NSO ANNUAL SUMMIT

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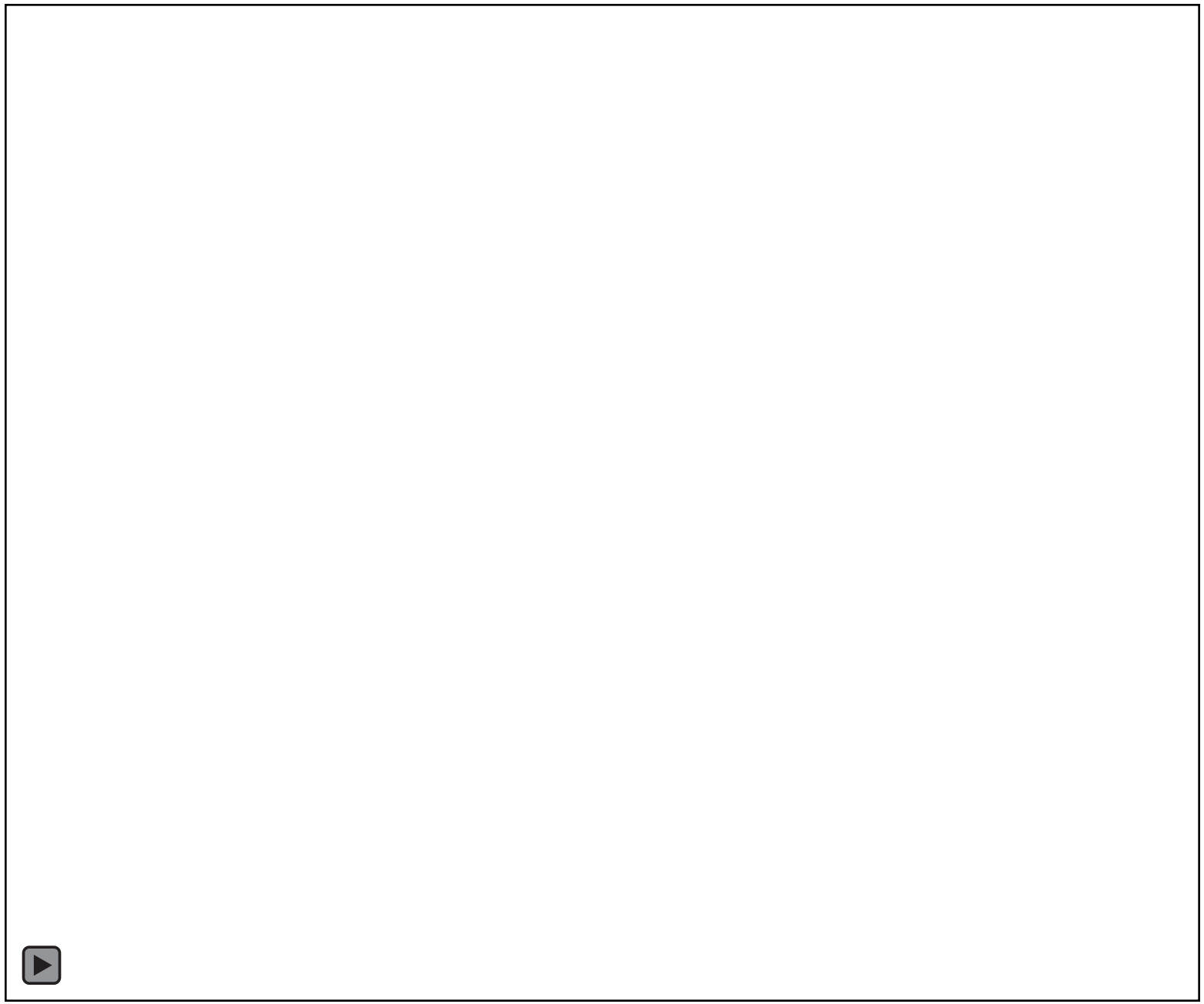


DEFENSE OF DELEGATION

Shannon Alexander, RN, MBA, CPHRM

Susan King, MS, RN, CEN, FAAN

Agenda

1. Definitions
2. Core Principles (5 Rights)
3. Case Examples
4. Defense Strategies and Requirements
5. Issues affecting Delegation
6. Q&A

LEARNING OBJECTIVES

- Discuss a case example of when delegation went wrong
- Discuss the legal components for building a defense
- Discuss strategies a nurse can take to delegate with confidence

DEFINITIONS

Delegation is allowing a delegatee to perform a specific nursing activity, skill, or procedure that is beyond the delegatee's traditional role and not routinely performed.

Delegated Responsibility: A nursing activity, skill or procedure that is transferred from a licensed nurse to a delegatee

ANA/NCSBN Joint Statement, 2019.

Frequency of Nurse Improper Delegation Charges

A *Nurse Journal* summary of National Practitioner Data Bank figures indicates that scope of nursing practice violations account for about one fourth of all complaints, behind only unprofessional conduct.

