

Nursing professionals and medical malpractice: A case study

In this case, the patient (plaintiff) was brought to the emergency department (ED) where he was well-known to the staff. He was intoxicated, agitated, and aggressive. His behaviors limited the nurse (defendant) and other ED staff from completing a comprehensive initial assessment. For the patient's safety, four-point physical restraints were ordered and the defendant nurse requested that security staff apply the restraints per hospital protocol... *To read the full case with risk management recommendations, go to www.nso.com/case-studies/casestudy-article/321.jsp.*

Nurses Service Organization Risk Advisor for Nursing Professionals

Evidence-based practice protects against litigation

You're taking care of Mr. Smith, a 78-year-old man who just arrived in the emergency department with signs and symptoms of a stroke. The steps you take next will contribute to Mr. Smith's short- and long-term outcomes. If you base those steps on the latest evidence, you'll also protect yourself from litigation if an untoward event occurs.

Evidence-based practice (EBP) is a problem-solving approach that encompasses research, clinical expertise, and patient values and circumstances. Nurses should use information from these three components to make informed decisions that are in the best interest of their patients. Integrating EBP with your practice will improve patient care and reduce your risk for legal action.

The gold standard

Evidence-based practice is accepted as the gold standard for professional nursing practice because it improves patient outcomes. For example, the 2003 Institute of Medicine (IOM) report *Health Professionals Education: A Bridge to Quality* states EBP is a core competency for healthcare professionals, and IOM's 2010 landmark report *The Future of Nursing: Leading Change, Advancing Health* confirms EBP as a basic competency.

Additional support comes from general and specialty nursing associations. The American Nurses Association's Standards of Practice include the competency, "The registered nurse utilizes evidence-based interventions and treatments specific to the diagnosis and problem." Other competencies also mention the importance of evidence. Standards from specialty nursing organizations include EBP as well. For example, the American Association of Critical-Care Nurses' standard of professional practice related to research has this

as its measurement criteria: "The nurse continually questions and evaluates practice and uses best available evidence or research findings to develop appropriate plans of care."

All this adds up to a consensus that EBP is a vital part of the profession. In a court case, an attorney will stress this fact while attempting to prove that you failed to engage in EBP. That's why your practice must be based on evidence, even though doing so can be challenging.

Barriers to EBP

A 2012 study published in the *Journal of Nursing Administration* found that only 34.5 percent of nurses agreed or strongly agreed that their colleagues consistently use EBP in managing patients. If EBP is so effective in improving outcomes, why don't more nurses practice it? The study found that although nurses believe in EBP, they encounter multiple barriers, with the top two being lack of time and lack of support from the organization where they work, including resistance from colleagues and managers.

The same study found that most nurses want to learn more about EBP but find education resources lacking. They also lack mentors to guide them.

Overcoming the time barrier

Fortunately, many resources are available to break the time barrier, particularly when it comes to collecting and evaluating the evidence. These resources include:

- Cochrane Database of Systematic Reviews (www.cochrane.org), which provides analysis of available literature related to a topic (some information is available for free)
- Journals such as *Worldviews on Evidence-Based*

Nursing and Nursing Research, as well as journals in your specialty practice area (requires a subscription)

- National Guideline Clearinghouse (www.guideline.gov), which provides summaries of clinical practice guidelines and has a tool that allows you to compare multiple guidelines (free access)
- Resources from specialty associations. For example, AACN Practice Alerts provides nursing actions related to a specific issue, such as assessing pain in the critically ill adult. The actions are backed by evidence found in the literature (free access).
- Joanna Briggs Institute (joannabriggs.org), which provides evidence reviews (some information available for free)
- U.S. Preventive Services Task Force (uspreventiveservicestaskforce.org), which provides evidence-based recommendations for preventive care (free access)
- Tools for appraising the evidence. Several scales are available to help you evaluate the evidence you find. You can link to these scales at <http://nursing-world.org/Research-Toolkit/Appraising-the-Evidence>.

An often overlooked but highly valuable resource is the medical librarian. A medical librarian at your facility, local university, or health center can guide you through the process of conducting a literature search so it's more efficient.

