

The Legal Responsibility of Nurses in Administration of Prescriptions

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Abstract

Patient safety is one of the main issues in health care services. Medical mistakes are common potential dangers for patients that can be treated as a measure of patient safety. Medication errors are the most common errors in the nursing profession, which can be potentially dangerous for patients. In this study, the main purpose was evaluation of criminal responsibility of nurses in administration of prescriptions using descriptive and analytical approach. Since for medical professionals legal aspects of such cases are beyond their duty, we wish to determine the criminal liability for medical care personnel (e.g. nurses) and associated professionals

We will look at penal provisions for this matter closely. Obviously, lack of medical community responsibility for such errors will diminish cases of criminal prosecution. While specific rules in Medicine provide the possibility to call upon relevant incumbents, yet, criminal responsibility has not been assigned to this issue. In the legal responsibility of medical superintendents, nursing faults are divided into two categories, general criminal liability and specific criminal liability. Recent responsibility requires that necessary coordination exists between prosecution laws and specific laws in medicine.

Keywords: Medical incumbents, criminal responsibilities, medication errors

1. Introduction

Responsibility towards society is dependent on agreement on conditions without which responsibility does not occur. These conditions can be divided into two categories: First, the necessary conditions for the person responsible and second, the binding requirements for the responsibility provoking act. So when it is said that a person has legal responsibility, he or she must be legally eligible to be responsible. Secondly, the action should be against the law. If any of these is missing, the notion of responsibility cannot be achieved. In this regard, one of the groups that are often not aware of their rights and because of their special circumstances in many cases, their rights are violated are patients.

Patient rights are among fundamental aspects of human rights. Each person during illness has a series of rights that are considered definite and undeniable. Patients have the right to continuity of care and the right to choose and change their physician, nurse or health care center as long as it does not have conflict with the function of the health care system.

Many factors affect patients' rights. Among them we can mention the role of nurses. The role of the nurse in a therapeutic relationship between doctor and patient is of particular importance. The extent and complexity of nursing functions are rising every day and nurses take a role in order to provide health for a wide range of individuals, groups and society which makes them responsible.

Because nurses are the largest and one of the most important groups in the health care system, they can take on a role in three levels of prevention, treatment and rehabilitation. Specifically in health care centers, they are often the first group encountering patients and treating them. In many cases they use their advisory role.

Nursing errors include a wide range of actions and lack of actions that can exacerbate the patient's condition or complicate it or even cause new acute problems. Thus, harm inflicted by an act or omission of it by a nurse in administration of prescribed drug regimens, can be grounds for investigation. Therefore, given that nurses are part of medical staff at treatment centers, they are one of the most important groups with roles in all three levels of the health system namely prevention, treatment and rehabilitation.

At the same time, they participate in communication and administration of medical orders, especially in medication orders. In step with scientific development in various fields, change in nature of diseases, and emergence of new ones, mechanical life and specialization of medical practice, it is essential that nurses keep up to date. So there are fewer mishaps and excellence in the nursing profession can be upheld, the profession can run smoothly and there is less need for legal interventions. If medical negligence in the execution of orders occurs, especially in medication orders from side of the nurse, patient rights should be recognized. Therefore, this study is in line with recognition of the role of nurses' criminal liability. Here the main question is what is the criminal responsibility of nurses in execution of medication orders? And other questions responded to in this study are as follows:

- 1- Do nurses have criminal responsibility for performing medication orders?
- 2- Is the delay in the implementation of medication orders the criminal responsibility of the nurse?
- 3- Is the nurse responsible for harm to the patient if his/her negligence in carrying out medication orders is proven?
- 4- Is interference by nurses' opinions in carrying out practitioner orders considered negligence by the nurse requiring legal responsibility?

Theoretical foundations

To find the right responses to these questions theoretically, definition of some terms are needed.

Nurse: A nurse is a person with university degree in associate of arts, master's or professional doctorate in nursing with capability of playing role in the six fields of protecting, educating, curing, caring, coordinating and supporting of patients. Therefore, manifest error by a nurse in the emergency room and also disclaiming of responsibility by other forces accordingly will never be accepted. In these circumstances, it is essential to ask hints and tips from colleagues to prevent errors.

Nursing error: Nursing Error means the failure to do nursing care and observe nursing standards. The duties and responsibilities that go with these standards and the basics are clarified by the Ministry of Health and usually in the course of investigation of a case, there are minimums that nurses should have upheld.

If the performance was less than above average, it is deemed as failure.

Failure and its variants: Literally, professional negligence is behaving contrary to accepted standards of the profession. In other words, negligence in nursing means breach in patient care responsibilities. Failure in more experienced and senior personnel is considered a kind of recklessness and disobedience of government regulations. Failure in younger personnel and novices often is considered a kind of carelessness and lack of skill. According to the Islamic Penal Code and its provisions which will be presented in continue, crimes and offenses related to medical malpractice are considered unintentional crimes. The culpable act alone is not enough to make someone take responsibility and get punished. There must be wrong doing involved, including negligence and disobedience of orders and other cases documented is the law.

