
Legal Briefs

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The duty to independently assess proper nursing functions

Nursing has always been a vital and integral part of providing health care services. Nurses are recognized as valuable team members in rendering such services. The team concept denotes a group of health care providers working together with their respective expertise. Each team member has an obligation to exercise professional judgment within his or her respective scope of practice. In connection with this obligation, courts have recognized a nurse-patient relationship in which the nurse has a duty to independently assess and evaluate the patient's condition and act in accordance with the standards of practice of the nursing profession.

The *Lunsford* decision

In *Lunsford v. Board of Nurse Examiners for the State of Texas*, 648 S.W.2d 391 (Tex. App. 3 Dis. 1983), a patient arrived at a hospital complaining of chest pains, accompanied by a pain and then numbness radiating down his left arm. The patient's companion searched for medical help and found a physician sitting at the nurse's station outside one of the treatment rooms. The companion requested the physician's assistance; but as the physician was quite busy, he instructed the companion to seek help from a nurse. A nurse then approached the nurse's station and was instructed by the physician to send the patient on to another hospital 24 miles away. The physician pointed to the hospital's only cardiac care equipment then in use on another patient. At that point, the nurse went into the waiting room where she found the patient lying on a table complaining of chest pains.

The nurse established that the patient had not eaten anything unusual that day nor had he engaged in any heavy physical exercise, but she failed to take the patient's vital signs. She then instructed the companion to drive the patient to the other hospital 24 miles away. After instructing the companion to speed to this hospital, the nurse inquired whether the companion knew CPR, since there was a chance that the companion might have to use it while in route to the hospital. The patient died before reaching the second hospital.

The Board of Nurse Examiners in Texas suspended the nurse's license to practice after the Board found that the nurse's conduct was "unprofessional and dishonorable conduct likely to injure the public." The nurse appealed the Board's suspension of her license. The court held that a person situated in this nurse's position, "has a duty to evaluate the medical status of the ailing person seeking his or her professional care and to institute appropriate nursing care to stabilize a patient's condition and prevent further complications of physical and mental harm." (*Lunsford* at 395.) The court pointed out that the Texas Nurse Practice Act defines the term "unprofessional conduct that is likely to injure the public" as,

"any act, practice, or admission that fails to conform to the accepted standards of the nursing profession and which results from conscious disregard for the health and welfare of the public and of the patient/client under the nurse's care and includes, but is not limited to, the conduct listed as follows:

(1) Failing to assess and evaluate a patient's/client's

status or failing to institute nursing intervention which might be required to stabilize a patient's/client's condition or prevent complications." (22 T.A.C. Section 217.13.)

The message of the *Lunsford* decision is that nurses have the duty to independently evaluate the patient's condition and to make independent judgments within the scope of nursing based on those evaluations. The *Lunsford* court also stated that when a state grants a license to practice nursing, the nurse is charged with a duty to act in a professional and honorable manner. In referring to the nurse in *Lunsford*, the court stated that, "any policy, real or imagined, of her employer had no effect upon Appellant's obligation to perform her job professionally and honorably. Her obligation to the public of this State far overrides any contractual agreement with her employer to act in a certain and proscribed manner." (*Lunsford* at 394.) Thus, a nurse's duty to act in a professional and honorable manner to protect the public supersedes obeying a physician's orders. Consequently, a nurse is not relieved from liability because she or he follows a physician's orders. The nurse is obligated to independently assess the patient's condition.

The Norton decision

This is the same conclusion reached by the court in *Norton, et al. v. Argonaut Insurance Company, et al.*, 144 S.2d 249 (Ct. of App. of Louisiana, 1962). In *Norton*, a physician prescribed the dosage of medication but was not specific with respect to the method of administering the medication. The prescribing physician allegedly intended the medication to be administered orally. The nurse questioned the dosage and she discussed the matter with several available physicians. The nurse was instructed to follow the prescribing physician's orders (which she did), but she administered the medication by injection. The patient subsequently died from an overdose of the medication. Although the court held that the prescribing physician had the duty to make his intentions clear and unmistakable, the court also held that the nurse should have known that the dosage was incorrect for that method of administering the drug and had the duty to clarify any confusion directly with the prescribing physician.

The AANA position

The AANA has formally taken the same position as these court cases. The AANA Statement of Policy on CRNAs and the Provisions of Anesthesia Services, which establishes standards of practice guidelines for CRNAs on certain issues, provides the following:

"Certified registered nurse anesthetists are legally

liable for the quality of the services they render. They make judgments as to the appropriateness of their professional service and its probable effect on the patient. A CRNA, who believes that the health care plan as it relates to anesthesia for a particular patient is inappropriate, should seek consultation for more appropriate direction. If reasonable doubt continues to exist, it is the responsibility of the CRNA to consider withdrawing from rendering the service, provided that the well-being of the patient is not jeopardized."

