



HOKKAIDO UNIVERSITY

Title	Legal Responsibilities of nurses in Japan : Through Recent Law Cases
Author(s)	Yoshimura, Sadako
Citation	看護総合科学研究会誌, 2(1), 48-55
Issue Date	1999-03-31
DOI	https://doi.org/10.14943/37427
Doc URL	https://hdl.handle.net/2115/38737
Type	journal article
File Information	2-1_p48-55.pdf



Legal Responsibilities of Nurses in Japan

-Through Recent Law Cases-

Sadako YOSHIMURA

(Department of Midwifery, College of Medical Technology, Hokkaido University)

Abstract

Over the last 3-4 decades the roles of nurses have been changing and expanding, so that now they include duties in advanced hospitals and home-care. The trends in law cases and the amendments made to The Medical Act and the licensure for CNS in Japan have both been indications of these changing laws.

These expanding responsibilities mean that nurses have needed, and will continue to need, to learn new skills in nursing and in the administration of machines. The nursing staff's responsibilities will continue to grow heavier, with new fields of responsibility added, following the changes in medical technology and situations.

The author has used the analysis of six recent malpractice law cases to discover the direction in which nursing roles will continue to change. These cases highlighted two main duties in the nursing staff's role, the administration of drugs and the observation of patients.

Key Words: Legal Responsibilities, Nurse's Independent Duties, Observation of Patients, Checking of Medical devices, Administration of drugs

1. Introduction

In 1992, The Medical Practice Act (*Iryo Ho*)(Law No. 205,1948) was heavily amended in accordance with the changing Japanese social situation especially, an additional provision clearly outlined changes in the philosophy of medical practice. In the contents of the provision nurses are listed as one of the members of the medical profession along with physicians, dentists and pharmacists. Another new provision provided advanced function hospitals, such as those at universities, and this improved medical care, which people came to expect, was one of the reasons behind the Japanese Nursing Association's establishment of the system of licensure for Clinical Nurse Specialists in 1994.

The number of the elderly has been growing and this has changed the patterns of diseases. This has meant that people have been staying in medical institutions and at home for longer terms of recovery. In order to keep up with the current situation the Japanese Government has decided to start a new long-term care insurance system (*Kouteiki Kaigo Hoken*) from 2000.

The responsibilities of nurses have grown to include the taking care of patients in the home and in advanced hospitals. The Public Health Nurse, Midwife and Registered Nurse Act (*Hokenfu Josanpu Kangofu Ho*)(Law No. 203, 1948), which has been amended several times but still remains in effect, provides basic guidelines concerning licensing, examinations and the extent of nurses' duties. The act also defines the professional duty of nurses as caring for patients and supporting physicians and dentists in their medical practice.

The author intends to clarify what nurses' duties are through following recent law cases in this paper.

2. Malpractice Litigation

Malpractice suits in the late 1960's revealed the fundamental legal responsibilities of professional medical practice. As a result of these cases malpractice suits involving nurses gradually increased through the 1970s and 1980s and the evolving medical duties and responsibilities of nurses were clarified through these cases. By analyzing the following cases (see Table), that were decided in the 1990s, it is possible to get an indication of the future of nursing responsibilities.

Case 1 (Observation of intravenous drip injections)

A ten-year old boy who was being treated for broken legs in a public hospital came out of the hyperbaric oxygen chamber with an intravenous drip injection in his arm. A doctor, who was called by an attending nurse to check on him, found the drip injection bottle empty, because of this an air bubble had been injected into his vein from the empty bottle.

The court decided that the observation of his general physical condition and keeping the intravenous drip sustained was the duty of the nurse, and charged the hospital with her negligence, for she failed to take appropriate action on her observation and allowed the suspension of the injection to occur.

Case 2 (Checking the respirator)

A causation link was determined, in court, between the death of a child suffering from inherent abnormal metabolism and the negligence of nursing staff. According to the court finding, the disconnection of the respirator, caused by the natural movements of a four-year old patient, went unnoticed for some time because of the nurses' failure to reconnect the respirators alarm

Table

Case No.	Decided Date	Occurred Year	Court	Plaintiffs	Defendants	Category	Facts and Reasons of Case	Fault of		Citations
								Nurse	Others	
1	June 26, 1991	1985	Chiba District Court	Patient and Parents	Municipality (Public hosp.)	Administration of drugs	A boy suffered brain damage as a result of a nurse's inappropriate action whilst observing the administration of his intravenous drip injection during medical treatment	Aff.	Doctor (Aff.) Hospital (Aff.)	1432 HANJII ¹⁾ 118 (1992) 771 HANTA ²⁾ 201 (1992)
2	Dec. 12, 1993	1992	Kobe District Court	Parents	City (Public hosp.)	Checking of medical devices	A child's death of resulting from nursing staff's negligence in checking the respirator's alarm connection	Aff.	Hospital (Aff.)	1521 HANJII 104 (1995) 868 HANTA 231 (1995)
3	Sep. 28, 1994	1989	Utsunomiya District Court	Mother	Medical College	Checking of basic nursing implements	Death of a child resulting from a fall because of a nurse's negligence in checking the bed's guardrail	Aff.	Hospital (Aff.)	1536 HANJII 93 (1995)
4	Feb. 17, 1995	1992	Tokyo District Court	Parents	Municipality (Public hosp.)	Checking of basic nursing implements	Death of a suicidal patient resulting from a nurse's improper method of using restraining bands	Aff.	Hospital (Aff.)	1535 HANJII 95 (1995) 901 HANTA 209 (1996)
5	Apr. 11, 1995	1987	Tokyo District Court	Husband and Children	Doctor	Observation of patient Supplementary - respiration	Death of a patient resulting from a nurse's improper observation of the patient's respiration during the operation	Aff.	Doctor (Aff.)	1548 HANJII 79 (1995)
6	Jan. 24, 1997	1988	Osaka District Court	Parents	Hospital	Observation of patient	An infant's death by dehydration resulting from the medical staffs' inappropriate medical care	Aff.	Doctor (Aff.) Hospital (Aff.)	1623 HANJII 110 (1997) 952 HANTA 256 (1997)

