Sources of the standards of care in malpractice actions

In these times of physician strikes and daily newspaper articles concerning the "malpractice crisis", it is appropriate to review one of the most important aspects of any malpractice suit—the standard of care against which the conduct of the defendant-medical practitioner will be judged.

A malpractice suit against any professional, including a CRNA, is basically the same as any type of personal injury litigation. The plaintiff is required to prove that the defendant owed him a duty, that he breached that duty, and that because of that breach the plaintiff suffered injury.

The standard of care required of the defendant is merely another way of stating the type of duty which the defendant owed to the plaintiff. It is a measure of that degree of skill and care which is required of anyone holding himself out to be a professional. Therefore, it is very important that any medical practitioner, including a CRNA, be very aware of exactly what the law expects of him or her during the treatment of a patient.

The standard of care required in a medical malpractice action is not something which is established from only one or two sources, but is something which is developed from many sources. The common thread which joins all of these sources together to weave the standard of care consists of the belief that a professional should know or be aware of all of these guidelines, and therefore, should practice his or her profession accordingly.

Peer comparison standards

One of the most basic elements of the standard of care is that degree of care which is normally rendered by similar professionals in similar areas under similar circumstances. The rationale behind this element is simply that all professionals should be held to the same level of skill and expertise which is normally prevalent among their peers.

This particular element of the standard of care is usually established by some form of expert testimony in malpractice cases. The reason for this is that the jury made up of laymen is not expected to possess the knowledge or expertise required to sufficiently judge the standard against which the defen-
A defendant's professional conduct should be evaluated.

Thus, the plaintiff has the burden of bringing to the court some member of the profession who is willing to testify what the "normal" professional would have done under similar circumstances as those which were present in the plaintiff's situation.

Sometimes, however, professionals are reluctant to testify against others of their profession, and in these situations, the plaintiff's attorney can rule upon the defendant-professional himself to establish what is expected in the way of treatment under such circumstances.

**State statutes**

Occasionally, however, the plaintiff is unable to find an expert witness to establish the standard of care and is unable to elicit testimony from the defendant sufficient to establish the standard of care. In these situations, the plaintiff is forced to rely upon other sources which can be used to establish the standard of care for treatment. One such source consists of the state statutes.

**Publications**

Obviously, a professional is expected to abide by the statutes in force in his state, and thus, those statutes are an element of the standard of care which is expected of him. In addition, a professional is expected to render treatment which is in accordance with that recommended by so-called authoritative treatises or journals on his or her specialty. In this way, the standard of care can be established by the plaintiff by proving that the plaintiff's situation had been one which was known and discussed in these treatises and journals, and thus the professional should have been aware of exactly the proper treatment.

**Hospital rules**

Another source of elements for the standard of care consists of writings which are normally in existence in and around the hospital. The rules of the hospital are often used to establish a standard of care, because of the obvious fact that any professional should be held to follow those rules which have been carefully considered by a committee of the hospital in which he or she is practicing. In this way, the various committees of any one hospital can have a very great effect upon the type of treatment which practitioners in that hospital will be expected to render.

**Instruction manuals**

In addition to formal hospital rules, there are other writings which should come to the attention of a CRNA as the source of an element of the standard of care for nurse anesthesia. These writings consist of the various instruction manuals and brochures that come with the machines which are normally used by the CRNA and the brochures and package inserts which come with the anesthetic agents.

The courts have held that as a professional, a CRNA should be well aware of the proper use and limitations of the machinery and equipment, as well as the dangers and appropriate methods of induction of the anesthetic agents.

**Other writings**

Other sources which have been used in litigation to establish the standard of care consist of writings which may or may not be as available to the CRNA as those previously mentioned. These writings include U.S. Food and Drug Administration releases on either equipment or anesthesia agents. Even though CRNA's may not have easy access to FDA releases, some courts have held that they, nonetheless, should make an effort to keep abreast of such scientific and governmental pronouncements concerning their profession.

Such writings also include the standards published by various professional societies, such as the American Association of Nurse Anesthetists. Several courts have held that, as a professional...
and a specialist, the medical practitioner should be aware of and abide by the standards which have been established by his medical specialty society.

For this reason, it is very important that these societies do not establish standards which are so optimal that, in all but rare instances, it is practically impossible to comply with every letter of the standards. Proper and safe treatment of the patient, of course, is always the goal of the medical practitioner, but societies should be realistic in their public pronouncements concerning their professional standards.

The final writing which undoubtedly the professional very rarely has a chance to see, consists of the case law of his or her state. Many courts will look to prior decisions for guidance in malpractice actions. Granted, these cases may not be a source of an element of the standard of care as often as some of the other elements mentioned. However, there very well could be a decision in a state which would be declared to be the public policy of that state. Namely, that in such and such a situation, the professional should act in such and such a manner.

As long as the professional has rendered care to the patient, which is in accordance with the standard of care in his locality, then he has fulfilled his duty to that patient. And, therefore, the professional cannot be liable to that patient for any injuries which the patient may feel that he has suffered. As all medical practitioners know, medicine is not a science so much as it is an art. Consequently, no result is totally assured, in spite of the utmost excellence of care.

**Conclusion**

Therefore, if a CRNA has knowledge of the standard of care which is expected in nurse anesthesia, then that CRNA will undoubtedly render treatment to patients which is as professional and as safe as is medically feasible at the time. In addition, when the treatment is in accordance with the standard of care, then the CRNA will be assured, that even if a freak accident or development occurs, he or she should not be held liable in a later malpractice action.

Since the sources for the standard of care consist of many varied areas, the most important advice we can give to CRNA's is to read any and all material which is available on the subject of nurse anesthesia and never cease your education. In this way, the CRNA will be both better protected in the sense of medical malpractice litigation and will be a better practitioner of anesthesia.
Almost everybody knows someone who has died of cancer. But the fact is about two million living Americans have been cured. Not only cured but leading active, normal lives. Another fact is millions more could be.

By getting to the doctor in time. By availing themselves of the most effective treatments today. By advances made through cancer research. Research made possible with the help of the American Cancer Society.

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