LEGAL COLUMN

BY CHRIS BRYDEN

Documentation and legal liability

WHAT YOU NEED TO KNOW – AND WHY – WHEN IT COMES TO YOUR CLINICAL NOTES.

I OFTEN ADVISE MY NURSING CLIENTS: "If it's not documented, it didn't happen." While this is not a hard or firm legal rule, the legal importance and impact of nurses' clinical notes and records cannot be overstated. Aside from the actual delivery of patient care, documentation is perhaps the most important element of a nurse's role.

Poor or sloppy documentation can expose a nurse to three forms of personal legal liability: professional liability before the College of Nurses of Ontario (CNO); civil liability, in negligence and malpractice actions; and liability as an employee, subject to discipline and termination from employment.

Professional liability

Poor documentation can land a nurse in hot water before the CNO. Its *Documentation, Revised 2008* practice standard sets out comprehensive requirements for the taking of proper clinical notes. To briefly paraphrase, the standard requires that clinical notes be accurate, clear, and comprehensive, and that they be completed in a timely manner. When CNO conducts a disciplinary investigation, one of the first things it typically requests of nurses is a copy of the clinical notes and records for the patient(s) at issue. Your notes will likely be highly relevant should you ever find yourself before the CNO.

While the CNO reviews each situation on a case-by-case basis, poor documentation may, either on its own or coupled with other practice issues, result in disciplinary sanctions, including suspension of your registration. The most serious cases of improper documentation typically involve dishonest or inaccurate note-taking carried out to conceal some sort of wrongdoing or fraudulent activity. Such conduct may result in revocation of your registration.

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Civil liability

Under this form of liability, nurses can face malpractice or negligence actions, or lawsuits brought by patients (or their families) in respect of the standard of care provided to a patient. A recent Ontario malpractice case, *Sozonchuk vs. P.*, provides an excellent case study.

In this case, a patient's family brought a malpractice suit against a nurse after the patient, as a result of allegedly inadequate care, was left with severe functional limitations. The nurse testified before the court that she had checked on the patient several times throughout the day, and performed several assessments. She also testified that she had a number of concerns about the patient's condition and had discussed those concerns with colleagues.

The judge, however, observed that the nurse had not documented any of the assessments, concerns or discussions she testified about. He also noted that many of the notes and entries she did make were not made in a timely fashion. As a result, the judge concluded that the nurse's evidence at trial was not "reliable given that in many cases she failed to make any record of events she was testifying to." Her testimony in court was deemed unreliable as a result of gaps in her clinical notes.

As a result, the nurse was found to have been negligent and was ordered to pay a portion of the settlement that the hospital had to pay to the patient's family.

Liability as an employee

Nurses are held to very high standards and expectations in respect of their documentation practises. Given these high standards, it is very easy for a nurse to have their employment jeopardized by poor documentation. Judges and arbitrators in wrongful dismissal suits have upheld terminations and dismissals where documentation errors have been made, particularly where those errors led to, or even had the potential to have a negative impact on a patient(s).

Protect yourself

The three forms of liability discussed above are by no means exhaustive. Nor should these forms of liability be seen as mutually exclusive. It is possible for a nurse to be terminated from employment, face disciplinary sanctions before the CNO, and face civil liability before the courts at the same time, and/or arising from the same series of incidents and events. In any of these forums, poor documentation can be damaging, if not fatal to a case. The best way to avoid these forms of liability is to review and familiarize yourself with the CNO's *Documentation, Revised 2008* practice standard and apply it to your daily practise. Judges and decision-makers often use professional practice standards as a guide, and are far less likely to hold a nurse liable when he or she has complied with those standards. **RN**

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