You be the Jury #3

written by Nancy Brent | February 1, 2012

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Thanks to those readers who posted comments about Nurse Jones and Mr. Smith's care. One comment in particular, that Nurse Jones had not documented anything in Mr. Smith's CCU record for 9 hours, is unacceptable care. Furthermore, the comment continues, what would Nurse Jones say?

No documented assessment about any patient and no care of any patient, including Mr. Smith, is unacceptable, no doubt about it. As you recall, documentation of patient care is absolutely essential for many, many reasons, not the least of which is the use of the documentation for defense purposes when an allegation of negligent care by the nurse is raised by an injured patient.

Indeed, if you think about your nursing education program, documentation of patient care, following good principles of documentation, was stressed in each and every course and clinical rotation you had to complete. And, there was that ever-present adage: "If it wasn't documented, it wasn't done".

Nurse Jones is in a tough spot here, as the comment indicates. What would she say to defend herself? She could try and convince the jury that she did the assessments but never got around to documenting them. Not very plausible, but she could try this defense.

She might also try to testify that she delegated the assessment and care of Mr. Smith to another RN as she was busy that day with another very ill CCU patient. This might sound possible initially, but the statement, and her conduct on that day, is not convincing that any delegation of care occurred to anyone.

Delegation, as you know, is a process, and requires that the delegator follow The Five Rights of Delegation:

- The right task
- Under the right circumstances
- To the right person
- With the right direction and communication; and
- Under the right supervision and evaluation (1).

It is also important to remember that the delegator retains the responsibility and accountability of the delegated nursing care. Moreover, although components of care may be delegated, the nursing process itself—assessment, planning, evaluation and nursing judgment– cannot be delegated (2).

Part of Nurse Jones' problem with this defense is that no documentation exists of any delegation and

Jones' evaluation of the care given by the nurse to whom she delegated Mr. Smith's care. Unless another staff nurse were to testify that Mr. Smith's care was delegated to her and that she provided that care, but forgot to document anything about that care as did Nurse Jones as well, this defense is a doomed one for Nurse Jones.

Nurse Jones might also try to state that she did not assess Mr. Smith because he was doing so well that no assessment was necessary. She could also try and state that if Mr. Smith's IV was infiltrated, or Mr. Smith was not feeling well, she assumed he would ring his call bell for whatever help he needed.

Granted, patients do often share with nursing staff that they are in pain, or that a pill does not seem to be like the one he has taken before, but Mr. Smith was in a chemically-induced coma after surgery. How could he share any feelings, issues, or thoughts with any nursing staff member?

Nurse Jones is trying to shift her liability to the patient by stating that he should have been the one to let her know if he was having a problem. Clearly, a patient does not have the expertise to know what might become a problem with his or her condition or when a problem does exist. Rather, that knowledge lies with the nurse and it is the nurse's constant legal duty to assess the patient, monitor the patient, and intervene when needed to prevent a foreseeable and unreasonable risk of harm.

And, as you have probably already surmised, the nurse expert for Mr. Smith is going to clearly testify that Nurse Jones' care of Mr. Smith, and her complete lack of documentation about any care, if any care did take place, did not meet the applicable standard of care for a CCU nurse in the same or similar circumstances.

So, if there are no defenses for Nurse Jones' conduct while caring for Mr. Smith, what should she do? Confess all to the jury and hope for the best? Share the reasons for her lack of documentation and assessment with her nurse manager and the Chief Nurse Officer (CNO)? Apologize to Mr. Smith and his family and ask for forgiveness? Quit her job due to her non-care of Mr. Smith?

And, what about any liability Nurse Jones may have under the state nurse practice act? Will the board of nursing be interested in the outcome of this case? Will the board take action against Nurse Jones if a complaint is received by them or if the trial court or the insurance company reports to the board a judgment rendered against her at the end of the trial, as is required in some states?

Stay tuned!

FOOTNOTES

(1) American Nurses Association and the National Council of State Boards of Nursing (no date given). Joint Statement on Delegation. Chicago, IL: authors. Available at https://www.ncsbn.org/Joint_statement.pdf (accessed 1/24/12). (This is an excellent resource and should be downloaded. It includes a decision-tree that is easy to follow as well as other helpful clinical pointers when considering delegation of aspects of a patient's care to another).

(2) Id.

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