

Module 3

LEGAL ASPECTS OF NURSING I

INTRODUCTION

This module is composed of two units, each with behavioral objectives; content, and a self—test. After reading the objectives for the first section, proceed through the content and answer the questions on the first self—test. Answers to the self—tests are located at the end of this module. Try to complete an entire unit at one time. When you feel you have mastered the first unit, proceed to the second unit in the same manner.

Unit 1

Legal Considerations in Nursing Practice

INTRODUCTION

This unit is intended to give you a basic understanding of legal aspects which affect your general nursing practice. It is not designed to supply legal advice for your specific situations. Should you find yourself in potential legal trouble in your nursing practice, consult your attorney.

OBJECTIVES

Upon completion of this unit, you will be able to:

- Define negligence.
- State the four essential components of a malpractice suit.
- List four additional doctrines which affect the nurses' practice.
- Identify at least five major grounds for malpractice litigation.

Scenario 1:

While you are working in an acute care hospital, your former teacher, Mrs. S., is admitted to your floor. The chart reads: "Bilateral Pulmonary Metastatic Carcinoma: Prognosis: Terminal." When you are attending church the following Sunday, several people ask about Mrs. S. A friend confronts you directly stating, "Isn't it too bad about Mrs. S.? They say she's dying of cancer." How would you respond?

Comment:

If you confirm or deny the diagnosis, YOU are committing an ethical catastrophe. You are divulging information you gained in the course of your professional employment.

Can Mrs. S. sue you if she finds out you released this information? Yes, she can because you have violated a confidence, which is an invasion of privacy.

How should you respond in this situation? The best thing to do is quote your hospital policy regarding release of information. You might say, "I'm sorry, I'm not allowed to discuss it," or "I'm not at liberty to say."

Scenario 2:

A friend is having a rough time dealing with a temporary crisis. She asks you to sneak her a few sleeping pills from the hospital pharmacy. How do you respond? -

Comment:

If you oblige this friend and sneak several barbiturates from the medication room on your nurses' station, you are in serious legal trouble.

First of all, you are stealing. Second, you are prescribing medication, which is a violation of the state Medical Practice Act and can result in criminal charges. Third, you are dispensing medication, thus violating the state Pharmaceutical Act. Fourth, you have taken a drug covered by the Narcotic and controlled Substance regulations, possibly incurring federal prosecution.

The appropriate response is to refer your friend to a physician.

These examples illustrate the kind of risky situations you as a nurse will face occasionally. It is easy to respond in haste without realizing the gravity of the legal consequences.

Following is an examination in greater depth of the legal principles which apply to you. There are two broad categories of law: civil and criminal. For the present, we will consider only the civil law principles.

Civil law:

Civil law concerns itself with the acts of a torts private individual, group, or corporation which results in harm to another, commonly referred to as torts. The harmed individual or entity may file a civil lawsuit against the one who caused the injury.

Negligence

The Doctrine of Personal Liability holds that each individual is responsible for his or her own actions. No person, organization or facility can absolve you of this responsibility. If I recklessly crash my car into yours, damaging your vehicle, I am totally responsible for that action and must suffer the consequences. Negligence is the term that describes the hazardous act, which results in harm to another.

Any citizen can be sued for negligence, regardless of his or licensure or employment status.

Scenario 3:

In the course of transferring a patient from admissions to his or her room, a nurse aide knocks an IV stand over. It smashes across the patient's leg, resulting in a fractured tibia. Can the patient sue the nurse aide?

Comment:

Yes, he/she clearly committed a negligent act which resulted in an injury. Although the hospital may also be sued, the hospital cannot assume total responsibility for that aide's negligence. The aide is always responsible for his/her own actions under the doctrine of personal liability.

Malpractice

The Doctrine of professional Liability applies only to licensed individuals. This doctrine holds that a licensed individual who commits a negligent act in the course of his or her professional duties may be sued for malpractice. Engineers, veterinarians, CPAs, architects, pharmacists, physicians, and nurses may be sued for malpractice by virtue of their professional licensure.

There are four basic components of a malpractice case in the field of nursing. All four must be present in order for the case to materialize. The four elements are:

- nurse—patient relationship
- standard of care
- breach of the standard
- causation of harm

We will consider each of these in detail.