Other cases

Although a nurse has the duty to independently evaluate a patient's condition and question a physician's orders when appropriate, the courts have not relieved a nurse from liability who overrules or ignores a physician's orders. For example, in *Pivar v. Manhattan General, Inc.*, 279 A.D. 522 (Sup. Ct. of NY, 1952) a hospital intern directed that sideboards be installed upon a patient's bed. The intern's directions were then entered in the hospital record over his signature. The entry contained no qualifications that sideboards were to be installed only if the patient's nurse considered it to be necessary, although there was conflicting testimony with respect to the nurse's discretion. The patient subsequently fell from her hospital bed and later died. The cause of death was in dispute as to whether it resulted from the fall or the operation from which the patient was convalescing. In discussing the hospital's negligence for the nurse's failure to follow the intern's directions, the court found, among other things, that "being a special nurse did not give her power to overrule medical decisions by the hospital intern."

In *McReynolds v. Bayview Hospital*, (Slip Opinion No. 42725, Ct. of App., 8th App. Dist., Ohio, 1981), an alcoholic patient was examined by a physician in the emergency room of a hospital after suffering a seizure and then was placed in the hospital's alcohol detoxification and rehabilitation ward. The emergency room order directed the staff to "observe for DTs" (delirium tremens) and to notify the house physician "immediately" if any occurred. For the remainder of the day, the patient was treated for acute alcoholic withdrawal.

The head nurse testified that the next day at 8:00 a.m., 10:00 a.m. and noon, the patient was administered either a sedative or tranquilizer because he continued to display extreme anxiety, above-normal blood pressure, sweating and tremulousness—all signs of acute alcoholic withdrawal. The nurse testified that the patient twice got up from the bed and that the nurse felt it necessary to return him to the bed each time in order to administer the sedatives. Sometime after the patient had received the noontime medication, the nurse again

observed him standing up in his room. The nurse testified that on this occasion, however, she was not alarmed by the fact that the patient was up and about and did not, therefore, attempt to place him back in bed. Moments later, the nurse heard a noise and upon entering the bedroom she saw the patient prostrate on the floor, convulsing. The patient was then transferred to a nearby hospital where he was treated for head injuries he received in his fall and for alcoholic detoxification. The hospital records disclosed that the patient had suffered from delirium tremens.

One of the issues before the *McReynolds* court was whether the hospital was liable for the alleged negligence of the nurse for not following the doctor's order to report symptoms of delirium tremens immediately to the physician. The court held that it is the acceptable medical practice in the area for a nurse to obey the standing orders of a physician.

Thus, although a nurse has the duty to question a physician's orders if he or she arrives at a different conclusion from the physician, the nurse does not have the authority to *ignore* or *overrule* the physician's orders. The nurse's choices are to question the physician and then, if he or she continues to believe such treatment or lack thereof violates the nurse-patient relationship or the public's protection, to withdraw from rendering the services ordered by the physician.

Fulfilling the duty to independently evaluate the patient's condition and to make conclusions within the scope of nursing practice regarding the status of the patient, may benefit patient care by exposing a pattern of questionable orders. For example, in *Fincke, et al. v. Peebles, et al.* (Slip Order, D.C. of App. of Florida, 4th Dist., 1985), the alleged negligence of a nurse anesthetist in the recovery room was at issue. Prior to entering the recovery room, the patient underwent orthopedic surgery. The anesthesia was administered by an anesthesiologist. The orthopedic surgeon testified that when they arrived at the recovery room, the anesthesiologist placed his hand over the endotracheal tube to determine the depth of the patient's respiration and was about to extubate the patient when the orthopedic surgeon left the room. At that time, the patient was not awake, moving, bucking or fighting the tube.

The orthopedic surgeon left, spoke with the patient's family in the waiting area, and returned to the recovery room a few minutes later to find that the patient had been extubated. The surgeon was on the fourth floor with another patient when he heard over the public address system that there was a cardiac arrest in the recovery room. When the surgeon arrived 3 to 5 minutes later, he learned that a nurse anesthetist in the recovery room had reintubated the patient and the patient's heart rate was normal but his pupils were non-reactive. The nurse anesthetist told the surgeon that another patient had been wheeled into the recovery room and that she had been taking care of him for several minutes when she realized that the first patient's heart had stopped. The patient never regained consciousness and died approximately one week later.

One of the issues before the *Fincke* court was a motion to exclude testimony concerning the previous complaints of the anesthesiologist's premature extubation. The testimony indicated that several nurses had registered complaints to the head of the anesthesiology department and that the anesthesiologist's conduct was common knowledge among the nurse anesthetists. The court allowed the testimony into the record on the grounds that the evidence was admissible to show that the hospital was aware of the complaints about the anesthesiologist but that it had failed to take action to remedy the situation.

Conclusion

A nurse's duty to render professional and honorable nursing services arises out of state statutes, regulations, health care providers' association policy statements and standards of practice within the health care facility or the community in which the nurse practices. A nurse is charged with the duty to independently evaluate a patient's condition within the nurse's scope of practice and, if the nurse objects to the physician's orders, to question the physician. If the nurse continues to question the appropriateness of the orders and feels that rendering such services would be in violation of the nurse-patient relationship or against the public's protection, then the nurse has a duty to withdraw from rendering the services ordered by the physician.