

# Nurse Legal Case Study: Wrongful delegation of patient care

Georgia Reiner, Senior Risk Specialist, Nurses Service Organization (NSO)

This case involved a registered nurse (RN), insured by NSO, who worked for a home healthcare agency. On the day of the incident, she was with another patient when she received a telephone call from a certified nursing assistant (CNA) who was also employed by the same agency.

The CNA was at the home of a mutual patient and reported that the patient's gastrointestinal (GI) tube had come out sometime during the night. The RN informed the CNA that the patient would need to go to the emergency department (ED) to have the tube re-inserted as it would be several hours before she could see the patient. The patient's family did not want to take the patient to the ED but instead opted to wait for the RN.

The CNA informed the RN that she had re-inserted several GI tubes while employed at a nursing home, so she felt comfortable re-inserting this patient's tube. The RN agreed to let the CNA insert the tube but advised her to not restart the feedings.

Approximately 45 minutes later, the CNA contacted the RN and affirmed that the tube was re-inserted without difficulty and confirmed proper placement.

When the nurse arrived at the patient's home several hours later, she noticed that the patient was receiving tube feeding. When questioned, the daughter confirmed that she resumed the tube feedings shortly after the CNA left and denied being told to wait. The RN noted that the patient was complaining of abdominal pain and reported feeling nauseous.

On physical assessment, the patient's abdomen was distended and positive for pain with abdominal palpation. After stopping the feeding, the nurse called 911. The patient was transferred to the nearest hospital, where she was diagnosed with peritonitis due to the GI tube being accidentally placed in the peritoneal space.

The family filed a lawsuit against the RN and the home healthcare agency. The allegations against the RN included:

- Wrongful delegation of patient care to unlicensed assistive personnel (UAP);
- Failure to follow the agency's policies and procedures on proper delegation, GI tube insertion, and supervision of UAP;
- Failure to contact the referring provider and obtain an order to reinsert the GI tube; and
- Failure to assure that the patient and family had received appropriate communication related to holding the GI feedings.

## Resolution

Defense experts had difficulty defending the RN's actions, as UAP such as CNAs cannot be asked to perform activities requiring assessment, problem solving, judgment, or evaluation.<sup>1</sup> Due to the low likelihood of prevailing in favor of the defendant RN in a trial, the decision was made to attempt to reach a settlement with the plaintiff.

A settlement was reached prior to trial. As mandated by state law, the nurse was also reported to the National Practitioner Data Bank (NPDB).

The total incurred to defend and settle this case on behalf of our insured nurse exceeded \$255,000.

## Risk Control Recommendations

- Know what nursing responsibilities can be delegated, to whom, and under what circumstances according to the state Nurse Practice Act and related laws/

regulations, in addition to your employer's policies and procedures.<sup>2</sup> Unfamiliarity to established policies and protocols is not a defense, especially if a clinician has acknowledged receiving education on such policies and protocols.

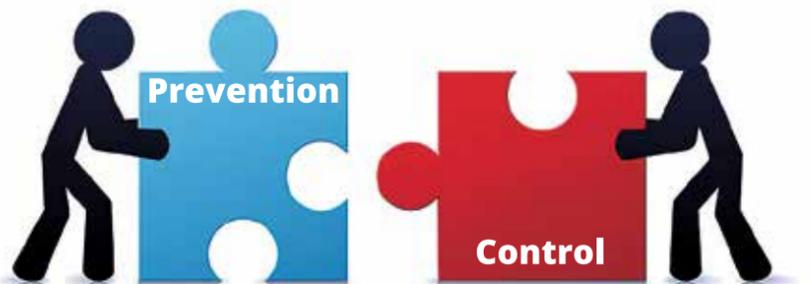
- **Prior to delegating tasks, be aware of the knowledge and skills, training, diversity awareness, and experience of the individual** to whom you are delegating elements of care. Use good clinical judgement, which includes the complexity of the patient, the availability and competence of the UAP, prior to delegating patient care.
- **Monitor implementation of the delegated task**, as appropriate, to the overall patient plan of care.
- **Evaluate overall condition of the patient and the patient's response to the delegated task.**
- **Evaluate the UAP's skills and performance** of tasks and provide feedback for improvement if needed.
- **For more information regarding nursing delegation, it is recommended that nursing professionals review the NCSBN and ANA National Guidelines for Nursing Delegation.**<sup>3</sup>
- **Contact the risk management department, or the legal department of your organization** regarding patient or practice issues.

## References

1. Wojciechowski, M & Flynn, J. (2019). The risks of wrongful delegation. *Daily Nurse*. Retrieved from <https://dailynurse.com/the-risks-of-wrongful-delegation/>.
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Georgia Reiner, Senior Risk Specialist, Nurses Service Organization, Healthcare Division, Aon Affinity, Philadelphia. Email: [Georgia.Reiner@aon.com](mailto:Georgia.Reiner@aon.com).

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