Nurse—patient relationship

A nurse-patient relationship is initiated relationship whenever a nurse gives nursing care to someone. It has nothing to do with the employment status of the nurse. You are a nurse 24 hours a day, 365 days a year, as long as your license is valid. A nurse—patient relationship starts when the nurse offers nursing advice or assistance by laying on of hands. If your neighbor complains of chest pain and you offer nursing advice or touch the person in the course of making an assessment, you have initiated a nurse-patient relationship and are, from that point on, responsible for what happens to your neighbor with regard to that problem. Once the nurse—patient relationship has started, you owe that person “a special duty of care.” That means you must act in a reasonably prudent manner to give sound nursing care.

Telephone advice is particularly risky, as noted in the following example.

Scenario 4:

A neighbor phones you late one evening with the following complaint: “Johnny’s got bronchitis. He can’t sleep, he’s restless, he’s coughing, running a temp, congested and complaining of a sore throat. What should I do?” You respond, “Give him one aspirin and a glass of orange juice, bathe him with a tepid sponge, put him to bed and call me in the morning.”

Comment:

You have now initiated a nurse—patient relationship and would be responsible if the child died of lobar pneumonia during the night. There are two criminal elements in this case. Can you find them? The first is the nurse confirming the mother’s diagnosis of bronchitis. If she/he does this without seeing the child, she/he is not only practicing medicine without a license, but practicing poor medicine at that. The second is the prescription of a medication, again violating the Medical Practice Act.

The appropriate response to this mother’s frantic phone call is, of course, to refer her to the physician.

What about the initiation of nurse-patient relationships in emergencies? Most states have Good Samaritan Acts which impel professionals to stop at the scene of an accident to render professional care. The Good Samaritan Act protects you from later being charged with malpractice if you stop and, in good faith, offer your nursing services. You still can be sued for negligence as an ordinary citizen, however. Should you be discovered by-passing the scene of an accident, you can, in some states, be sued for negligence for abandoning a victim.

Standard of Care

The second essential component in a malpractice suit is the presence of a standard of care. A standard of care is a measure of acceptable nursing practice. A standard of care might be “side rails must be raised whenever disoriented patients are put to bed” or “bedridden patients weighing over 200 pounds must be transferred from bed to chair with a minimum of three staff lifting.” Standards of care are designed to protect the patient’s safety and well-being. They may be found in your facility’s procedure manual or in the patient’s individual plan of care.

In a broader sense, the state defines acceptable standards of nursing care in the Nurse Practice Act. Each state’s Nurse Practice Act describes the scope of practice of the registered nurse and licensed practical nurse. The scope of practice establishes the legal parameters within which you must function as a nurse. Standards of care included in the scope of practice would be health teaching and counseling, preventive and restorative care, anticipation of potential problems, and patient assessment. You should familiarize yourself with your scope of practice as defined in your state’s Nurse Practice Act because you will be held to that standard should you ever be defending yourself in a malpractice case.

Your job description also specifies the parameters within which you must function. This is another standard to which you will be held if you are the defendant in a malpractice suit. It would be to your advantage to study your job description carefully to ensure you are practicing within its specifications.

An additional standard is that of the expert witness. A nurse with similar education and experience may be called to testify as to what a reasonably prudent nurse would do in this case.

The ultimate standard of care is “what is best for this patient at this time.” If you act in good faith with this precept as your motivation, your chances of avoiding a lawsuit or defending yourself in a lawsuit are great. That sounds easy enough until you think about the complexity of critical, highly—charged hasty situations in which you may incur the wrath of the physician or risk losing your job if you follow your best instincts about what is best for the patient.

Breach of Standard

The third critical element in any malpractice the standard case is the “breach of the standard.” This occurs whenever a nurse violates or ignores a documented standard of care.

Scenario 5:

The hospital procedure manual states: “Sterile technique is to be used whenever catheterization care is given.” The nurse is in a hurry to get to another critical patient, so he *inserts* a catheter, which has been dropped on the floor in transit to this patient’s room.

Comment:

Regardless of the results of this hazardous situation, the first three elements of a malpractice case are present here. Clearly there is a nurse—patient relationship because the nurse is giving this patient nursing care and, thus, owes him a special duty of care. The procedure manual documents the standard of care applicable in this instance. The nurse has committed a breach in the standard because he has violated hospital policy regarding sterile catheterization. He has been negligent.