Overcoming resistance

Overcoming resistance can be challenging. You can start by serving as a role model for others. Take the lead in suggesting practices that could benefit from a re-examination. For instance, is the acuity tool you currently use really the best one to ensure that assignments benefit patients?

Suggest your nurse practice council embrace EBP as a tool to improve patient care. Managers might choose to tap into clinical nurse specialists to serve as resources to staff who want to engage in EBP projects and build such projects into job descriptions and evaluations. Another option is to partner with a faculty member at a local university.

Overcoming a lack of knowledge

You don't need a large budget to gain knowledge about EBP. You can access free self-study programs online. For example, staff at Duke University Medical Center Library and the Health Sciences Library at

Steps of evidence-based practice

Here are the basic steps of EBP:

- Cultivate a spirit of inquiry.
- **Ask** the clinical question in PICOT (**P**atient population, **I**ntervention or Issue of interest, **C**omparison intervention or group, **O**utcome, and **T**ime frame) format.
- **Search** for and collect the most relevant best evidence. This includes searching for systematic reviews and meta-analyses.
- Critically **appraise** the evidence for its validity, reliability, and applicability.
- **Integrate** the best evidence with your clinical expertise and patient preferences and values in making a practice decision or change.
- **Evaluate** outcomes of the practice decision or change based on evidence.
- **Disseminate** the outcomes of the EBP decision or change.

Source: Melnyk BM, Fienout-Overholdt E. *Evidence-Based Practice in Nursing & Healthcare: A Guide to Best Practice*, 2nd ed. Philadelphia: Lippincott, Williams & Wilkins; 2010.

the University of North Carolina at Chapel Hill developed an "Introduction to Evidence-Based Practice" tutorial, available online at <http://guides.mclibrary.duke.edu/content.php?pid=431451&sid=3529491>.

For tips on interpreting the information you find, access the "How to read a paper" section of the *BMJ* website, which contains an article on how to read and interpret different types of research studies and includes two articles related to statistics (www.bmj.com/about-bmj/resources-readers/publications/how-read-paper).

If your organization provides educational reimbursement, consider attending a workshop on EBP. Retain documentation of the courses you complete so you can show evidence of your efforts should you be involved in a lawsuit. The evidence will also be helpful for career advancement.

Keeping up

Staying on top of developments in your field helps ensure you are aware of the latest research. You can use technology to make the process easier. For example, services such as Feedly (www.feedly.com) let you customize feeds of news stories related to

your interest areas. You can easily scan the headlines and short descriptions to determine if you want to learn more. Other options you might want to try:

- Sign up to receive electronic tables of content from journals you are interested in. You can scan the table of contents to determine what's of interest to you.
- Subscribe to electronic newsletters such as those provided by Medscape or SmartBrief.
- Listen to podcasts as you exercise or drive to work.
- Download an app such as Mendeley (www.mendeley.com) that lets you capture articles as PDFs and organize them according to keywords and other parameters.

Taking just these few steps can ensure that you are current in your evidence-based knowledge.

Practicing effectively

Basing your practice on evidence will benefit your patients by ensuring optimal outcomes. It will also benefit you by providing support for your decisions

should you find yourself in the uncomfortable position of being named in a legal action.

RESOURCES

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Caring for aging patients

A nurse working in a long-term care facility replaces a resident's gastric tube without an order and without notifying the nurse practitioner, who is the resident's primary care provider. The resident subsequently develops sepsis and dies. A nurse working on a medical/surgical unit in the hospital fails to fully assess a 76-year-old patient who complains of abdominal discomfort. The patient has frequent complaints, and the nurse dismisses this latest as "gas." Unfortunately, the patient has a perforated ulcer and requires extensive surgery.

These two cases would likely result in litigation, illustrating the legal risks associated with caring for older patients. As members of a vulnerable population, juries are likely to be highly sympathetic toward older plaintiffs. Fortunately, you can take steps to protect yourself.

Nurses at legal risk

According to the CNA/NSO claim study *Understanding Nurse Liability, 2006–2010: A Three-part Approach*, nurses who work in an aging services (or

long-term care) facility are at risk for litigation. From January 2006 through December 2010, the percentage of closed claims with paid indemnity equal or greater than \$10,000 was 18 percent for this area, the second highest nurse specialty. The average paid indemnity was \$100,294.

