Legal Issues

Facilities at Risk When Nurses Violate Standards

By Janet K. Feldkamp, JD, RN, LNHA

Violations of nursing standards of care can result in actions against individuals, survey deficiencies, civil money penalties for long-term care facilities, and a variety of other possible negative outcomes. Two cases demonstrate how nurses are in personal jeopardy.

In 2005, a Delaware court upheld a finding that the state's nursing standard of care requires a licensed nurse to perform cardiopulmonary resuscitation, if possible, and contact 911 for any full-code patient in full arrest.

The 79-year old woman in the case was a resident of a skilled nursing facility, diagnosed with a variety of chronic illnesses but identified as "full code" in her medical record. One afternoon, a certified nursing assistant noticed a change in the resident's status, including the presence of a thick white discharge coming from her mouth. The nursing assistant called a registered nurse to the room.

The RN observed the resident and repositioned her, at which time blood began streaming from the woman's nose. The RN then checked the patient's pulse, but he did not attempt to perform CPR or call 911. Instead, the RN called the charge nurse and instructed her to come to the resident's room and to bring her stethoscope. The RN did not indicate any urgency regarding the situation when he called the charge nurse. The

Medical Expert Perspective

These cases highlight several important points. The standard of care is not the same as optimal care, or the best possible care. It's merely that level of care or skill that a reasonably prudent professional of that training or licensure should provide in that or a similar situation. Even making an incorrect decision is not necessarily negligent.

While expert testimony is required to determine the standard of care in civil cases, attorneys often attempt to invoke other definitions of standards of care. These may include state or federal regulations, guidelines, and facilities' policies and procedures.

In fact, failure to follow a facility's policy or procedure may not be a breach of the standard of care, but it doesn't look good. Try to ensure that your policies and procedures are reasonable and achievable, and do the same for care plan goals.

Another point here is that even if an individual health care worker is negligent, the facility can be implicated under the notion that it is responsible for the acts of employees – and it is much easier for a plaintiff to prevail against a corporate or institutional entity than an individual.

Finally, the whole idea that somehow the outcomes would have been different if cardiopulmonary resuscitation had been performed on the individuals in these cases is misguided. The survival rates for out-of-hospital arrests with CPR are dismal.

We need to educate our patients about this before casually signing "full code" orders. Performing CPR on a frail elderly nursing home resident is not a kindness, and people really ought to give informed consent for it to happen. Perhaps allowing them to watch a video of a full code situation – and its results for a patient even if he or she survives – would evoke a truly informed decision.

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resident died without emergency intervention.

The RN was charged with neglect by the state's Department of Health and Social Services and was placed on Delaware's Adult Abuse Registry for violating the nursing standard of care when he failed to perform CPR or call 911 for the full-code patient. The RN argued that there was insufficient evidence to prove that he had violated a standard of care and that the patient was "obviously" dead when he arrived in the room. However, the court disagreed and found that the procedure for responding to a full-code patient in full arrest is to perform CPR and call 911.

The RN also argued that the failure to perform CPR was merely a violation of an internal facility policy, not of the state's nursing standard of care. The court again disagreed.

In a 2010 case, a New York court found that failure to properly and immediately perform CPR may be grounds for a claim of nursing malpractice. The patient involved was a 12-year-old girl who was receiving home infusions of a steroid administered by a visiting nurse.

After commencement of one of the infusions, the patient, lying on a sofa, began to complain of difficulty breathing. The situation quickly escalated, and the patient went into arrest. The nurse did administer CPR to the patient, but there was conflicting testimony as to whether it took place on the sofa or the floor.

Expert testimony in the case established that if CPR was performed on the sofa, the nurse had improperly administered the procedure because it should be performed on a sturdy, rigid surface. Although this particular case addressed the administration of CPR in a home-care setting, the court (in ruling that a trial should occur) said that the proper administration of CPR is a basic standard of nursing care and could be raised in the malpractice case.

Long-term care facilities also can be found noncompliant with standards of care, and the result can be a per-day

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penalty for as long as a court determines a resident was in immediate jeopardy because of the facility's failure. For example, in the case of Life Care Center of Tullahoma, Tenn., a Centers for Medicare & Medicaid administrative law judge found that the nursing home failed to adhere to Medicare facilities' standard of care, established by F Tag 281, when nurses routinely didn't notify patients' physicians of hypoglycemia or hyperglycemia. The facility was fined $4,550 per day for a total of $709,800.

Life Care argued that it was being held to a standard of care not found in the applicable regulations. However, the CMS appeals board agreed with the administrative law judge that Life Care's clinical staff had failed to adhere to professional standards of quality as required by F Tag 281. Furthermore, the appeals board stated that the prevailing standard of care was corroborated by the existence of the facility's own physician-notification protocol and hyperglycemia and hypoglycemia policy, both of which demonstrate the appropriate standard of care.

Even though each licensed nurse is responsible for his or her practice and competence, the facility must provide policies and procedures with appropriate oversight and management to ensure that nurses' care complies with standards of practice. A facility's medical director is an integral component in the development of policies and the ongoing monitoring of care.

Education and reinforcement of the facility's policies can update the staff regarding changes in skills and knowledge required for the delivery of quality care.

Breach of a standard of care by a licensed nurse in a long-term care setting may result in significant monetary penalties to the nurse and the facility.

This column is not to be substituted for legal advice. The writer, JANET K. FELDKAMP, *practices in various aspects of health care, including long-term care survey and certification, certificate of need, health care acquisitions, physician and nurse practice, managed care and nursing related issues, and fraud and abuse. She is affiliated with Benesch Friedlander Coplan & Aronoff LLP of Columbus, Ohio.*