Types of failure: 1-civil; 2-moral; 3-criminal

Another type of division:

Once the patient is accepted nursing-care responsibilities towards patients begin. 1) The nurse may have violated his or her duty in four possible ways according to the Islamic Penal Code: Recklessness, carelessness, lack of skill and lack of compliance with government regulations. 2) Violation of the duty has led to mental or physical damage to be patient.

The commitment contract: The concept of a contractual obligation

There's a right and responsibility which leads to establishment of causality for negligence. The lack of performance of the obligation was caused by any conventional means committing an error, whether this is intentional or the result of an error. However, the fundamental element of contractual liability is a breach of what each party has accepted in a contractual relationship. In fact, contractual responsibility involves necessity to compensate for the damages incurred by lack of execution of the contract that will be discussed in the context of contracts.

To fulfill contractual liability there should be an accurate agreement where its implementation is necessary for the guarantor, but he or she has refused it. Based on the vision of commitment to the result, because the doctor is committed to achieving results, in the absence of healing the patient, it is assumed that the doctor has erred. In other words, the lack of outcome proves that the doctor has violated certain rules of medical science and in this

case the patient does not have to prove the doctor's wrong doing.

Criminal responsibility of Medical superiors: Medical directors' responsibility involves the consequence of the medical crime such as murder, punishment or suspension. Their responsibility has two aspects: moral or professional.

Morality pertains to public moral aspects which are required for medical superiors and the professional aspect pertains to the medical profession and the rules and principles that medical directors should obey. Paragraph (b) of article 295 of the Islamic Penal Code stipulates that even if the doctor behaves as proper, he or she is still liable for the damages that the patient has incurred and his action is an error similar to an intentional act.

The compensation paid in cases of murder or maim or defect is treated the same as if the act was deliberate similar to an offender with intention that typically does not commit a crime. Thus this title is another reason for the responsibility of the doctor in the law of Iran. His behavior is assumed conventional and non-intentional. So the doctor or medical staff has responsibility in terms of criminal prosecution when their act is committed with intent and it is punishable by law.

In French law, they are punished if they refuse medical assistance to those in need of treatment or because of lack of skill and carelessness and negligence causing death or full disability for more than three months for the patient.

Their criminal liability (and naturally the fine) is excluded from coverage by medical liability insurance in France.

Specific terms of criminal responsibility: criminal liability of medical superiors in addition to the general conditions, pertain to specific conditions as well. Meanwhile, these conditions pose the issue of criminal responsibility in medical law. To examine the specific circumstances of criminal responsibility for medical superiors, the following points are considered. For the superiors in charge of the medical profession, the essential ingredient is the crime.

Thus territory of crime seems vast and unlimited. In this type of criminal responsibility and criminal prosecution and attribution, it is necessary that the criminal be an instance mentioned in the law.

To study the definition of criminal responsibility and its reflection in the law, some criminalization in this area will be examined.

2. Research Methodology

The method in this research was descriptive-analytic so that with the study and careful analysis of jurisprudence and legal texts of Iran, including civil and criminal, we sought to clarify the rights and obligations between the nurse and patient.

Strengths and weaknesses of the criminal sanctions in relation to this issue are discussed. This study, most of all, clarified the hidden aspects of nurse's responsibility in carrying out medication orders. Depending on the type of research in legal and jurisprudential issues, data was extruded from documents (books, articles, theses and related reputable web sites). Analysis was done through collected theoretical material and comparative analysis of legal aspects of Iran's laws.

3. Research Findings

Error means coming short in the standards of nursing care and nursing. The basics of these standards, duties and responsibilities usually applied in investigation of cases are determined by the Ministry of Health. The duties of a nurse refer to measures that should be taken by him or her. And if this performance is less than average or out of the range of duties, it is considered failure.

Error and negligence in nursing: Based on what was said nursing malpractice case will be discussed in two ways:

Negligence in nursing:

The main argument in this section, nursing malpractice, is usually prosecuted in courts and after investigation by the Council of Forensic Medicine or Nursing Council. According to voting 336 of the Penal Code, negligence comes in four possible shapes.

A) Recklessness: lack of technical and scientific expertise expected, such as use of nonstandard size injection needle, leading to subcutaneous drug penetration and inflammation, resulting in necrosis and need for repeated surgery or vaccination in a child without taking child protection measures that leads to breaking the needle with mobility and thus surgery is required to remove it.

B) Indiscretion: lack of expected scientific approach, such as subcutaneous injection of intravenous drugs and creating seizure in the patient and death or supply of the wrong drug in anesthesia syringe due to lack of care in reading medication labels.

C) Lack of skill in performing tasks. Examples are

intravenous injection without consideration of precautionary points and those ordered by the physician (such as intravenous administration or rapid injection contrary to orders) that can lead to agitation and death of the patient due to cardiac arrest.

