Why patients seldom sue nurses

By L.E. & F.A. Rozovsky

The current talk throughout the health field is that of malpractice. The feeling seems to be that if doctors are getting sued as often as they say they are, can nurses be far behind?

There is no doubt about it, as nurses expand their role, they automatically take on increased responsibilities. With increased responsibilities and greater potential for harming patients, there will naturally be a greater risk of being sued..

Considering the amount of malpractice that could take place, and may actually take place, it may seem amazing that more suits are not brought against doctors, hospitals, nursing homes — and nurses. However, on further analysis, it becomes apparent that the law is actually very weak in helping dissatisfied patients, even when those patients have cause for complaint. The following factors discourage malpractice suits.

Reasons not to sue

1. The difficulty of bringing a law suit is enormous. If a patient alleges that a nurse has been negligent, the onus is on the patient to prove to the court on the balance of probabilities that the nurse has failed to live up to the average, reasonable and prudent nursing standards in the circumstances. To do this, the patient's lawyer must obtain the services of an expert witness who is prepared to testify in open court that the defendant nurse failed to meet these standards. Few are prepared to do this. Many experts may say, "I would not have done that," but such a statement is not sufficient.

2. The second difficulty is that the patient must also bring in an expert witness to show that injury has been suffered as a reasonably foreseeable result of the failure of the nurse to abide by those standards. Because this is often purely a matter of opinion and even speculation, it is not enough to convince a court.

3. The third practical problem is the cost. Many law firms want at least their potential costs in advance before they go out hiring expert nurse and medical witnesses. Even in those provinces which allow contingent legal fees by which the client pays the lawyer a percentage of the amount collected and only if the case is won, the out-of-pocket expenses must usually be borne by the client.

4. The fourth problem is inherent in the negligence rule itself. The nurse is not responsible for her actions unless she has failed to live up to average, reasonable and prudent nursing standards in the circumstances. The nursing care may therefore, be extremely poor but not negligent. The patient has no right to be compensated for poor nursing care, only care that has fallen below these legal standards.

Negligence exists only if the patient has been injured. Therefore, there is no right to compensation for even terrible nursing care, as long as there is no injury.

Similarly even when there has been injury or death, there is no right to compensation if the standards have been met.

Considering these factors, it becomes obvious that many patient complaints do not fall within the legal definition of negligence and no successful legal action can be taken.

5. Even when there has clearly been negligence, lawyers regularly talk their clients out of taking legal action. This advice is based on the fact that the compensation which a court would award is not sufficiently

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Southern Maine Medical Center Central Services Eliminates Wet Packs and Reduces Sterilizer Maintenance Costs by 32%

Ray Averill, Central Services Supervisor for Southern Maine Medical Center (S.M.M.C.), Biddeford, Maine, reports that he has eliminated a serious and costly wet pack problem, increased productivity by 25%, eliminated staining of sterilized instruments, and reduced maintenance costs by 32% with the installation of steam filters on his two sterilizers.

Central Services provides all instrumentation for the four operating rooms at S.M.M.C., a 150-bed, 7-year-old institution. This heavy demand requires both sterilizers to be in use 24 hours a day, seven days a week.

"After about three and a half years of operation, we started averaging as many as six wet loads a day, black particulate matter was being blown into the sterilizers, the sterilizer check valves were gumming up to a point we couldn't get through a two-month PMA (Preventative Maintenance Agreement). We were scrubbing the sterilizers every week trying to keep the junk out of them. It was a nightmare, a real nightmare.

"We're one of those hospitals that doesn't have the ideal steam generator. We have hard water, and they treat the water for hardness as well as adding amines to keep the pipe scale down. Things were gumming up to the point where I couldn't keep a (steam) trap element two months. They would gum, stick open, causing steam to pour out of the chamber even with the doors open. It was unbelievable!"

Mr. Averill's maintenance logs showed that every part of both sterilizers was being affected. Some of the problems listed were: sterilizer chamber not vacuuming; blowing off jacket pressure; jacket pressure assembly required repair; intermittent sticking in pre-vacuum; and sticking in cycle, all problems being attributed to the gunk in the lines.

"When you're averaging 24 loads a day and six of them are being rejected because of moisture problems you're losing 25% of your productivity. That's a lot of wasted dollars."

In addition to his moisture problem, Mr. Averill was also experiencing staining of instruments. "We were using muslin at the time. The muslin would come out of the sterilizer brown and stained. If you opened an instrument tray in the O.R. you could see where the stains had splattered onto the instruments. Because we do all the instruments for the operating rooms for the entire facility, our equipment is right there under the spotlight all the time. We were getting complaints about the appearance of our product."

To alleviate the problem, steam filters were recommended and installed on both sterilizers by Balston, Inc., Lexington, MA.

"When we put the Balston filters in, it immediately took care of the moisture and gum. It was like night and day."

