Nursing Assistants Violate Resident's Privacy and Other Rights

written by Nancy Brent | April 3, 2017

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We live in a "social media" era. You can take photos with your smart phone (whatever type), your android phone or your tablet, and send those photos anywhere, send text messages along with the photos, and on and on and on.

Regardless of where you work in health care, your facility should have clear policies and procedures concerning the non-use of your personal phones while at work. The policies should include an unambiguous prohibition of using your personal devices to take photos of residents or discuss any patient whether or not a photo accompanies the text message.

Although you would think such a policy is a sound measure and you would expect your nursing team members to abide by it without question, a Washington Post article shatters this belief.[1] According to the December 21, 1015 article, health care workers in nursing homes have posted "embarrassing and dehumanizing" photos of residents on social media networks.

The article states that according to ProPublica, 35 instances of photos or videos or residents were shared with others, some showing residents partially or completely naked. At least 16 cases were seen on Snapchat.[2]

In one February 2014 case, a nursing assistant at a nursing home in the State of Washington sent a co-worker a Snapchat video of a resident sitting on a bedside portable toilet with her pants below her knees.

In another instance, an Illinois nursing home nursing assistant recorded a co-worker lightly slap the face of a 97-year-old resident who had dementia. On the video, the resident cried "Don't, Don't" as she was being struck. The employees laughed.

Of course, an invasion of a resident's privacy can easily occur when resident photos are shared. Sending these photos is a clear violation of the resident's right of privacy under state law and HIPAA that carries civil and criminal penalties.

Regardless of the type of photographs, videos or discussions of and about patients, the legal and ethical ramifications of such conduct is apparent. Your employer will not hesitate to fire you for such conduct and report you to whatever agencies it is required to report such conduct. Not only does this have immediate ramifications, the employer's firing you essentially makes it extremely difficult for you to be

hired by another employer, even with no legal charges that might be filed against you.

A resident's right to be free from abuse, neglect, sexual abuse, and exploitation is a fundamental requirement of Medicare and Medicaid. If violated, the facility faces deficiencies which can lead to a revocation of their accreditation.

Third, and most important as a health care provider in a nursing home, you face individual liability for such conduct. For example, being charged with invading a resident's privacy can result in allegations being brought by the state regulatory agency that certifies you as a nursing assistant. If found to have been involved invading a resident's privacy, your certification can be removed, thus preventing you from working in that role in the future.

Another ethical and legal issue to consider if this type of conduct is occurring in your facility is your duty to inform your immediate supervisor and others identified in your policy about it. This is an essential way to eradicate this type of behavior, even if, as the Washington Post article mentioned, some of the patient photos and information were only shared with other co-workers rather than on a social media platform.

And, if the conduct you observe of other team members meets the definition of elder abuse, neglect, sexual abuse or exploitation, under your state's law you are required to report these happenings to the identified state agency. Not doing so can result in charges against you for not fulfilling your reporting obligations.

Moreover, as briefly stated above, criminal charges can also be filed, depending on the conduct of the health care provider. For example, in one case cited in the Washington Post article, the nursing assistant who took a picture of a resident on the toilet, pled no contest to a charge of using a computer to commit a crime.

As the author of the article notes, his story likely illustrates just the tip of this horrific nightmare. How many more instances exist, and continue to exist, but are not reported or discovered? Treatment of this kind is not acceptable under any circumstances, but is certainly is not fitting for elderly, helpless and vulnerable patients.

All patients must be treated with respect, dignity, and a caring manner. Those who participate in behaviors described in this article should not be allowed to continue to do so.

As the saying goes in today's world: "If you see something, say something". Doing so may not be easy, but it will help protect victims from this kind of treatment and also fulfill your legal and ethical duties to those to whom you provide care.

FOOTNOTES

1. Charles Ornstein (ProPublica), “Nursing Home Workers Have Been Posting Abusive Photos of Elderly on Social Media”, The Washington Post: Health & Science, December 21, 1015.
2. Id., at 1.

NOTE: YOU CAN READ MORE SPECIFIC INSTANCES OF SOCIAL MEDIA ABUSES FROM 2012-2016 GATHERED BY PROPUBLICA AT:

https://www.propublica.org/article/inappropriate-social-media-posts-by-nursing-home-workers-detailed .

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