** Aff.: Affirmative ** Neg.: Negative 1) Hanrei Jiho 2) Hanrei Taimuzu

after giving the child a bath. The disconnected respirator resulted in his death through his difficulty in breathing.

In this case the court recognized the nurses as being very negligent in their observation of the patient and the administration of medical electronic devices as this failure to reconnect the respirator's alarm had happened two times before the fatal incident.

Case 3 (Checking the sideboard)

A three-year old boy who suffered from a malignant tumor, fell off of his hospital bed and died three months later because of brain damage caused by the accident. A nurse had been reading him a book, but went to the next room to help another child. Immediately after leaving the room she heard him crying and returned to find him on the floor. He had fallen off of the bed because she had not completely set up the sideboard.

In this case, the court found the nurse to be negligent in her administration of the sideboard.

Case 4 (Using restraining band on the suicidal patient)

A sixteen-year old boy who suffered from depression was sent to a psychiatric hospital after he attempted to commit suicide in his home. He tried to commit suicide again after being admitted to hospital and was isolated in a special room for his protection. Nurses placed his arms and legs in restraining bands and then injected him with a prescribed dose of tranquilizer. Though a nurse continued to observe his condition every thirty minutes he was discovered unconscious after a further attempt to kill himself using the restraining bands. He eventually died despite being treated by doctors and nurses.

The court charged the nurse with negligence regarding her duty to restrain the patient appropriately.

Case 5 (Observation of the patient's respiration during the operation)

A woman with myoma of the uterus died during an operation. Though she was being treated with epidural anesthesia by a doctor an attending nurse was in charge of the anesthesia and of monitoring her general condition (especially respiration). The nurse discovered the patient's worsening respiratory condition but too late to help her. After the nurse reported the patient's condition to the doctor, he ordered her to start assisted respiration by mask and she did so immediately. Although the doctor fixed an endotracheal intubation to the patient she became worse in spite of all the efforts of the nurse. Eventually the patient died.

The court charged the nurse with negligence of duty in her observation of the patient's respiration during the operation, and the doctor with negligence of duty in posting an insufficiently experienced nurse.

Case 6 (Predicting dehydration through observation)

An eight-month old girl went to hospital as an outpatient on the 20th and the 23rd of December in 1988 and was admitted to the ophthalmological ward on the 24th. She received a detailed eye examination under total anesthesia on the 26th and during the recovery examination it was discovered that she had developed a fever and diarrhea. The next day an ophthalmologic doctor and a pediatric doctor, on checking her condition, ordered an intravenous drip injection be administered.

At 3 A.M. on the 30th the mother noticed that the intravenous drip injection was no-longer properly inserted and called a nurse. The nurse observed that the girl's eyes were sunken and that her extremities were very cold and tried to warm her up. At around 4 A.M. the nurse called a doctor on night duty but he could not restart the intravenous drip injection. At 6:45 A.M., the doctor in charge reached the hospital. He tried cutting down to her vein in order to keep the intravenous drip injection but her condition continued to worsen and eventually, after continued vomiting, she died.

The court decided that the nurse and the night duty doctor were negligent in performing their duties. They should have predicted the dehydration through observation of the patient's condition. The attending doctor should have checked the patient's weight and taken more blood tests to determine the patient's condition. The nurse's negligence was in delaying her report to the doctor on night duty. The court charged the hospital with their staffs' negligence.

3. Analysis

I have categorized the above cases into the following four types:

- 1) Administration of drugs,
- 2) Checking of basic nursing implements,
- 3) Checking of medical devices, and
- 4) Observation of the patient's condition.

Medical staff tend to make basic, human error mistakes easily in these areas. Nurses primarily have to pay more attention to the patient's daily care so that the mistakes do not have too severe a result. They should also be able to analyze and respond quickly to problems resulting from these simple mistakes.

