

Medicolegal Aspects of Nursing Care— Nurse, Patient and the Law

By

Dr. Jagdish Chandra

Associate Professor of Forensic Medicine, All India Institute of Medical Sciences, New Delhi

NURSING has long been recognised as an art which tells how to work to produce certain results. Florence Nightingale to whom the whole suffering humanity is so much indebted called Nursing the finest of fine arts. It is an art requiring sympathetic heart and willing hands. Nursing service in its simplest terms is a personal relationship between the nurse and the patient. The patient expects the nurse to have scientific knowledge and the ability to apply it in many techniques. He also expects her to help conserve and restore his strength, to keep him comfortable and safe, to relieve his pain and to carry out therapeutic measures with expert manual skill.

The physician expects the nurse to carry out his orders for treatment, to aid him in diagnostic procedures, to observe, to report and record accurately and to be loyal and co-operative. I would like to repeat the golden words of Florence Nightingale as regards the qualities of a nurse:

"A nurse must be no gossip, no vain talker, she should never answer questions about her sick, except to those who have a right to ask them. She must, I need not say be strictly sober and honest, but more than this, she must be a religious and devoted woman, she must have a respect for her calling, because God's precious gift of life is often so literally placed in her hands; she must be a sound, a close and quick observer and must be a woman of delicate and decent feeling."

A hospital owes the patient a high degree of care which includes medical as well as nursing care. The average ambulatory patients require ordinary care while others like premature newborn, mentally ill, the obstetrical patient or a

patient who is unconscious, under sedation or in delirium or shock and getting convulsions would require a higher degree of care. A nurse is a very important figure in a hospital and is a connecting link between the doctor and the patient. She has therefore to play an important role of responsibility. She is likely to be involved in the act of negligence at any step from admission to discharge of the patient from the hospital. She has therefore to be careful at each step of her duty to avoid her liability as well as liability of the hospital to the patient for any harm suffered by him.

Negligence implies, basically a failure to discharge the duty of employing reasonable skill and care. 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 the occurrence of the alleged act of negligence. A course of conduct has to be judged in the light of the knowledge existing at the time when it was adopted. Any negligence committed in nursing or medical care either by professional or non-professional employees of the hospital make the hospital liable for any harm which a patient suffers.

Hospital Authorities and Negligence of Hospital Staff

The law varies with respect to hospital liability to patients for negligent acts of its employees. The liability sometimes has been adjudged from whether the hospital is a Government Institution, a charitable or a non-charitable hospital. Sometimes hospitals are held liable for negligence of employees including nurses only if they did not exercise due care in the selection or retention of such employees. The

A talk given at the Workshop conducted by the Delhi Branch of the TNAI on "Legal Aspects in Nursing" at the Nurses Lecture Hall, Irwin Hospital, New Delhi from August 19-20, 1967.

court said in one of the judgement as follows:

When a hospital undertakes to treat a patient without any special arrangement or agreement, its engagement implies that its physicians, nurses and attendants (a) possess that required degree of learning, skill and ability necessary to the practice of their profession and which others similarly situated ordinarily possess (b) will exercise reasonable and ordinary care and diligence in the use of their skill and in the application of their knowledge to the patient's care and (c) will exert their best judgement in the treatment and care of the patient.

Until recent years reported cases on the liability of hospital authorities to patients for the negligence of medical and other staff have been remarkably few and the decisions not altogether consistent. Accordingly the law on this subject has always been difficult. Previously public body performing public duty and receiving no profits could not be held liable in damages for negligence of servants but the trend has now changed. Lord Justice Kennedy observed in one of the case that the hospital authority would not be liable for negligence of its professional staff in the matter of professional care and skill but it would be so liable for their negligence in carrying out ministerial or administrative duties. The administration of medicine was held to be a professional duty and feed-

ing a patient with ordinary food would be regarded as a purely ministerial duty. Other duties which were held to be professional duties were the supervision of ultra violet light treatment and management by nurses of a drainage tube.

