What is Unprofessional Conduct in Nursing?

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Nurse practice acts list unprofessional conduct as one of the bases a board of nursing can take disciplinary action against a nurse. You might ask what "unprofessional conduct" means.

See if you think the following case[1] illustrates an example of unprofessional conduct:

> Martha Duncan needed an MRI and called the facility where she was to have the examination and told a nurse there that she would only accept Demerol or Morphine for the sedation she required due to a back condition that would not allow her to lie still during the procedure.
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> The nurse with whom Duncan spoke assured her that only these two drugs would be considered for her sedation.
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> On the day of the procedure, Duncan asked the nurse what drug she would be receiving for the sedation. The nurse responded that Fentanyl would be administered. Duncan expressly refused to have Fentanyl administered and asked three times to have only Demerol or Morphine administered.[1] She also asked that her doctor be called.
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> The nurse told Duncan that the medication had been changed to Morphine and she then agreed to proceed with the MRI.
>
> Duncan later learned that the nurse had actually given her the Fentanyl when she experienced a severe headache, projectile vomiting, difficulty breathing, post-traumatic stress disorder, and vocal cord dysfunction.[1]
>
> Duncan filed a lawsuit against the hospital and its radiologists, alleging medical malpractice, lack of informed consent, and battery. Several legal procedural issues were raised against Duncan's lawsuit, resulting in a dismissal of her allegations.
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> Duncan appealed the lower court decision and the appellate court issued a memorandum decision, which was not favorable to her.
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> Duncan then appealed to the Supreme Court of Arizona, asking the Court to determine several issues that the trial court dismissed. The Supreme Court only proceeded with her battery claim, holding that the trial court erred in characterizing her claim of battery as a claim for medical malpractice.

In reviewing Duncan's claim for battery, the Court stated that it is "well established that a health care provider commits a common law battery on a patient if a medical procedure is performed without the patient's consent".

In this instance, the Court continued, the plaintiff consented to an injection for the procedure, but only with one of two specified drugs. As a result, the Court opined, when a patient gives "limited or conditional consent, a health care provider has committed a battery if the evidence shows the provider acted with willful disregard of the consent given."

The Court further discussed the nurse's conduct as expressly misrepresenting what he was administering. When a patient relies on such a misrepresentation and agrees to a treatment (an injection in this case), the court opined that the patient's consent is invalid and a cause of action in battery is appropriate.

Duncan's complaint, the Court continued, states a claim for battery. It vacated the appeals' court memorandum, reversed the judgment of the trial court, and remanded the case to the trial court for further proceedings.

It is unclear why the nurse in this case acted as he did. The entire matter could have been easily avoided by simply calling Ms. Duncan's physician and obtain an order for either of the two medications she specified. For whatever reason, he did not do so, resulting in a long, arduous and unnecessary legal battle.

So, did the nurse engaged in unprofessional conduct?

Arizona's Board of Nursing Rule R4-19-403 defines unprofessional conduct as "any conduct that is or might be harmful or dangerous to the health of a patient or the public and includes one or more of the following: (1) a pattern or failure to maintain minimum standards of acceptable and prevailing nursing practice…".[2]

I think the nurse most likely subjected himself to a disciplinary action by his state board of nursing as a result of his conduct. 2003 disciplinary actions against nurses in Arizona are currently not available on the Arizona Board of Nursing's website so I could not verify if the nurse was disciplined. However, the above Rule could apply to this situation.

If you are confronted with a situation in which a patient specifically requests a certain medication or medications, or questions a treatment about to be undertaken, remember these parameters:

1. Notify your nurse manager immediately for guidance and an acceptable resolution of the situation;
2. Notify the patient's physician for guidance and an acceptable resolution of the situation;
3. Never intentionally mislead or misinform a patient about a medication or treatment the patient is about to undertake;

4. Remember that consent for a particular medication or a specific treatment never allows you to substitute a different medication or different treatment;
5. Know your nurse practice act's definition of unprofessional conduct and the rules that further illustrate examples of such conduct;
6. Provide nursing care consistent with minimum standards of acceptable and prevailing nursing practice; and
7. Unprofessional conduct, as defined in your nurse practice act, can also result in a lawsuit against you and/or your employer.

FOOTNOTES

1. Duncan v. Scottsdale Medical Imaging, Ltd., Supreme Court of Arizona, *en* banc (the full court), CV-02-0191-PR, June 16, 2003.
2. R4-19-403, available at:

https://www.azbn.gov/media/2305/rulesjuly/2017final.pdf .

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