

Legal Aspects of Nursing

By

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MODERN nursing can be said to be the blending of art and science. Patient care has been recognised since ages, but the advent of modern art of nursing is mainly associated with the untiring efforts of Florence Nightingale.

With the rapidly increasing knowledge of the medical science, the patients expect the application of the latest scientific knowledge and techniques to relieve them from pain and suffering. Thus nursing of the patient has all the more become important. A little carelessness or lack of caution can expose the nurse or the hospital at large to legal cases and therefore, it is necessary for the nurse to possess some knowledge of the law relating to her profession and responsibilities.

Nursing is one of the noblest professions, but its nobility can be sustained only if those in the profession are able to prove worthy of it. Nurses form an important link in the medical profession in the patient care in a hospital since they are charged with the responsibility to deliver the goods to the ailing humanity on behalf of the doctor in a proper shape. The Nurse has to carry out the orders of Physicians while treating a patient in diagnostic, operative and therapeutic procedures and also in keeping proper records regarding the cases. Thus with the increase in her responsibility, she has to bear in mind the legal aspects of Nursing.

In order to establish a uniform standard of training of nurses, midwives and health visitors, a central Act called the "Indian Nursing Council Act", was passed in 1947 by the Parliament. Under this Act two kinds of qualifications are considered as recognised which are mentioned in the schedules of the Act. If a person possessing the recognised qualifications within the meaning of this Act, he or she will be entitled to be enrolled in any state register and practice the profession in private or in a hospital. A few of the important general rules regulating the practice of nursing have been incorporated in the International Code of Nursing Ethics which every nurse should know.

Important Obligations

Nurses are solely responsible for their own professional Acts irrespective of whether they are doing private work or employed by a hospital or public health or social welfare agency. The responsibility rests on the nurse herself, if she gives on her own intravenous medication (infusions or transfusions) with-

out the supervision of a medical practitioner. She is also responsible for bed-sores, hot-water-burns, mix-up babies and communication of infection to babies. A nurse, like a medical practitioner, must observe secrecy regarding information relating to the patient's illness which she obtains in the discharge of professional duties.

A private nurse is not obliged to attend or take care of all patients who call her, as against a nurse employed in a hospital who has to look after each and every patient entrusted to her care. A private nurse, like a doctor, is responsible for her duties if she abandons a patient without giving due notice or brings a substitute without the consent of the patient. She can refuse attending them only if the contract in any case has been served from the patient's side either by engaging another incumbent or not paying for the previous services rendered. A private nurse is responsible for constant care and attention of the patient on whom she has been engaged and not for the care of other people in the household.

A nurse employed in a hospital will have obligations other than mentioned above according to the rules and regulations of the hospitals where she is employed.

Negligence or Accidents

In an alleged negligence, nurses, doctors and the hospital sometimes become involved in law suits, which among other things, creates a great deal of undesirable publicity even if the suit is lost. There are many patients who realise that wherever human beings are involved, mistakes are possible. They are usually reasonable and unless gross negligence is indicated they would not generally take a case to the court. There has, however, been a growing tendency for some years to sue which may even increase with the increasing education. Nursing as well as the medical profession must, therefore, recognise the fact that if every possible precaution is not taken by them, they may become involved in more law suits in future.

The courts of law have held that in every medical case the question of negligence is to be decided according to the knowledge and practice existing at the time of occurrence of the alleged act of negligence. The test of negligence is mainly based on the fact whether the "Reasonable Care and Skill" was used while treating a patient or not.

The liabilities of the nursing staff in cases of alleged negligence in a hospital depends on the relationship which they bear with the employers. Generally the nursing staff is held liable for professional acts, but the hospital authorities are also held responsible for the ministerial duties of the nursing staff. For example, administration of a drug is a professional duty and proper feeding is a ministerial act. However, a recent case in California has introduced a new theory under which the hospitals may be held liable for the professional acts of the members of its staff. This decision was decided on the basis

of 'Respondent Superioris' i.e., master and servant relationship for the wrongs done by his servants. In all such cases of negligence the burden of proof of negligence rests on the plaintiff or the complainant.