Causation of harm

In order for a malpractice case to fully develop, there must be a direct cause and effect relationship between the breach in the standard and harm to the patient. This is where most malpractice suits disintegrate. Either there is no observable injury to the patient, or the injury cannot be directly attributed to the nurse's negligence. In the case above, if the patient suffered no ill effects from the unsterile catheter, there would be no grounds for litigation.

Scenario 6:

A patient enters a clinic for a chest x-ray. The chest x-ray is negative except it reveals a 3-inch surgical scissors just below the diaphragm. The patient reports that she had surgery three years ago for repair of an epigastric ulcer and had an uneventful recovery with no post—surgical complications. Can this patient file a malpractice suit against the surgeon who apparently sutured the incision over the missing surgical scissors?

Comment:

No. Even though the first three elements of a malpractice suit are present, the patient cannot claim causation of harm because she has had no deleterious effects from this breach of a standard of care.

Other Doctrines Affecting a Nurse's Liability

Respondeat superior. This doctrine, meaning “Let doctrines the Master respond,” holds the employer liable for affecting a the negligent acts of the employees.

In the example of the nurse aide causing an IV stand to fall on a patient during transport within the hospital, the nurse aide may be sued, but the hospital may also be sued. The hospital is liable for hiring and supervising an employee who commits a negligent act.

Supervisory negligence. This doctrine holds that the supervisor nurse is responsible for the negligent acts of the RNs and LPN's and aides she or he supervises if, in the process of supervision, she or he has been negligent. The two major pitfalls for the supervisor are misdelegation and personnel evaluation. The supervisor must not delegate any function clearly beyond the scope of practice of the staff member to whom she or he delegates. The supervisor must be familiar with the nurse practice act and the institutional job descriptions that define the legal parameters of the supervised staff. The supervisor must not assign functions of the LPN to the nurse aide or functions of the RN to the LPN. The most common time for this choice to arise is if the unit is short—staffed and the patient census is high. The supervisor must make provisions for some type of back—up staffing so that she or he is not left with misdelegation as the only alternative.

Scenario 7:

An LPN assigned to the surgical unit called in ill ten minutes before her 7:00 a.m. shift. The supervisor tried unsuccessfully to call in a replacement LPN. Under pressure to ensure the preoperative medications are given on schedule, the supervisor assigned the morning medications to the most experienced nurse aide. The aide miscalculated a dosage and gave twice the amount of Demerol and atropine to a pre—surgical patient, causing permanent damage.

Comment:

The nursing supervisor was negligent because she misdelegated an assignment clearly beyond the capabilities and qualifications of the aide. The patient can now bring suit against the hospital under the doctrine of respondeat superior, the nurse aide under doctrine of personal liability, and the nursing supervisor under the doctrine of supervisory negligence.

Scenario 8:

The supervisor notes that the LPN who is a newly licensed graduate had difficulty passing medications in a reasonable length of time. During the LPN's first quarterly evaluation, the supervisor discusses with her the series of eight medication errors she has made since starting her job. The LPN's written evaluation documents the medication errors.

Comment:

If the supervisor takes no corrective action and continues to assign the medications to the LPN, he is liable for supervisory negligence. Even though the LPN is licensed to carry out this function, if her practice has been documented as unsafe, they are both liable for her negligence if she is allowed to continue that function. The appropriate action for the supervisor would be to require the LPN to successfully complete a pharmacology course before he would allow her to resume the function of giving medications.

The supervisor bears a tremendous amount of legal responsibility. Virtually everyone under her/his supervision is practicing on her/his license. The supervisor needs to take every precaution to avoid the unsafe practice of any of the staff. Her or his professional judgment in evaluating personnel capability and assigning functions appropriately is critical. An attitude of openness as a resource person is essential. The staff should feel comfortable coming to her/him for direction when they are in doubt about any nursing function.

Captain of the ship. This doctrine pertains to the physician who takes primary responsibility for the patient's course of treatment. Should the physician make an error in diagnosis, prescription, or the patient's course of therapy, he or she is held liable for that error. Most physicians are not employees of hospitals or other facilities. Being self—employed, they have staff privileges, which allow them to admit and subsequently treat patients in health care institutions. The physician's liability then is independent of that facility except insofar as the nurses caring for his or her patients follow his or her incorrect orders.

