

Patient Advocacy is an Ethical and Legal Duty

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The Code of Ethics for Nurses With Interpretive Statement clearly states in Provision 3 that a nurse “promotes, advocates for, and protects the rights, health and safety of the patient”.¹ This ethical duty includes many roles, such as protecting patient privacy and confidentiality, providing a culture of safety, and acting on questionable practices.²

As a nurse, you are the last line of defense for a patient, not only in ensuring that his or her care meets standards of care and standards of practice, but also in expressing concerns, issues, or needed changes in patient care for the patient. In short, you speak for the patient.

Speaking up about your patient’s care is not always easy, as many of you know. How to do so, when to do so, and to whom you raise your concerns are all part of the role you undertake when you decide to voice your trepidations about your patients’ care and treatment. Even so, there are times when it must be done. And when you do advocate for your patient, the patient benefits.³

The legal duty to advocate also comes with complexities, as the nurse in the following case⁴ discovered.

A patient presented at a California hospital ED at 11:45 p.m. with life-threatening gunshot wounds. The ED physician called the on-call vascular surgeon and he did not arrive until 2:45 a.m. The patient died during surgery at 7:00 a.m.⁵

The family filed a suit against the ED physician, but it was dismissed. The suit also named the nurse agency that had assigned a nurse to work in the ED that evening.

The focus of the allegations against the agency was the agency nurse’s care of this patient.

The appellate court upheld the lower court’s verdict. There was no legal duty, this court held, for the E.D. nurse to “go up the chain of command” to try and get another vascular surgeon to do the surgery.

This decision was also based on the nurse expert’s testimony. She testified that the ED nurse’s direct care was “appropriate”. She continually monitored the patient and understood the life-threatening nature of her patient’s gunshot injuries. She also understood the need for “quick action”.⁶

The nurse expert also opined that the ED nurse fulfilled her legal duty in the situation by regularly asking the ED physician that he was still trying to get the on-call vascular surgeon to come for the needed surgery.

And, the court noted that the only trauma surgeon on duty in the hospital that evening was in surgery with another patient with a gunshot wound. In short, it appeared there was no one else readily available that could perform the needed surgery.

It is important to remember that this decision involves the specific facts of this case and was decided in California. Another set of circumstances and another state appellate court might rule differently. Even with these caveats, the case presents important points to keep in mind as you advocate for a patient. They include:

1. Remember that you have both an ethical and legal duty to advocate for your patient;
2. Documentation of your advocacy should be timely, complete, and include details such as with whom you talked, what you raised about your patient's care or condition, and the response to your voiced concerns;
3. There may be a situation in which you will need to go "up the chain of command" or take other direct action to ensure your advocacy obligations are fulfilled;
4. Seek legal counsel for specific advice on how to proceed if you are unsure of what to do and if there is time to do so; and,
5. Remember that patient advocacy is almost always included in state nurse practice acts, so if it is alleged that you did not meet that duty, a professional disciplinary proceeding might be initiated by the board of nursing regardless of a favorable verdict in a lawsuit.

FOOTNOTES

1. American Nurses Association (2015). *The Code of Ethics For Nurses With Interpretive Statements*. Silver Spring, MD: author.
2. *Id.*, at 13, 15, 16.
3. See Francine Parker, (November 26, 2007), *Ethics Column: "The Power of One."* Online Journal of Issues In Nursing, Volume 13, No.1.
4. *Ramirez v. On Assignment*, 2013 WL 4434234 (Cal. App., February 6, 2013).
5. *Legal Eagle Eye Newsletter for the Nursing Profession* (March 2013), "Emergency Room: Nurse Did Not Fail To Advocate For The Patient", 6.
6. *Id.*

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