Patients are being discharged from hospitals at earlier stages of recovery and with conditions requiring more acute and intensive nursing care.5 Nurses may be sued for not providing care or not making referrals appropriate to the patient’s condition.

The nursing shortage and hospital downsizing have contributed to greater workloads for nurses, increasing the likelihood of error.

- **Advances in technology:** require nurses to have knowledge of a variety of technologies’ capabilities, limitations, and safety features.
- **Increased autonomy and responsibility of hospital nurses:** in the exercise of advanced nursing skills have also brought about greater risk of error and liability.
- **Better-informed consumers:** are more likely to be aware of malpractice issues and to recognize insufficient or inappropriate care.
- **Expanded legal definitions of liability:** have held all professionals to higher standards of accountability. For example, because of the expanded scope of practice of advanced practice nurses, courts have held them to a medical standard of care.

Negligence Issues

According to eileen 2003 six major categories of negligence issues that prompted malpractice lawsuits. Documentation describing the negligent behavior often used terms such as failure to, lack of, incomplete, ineffective, and improper. The categories of negligence are: failure to follow standards of care, failure to use equipment in a responsible manner, failure to communicate, failure to document, failure to assess and monitor, and failure to act as a patient advocate.

Six Major Categories of Negligence That Result in Malpractice Lawsuits

Failure to follow standards of care, including failure to

- Perform a complete admission assessment or design a plan of care.
- Adhere to standardized protocols or institutional policies and procedures (for example, using an improper injection site).
- Follow a physician’s verbal or written orders.

Failure to use equipment in a responsible manner, including failure to

- Follow the manufacturer’s recommendations for operating equipment.
- Check equipment for safety prior to use.
- Place equipment properly during treatment.
- Learn how equipment functions.

Failure to communicate, including failure to

- Notify a physician in a timely manner when conditions warrant it.
- Listen to a patient’s complaints and act on them.
- Communicate effectively with a patient (for example, inadequate or ineffective communication of discharge instructions).
- Seek higher medical authorization for a treatment.

Failure to document, including failure to note in the patient’s medical record

- A patient’s progress and response to treatment.

- A patient's injuries.
- Pertinent nursing assessment information (for example, drug allergies).
- A physician's medical orders.
- Information on telephone conversations with physicians, including time, content of communication between nurse and physician, and actions taken.

Failure to assess and monitor, including failure to

- Complete a shift assessment.
- Implement a plan of care.
- Observe a patient's ongoing progress.
- Interpret a patient's signs and symptoms.

Failure to act as a patient advocate, including failure to

- Question discharge orders when a patient's condition warrants it.
- Question incomplete or illegible medical orders.
- Provide a safe environment.

Strategies of Nursing Malpractice

ANA Standards of Practice and Professional Performance^[10], Standards of Practice

The Standards of Practice describe a competent level of nursing care as demonstrated by the critical thinking model known as the nursing process. The nursing process includes the components of assessment, diagnosis, outcomes identification, planning, implementation, and evaluation. Accordingly, the nursing process encompasses significant actions taken by registered nurses and forms the foundation of the nurse's decision-making

Standard 1. Assessment

The registered nurse collects comprehensive data pertinent to the healthcare consumer's health or the situation.

Standard 2. Diagnosis

The registered nurse analyzes the assessment data to determine the diagnoses or issues.

Standard 3. Outcomes Identification

The registered nurse identifies expected outcomes for a plan individualized to the healthcare consumer or the situation.

Standard 4. Planning

The registered nurse develops a plan that prescribes strategies and alternatives to attain expected outcomes.

Standard 5. Implementation

The registered nurse implements the identified plan.

Standard 5A. Coordination of Care

The registered nurse coordinates care delivery.

Standard 5B. Health Teaching and Health Promotion

The registered nurse employs strategies to promote health and a safe practice environment.

Standard 5C. Consultation

The graduate-level prepared specialty nurse or advanced practice registered nurse provides consultation to influence the identified plan, enhance the abilities of others, and effect change.

Standard 5D. Prescriptive Authority and Treatment

The advanced practice registered nurse uses prescriptive authority, procedures, referrals, treatments, and therapies in accordance with state and federal laws and regulations.

Standard 6. Evaluation

The registered nurse evaluates progress toward attainment of outcomes.