Nurses who work with aging patients in acute care are also at legal risk. In the same study, the highest percentage of closed claims (40.1 percent) was for adult medical/surgical (average paid indemnity of \$143,969), a specialty heavily populated with older patients.

Further analysis based on location found that the top three settings in percentage of closed claims were medical setting in the hospital (20.2 percent), long-term care (18.4 percent), and surgical unit in the hospital (10.3 percent).

So what types of allegations result in legal action? *Understanding Nurse Liability* broke down categories of allegations into greater detail. The highest percentage of closed claims in the treatment and care category was improper or untimely

management of long-term care residents (16.2 percent, with an average paid indemnity of \$91,043). The second highest was improper or untimely nursing management of medical patients or medical complications (15.9 percent, with an average paid indemnity of \$108,030). Again, many of these were likely older patients.

Unfortunately, directors of nursing (DON) in long-term care facilities are at particular risk of litigation. Of total claims against DONs, 93.2 percent occurred in this setting, and the claim study noted that DONs are being named in lawsuits even if they are not providing direct care or service to the patient.

Reducing risk in caring for aging patients

Here are some suggestions for reducing your legal risk when caring for older patients. These also apply to patients in other populations.

- *Practice within your scope of practice* according to your state's nurse practice act and your competencies.
- *Adhere to national standards of care and to your institution's policies and procedures*, as long as they don't conflict with the nurse practice act.
- *Assess the patient on admission, with a change in treatment, or with a change in the patient's condition or response to treatment.* Areas of particular importance with older patients include risk for falls, mobility status (including use of mobility aids), medications, risk for elopement, restraint use, pain management, cognition, and nutrition and hydration. Communicate changes to the appropriate person.
- *Monitor patients per policy and standards*, monitoring more frequently if appropriate in clinical judgment to do so. Areas of particular importance for older patients include effectiveness of pain management, restraint protocol compliance, nutritional intake, output, cognition, and patient safety.
- *Provide and document patient care.* Providing care includes appropriate supervision and delegation of nonprofessional caregivers such as nursing assistants.
- *Remove—and report—broken and malfunctioning equipment.* Ensure that mobility aids are functioning properly.
- *Explain procedures and treatments to the patient and treat patients and family members with respect.* If intimate touching is required for a procedure, have another person present. Document appropriately.

Source: CNA, NSO. *Understanding Nurse Liability, 2006-2010: A Three-part Approach.*



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Consider physiological changes

Physiologic changes associated with aging put older patients at risk for negative outcomes and possible legal action. For example, loss of skin turgor makes older patients more susceptible to pressure ulcers. Assess the skin on a regular basis and take steps to prevent ulcers.

Older patients often have to get up more than once during the night to use the bathroom, so be sure the pathway is clear of clutter and a nightlight is present as a guide. Instruct patients who need help to call before trying to get up and document this instruction in the medical record.

Sensory changes such as reduced vision and hearing means you must take special care with education. For example, provide education materials printed in a large font for a patient who has impaired vision.

Many older patients suffer cognitive changes such as memory impairment. You may need to create aids such as checklists or have patients use pillboxes to ensure they engage in proper self-care.

Prevent falls

Falls are a serious risk factor for older adults and can result in legal action should injury occur. Fortunately, resources for preventing falls are widely available. If you're hospital based, access *Preventing Falls in Hospitals: A Toolkit for Improving Quality of Care*, from the Agency for Healthcare Research and Quality (AHRQ), available for free online at www.ahrq.gov/professionals/systems/long-term-care/resources.

Take special care if you work in long-term care. It's been estimated that between 50 percent and 75 percent of residents in nursing homes fall each year. Check out the AHRQ's *The Falls Management Program*, also available online at www.ahrq.gov/professionals/systems/long-term-care/resources. Another excellent resource is the 2014 article "Strategies for Reducing Falls in Long-Term Care," published in the January 2014 issue of *Annals in Long-Term Care* (www.annalsoflongtermcare.com).