Doctrine

In case of negligence alleged under the doctrine *Res-Ipsa : Liquitoris* (i.e. the thing speaks for itself) the situation is different. Here the burden of proving oneself against negligence or innocence rests on the defendant. Such a situation, broadly speaking, arises in two types of cases :—

- (i) Where some object such as swab or a forceps has been left in a body cavity at operation ;
- (ii) Where some disaster has occurred during treatment and has led to a situation worse than at the time of start of therapy.

In such cases usually the negligence is presumed. The Surgeon's duty is undoubtedly to exercise reasonable care in the removal of swabs giving proper weight to the rare but not impossible risk of a swab having lost its 'Spencer-Wells' clips. The risk, it is worth remembering, is one which depends mostly not on the Surgeons but on the Nurses. It is the Nurses' duty to see that each spencer-wells clip is in good order so as to maintain the catch of swab properly, while being placed in the Surgeons hand. Still more, the check afforded by the counting depends on nurses mainly. In such cases the Surgeon has to prove that he used the degree of reasonable care in the circumstances which should be proved with evidence. At the same time he cannot absolve himself of his responsibility by merely saying 'I relied on the Nurse'.

The other instances of *Res-ipsa Liquitoris* are cases where severe burns occur to a patient during diathermy or allied treatment, because of the negligent conduct of the nursing staff. In a recent case a nurse was held negligent for her conduct in painting the body of a woman with iodised phenol instead of tincture of iodine causing severe burns to the patient.

Patient's Consent

The degree of responsibility of the nurse in getting signatures on consent forms for admission, special examinations or operations varies in different institutions. Therefore, a nurse should be familiar with the rules of the institution, the execution of which becomes her responsibility. It is important that she should carefully explain the documents to the patient before obtaining his signature. Legally speaking signatures on documents which have not been explained beforehand are of no use if proved so by the patient. The practice of taking consent in a most generalised fashion at the time of admission of the patient is now generally discouraged on the grounds that the patient is not in a fit mental condition at the time of admission to assess the nature or consequences of the distantly planned operations or specialised tests.

In emergency cases or in cases where proper consenting parties are not present, because of the patient

being unknown, necessary treatment and care must be taken in hand immediately.

Patient Care In Wards

After a patient has been admitted in the ward, following points must be kept in mind to avoid negligence :

- (i) The patient must be provided with proper comfortable beds according to his needs. Special beds to be provided to unconscious patients and children, so as to protect them from falls etc.
- (ii) Detailed and proper records must be maintained with special emphasis on the regular progress of the cases and treatment given.
- (iii) Proper attention should be paid towards the hygiene of the patient. Development of bed-sores in patients suffering from paralysis or being unconscious for a long period should be specially checked.
- (iv) Proper attention must be given to the diet prescribed by the doctor to a patient keeping in mind also the liking and disliking of the patients. Special diet cases must be given extra attention.
- (v) Precious belongings of the patients should be collected, an inventory made and deposited with the Sister in-charge for safe custody. Quite often the loss of some costly articles worn by the patient, particularly when there were no relations at the time of admission, may become a source of civil liability for nurses. Hence these cases demand great caution.
- (vi) In cases where a patient becomes serious, it is the responsibility of the attending nurse to inform the medical officer-in-charge immediately.
- (vii) Orders for treatment of patients must be taken in writing from the doctors before instituting them, except in emergency cases.
- (viii) In an emergent situation, in the absence of a medical officer proper treatment to save life must be given and the medical officer informed accordingly as early as possible.
- (ix) In cases where patients leave against medical advice or abscond from the hospital, necessary authorities must be informed immediately in writing on proper forms.
- (x) In cases of death relations should be informed, if not present at that time.

Care and Liabilities

1. OBSTETRICAL CASES

The hospital is usually held responsible for the injuries to the expectant mother due to falls, drug dosage, improper screening and protection in delivery room, injury to new-born babies during delivery and burns due to hot douches.

An important aspect of legal importance during deliveries is the method adopted for the identification of the babies so as to check inter-change. It is better that in all such cases recourse to means of identification by foot prints, palm prints, a tape or adhesive sticker or bracelet or necklace containing names are used. In the event of a baby mix-up a great deal of grief and mental anguish can be caused to the parents involved. This could lead to a suit against the hospital due to negligence of its employees.

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