In one of the decisions of court it was decided that in the case of a nursing home conducted by local authorities, the local authority is not responsible for the negligence of the doctors, matron or nurses while acting in the exercise of their professional functions and knowledge. In another case it was decided that a hospital authority was responsible for the negligence of a nurse whether in the performance of professional or administrative duties, since it undertakes the obligation of nursing and not merely of providing nurses. Proprietors of a nursing home were held liable for an injury sustained by a patient at the home where bladder had been punctured by trained nurses in the course of catheterization. In contrast to this case the managing committee of a Charitable Hospital was held not to be liable for negligence of their nurses in administration of 6 ounces of paraldehyde in mistake for six drachms. Lord Greene observed: "It would be quite unreasonable to hold the duty owed to a paying patient in such a hospital as this was greater than owed to a nonpaying patient. It would be lamentable were it to be said that there is one standard for country hospitals and another for voluntary hospitals."

The Res Ipsa Loquitur Doctrine in Medical Negligence (To shift the burden of proof to defendant).

The question of the application of this doctrine has fallen to be considered broadly speaking in two classes of cases.

1. In cases in which some object such as swab or a forceps has been left in a body cavity at operation.

2. In cases in which some disaster occurring in the course of the treatment of a patient has led to his last state being worse than his first.

The Surgeon's duty is undoubtedly to exercise care in the removal of

the swabs giving proper weight to the rare but not impossible risk of a swab having lost its spencer wells clip. This risk, it is worth remembering, is one which depends not on the surgeon but on the nurses. It is their duty to see that each spencer wells clip is in good order and that its safety catch is made well fast when the swab to which it is fastened is placed in surgeon's hands. So too, the check afforded by the count depends on the nurses. The *res ipsa* doctrine is applied in such cases and negligence is presumed whenever a swab or instrument is left in the body of a patient.

The Surgeon has to prove that he used that degree of care which is reasonable in the circumstances and that must depend on the evidence. If on the whole of evidence it is shown that he did not use that standard of care, he cannot absolve himself of a mistake he made by saying "I relied on the nurse." Lord Justice Goddard said that once the swab or instrument had been found left in that was enough to call for explanation of the defendants.

The other example is Ischaemic Contracture which may occur after too tight splinting of a fracture. Although this may also occur quite independently of splinting but the tendency of contractures to occur after splinting in certain regions is well known as is also the fact that pain and swelling is a danger signal, the timely heed of which may prevent these crippling deformities.

In a case in the year 1952 a Radiographer treating the child with Crenz rays for warts on the face omitted to protect the healthy parts of the face with a lead rubber with the result that the child's face was burnt and permanently disfigured. It was held by the court that a hospital was liable for negligence of a medical auxiliary (a radiographer, occupational therapists, dispensers etc.) and doubtless also of a nurse in the performance of a duty otherwise than under the direct supervision of a physician or a surgeon. Even if as in operating theatre an auxiliary or nurse is under the direct supervision of a medical practitioner the hospital may still be

liable if she carries out his orders negligently; she does not cease to be hospital servant and the doctrine of respondent superior (Master and servant relation) is applicable in such cases.

I would like to narrate other instances where a nurse has to be on guard to avoid the charge of negligence:

Suicidal Tendencies

A patient with suicidal tendencies should not be permitted to wander freely through the hospital. Negligence by hospital personnel cannot be shown unless there is a failure by such personnel to reasonably anticipate danger. A patient with mental illness needs more care to safeguard him against hazards. Such patient is potentially dangerous not only to himself but to others also. A failure to provide attendants for surveillance or to restrain delirious patients may result in liability. One of the hospitals was held liable where a nurse failed to exercise ordinary care when a patient was left unattended. The patient either jumped or fell from a second floor window and was injured. In another case a hospital was held liable where a patient was permitted to wander. He was admitted to the hospital as a "temporarily insane patient" and obtained access to the kitchen where he got a knife and cut his throat. Similarly an expectant mother in labour is in a state of mental confusion and should be provided constant and uninterrupted attendance of a nurse during the labour period. Such patient too can jump or fall down from a window in the labour room and get killed. The hospital in one case was held liable in such case and the husband was awarded \$35,000 in damages.

Alertness, watchfulness and care must be heightened where suicide has been successfully threatened in the past.

Intoxicated Persons

Alcohol can affect the state of mind of a person to the extent that he becomes mentally disturbed, incoherent, disoriented and in many respects more helpless and potentially dangerous than the bonafide mental patient. Special care has to be exercised for such patients.