No matter where you work, an important part of preventing falls is identifying patients at risk. Consider factors such as a history of falling, medications, comorbidities, and physical condition. Many organizations have staff "huddle" at the start of the shift to discuss patient needs; this is a good time

to identify those at risk for falls. Elicit the help of patients' families and visitors by telling them of any restrictions such as needing to call before moving a patient. Follow safe patient handling practices to protect your patients from falling and yourself from injury.

Delegate appropriately

Improper and ineffective delegation can put nurses at risk. This is particularly true in the long-term care setting, where the use of unlicensed assistive personnel (UAP) is common.

According to a joint statement on delegation from the American Nurses Association and the National Council of State Boards of Nursing, the nurse "delegates tasks based on the needs and condition of the patient, potential for harm, stability of the patient's condition, complexity of the task, predictability of the outcomes, abilities of the staff to whom the task is delegated, and the context of other patient needs." In a court of law, nurses will be judged based on these criteria.

Use the five rights of delegation to protect yourself and your patients. Be sure the assignment is the **right** task, under the **right** circumstances, to the **right** person, under the **right** directions and communication, and under the **right** supervision and evaluation.

Delegation frequently breaks down at the communication stage. To avoid this, ask the nurse or UAP to restate what you have requested and your expectations. Be sure to set a time frame and request appropriate follow-up.

Avoid restraints

Do not use restraints except as a last resort. Restraints are more likely to harm than help the patient. A good resource is the article "Try this: Avoiding Restraints in Hospitalized Older Adults with Dementia" from the February 2013 issue of *Annals in Long-Term Care*. It includes several practical interventions such as reducing excessive noise that can be applied both in the hospital and in the long-term care facility.

Document completely

Proper documentation is a key force in whether you can successfully defend yourself against a

lawsuit. Documentation considerations related to older patients include falls prevention and use of aids such as hearing aids and scooters. Note any special steps you took to ensure the patient understood the education materials. Take special care if you must use restraints: Document the reason for their use, frequent monitoring, and when they were removed. Remember to include any instructions or information you gave to the patient's family or caregiver.

Taking care of older patients... and yourself

Older patients can be a delightful population to care for. At the same time, it's important to safeguard them from harm and to protect yourself from litigation by following the steps in this article.

RESOURCES

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If you see something, say something

On a busy day with short staff and high-acuity patients, a nurse fails to notify the physician of an abnormal clotting time for her patient. Not knowing the result, the physician orders the patient's heparin to be restarted. The nurse mistakenly overlooks the abnormal lab tests and implements the order. Subsequently, the patient suffers significant brain hemorrhage and permanent disability.

In this situation, you might think it was the physician's, not the nurse's, responsibility to check the clotting time before restarting the heparin. But in a similar case, a nurse was held liable for failing to notify the physician. The case illustrates the important responsibility of nurses to notify others of a significant change in a patient's condition, including results of lab tests. Failure to do so can leave you open to legal action by patients or families. Here is what you need to know to ensure you are following correct procedures for notification.

A common problem

Allegations related to patient assessment monitoring, treatment, and care—three main areas where notification plays an important role—are relatively common and can be quite costly, according to the CNA/NSO claim study *Understanding Nurse Li-*

ability, 2006–2010: A Three-part Approach. From January 2006 through December 2010, assessment allegations accounted for 12.6 percent of closed claims with a paid indemnity greater than \$10,000, monitoring accounted for 6.8 percent, and treatment and care accounted for 58.5 percent. The average paid indemnity was \$228,737 for assessment, \$223,282 for monitoring, and \$156,857 for treatment and care. So how can you lower your risks for being named in a lawsuit as a result of not notifying practitioners?

Monitor the patient

It seems self-evident that you should monitor your patients, but claim studies show that this doesn't always happen. Base your monitoring on practitioner orders and your professional judgment. For example, if your patient is having neurologic checks every 2 hours and develops altered cognition, perform a complete neurologic assessment.

Common areas to assess include vital signs, blood glucose, lab and diagnostic test results, clinical signs of bleeding, effectiveness of pain management, signs of infection or inflammation, nutritional intake, oral and I.V. fluid intake and output, outputs (e.g., urine, stool, wound drainage), wound status, behaviors,

cognition, patient concerns, response to treatment, and patient safety.