Scenario 9:

Dr. X., a new physician, admits a patient to the coronary care unit of the local hospital. The admitting orders state that the patient is to receive 1000 milligrams of a cardiac medication stat. The RN hesitates to give the med in that dosage because she has never seen it given in more than 100 mg dosages. She calls her supervisor to check the order before she gives it. The supervisor

states that Dr. X has just completed a residency in cardiology and must know what she's doing. In addition, the order reads stat, so she had better not waste any more time giving it. The RN administers the 1000 mg dosage per doctor's order resulting in the patient's immediate death.

Comment:

The patient's estate can bring suit against the physician for issuing an incorrect order, the pharmacist for dispensing the drug in that dosage, the RN for administering an incorrect dosage, the supervisor for not questioning the doctor about the unusual dosage, and the hospital for employing these negligent nurses.

It is the nurse's legal obligation to question a doctor's order if she or he believes it will result in harm to the patient. A nurse can always refuse to give a medication or initiate a procedure believed to be incorrect. If the nurse chooses not to do a given procedure, she or he must contact the supervisor immediately so that alternate arrangements can be made.

Contributory negligence. This doctrine pertains to the patient's role in causing harm to him/herself. Should a patient contribute to his or her own injury or decline by not following doctor's orders or not cooperating in the plan of care, that person may not later bring litigation. The patient is prohibited from filing a lawsuit against the facility or staff because his/her own actions were partially responsible for his or her decline.

Scenario 10:

Mrs. T. has had a right hip pinning. The physician has ordered "No weight-bearing on right leg." Her nursing care plan as well as the sign above her bed reiterates this order. The chart indicates that the patient has been instructed and has repeated the instruction regarding this order. Disregarding all this, Mrs. T. walks from the bed to the bathroom. When the nurse discovers Mrs. T. walking from the bed to the bathroom, she attempts to assist her back to bed, dropping her on the floor, fracturing her right hip.

Comment:

Mrs. T. has no grounds for a lawsuit, even though negligence may have occurred, because she contributed to her own injury by ignoring medical orders.

Common Causes for Malpractice Litigation

Doctor's orders: There are two hazards here:

following doctor's orders and not following orders. If you do not have cause to question a doctor's order but neglect to carry it out, you are negligent. If, on the other hand, you believe the order will result in harm to the patient, you have a legal duty to confront the physician and question the order. The consequences of not questioning a physician's incorrect order can be disastrous, as the example in Scenario 9 illustrated.

Drugs and anesthetics. Erroneous administration of pharmaceuticals is a major cause of malpractice suits against nurses. Nurse anesthetists are a particularly high—risk group because they use considerable independent judgment in administering anesthetics. The supervising anesthesiologist may not be readily available for consultation. All nurses should follow the five

“rights of medication administration”: right patient, right medication, right time, right dosage, right route.

Falls. This is a common cause of litigation against nursing homes. Elderly or disoriented patients, or those experiencing perceptual distortion, warrant special precautionary measures to prevent falls.

Burns. Common offenders are hot water bottles, baths, and heat lamps. Always check the temperature of a hot water bottle with a thermometer before applying it to a patient’s skin. A protective covering should be used to avoid direct contact with skin. A classic case of malpractice involving burns occurred when a heat lamp collapsed on an infant, causing severe abdominal burns.

Sponges and instruments. Surgical procedures may be the source of malpractice if equipment is left inside the incision causing harm to the patient. (See Scenario 6)

Infections. Contaminated equipment or staff with contagious diseases may expose patients to additional risks. Staph and strep infections are the most common; however, viral infections and hepatitis are also offenders. Several cases of patients or staff acquiring AIDS from infected patients are now being prosecuted.

Medical diagnosis made by the nurse. As the fourth scenario indicated, it is easy for a nurse to get trapped into making or confirming a medical diagnosis. Of particular risk is the practice under standing orders or protocols, as the following scenario indicates.

Scenario 11:

A large industrial company employs an occupational health nurse who is responsible for employee histories and physicals, emergency care, safety, and preventive health care programs. An employee enters the nurse’s office complaining of upper respiratory symptoms. The nurse makes an initial assessment and begins therapy as prescribed in the Standing Orders for Upper Respiratory Infections. These standing orders have been issued by the physician who is on call for consultation whenever the nurse needs her. The standing orders call for an antihistamine with aspirin, a glass of orange juice, and 24 hours bed rest. The nurse sends the patient home in a cab to get some rest after he has taken the antihistamine with aspirin and orange juice. On the way home in the taxi, the employee suffers a massive coronary and dies.