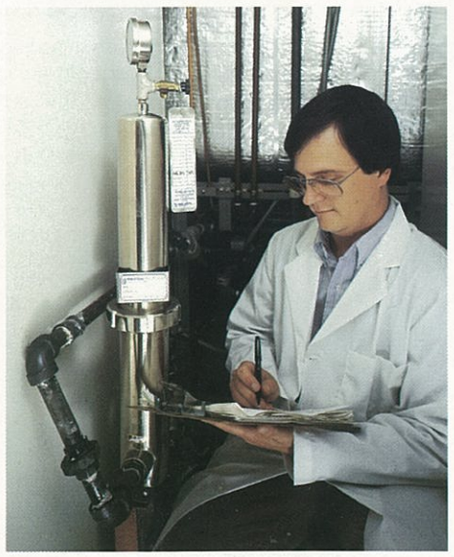
Mr. Averill calculates "the two filters paid for themselves in the first two months they were in use." Prior to the Balston steam filter installation, preventative maintenance costs were averaging $5400 for contract maintenance per year plus an additional $5000 in replacement parts and emergency service calls. After the Balston steam filter installation, replacement parts were reduced to a nominal cost of $2500 and engineering service calls were eliminated altogether—an identifiable annual savings of $2500.

This savings does not reflect in-house labor costs for redoing rejected sterilizer loads, an average of six per day, at a cost ranging between $150 to $400 per load depending upon what the load consisted of.

"Our main concern is the quality of product we deliver to the patient. We pride ourselves on producing a quality product because we do a lot more to our instrumentation than most places do. For instance, we hand wash everything before we machine wash, which makes a big difference in their appearance. Now that we've installed the Balston steam filters, we're not getting the spotting, rusting, staining like we did before. Our dirty instrument ratio now is like 1%. You might find one out of 114 instruments that's dirty, but that's because of human error, not because of something the sterilizer did to them."

Comments Mr. Averill, "As far as I'm concerned, Balston steam filters are the solution to my problem. We did have a serious moisture problem, we don't any more."

For complete information and prices on Balston steam filters call 416-272-1516.



high to make the effort worthwhile. While it is possible for a winning party to be awarded "costs" from the losing party, these seldom cover the actual costs.

The trauma of a law suit over a period of several years is emotionally draining in which the suit becomes a focal point of the client's life. Most people do not wish to have their lives revolve around a lawyer's office.

6. In many injury cases, there have been no permanent injury and no expenses since most of these costs have been paid for by Canada's health insurance programs. As a result, the patient is left to sue for pain and suffering. Because these amounts are generally not very high, the patient simply wants his bills paid and that has been done.

7. In small towns, the social pressure against suing a local hospital or nursing home and a local nurse may be sufficient to dissuade even the most disgruntled patient.

Cause for joy

This may send the most defence minded nurses, their insurers and their solicitors into smiles of satisfaction. It certainly does keep lawsuits to a minimum.

However, it does result in an increasingly large number of unhappy patients who have received what at least they think is poor nursing care. They have been discouraged from taking legal action, and must therefore turn to other avenues of complaint.

The first shock they get is that in following other methods they will not be compensated for their alleged injuries. They can complain therefore, solely to get it off their chest. The question is: how can they do this?

The obvious place to go is the licensing or registration authority for nurses in the province. Until very recently, their bodies have not been particularly active in discipline matters though this appears to be changing. The second problem is that discipline bodies for all professions seem to be losing their prestige. There seems to be a growing public suspicion of professions that are "self-governing" in the interests of the public.

Patients can also complain to employers though with the advent of unions, many employers are timid about disciplining nurses even though collective bargaining agreements allow for such action to take place.

Limited access

Complaints to government are invariably passed along to the "self-governing" authorities and complaints to provincial ombudsmen are frequently brushed aside since that official usually has no jurisdiction in the matter.

The result is a growing number of patients who have limited access to any complaint mechanism. They do nothing, but are certain to tell their friends and families of the injury which they have suffered at the hands of what they consider to be over paid, under-trained, under-worked, incompetent nurses. In many of these cases, there may have been a small kernel of truth, though as time goes by the incident may become in the minds of those who hear about it, an event akin to a major catastrophy — it happened and there is nothing that can be done about it.

Such a development has already begun to hurt the medical profession and is beginning to show its face among other disciplines. Public support of the professions decreases regardless of any justification.

The answer is to prevent complaints from getting out of hand. Patients must be given a mechanism which is simple and honest in dealing with their dissatisfaction, regardless of whether their feelings are legally based or not.

Conclusion

Within health institutions, a patient representative is one way of overcoming this problem. In the health field as a whole, a health ombudsman, such as exists in Great Britain, may be the answer.

In any case, the nursing profession must examine this problem and come to terms with it. Law suits are not the answer — neither for nurses nor for patients.

Study suggests that proper handwashing still neglected by medical care givers

The first medical practitioner of record to advocate that hands be washed in order to interrupt the transmission of hospital infections was a Hungarian physician, Dr. Ignaz Semmelweis. When he introduced his theory in the middle of the last century, he was ridiculed in such a manner that he became psychotic. Shortly after, he committed suicide.

Procedures still neglected

A recent study on handwashing introduced in the United States suggests that Dr. Semmelweis' theory may not have been received any more favourably today, judging from the percentage of times that hands are washed by hospital care givers between patient contacts.

Dr. Semmelweis' theory has been accepted for some time now, but is largely ignored, according to a study at the University of Virginia Medical Centre in Charlottesville, Virginia.

Dr. Leigh Donowitz, a professor of pediatrics, found that overall, doctors, nurses, occupational/physical therapists, respiratory therapists and radiology technicians wash their hands only 30 percent of the time between patient contacts.

These findings were presented at the American Society for Microbiology Interscience Conference on Antimicrobial Agents and Chemotherapy held in New Orleans recently.

Although the study mentioned that nurses washed their hands significantly more than physicians (37% of the time vs. 21%), this rate still leaves much to be desired. The next step Dr. Donowitz said was to find ways to change behavior.