Understanding the Legal System and Infusion Nurse Liability

Infusion Nurse Society Annual Conference
May 18, 2013

Presented by
Jan Haedt, RN, BS, CPHRM
Sr. Risk Management Consultant
University of Wisconsin Hospital and Clinics

Leadership, Education, Accountability, Development

Objectives

- Review aspects of the legal system and the effect on infusion nursing practice.

- Describe infusion nursing responsibilities that can help prevent litigation.

Leadership, Education, Accountability, Development

Legal System Overview

Leadership, Education, Accountability, Development
**Legal Standards**

- Each state has statutes or nurse practice acts that minimally define nursing practice for every level of nursing
  
  [https://www.ncsbn.org/Nurse_Practice_Act_by_State.pdf](https://www.ncsbn.org/Nurse_Practice_Act_by_State.pdf)
  
- Regulatory boards govern nursing practice and may take action for violations

- Governmental oversight – CDC, CMS, FDA, OSHA

**Professional Standards**

- American Nurses Association (ANA)
  
  - Scope of Nursing Practice
  - Code of Ethics
  - Standards of Practice – Nursing Process

- Nursing associations and societies: standards of practice, position statements, code of ethics / conduct
  
  [http://www.nurse.org/orgs.shtml](http://www.nurse.org/orgs.shtml)

**Organizational Standards**

- Policies and Procedures
- Protocols / Guidelines
  
  - Systematically developed
  - Evidence-based
  - Care management of specific patient populations or conditions
  - Goal is to improve clinical decision-making which results in better patient outcomes
INS Standards of Practice

- Applied in all practice settings where infusion therapy is administered
- Administration of infusion therapy shall be established in organizational policies, procedures, and/or practice guidelines
- Administration shall be in accordance with rules and regulations established by state Boards of Nursing, state, federal, and accrediting agencies.
- Scope of Practice: For each personnel involved with delivery of infusion therapy to support patient safety and protection
  - Defined roles, responsibilities, tasks, range of services, accountability

Leadership, Education, Accountability, Development

Liability in Nursing Practice

Leadership, Education, Accountability, Development

Hindsight is 20/20

Leadership, Education, Accountability, Development
Legal Standard of Care

- Used to evaluate the quality of nursing conduct
  - Reasonable expectation = typical performance of a professional nurse with knowledge / skill
  - Measurable
  - Valid based on where care is delivered
  - Based on current state of knowledge

American Nurses Association

- Standards of Care (SOC)
  - Scope: Who, what, where, why and how of nursing
  - Standards: Authoritative statements of duties that all registered nurses regardless of role, population, or specialty are expected to perform competently
    - Describes the responsibilities
    - Reflect values and priorities
    - Provide direction for practice
    - Provide framework to evaluate practice
    - Define accountability to public
    - Define outcomes responsible for

Nursing Professional Liability

- Nursing Malpractice
  - Civil law action
    - protection from harm and if injured by actions of another, may file civil action seeking damages
- Negligence
  - Duty – had a duty to the patient
  - Breach of duty – failed duty
  - Cause resulting in harm – not the cause, but a cause; substantial factor
  - Damages (legally compensable injury): economic and non-economic
Nurses Role in Legal Proceedings

• Fact witness
  – Participated in care, but not target of litigation
• Expert witness
  – Agree to serve as expert
  – Depending on state, may not be compelled to be an expert
• Defendant
  – Named as a party to the lawsuit

Legal Proceedings

• Request for compensation
• Mediation
• Summons and Complaint
  – Discovery
    • Interrogatory
    • Subpoena
    • Depositions
    • Record Review
• Resolution
  – Summary judgment / dismissal
  – Settlement
  – Arbitration
  – Trial

Duty to the Patient

• Nurse does admission assessment on patient in the infusion center for colleague who is busy with another patient. Y / N?

• Patient calls the unit after discharge with a question about their discharge instructions? Y / N?
**Breach of Duty**

- The nurse notes on her assessment that the patient has several areas of bruising that patient claims are recent and a change. The nurse documents this and makes a mental note to inform the physician, but forgets. The patient is later noted to have a low platelet count and admitted for further testing.  

  Y/N?

- The nurse taking the call is not familiar with the patient, but reviews the discharge instructions in the EMR and answers the patients questions.  

  Y/N?

**Breach of Duty**

- Two patients with the same first and last initials are receiving PRBCs. Both bags are laying next to each other and the nurse for Pt. A picks up the bag for Patient B and begins infusion without checking patient identifiers.  

  Y / N?

- Patient has a PICC line in place with last dressing noted to be 10 days prior. The nurse caring for the patient notes this with plans to change the dressing, but becomes distracted with other tasks and never does.  

  Y / N?

**Cause of Harm / Damages**

- The nurse returns to the desk and notes that the wrong PRBCs were hung on the wrong patient so immediately returns to stop the transfusion. Only 15 ml have been give and the patient suffers no adverse effects.  

  Y/N?

- The patient is subsequently admitted with central line associated blood-stream infection resulting in a 10 day hospital stay.  

  Y/N?
Malpractice

- Breaches of duty / injuries (harm) ≠ malpractice or medical error
- Must demonstrate harm has occurred as a result of a breach of duty with economic / non-economic damages

Legal Standards

- Violations of Standards:
  - Professional misconduct
  - which may result in limiting, suspending, revoking or denying renewal of license or reprimand by the state’s Board of Nursing.
  - https://www.ncsbn.org/3858.htm

Nursing Liability

- Common Areas of Nursing Negligence
  - Medication administration
  - Equipment usage
  - Assess / monitor / report
  - Adherence to policy / procedures / guidelines / protocols
  - Communication
  - Documentation
Nursing Liability Claims
CNA HealthPro and Nursing Services Organization
Understanding Nursing: 2006-2010 Liability: A Three Part Approach

Allegations involved:
- Treatment and care (>50%)
- Medication Administration
- Assessment
- Monitoring
- Patient rights / abuse / professional conduct
- Scope of practice
- Documentation

Assessment / Monitoring / Care and Treatment
- Failure to properly or fully complete assessment
- Failure to assess the need for medical intervention
- Failure to reassess the patient after any change in medical condition
- Failure to monitor and report condition changes to practitioner
- Failure to monitor and timely report vital signs
- Failure to monitor and timely report blood test results
- Improper or untimely management of care / treatment
- Failure to notify practitioner of medical condition

Medication Administration
- Wrong dose, wrong medication, improper technique, failure to monitor and maintain infusion site
Case Study

Managing the Risk

- Adhere to nursing standards, policies, practice scope
  - Know what you don't know!!
- Communicate
  - Interdisciplinary rounds
  - Clear and meaningful hand-offs
  - Patient / family centered
  - Informed Consent
- Assess, monitor, report
- Advocate
- Document

Nursing Professional Liability Insurance
FAQs

• Should I carry my own insurance even if my employer provides coverage?
• How much coverage is enough?
• Am I covered if I leave employment and a suit is brought after my departure?
• Do I have a say in how my case is handled?

“...What you want are facts, not opinions. The most important practical lesson than can be given to nurses is to teach them what to observe, how to observe, what symptoms indicate improvement, which are the evidence of neglect, and what kind of neglect.”  
Nightingale, 1859
Resources

- CNA HealthPro and Nursing Services Organization - Understanding Nursing: 2006-2010 Liability: A Three Part Approach
- Reising, D, Protecting yourself from malpractice claims; American Nurse Today; February 2007
- National Council of State Boards of Nursing
- American Nurses Association
- Infusion Nursing Standards of Practice; January / February 2011

Leadership, Education, Accountability, Development