Comment:

The nurse “diagnosed” this condition as an upper respiratory infection and missed the diagnosis of the impending coronary. In order to apply standing orders, the nurse must decide what is wrong with the patient. This may in fact border on medical diagnosis. The patient’s estate can file suit against the nurse and the company in this case.

As you can see, there are multiple sources of malpractice claims against nurses. The responsibility a nurse bears for her or his practice is staggering. There are several ways nurses can protect themselves from litigation. These are considered in the next unit.

This is the end of Unit 1. Please proceed to the self—test.

Unit
Self-Test

1. A _____ is an act of a private individual, group, or corporation resulting in harm to another. It falls under the broad category of _____ law.
2. A hazardous act by one person resulting in injury to another is called _____
3. Who can be sued for malpractice?
4. When is a nurse-patient relationship initiated?
5. Define standard of care.
6. Where are standards of care found?
7. Match the following terms to their definitions.

_____ 1. supervisory negligence

_____ 2. contributory negligence

_____ 3. respondeat superior

_____ 4. captain of the ship

- a. Employers are liable for the negligent acts of their employees.
- b. Physicians are responsible for their negligence in directing patient care.
- c. Nurses are liable for the negligence of their staff members.
- d. Patients who do not follow orders may not bring lawsuit.

Unit 2

Legal Consideration of Charting

INTRODUCTION

This unit is intended to give you a basic understanding of legal aspects of charting. It is not designed to supply legal advice for your specific situation. Should you find yourself in potential legal trouble over your charting, consult your attorney.

OBJECTIVES

Upon completion of this unit, you will be able to:

- Recognize the appropriate use of consent and release forms.
- State, in writing, four factors which make nurses' notes legally significant.
- List, in writing, five charting errors which could result in litigation.
- Identify the nurse's obligation to the patient who has been injured while institutionalized.
- State at least five principles of legal accountability for the nurse.

Comments

Legal charges that can be avoided through charting and forms

Assault and battery. Assault is the threat of unauthorized touching. Battery is the actual unauthorized touching. A patient must consent to touching prior to the initiation of any course of therapy. There are two kinds of consent: implied consent and informed consent.

Implied consent. Implied consent happens when a patient voluntarily enters a clinic, hospital, or nursing home. The patient is voluntarily submitting to receive attention from the health professionals there. He or she is seeking advice, but remember: the patient always has the right to refuse the proposed treatment. If the patient refuses a treatment or medication, the chart should indicate his or her reason for refusal.

Informed consent. Informed consent is needed whenever an invasive body procedure is proposed: fluoroscopy, surgery, bronchoscopy, proctoscopy, and so on. It is the physician's legal responsibility to inform the patient of the nature and potential outcomes of the procedure and to obtain the signed consent form. This is, however, most often a function the doctor will delegate to the nurse. The nurse can legally accept this delegated responsibility. If you need to get a patient's signature on a consent form, you need to validate his or her knowledge about the upcoming procedure. You might ask the patient to recall what the doctor explained about the procedure. If you find the patient's understanding to be incorrect or inadequate to make an informed decision, you should urge the patient to call his or her doctor to request a more complete explanation before the consent form is signed. The form must be signed by the patient and two adult witnesses. It must be signed before preoperative medications or sleeping pills are given to ensure the patient's clarity of mind. Consent forms should be signed within 24 hours of the procedure; however, if the procedure is unavoidably delayed until later in the patient's hospitalization, the same consent form will still be valid.

If the patient is a minor, the parent or legal guardian should sign the consent form. An emancipated minor may sign the consent form. Those declared legally incompetent will need the consent of their legal guardians. In the case of an emergency when the patient is unconscious and surgery is imperative, every effort should be made to contact the next of kin. At times consent can be obtained over the telephone. Should this prove to be impossible, the hospital may assume temporary custody of the individual and grant consent. In this case, the chart should document all steps taken to obtain consent.

Consent forms should be as specific as possible. They should state the name of the physician(s), date of procedure, name and nature of the procedure, and what part of the body is affected (bilateral or unilateral and which side). These forms are legal documents and should remain in the patient's chart.

Principles of assault and battery become especially important when care is being given to those of religious groups whose beliefs prohibit blood transfusions or injections. Christian Scientists and other similar organizations may file assault and battery charges if you transfuse or inject one of their members without consent. This can be avoided through the process of informed consent.