The findings stated in these six cases indicate that the following suggestions should be adopted by the nurses' to fulfill their legal and professional responsibilities concerning the observation and care of patients:

- a) to keep intravenous drips sustained whilst patients are receiving treatment in the hyperbaric oxygen chamber,
- b) to frequently observe the general conditions of patients,
- c) to appropriately administer and manage electronic medical devices for patients,
- d) to use restraining bands properly,
- e) to report immediately to a doctor if abnormal symptoms or signs are exhibited by a patient,
- f) to completely set up the sideboards of children's beds,
- g) to observe, at all times, a patient's breathing in a situation of epidural anesthesia, and
- h) to immediately report the abnormal condition of a baby to a doctor when dehydration is predictable.

The number of complex medical devices has recently been increasing. Nursing staff's duties have expanded to include the administration of these devices. Nurses should also be able to teach the use of medical devices to those patients and their families who continue to need them in the home and support the patient in their use.

4. Nurse's independent duties

In addition to the points stated above, I would like to make clear what a nurse's independent duties are in the two following points.

1) Administration of drugs

The administration of injections is especially important for the day-to-day care of patients. A nurse's duties with regards to injections are:

- to correctly follow the doctor's prescription of the drug;
- to select the proper place and method of injection; and
- to observe the conditions of the patient, and if abnormal symptoms or signs are exhibited by the patient, to report immediately to a doctor and take appropriate measures.

These duties have become the nurse's responsibility because doctors do not usually indicate the proper place and method of injection. This is because nurses learn the proper methods of performing injections throughout their nursing education in nursing school and whilst practicing under a lecturer in hospital. Doctors, on the other hand, hardly ever learn the practical methods of injections whilst in medical school but gain their skills after they graduate. Nurses have to develop good skills in giving injections, this includes judging the effect of drugs on the patient both before and after the injection to be sure there have been no severe side-effects.

2) Observing patients

Observing patients is the most important nursing duty because nurses have to report to a doctor as to whether a patient's condition is changing or not. In order to be able to observe properly, nurses have to keep up to date concerning the patient's condition and treatment. Nurses need to assess a patient's condition through the observation of changeable symptoms as a patient's condition is apt to vary from hour to hour. Nurses, therefore, have to decide whether the changes are serious enough to report to a doctor. It is not necessary to report to a doctor after each and every observation of the patient unless a doctor orders a nurse to observe a patient in detail, then the nurse's duty is to report to the doctor after every observation. If a doctor has not ordered a detailed observation it is up to the nurse to decide when, how many, and of what type the observations should be.

In cases where the patient or visitors (including family) express that something strange has happened, nurses need to go immediately and check the patient for abnormal conditions. Nurses have sometimes made an assessment without observing the patient themselves, since they have seen similar symptoms in the patient, and this has led to severe results. If a nurse does not make an observation when a patient reports to them that something has happened, they are legally responsible for the lack of the observation. The court has indicated that nurses can decide for themselves when it is proper to make an observation, and how many times they need to observe. This is an indication that the observation of the patient is one of the nurses' independent duties.

5. Conclusion

1) Higher standards of care

My analysis of the above cases indicate that nurses need to continually update their nursing expertise and skills to remain abreast of the advancements in medical care. This includes the mastery of new electronic devices that enable nurses to make more sophisticated observations of patients. It is also necessary for nurses to provide higher standards of care to protect the patient's health.

2) Higher observation skill

Nurses' observations have become more important especially for the protection of patients' physical conditions in hospital. This is because they observe patients round-the-clock where-as doctors do not. This means that the role of nursing observation has become very important especially in advanced function hospitals. Nurses also have to pay attention when electronic devices are being used and not make easy mistakes.

3) Home-care and a nurse's responsibilities

Though the above cases did not occur in patient's homes, the number of patients has been increasing who continue using medical devices, such as respirators, after their discharge from hospital. Perhaps similar cases will occur with in-house-patients in the near future. At that time nurses' responsibilities will become heavier because of the expectations of patients and their families.

4) Nurses as full members of the medical profession

Nurses have become professional members of the medical staff and not just doctor's assistants as shown by the court's findings on nurses' increased responsibilities. These and other recent cases indicate a move towards nurses having independent responsibility for the observation, assessment and general treatment of patients. There is a possibility of future recognition of nursing as a specialist field within the medical profession.

6. References

- 1) Nobuo Kumamoto, Sadako Yoshimura: Introduction of the New Hampshire Act for Registered Nurses and Practical Nurses, The Hokkaigakuen Law Journal, 25(2), 321-351, 1989.
- 2) Sadako Yoshimura: Legal Responsibilities of Nurses in the United States (1), The Hokkaigakuen Law Journal, 26(3), 521-546, 1991.
- 3) Sadako Yoshimura: Legal Responsibilities of Nurses in the United States (2), The Hokkaigakuen Law Journal, 27(2), 375-408, 1991.
- 4) Sadako Yoshimura: Legal Responsibilities of Nurses in the United States (3), The Hokkaigakuen Law Journal, 29(1), 157-176, 1993.
- 5) Sadako Yoshimura: Legal Responsibilities of Nurses in the United States (7), The Hokkaigakuen Law Journal, 32(1), 121-140, 1996.
- 6) Mitsu Kaneko: *Hokenfu Josanpu kangofu Ho No Kaisetsu, Nihonijishinposya*, 1987.