

CHAPTER 28

NURSING ADVANCED PRACTICE LEGAL ISSUES

I. INTRODUCTION

The advanced nurse is a registered nurse who has completed some form of advanced nursing education and training. Two types of advanced nurses are the advanced registered nurse practitioner (ARNP) and the certified nurse specialist. There are three types of certified nurse specialists, certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners, in the state of Florida. The potential risk of liability for an advanced nurse is as real as the risks for any other nurse. In addition to all of the legal issues that a registered nurse is faced with the advanced nurse is susceptible to even more legal issues.

II. COMMON LEGAL ISSUES FOR ADVANCED NURSES

Advanced nurses are held to higher standards of care than registered nurses or licensed practical nurses because of the higher degree of education and training that an advanced nurse is required undergo. Advanced nurses are required to meet further certification requirements in order to become licensed. The additional certification requirements were established because advanced nurses have a much broader scope of practice than registered nurses or licensed practical nurses. The requirements which an advanced nurse is required to meet are discussed in Chapter 11, Professional Licensure.

An advanced nurse is held to all of the same duties and standards as a registered nurse which were discussed in Chapter 5, Duties of the Nurse, as well as, additional duties that are placed on the advanced nurse because of her advanced training. A failure to uphold the duties of a nurse can lead to the same consequences that a registered nurse could face, including action being taken by the Board of Nursing against the nurses license.

A. ADVANCED REGISTERED NURSE PRACTITIONER (ARNP) AND PHYSICIAN PROTOCOLS

An advanced registered nurse practitioner (ARNP) shall only perform medical acts of diagnosis, treatment and operation pursuant to a protocol between the ARNP and a Florida-licensed medical doctor, osteopathic physician, or dentist. The degree and method of supervision shall be specifically identified in the written protocol and shall be appropriate for prudent health care providers under similar circumstances. General supervision by the physician or dentist is required unless these rules set a different level of supervision for a particular act. The number of persons to be supervised shall be limited to insure that an acceptable standard of medical care is rendered in consideration of the following factors: risk to patient; educational preparation, specialty, and experience of the parties to the protocol; complexity and risk of the procedures; practice setting; and availability of the physician or dentist. Rule 64B9-4.010, Florida Administrative Code.

The Board of Nursing, "Board," has established rules, pursuant to Florida Statutes, which regulate the requirements for a protocol between a physician or a dentist and an ARNP. The protocol must be in

writing and signed by both the ARNP and the physician or dentist, showing a mutual agreement between the parties. The protocol must also include a description of the duties of the ARNP; a description of the duties of the physician or dentist; the management areas for which the ARNP is responsible, including the conditions for which therapies may be initiated and the treatments that may be initiated by the ARNP, depending on patient condition and judgment of the ARNP; and the drug therapies that the ARNP may prescribe, initiate, monitor, alter, or order. The protocol must include a provision for annual review by the parties which are privy to the protocol

In addition, the original protocol must be submitted to the Board within thirty days of the renewal of the ARNP's license. A copy of the protocol and a copy of the notice required by Section 458.348(1), Florida Statutes, shall be kept at the site of practice of each party to the protocol. Any alterations to the protocol or amendments should be signed by the ARNP and the physician, or dentists and filed with the Board within 30 days of the alteration to be kept in the Department of Health for filing purposes only. Specific conditions and a procedure for identifying those conditions that require direct evaluation or specific consultation by the physician or dentist must be contained within the protocol.

B. STANDARD OF CARE FOR NURSE SPECIALISTS

1. Certified Registered Nurse Anesthetists (CRNA)

Administration of anesthesia by a certified registered nurse anesthetists requires special training and certification. Oversight and availability of an anesthesiologist is required by most organizations. The major risks for registered nurse anesthetists include the improper placement of an airway, failure to recognize significant changes in a patient's condition and the improper use of anesthetics.

The negligent administration of anesthetics by a nurse-anesthetist can lead to liability against that nurse, as well as a hospital or a physician. In McKinney v. Tromly, a suit was instituted against a physician for the negligence of a nurse in the administration of an anesthetic to the plaintiff's 9-year-old son who was undergoing a tonsillectomy. McKinney v. Tromly, 386 S.W.2d 564 (Tex. Ct. App. 1964). The Texas Court of Civil Appeals held that administration of an anesthetic constitutes the practice of medicine because the nurse-anesthetist had a duty to properly administer anesthesia. A nurse who specializes in the administration of anesthetics is held to the same standard of care as other certified registered nurse anesthetists in the community.

In Weinstein v. Prostkoff the decedent went to the hospital after experiencing labor pains. Weinstein v. Prostkoff, 191 N.Y.S.2d 310 (Sup. Ct. 1959). The physician testified that an examination of the decedent revealed that her unborn child was suffering from fetal distress. The patient was prepared immediately for delivery, taken into the delivery room and administered an anesthetic. The nurse-anesthetist who responded to the delivery room call was told that the baby was in distress and that 100 percent oxygen was to be administered immediately to the mother. Although it was customary and exceedingly important to ascertain whether a patient had eaten any food within a reasonably short time before the administration of anesthesia, no such inquiries had been made. Shortly after the baby was born, the patient gave several gasps and died. The physician testified that after the nurse-anesthetist removed the oxygen mask he immediately saw large amounts of vomit coming from the patient's mouth. The immediate impression of those in attendance indicated the patient had suffocated as a result of aspirating gastric matter

into the lungs. The jury found the nurse-anesthetist to be liable for negligence because she did not inquire as to whether the patient had eat within the last few hours and that breached the nurse-anesthetist duty to properly administer anesthesia.

2. Nurse Practitioner (NP)

A nurse practitioner, NP, is a registered nurse who has completed the necessary education to engage in primary health care decision making. The American Nurses Association is the organization that certifies NPs. A physician may not delegate a task to a NP when regulations specify that the physician must perform it personally or when the delegation is prohibited by state law or by an organizations own policies. A NP who practices outside of her scope of practice can be sanctioned by the Department of Health and if an injury occurs to a patient that NP can be civilly liable to the patient.

3. Certified Nurse Midwives (CNM)

Nurse midwives provide comprehensive prenatal care including delivery for patients who are at low risk for complications. Nurse midwives manage normal prenatal, intrapartum and postnatal care; in addition, nurse midwives will care for newborns as long as there are no complications. Nurse midwives also provide primary care for women's issues from puberty to post menopause. The standard of care for a certified nurse midwife is that of a reasonably prudent certified nurse midwife engaged in the practice obstetrics and gynecology.

C. DEPARTMENT OF HEALTH (DOH) INVESTIGATION

One of the biggest mistakes an advanced nurse makes when being investigated by the Department of Health, DOH, is failing to forward a complete copy of the patient medical record when subpoenaed by the DOH investigator as part of the investigation process. If the advanced nurse does not make an objection to the DOH investigators request for a copy of a patient's medical record, she is required to forward the medical record to the investigator. A failure to comply with this can lead to further disciplinary action against a nurse's license.

III. CONCLUSION

Advanced nurses perform many acts that go beyond the scope of practice of a registered nurse. This creates many additional acts for which an advanced nurse is responsible for knowing and understanding in order to avoid civil liability and as a result of obtaining specialized education and training to perform acts that go beyond the scope of practice for a registered nurse the advanced nurse is held to a higher standard of care.

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