False Imprisonment. Detaining a patient against his or her will may Imprisonment result in false charges. In this era of patient rights, we should be aware of each individual's right to come and go without restriction.

Premature Departure. A major source of false imprisonment charges is prohibition of premature departure. If a person decides to leave the hospital or nursing home before the personal physician has approved discharge, the patient has the right to leave. What is your responsibility as a nurse in this situation?

- Call the patient's physician to notify her or him of the patient's intention.
- Try to delay the patient until the physician comes.
- Inform the patient that he or she will be solely responsible for his/her own safety after leaving.
- Ask the patient to sign a release form absolving your facility from responsibility once the patient leaves.
- Document your actions in the patient's chart.

Restraints. Another major source of false imprisonment charges is that of restraints. Nursing homes are particularly vulnerable to this. A doctor's order and a documented safety hazard must be on record in the chart before restraints may be applied. If chemical restraints such thorazides are to be used, the nurse must check the patient/resident every half hour for potential ill effects. If physical restraints, such as Posey belts, are used, the nurse must check for circulation impairment every 30 minutes. Restraints must be applied properly and released every two hours and position changed and/or area massaged to prevent additional problems. No more than three limbs may be restrained at any given time. Half doors in nursing homes which inhibit freedom of movement are also considered restraints and it is best to obtain a doctor's order for them.

Invasion of Confidentiality.

The biggest offender in this privacy category is breach of confidentiality. Patients have the right to protection against public exposure. All information on the patient's chart is confidential. Please refer to the previous section on HIPAA regulations for more information on confidentiality and privacy of patients records.

Scenario 1:

You receive a phone call from a person claiming to be the niece of a patient on your floor. The caller requests the diagnosis, prognosis, and projected length of stay. How do you respond?

Comment:

Since you can't verify the caller's identity or her relationship to your patient, you should not release any information. You may refer the caller to the patient, the patient's family, or the physician. Or you may take the caller's name and number and return the call to verify she is who she claims to be. She could be an attorney, the press, or any number of sources to which you would not release confidential information.

Photographs. Public exposure of an identifying image through pictures on any type of media may give rise to invasion of privacy suits.

Scenario 2:

Mr. and Mrs. P. entered the delivery room for the birth of their first child. The baby was born with multiple deformities and died shortly after birth. The medical school photographer happened to be in the delivery room that day and took several photographs of the baby which later appeared in a medical textbook. Even though the names were removed, Mr. and Mrs. P. recognized the child in the textbook photos as their own and subsequently filed lawsuit alleging invasion of privacy.

Comment:

Whenever photographs or interviews are to be taken for publication, the patients or guardians should be asked for their permission, informed of the intended use, and presented with a release form to sign. The release form states that the patient was a willing, informed participant in the process.

Defamation of Character Impairing the reputation of a patient may happen quite innocently through judgmental, subjective charting and reporting.

Slander. Making statement injurious to a patient's reputation may evoke charges of slander. The hospital cafeteria often becomes the site for gossip about patients and co—workers. If a family member at a nearby table overhears nurses discussing their frustrations over a given patient, that person may interpret those comments to be slanderous.

Libel. Libel refers to written defamation. Avoid subjective labels when charting about a patient's psychosocial state. Don't chart "patient seems hostile." Instead, use your mind like a camera and chart exactly what you see and hear: "Patient is striking his wife with his left arm. He states in a loud voice, 'Get out.' I don't want to see you here again!" You are simply stating the facts, not

drawing any conclusions about them. The care plan should also be free of judgmental statements that could be interpreted as libelous.

Significance of the Chart and Nurse's Notes

The chart is a legal document which may be of the chart subpoenaed into a court of law. The patient's and nurses' name should be clearly stamped on each page; all notes entries must be written in ink (felt—tip pens do not copy well), dated, and signed. No space should be left between the end of the narrative and the nurse's signature. A line should be entered in the blank space to prevent unauthorized entries later.

Charting Errors Leading to Litigation

When the patient experiences a relapse or a errors crisis, the accuracy of documentation should be leading to meticulous. One of the major charting errors leading to litigation is the absence of charting during a period of drastic change in the patient's condition.

Scenario 3:

A family brings lawsuit against a hospital and a nurse following the death of a patient. The chart indicates that the patient's blood pressure dropped consistently ten points per hour for the three hours preceding her death. The nurse's notes read as follows: "10:00 a.m. Fair day. Bath given, tolerated well. MM, RN. 2 p.m. Absence of pulse, blood pressure and respiration. Physician notified. MM, RN."