Protection Against Contagious Diseases

It is the responsibility of the hospital to assure that its employees are in a state of health that is free from infection and disease to prevent any harm to the patients. Every reasonable precautionary measure must be taken to prevent the spread of infection to other patients. Patients with infectious diseases should be isolated from other patients and proper isolation techniques should be observed. There is a legal duty to give adequate instructions and reasonable directions to hospital personnel to prevent the spread of the disease. There is also a legal duty on the hospital to use all reasonable precautions, not only to prevent the spread of a contagious disease or infection to the patient but also to employees, visitors, and others who ordinarily may come in contact with a contagion. A hospital was held liable for retaining the services of a nurse afflicted with tuberculosis who had attended a two month old child. Later the child was found to be the victim of miliary tuberculosis from which it died. In another case the hospital was held responsible for a nurse's negligence where she brought the wrong infant to a mother for feeding. This infant had impetigo—a kind of skin disease. The mistake was not discovered until after the infant had nursed. Upon discovering the mistake the nurse then brought the correct baby in to the mother after removing the wrong one. The healthy child subsequently contracted impetigo. The hospital must advise its employees of a patient known to be suffering from a contagious disease. In a case where a nurse employee contracted a contagious disease the hospital was held liable because it failed to inform her that the patient she attended had a communicable disease.

Hospital Liability in Obstetrical Cases

The hospital has been held liable for injuries to the expectant mother involving falls, drug dosage, improper screening and protection in delivery room, injury to newborn during delivery, burns due to hot douche.

New Born

The hospital owes a high degree of care to the premature infant and newborn. The nursery should be in constant attendance with a registered nurse in charge. The hospital is responsible for the care and maintenance of the equipment used in nursery. It may be liable if an injury results from a defective or improperly functioning incubator. Newborns with infections of skin, mouth or the respiratory tract and especially those with diarrhoea diseases should be separated from the other babies in the nursery in order to prevent the spread of infection and avoid liability.

Identification

Immediately upon delivery a means of identification should be established by the hospital for identification of the baby—foot-prints, palm prints, a tape or adhesive sticker or bracelet or necklace containing name may be used. The blood group can be known by typing blood from umbilical cord. In the event of baby mix up a great deal of grief and mental anguish can be caused to the mothers involved. This could lead to a suit against the hospital due to negligence of its employees.

Patient Care in the Wards

A nurse should be careful on the following points to avoid negligence:

1. The patient should be provided a proper and comfortable bed. He should be well protected from any harm by fall from bed or getting injury by other means. This is especially required in children, unconscious patient and patient getting convulsions. The position of bed and patient is also important in some conditions. Blocks at the foot end of bed or a heart table may be beneficial for patients suffering from different ailments.

2. Details regarding full name, age, sex, address and address of relations or persons who bring the case to hospital may be clearly entered into the hospital records. This information may be very useful for identification and to call relatives at the time of need.

3. Written consent should be obtained for any operative procedure or anaesthesia.

4. Proper attention should be given to oral hygiene to prevent oral complications e.g. parotitis, attention to skin of pressure points at the back to avoid bed sores, proper attention to bed of patients suffering from paralysis, attention to empty distended bladder and bowels of unconscious patient is very important.

5. Hot water bottles given to patients especially unconscious patients should be well wrapped in covers to avoid burns of skin.

6. A nurse should be competent enough to carry out emergency and life saving procedures.

7. A nurse should look after the diet of the patient and should see that they get what the doctor has advised for that particular patient and at the same time she should try to know the likings and dislikings of the patient.

8. Her behaviour towards the patient should be sympathetic and understanding. A few words of encouragement may be delightful for the patient.

9. Patients who have been advised strict bed rest must get a good attention and those confined to bed must get attention to bed sores or pulmonary complications. Excreta of the infectious patients should be properly disposed off to avoid health hazards to other patients.

Operation Theatre

A nurse assisting a Surgeon in the operation theatre shares a heavy responsibility along with the Surgeon. It is her duty to see that the instruments are sterilized and are adequate for an operation. Instruments and swabs should be counted before and at the completion of the operation and she should maintain a record of it. Any tissue removed from the body should be properly preserved so that it can be sent for Histopathology Examination by the Surgeon when desired. Any loss of instruments or swabs should be reported to the Surgeon before the closure of the wound. She should also be careful to see that all the resuscitative equipments are in working order and life saving measures are

available for use at the time of emergency.