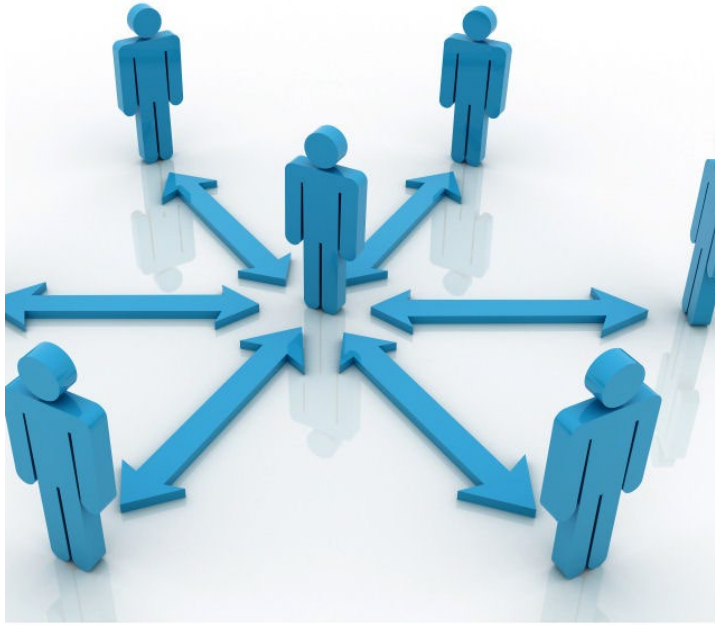
Scope of practice violations include many elements of practice and delegation is not specifically delineated in that database.

CORE PRINCIPLES-5 RIGHTS

- **Right practice**; **task**-referring to the nursing activities that the delegating nurse assigns. The delegating nurse should ensure that law and employer rules authorize the task delegation and that the delegation is not of a task or activity outside law, rule, regulation, or employer
- **Right Circumstance**-referring to the patient conditions, facility resources, and other contexts under which the delegating nurse assigns the task. The delegating nurse should ensure that the peculiar circumstances do not require greater patient care, more resources, or more skill;
- **Right Person-** referring to the licensure, skills, competence, and confidence of the individual to whom the nurse delegates the task. The delegating nurse must avoid delegating licensed tasks to unlicensed individuals or to individuals whose license does not include the delegated task;
- **Right Directions and Communication-** referring to the delegated nurse's instructions and other communications to the individual performing the delegated task. The delegating nurse must avoid delegating the task without adequate guidance to ensure that the individual performing it does so within the standard of care.
- **Right Supervision and Evaluation-** referring to the delegated nurse's retention of the duty to ensure that the individual performing the delegated task does so with appropriate skill and competence within the standard of care. The delegating nurse must avoid delegating a task to a qualified individual but then disregarding whether the individual employs the requisite knowledge and, skill.

5 Things That Cannot Be Delegated- PACET

- **Planning:** Planning and goal setting MUST be done by the RN and cannot be delegated to the LPN or CNA
- **Assessment:** The primary assessment must be completed by the RN- secondary assessments can be delegated
- **Collaboration:** Collaboration to achieve goals, i.e. consults, dietary, social services, etc. must be completed by an RN
- **Evaluation:** LPN's and aides can record data but RN's must evaluate the care plans, VS, goals
- **Teaching:** Primary patient education must be conducted by the RN- LPN's and aides can reinforce the education



Risk of Improper Nursing Delegation

Improper delegation charges can arise out of any of the following divisions and delegations of responsibility:

- from physicians or physician assistants to nurses;
- from advanced practice nurses to registered nurses;
- from registered nurses to licensed practical nurses;
- from registered or licensed practical nurses to certified nurse assistants; and
- from registered or licensed practical nurses and certified nurse assistants to unlicensed assistive personnel.

Registered Nurse Medical Malpractice Case Study: Wrongful delegation of patient care to unlicensed assistive personnel

Presented by NSO and CNA

Medical malpractice claims may be asserted against any healthcare practitioner, including nurses. This case involves a registered nurse working in a home health setting.

Summary:
Our insured was a registered nurse (RN) employed by a home healthcare agency. She was with a patient when she received a telephone call from a certified nursing assistant (CNA) who was employed at the same agency.
The CNA was at the home of a mutual patient and reported that her gastrointestinal (GI) tube had come out sometime during the night. The RN informed the CNA that the patient would need to go to the emergency department to have the tube re-inserted as it would be several hours before she could see the patient. The patient's family didn't want to take the patient to the emergency department but would instead wait for the RN to see the patient.
The CNA informed the RN that she had re-inserted several GI tubes when she was employed at a nursing home, so felt comfortable re-inserting this patient's tube. The RN agreed to let the CNA insert the tube but advised her to not restart the feedings.
Approximately 45 minutes later, the CNA contacted the RN and affirmed that tube was re-inserted without difficulty and proper placement was confirmed

When the nurse arrived at the patient's home several hours later, she noticed that the patient was receiving tube feeding.
When questioned, the daughter confirmed that she resumed the tube feedings shortly after the CNA left and denied being told to wait.
The RN noted that the patient was complaining of abdominal pain and
reported feeling nauseous.
On physical assessment, the patient's abdomen was distended and positive for pain with abdominal palpation.
After stopping the feeding, the nurse called 911 and the patient was transferred to the nearest hospital where she was diagnosed with peritonitis due to the GI tube being accidentally placed in the peritoneal space.