Comment:

The nurse is in serious trouble for not charting the significant factors leading to the patient's death. She had an obligation to at least monitor the dropping blood pressure. The chart assumes that the patient's condition is stable. Any deviation in the patient's condition deserves notation and follow-up in the nurse's notes.

A second and related charting error is the absence of exact times and sequences of activities. These factors are especially critical when the patient's condition requires highly complex, multidisciplinary procedures.

The medication sheet should indicate the exact time the pre—op medication was given and the nurse's notes should indicate the time the surgical consent form was signed prior to the med. The sequence of these two procedures is critically important as noted in the previous section on informed consent. The chart will be the record of truth, regardless of your recollection.

Precautionary measures to protect the patient's rights, safety, and well-being should also be charted. The time the physician was notified, the pastor was called, and the family was contacted should all be noted in the nurse's notes. Application of restraints and side rails should also be noted. Patient teaching and the patient's response to it should be charted.

One of the most often missed items is the charting of a patient's reaction to a PRN med, treatment, or diagnostic procedure. A myelogram, for example, almost always results in a headache. The time of onset, severity, PRN medication given, and time of relief should be documented in the chart. Never sign for something you didn't directly observe.

ABC's of Daily Charting

A nurse's notes must be:

A = accurate

B = brief

C = complete

Notations should be neat, intelligent, and pertinent. Here are some practical hints to help you chart more meaningfully:

1. Read the latest entry of nurse's notes before you begin to chart.
2. Make sure the name on the chart is the patient on whom you wish to chart. Don't pull charts by room number only.
3. Record only factual information. Describe symptoms objectively, avoiding judgmental or diagnostic terms. Instead of charting "wound appears to be infected," use your mind like a camera and check what you see: "edges of wound are separated by .5 cm.; 10 cc of green, foul-smelling liquid oozed from open area."
4. Use only standard abbreviations as defined in your procedure manual.
5. Chart medications and treatments only after they have been given.
6. Be definite. Avoid ambiguous terms such as "apparently," "seems to be," or "appears." Instead, chart what you see and hear, or what the patient tells you. Use quotation marks around a patient's statements.
7. Correct an error in charting by lining through it, dating and initialing it. Follow the error with the statement, "corrected to read " Then complete the nurse's notes with the appropriate entry. This example illustrates this process:

~~Up walking to bathroom. Tolerates ambulation well. 12/6/87 M.H., RN.~~

Corrected to read: 10 a.m. Walked from bed to bath with aid of walker once. Patient states, "My right leg feels numb when I walk on it." M.H., RN.

8. Chart frequently. Don't wait until the end of the shift to chart on all your patients.
9. Never make entries for another person.
10. Each entry should include the date, time, name, and title of the recorder.
11. Remember, legally if it is not recorded, it was not done.

Nurse's obligation to patient who has been injured while hospitalized

In the unfortunate event that a patient sustains injury as a result of negligence while hospitalized, the nurse needs to observe several basic tenets. Every patient deserves courteous and respectful care, but this patient warrants an extra measure of respect and dignity. Be honest with the patient about the incident. Most plaintiffs bringing malpractice cases would openly and bitterly state, "I didn't know anything about what was going on. They didn't tell me anything."

Accurate documentation is crucial in a potential malpractice case. Chart precautionary measures, patient's response to treatment, and any significant changes in the patient's condition. Take precautions to avoid further injury or advancing the current injury. The facility may choose to compensate the individual for excess expenses incurred as a result of this unfortunate incident. The patient can still bring a lawsuit, however.

Your liability if found guilty in a malpractice case

In the disastrous event that you are in a civil malpractice suit, the court will award the plaintiff patient "damages." These damages take the form of financial remuneration. The award will be made on the basis of 1) physical harm, 2) loss of income, and 3) emotional or psychic stress.

Scenario 4:

A 37-year-old neurosurgeon loses her hand in a traffic accident. She brings a civil lawsuit for negligence against the driver of the offending vehicle. The court establishes the defendant's negligence and proceeds to award damages.