Make the patient your ally. Tell him or her to report any problem promptly. Keeping patients and families informed will make it more likely they will speak up promptly. If there is a change in your patient's condition, you'll need to communicate it quickly.

Communicate effectively

Think before you speak with the practitioner so you can provide the information in a way that will get results. A commonly used tool is SBAR, which staff at Kaiser Permanente created based on a tool from the U.S. Navy. Here is an example adapted from material from Kaiser:

- **Situation.** Give a concise statement of the problem. "Dr. Jones, I'm calling about Jack Wilson, a 55-year-old man who is pale, diaphoretic, and complaining of chest pressure."
- **Background.** Give pertinent, but brief, information related to the situation. "He has a history of hypertension and was admitted yesterday for GI bleeding. He received two units of RBCs yesterday, and his hematocrit 2 hours ago was 32. His blood pressure is 90/50 and pulse 120."
- **Assessment.** Provide what you found and what you think about the situation. "I think he is bleeding again, and we can't rule out an MI, but we don't have a recent H&H or troponin."
- **Recommendation.** Request or recommend an action. "I'd like to get an ECG and labs, and have you evaluate him right away."

To make your communication more effective, use the practitioner's name to get his or her attention and state the problem clearly and concisely. If you are talking in person, make eye contact. Minimize background noise, particularly when you are on the phone, and avoid multitasking. Some hospitals have Rapid Response Teams that you can call if you feel the situation warrants more immediate attention. Use them if you need them.

Overcoming resistance

What if you feel the practitioner isn't listening to you or doesn't plan to take appropriate action? According to TeamSTEPPS, a tool for enhancing patient safety that you can obtain at no cost from the Agency for Healthcare Research and Quality, it's

Notifying practitioners

These actions will help ensure you properly notify practitioner of a change in a patient's condition:

- Frequently monitor the clinical situation of your patients so you detect problems early. Follow practitioner orders, but also use your judgment about when to conduct additional assessments.
- Listen to what the patient says. It can be tempting to dismiss another complaint from a "difficult" patient. Don't.
- Assess and document, at a minimum, the following when there is a change in the patient's condition: presenting problem(s), comorbidities affecting the patient's status, mobility status, medications, behaviors, cognition, vital signs, and lab values.
- Notify appropriate practitioners of your assessment results.
- Document the results of specific patient-monitoring activities according to the practitioner's orders and as indicated by the patient's condition, including vital signs and other relevant information.
- Document all patient treatment and care, including timely implementation of practitioner orders, patient/family education, supervision of nonprofessional caregivers, tracking of test results/consultation reports, follow-up of delays and issues in obtaining tests or test results, and reporting of any patient incident (injury or adverse outcome and subsequent treatment/response).
- Document the actions you took to notify the practitioner and the response.
- If you do not receive a response in a reasonable time frame, seek assistance elsewhere and document your actions.

your responsibility to assertively voice your concern at least two times to ensure it has been heard. If the outcome is still not acceptable, you'll need to contact your supervisor or go up the practitioner's chain of command.

Remember that your goal is not just to notify someone—you want to ensure proper action is taken. Following the chain of command is important from a liability perspective, too. According to the

Understanding Nurse Liability claims study, claims involving the failure to invoke the chain of command represented 5.6 percent of the treatment and care closed claims and had one of the highest average paid indemnities (\$350,558)

Don't forget to document

It's easy to forget to document your efforts to contact the practitioner, particularly if the patient's condition is declining rapidly. However, that documentation is what will protect you should a claim occur. Date and time each entry and include detailed information about the patient's condition based on your assessment, who you notified, and actions taken. If you need to follow up with someone higher in the chain of command, note that as well. Other areas to document include reporting abnormal lab values and diagnostic tests.

Remember documentation basics: Follow your organization's protocols and guidelines from your professional association. Don't alter the medical record and comply with the policy for correcting errors.

The bottom line

As a nurse, you are responsible to promptly notify practitioners of a change in a patient's condition. The bottom line is that if you see something, say something—and document it.

RESOURCES

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Kaiser Permanente. SBAR toolkit. <http://www.ihl.org/resources/Pages/Tools/SBARToolkit.aspx>.

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