Drugs

A nurse should always be aware of the various drugs present in the ward. Emergency drugs should be kept in a separate tray under lock and key and should be within easy reach at the time of need. Bottles containing various drugs should be properly labelled. Poisonous drugs should be kept in separate cupboard and labelled as Poison. Proper and correct dose of medicines and injections should be given to the patients at the right time as desired by the doctor. She should get written instructions for the patient from the doctor concerned in the patient's case sheet. Drugs for the whole day should not be left with the patient to be taken at the required time and after giving it to the patient she should see that the patient takes the drugs.

Injections should be given as prescribed and due care to proper sterilization of syringe and the needles etc. should be taken. The area to be injected should be well planned and injections likely to give sensitivity reactions should be tested by sensitivity tests and antidotes and other resuscitative measures should be kept within easy reach to be used in emergency.

Verbal orders or orders on the telephone should be carefully taken and the doctor should be requested to write these orders in the case sheet as soon as he arrives in the ward. She should be intelligent enough to give emergency treatment like adrenaline at the time of sensitivity reactions. Name of the drug, time of giving the drug and the mode of administration should be clearly written in the record books.

Ultra Violet and X-Ray Therapy

When a patient is receiving X-ray exposures for treatment of an ailment a nurse should be careful to cover the parts which do not need X-ray exposure with lead rubber sheets. She should give spectacles to patients getting ultra

violet exposures to avoid eye complications.

Transfusions

Carelessness in blood transfusions can lead to serious consequences. Blood should be very well matched and be transfused only after careful comparison of patients blood group as noted in the case sheet and the blood of bottle. She should check all the papers and records before transfusion and the time of transfusion should be noted. A nurse should be able to detect the early signs of reaction and should be competent to carry out immediate counter measures.

While sending the blood samples for grouping she should see that the form is properly filled up and signed by the doctor. Full name, and age should be clearly written on the form accompanying the sample.

The doctor concerned should be informed for any untoward reactions of any transfusions and the instructions be carried out accordingly. In case of death due to blood transfusion, the blood bottle, and other records should be preserved for probe into cause of death.

Advice to Patients

The nurse should not advise the patient about the prognosis or complications of the disease though she is advised to advise them regarding the prevention of the communicable diseases. Any query regarding the disease process should be referred to the doctor on behalf of the patient.

Discharge of Patients

At the time of discharge of the patient from the hospital, the nurse should clearly tell the patient the details regarding the administration of drugs, his date of further visit to the doctor and other instructions desired by the doctor.

Discharge of the patient from the hospital without proper advice quite often may lead to trouble.

Visitors

The nurse should see that there is no disturbance to the patients in her ward. No visitor should be allowed except at the visiting hours and in serious cases only with the permission of the doctor. The visitors should not be allowed to sit on the bed of the patient and they should be advised not to bring children in the wards as they are more prone to infectious diseases.

The visitors should be requested to leave the ward at the expiry of visiting hours or when the visitors are not allowed by the doctor.

Medicolegal Cases

The same principle which apply to the care of general patients, applies to medicolegal cases but on certain occasions, she has to be more careful. The doctor should be immediately informed about the admission of the case and a proper record of the condition of the patient is kept. Blood samples, gastric wash and excreta should be preserved and labelled as and when desired by the doctor. Records must be under lock and key. At the time of admission and discharge she should see that the police has been informed about the case. Emergency drugs and resuscitative measures like oxygen cylinder and suction apparatus etc. should be available for use at any moment and she should check these before taking charge of the duty. She should report to the hospital administration if any instrument of emergency use is out of order and should take steps to replace them as early as possible. If a patient leaves the ward without permission, matter should be reported to hospital authorities for proper action.

In the end I would again like to emphasise that the nursing profession is one of the noblest professions and one has to prove worthy of the same. Every one should be on guard not to expose himself or herself to any act of omission or commission which might tarnish the fair name of the profession and expose either oneself to legal action or make the hospital liable for such lapses.