Comment:

The physical injury may arbitrarily be worth \$100,000. The loss of income would be based on the years of employment affected. Subtracting the surgeon's age (37) from retirement age (65) and multiplying the remaining years (28) by the annual salary of a neurosurgeon, figuring in the inflation factor, quickly brings the court to over \$2 million for this category. The remaining category of emotional and psychic stress is a subjective judgment the court makes based upon the plaintiff's frustration, anxiety, and ability to regroup her forces into a productive life again. Often this category elicits more damages than the other two. In this case, the court awarded \$2 million for emotional stress due to the extensive education that this individual is now unable to use, causing her marked frustration.

As you can see, losing a malpractice case is expensive. Nurses should carry professional liability insurance to pay these damages as well as legal expenses. In this era, liability coverage of \$1 million per incident per year is not an exorbitant amount for a nurse to carry.

Criminal liability. If, in the course of committing a negligent act, you also violate a state or federal law, you are vulnerable to criminal charges. The state and federal government may prosecute you for a felony or misdemeanor, depending on the severity of the violation. Common causes for criminal liability of nurses are medical diagnosis, prescription of drugs, child abuse, and violation of the Narcotic and Controlled Substance regulations. Should you be found guilty, the court may impose a fine, imprisonment, or both.

Licensure suspension. If you are found guilty in either civil or criminal prosecution, the Board of Nursing may initiate a hearing to determine your capability to hold a nursing license. The hearing could result in permanent revocation, temporary suspension, or probation of your license to practice. Since this is public information, your name and licensure status will be published.

Scenario 5:

A nurse restrains a pediatric patient against his will in order to give the prescribed injection of insulin. The child becomes highly agitated and vocal. In the ensuing struggle, the child's arm is fractured and the insulin is not given. The child goes into diabetic coma. As a result of this incident the child's length of stay is prolonged and his recovery is impeded. The parents initiate a civil malpractice lawsuit against the nurse and the hospital to regain the excess hospital expenses and to compensate for the injury, pain, suffering, and emotional trauma caused to the child by the nurse's negligence. The state brings a separate criminal suit against the nurse for child abuse.

Comment:

Pending the outcome of these two proceedings, the Board of Nursing will initiate a third hearing to determine whether this nurse is safe to practice and should maintain RN licensure. It is possible to be tried three times for the same event. protection against liability. There are defensive measures you can use to protect yourself from liability. The best is a positive, caring relationship with your patients and their families.

Positive interpersonal relationships. If you establish a warm rapport with your patients and act in their best interests, they are not likely to institute proceedings against you. Honesty, openness, and respect are attitudes which foster good interpersonal relationships. Most malpractice cases result from poor nurse—patient relationships.

The literature documents the existence of a personality type called "suit-prone patient." This is an individual who is generally hostile, resistant to treatment, and looks for things to go wrong. This patient will often put impediments in the nurse's way, hoping to somehow confuse the nurse or get her or him to err. Should you encounter such a patient, treat him or her with special dignity and respect even though it is difficult. Take extra precautionary measures, use extreme care in giving medications and treatments, and document precisely what you do.

Statute of limitations. Each state has a statute of limitations which is designed to protect you from long-standing liability. This law holds that a patient may only bring suit for an injury within a given number of years following the injury. Once the statute of limitations has expired, a patient cannot bring a lawsuit against a negligent nurse. Generally, the statute of limitations for malpractice is two or three years from the time of discovery of the injury. Minors are under an extended statute of limitations in most states.

Scenario 6:

A fall of a nursing home resident caused a hairline fracture which did not elicit symptoms until a year later. The resident has three years from the onset of symptoms to bring the lawsuit. If he or she does not initiate proceedings within this three-year period, he or she can no longer prosecute.

Guidelines for nurses' legal accountability

Here are some rules of accountability that will protect you from prosecution:

1. Treat patients courteously and respectfully, making sure they know what is happening.
2. Identify yourself appropriately by your title.
3. Do not exceed your scope of practice as defined in the nurse practice act and your job description.
4. Accept only those delegated functions that are appropriate to your qualifications and skills and licensure.

If you consistently follow these principles, you will protect yourself from most liability.

Self-Test

1. When is informed consent needed?
2. Give two examples of false imprisonment.
3. The patient's right to protect public exposure is called _____
4. Explain the difference between libel and slander.
5. What is the nurse PRN medication?
6. Money paid to the patient who wins a malpractice suit is called _____
7. How should the nurse treat the "suit—prone" patient?
8. What is the nurse's best defense against malpractice?