Risk Management Comments

The family filed a lawsuit against the RN and the home healthcare agency. The allegations against the RN
included:
• Wrongful delegation of patient care to unlicensed assistive personnel (e.g. CNA);
• Failure to follow the agency's policies and procedures on proper delegation, GI tube insertion and
supervision of unlicensed assistive personnel;
• Failure to contact the referring provider and obtain an order to reinsert the GI tube; and

• Failure to assure that the patient and family had received appropriate communication related to re-
inserting the GI tube and holding the GI feedings.

Resolution

Due to defense experts' assessment that there would be a low likelihood of a defense verdict in favor of the insured RN should the case go to a jury trial, the decision was made to pursue mediation.

A settlement was reached prior to a lawsuit going to trial. As mandated by state law, the nurse was also reported to the National Practitioner Data Bank (NPDB).

The total incurred to defend and settle this case on behalf of our insured nurse exceeded $255,000.*

*Monetary amounts represent only the payment made on behalf of the insured registered nurse and do not include any payments that may have been made by the nurse's employer or payments from any co-defendants. Amounts paid on behalf of the multiple co-defendants named in the case are not available.

Risk Management Recommendations

• Know your employer's policies and procedures related to clinical practices and delegation. Unfamiliarity to established policies and protocols is not a defense, especially if a clinician has acknowledged receiving education on such policies and protocols.
• Prior to delegating tasks, be aware of the knowledge and skills, training, diversity awareness, and experience of the individual to whom you are delegating elements of care. Use good clinical judgement, which includes the complexity of the patient, the availability and competence of the unlicensed assistive personnel, prior to delegating patient care.
• Monitor implementation of the delegated task, as appropriate, to the overall patient plan of care. Complete documentation of in person instruction as well as phone or remote consultations and instructions.
• Evaluate overall condition of the healthcare consumer and the consumer's response to the delegated task.
• Evaluate the unlicensed assistive personnel skills and performance of tasks and provide feedback for improvement if needed.
• For more information regarding nursing delegation, it is recommended that nursing professionals review the NCSBN and American Nurses Association (ANA) National Guidelines for Nursing Delegation.

The NP was treating a patient who had a low blood platelet count. When the NP accidentally removed the patient's IV catheter, the patient began bleeding heavily. The NP asked a nursing assistant for help with the patient, asking the nursing assistant to wrap a towel around the patient's arm and apply pressure to the wound to stop the bleeding. The NP then left the room to attend to another patient. The nursing assistant stayed with the patient for approximately 15 minutes, then left the room, believing that the bleeding had stopped. The NP later returned to the room to find that the patient was bleeding heavily. The patient's vital signs showed that the patient was going into hypovolemic shock. After the patient was stabilized, the NP was sent home for the remainder of her shift. The hospital later reported the incident to the SBON. The SBON concluded that the NP violated established standards of practice when she improperly delegated the task of stopping the patient's wound from bleeding to a nursing assistant and failed to maintain responsibility and accountability for this delegated task. The SBON further concluded that the NP's lack of assessment and evaluation of the patient's condition resulted in the patient going into hypovolemic shock. The SBON placed the NP's license on probation for one year. The total costs incurred to defend the NP in this case exceeded $4,000.

The insured NP worked in a behavioral health counseling practice, under a collaborative agreement with the practice physician. The State Board of Medicine entered a final order against the NP's delegating physician which limited his license to practice for one year. During the term of limitation, the physician was prohibited from prescribing, dispensing or administering any Schedule II controlled substance. At a follow up conference, the Board of Medicine discovered that the physician was relying on the NP to prescribe medications to his patients during the term when his license was limited. The Board of Medicine reported to the SBON that during the one-year period, the NP issued nearly five hundred prescriptions for Schedule II controlled substances, including amphetamines and hydrocodone combination products. The SBON concluded that the NP's conduct constituted a breach of the state scope of practice guidelines for NPs, by exercising improperly delegated authority to prescribe Schedule II controlled substances. The SBON placed the NP on probation for two years, during which time she was banned from possessing, prescribing, dispensing or administering any Schedule II controlled substances. The total costs incurred to defend the NP in this case exceeded $4,800.

Issues Affecting Delegation

Nursing shortage

Skill, competence

Language

Practice setting policies

Care availability

Variable state practices

Q & A