Source: American Nurses Association (2010). Nursing: Scope and Standards of Practice, 2nd Edition. Silver Spring, MD: Nursesbooks.org; (pgs. 8-9)

Standards of Professional Performance

The Standards of Professional Performance describe a competent level of behavior in the professional role, including activities related to ethics, education, evidence-based practice and research, quality of practice, communication, leadership, collaboration, professional practice evaluation, resource utilization, and environmental health. All registered nurses are expected to engage in professional role activities, including leadership, appropriate to their education and position. Registered nurses are accountable for their professional actions to themselves, their healthcare consumers, their peers, and ultimately to society. (Nursing: Scope and Standards of Practice).

Standard 7. Ethics: The registered nurse practices ethically.

Standard 8. Education

The registered nurse attains knowledge and competence that reflects current nursing practice.

Standard 9. Evidence-Based Practice and Research

The registered nurse integrates evidence and research findings into practice.

Standard 10. Quality of Practice

The registered nurse contributes to quality nursing practice.

Standard 11. Communication

The registered nurse communicates effectively in a variety of formats in all areas of practice.

Standard 12. Leadership

The registered nurse demonstrates leadership in the professional practice setting and the profession.

Standard 13. Collaboration

The registered nurse collaborates with healthcare consumer, family, and others in the conduct of nursing practice.

Standard 14. Professional Practice Evaluation

The registered nurse evaluates her or his own nursing practice in relation to professional practice standards and guidelines, relevant statutes, rules, and regulations.

Standard 15. Resource Utilization

The registered nurse utilizes appropriate resources to plan and provide nursing services that are safe, effective, and financially responsible.

Standard 16. Environmental Health

The registered nurse practices in an environmentally safe and healthy manner.

Discussion

There are not too many cases of legal suits filed against nurses in India, as our patients and their relatives still feel that the responsibility of any criminal negligence in patient care lies with the doctors. However, there have been criminal suites of medical negligence against nurses and the notable ones among these are:

- Unskilled treatment of a high-risk pregnancy at Jeevan Hospital at Tanjore Road near Tiruchirappalli in Tamil Nadu (1994), resulting in death of the foetus ^[11].
- Partial disability of leg, caused due to administration of injection by an unqualified nurse in 1995 at Karuna Hospital in Thiruvanthapuram ^[12].
- Permanent brain damage caused by negligence of nurse in administration of drug at Spring Meadows Hospital in 1993 ^[13].
- Death of an Infant caused by negligence of nurse on duty on 22 February 2010 at Government Medical College, Nagpur ^[14].
- A very recent case of a mismatched blood transfusion carried out by a nurse in Bangalore at KC General Hospital, resulting in death of patient ^[15].
- All nurses should be familiar with nursing laws and ethics and they should understand as to how nursing legal issues can affect them. Basic nursing laws which all nurses should know are

Signatures are Golden: When a physician or another health care provider orders that a procedure be done on a patient, it is the nurse's responsibility to obtain the patient's informed consent and signature. If the nurse does not obtain his/her signature, both the nurse and the health care provider can be held liable for damages ^[16].

Documentation: It is the nurse's responsibility to make sure that everything that is done with regards to a patient's care (vital signs, specimen collections, medication administration, etc.) is documented in his/her chart/case sheet. If they are not documented within the proper time frame, the nurse can be held liable for negative outcomes. A note of caution: if an error is made on the chart, it should be crossed out with one line (so that it remains legible) and the correction and the cause of the error should be noted.

Report it or Tort it: Allegations of abuse are serious matters. It is the duty of the nurse to report to the proper authority when any allegations are made (emotional, sexual, physical, and mental) towards a vulnerable population (children, elderly, or domestic). If no report is made, the nurse has to be held liable for negligence or wrongdoing towards the victimized patient.

Rights to Privacy: The nurse is responsible for keeping all patient records and personal information private and only accessible to the immediate care providers. If records get out or a patient's privacy is breached, the liability lies on the nurse, because the nurse has immediate access to the records.

Conclusion

Nursing practice is highly interactive; hence it's increasing Vulnerability to litigation. In a related concept, nursing's quest for quality care, patients' satisfaction and dignifying care implies that the profession ensures that members are knowledgeable on their rights and privileges, patients'

clients' rights; and conformation to the standards of practice. This becomes very important because every individual wants his/her rights protected and would do anything should such be infringed upon. With the advent of new technology, changing laws, and new court decisions, the ethical and legal issues nurses will encounter when taking care of patients will not remain the same. Continuing education will be essential if nurses are to remain current, lower their malpractice liability, and deliver quality care

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