D) non-compliance with government regulations: non-compliance with and lack of enforcement of all laws, directives and guidelines by relevant authorities such as the Ministry of Health, the university president, head of nursing services, head of department, the hospital matron and etc. All orders must be written clearly and obviously. Lack of proper notification to emergency doctors by nurses in relation to the critical situation of the patient or performing of unauthorized medical duties by nurses are included in this group.

Nursing disciplinary violations:

These violations are legally not considered a crime and punishment in law for them has not been established. But superintendents of the nursing profession, according to the nursing profession system are bound to obeying them.

These violations in the first instance are addressed by the staff and appeals are made and certain penalties considered, such as oral or written reprimand, and short or long suspension of services if nursing failure to fulfill four main conditions is proved.

Pharmaceutical and medication orders play a significant role in the process of treatment and patient care and contribute to patient safety, and are considered one of the most important aspects of health care. Medication error in health care is one of the basic mishaps of nursing practice in the main system. Inappropriate medication errors could be prevented.

The occurrence of medication errors usually by nurses are blamed and punished more frequently compared to other health professionals. The reason for this is that nurses perform most medication orders and spend the most of their time with the patient (40% of their time).

These mistakes are common in developed and developing countries and research shows high rates of medication errors.

The most common medication errors

According to studies, the financial costs associated with medical complications are close to 77 billion dollars. Medication related errors, include medication administration errors, incorrect medication, failure in observing prescription instructions, failure to observe the correct time of drug administration and delivering drug to another patient due to lack of proper identification.

The identification of these errors is important, because in addition to being costly, they has negative well known consequences for the safety of patients. Studies have shown that medical errors are one of the major issues in health care and, most importantly, the prevention of these errors depends on accurate reporting them.

According to ISNA Research Service Regional Medical Sciences, Tehran, medication error is one of the five categories of medical errors categorized by the American Institute of Medicine (IOM) which in many cases is not reported correctly. This research is a cross - sectional study that aims to determine the occurrence and reporting of medication errors and their relationship with working conditions in hospitals of Tehran University of Medical Sciences.

In this study, 286 nurses in internal medicine, surgery, orthopedics, obstetrics and gynecology in all public hospitals were selected by multistage sampling. The findings suggest that medication errors within three months occur in average in 19/5 cases and reported errors in average are 1/3 cases. In this study, the correlation between incidences of medication errors with working conditions of nurses was statistically significant but there was no relationship between the reporting of errors and working conditions.

Research also shows that majority of errors occur at the time of prescribing and administering medication. Also reports of medication errors among nurses are much less than the actual incidence. So in the health system, due to continuous and day and night operation, staff fatigue occurs in many cases and many enterprises, especially in unusual shifts or loads inconsistent with the body's normal physiology.

On the other hand large volumes of work, mistake in communication and the volume of information, lack of time, actions that require high concentration and attention and some mental problems as well as insufficient experience

of nurses increase the chances of occurrence of error.

Occurrence of error is not equivalent to human negligence and failure, yet, working ethics in favor of performance without error creates a certain culture in the medical community that the individuals are shown as the problem when errors occur and blame and punishment are used rather than looking for the cause of the error to avoid that problem. The starting point for reducing error is awareness of the causes of the error and error reporting culture.

A review of the literature regarding nurses abiding with medication orders from physicians to treat their patients, especially "recklessness and negligence and delay" that is the subject of this study is less found in the literature.

The legal literature and scientific work carried out in this context, such as books and articles in this area are young and other research activities regarding the undeniable importance of patients' rights are few and much of the medical community, nurses and nurse obligation by law has not been scrutinized. However, there is much discussion about the salaries of doctors and its request before treatment and letters of patient consent to free doctors from liability.

As for the criminal responsibility by virtue of their commitments, especially for nurses and physicians regarding patient medication orders, some books and articles have been written that are listed in brief:

Haghighi and Farshydrad (1385) familiarize us with the laws and duties, nursing, behavioral factors, rising health care costs, economic needs of nurses, negative and pessimistic patients, unauthorized interference in the affairs of nursing as specific causes and raise awareness of people with respect to patient rights, informing by the media which leads to general increase in the rate of complaints. Nurses as members of the medical team are directly or indirectly involved in injury or death of the patient in cases of error.

Alfetriv (1386) notes that for patients to have an active role in clinical decision making, they should initially have enough time to learn, acquire a trusting relationship with their doctor and nurse and be able to make appropriate decisions in relation to the their health or treatment.

Issues such as emotional state of the patient, including patient participation in decision-making are challenges facing them. Darestani and colleagues (1388) report on prevalence of nursing and midwifery errors in cases referred to the Medical Council and Imam Reza (AS) Hospital, Kermanshah (1380-1385). They note that error in health care delivery are in some cases harmful phenomena and irreversible.

Patient congestion, lack of expertise and lack of supervision over education have role. Reduced workload, increased number of nurses and midwives and detailed monitoring system have major role in reducing failures.

Jacob (1389) writes about the development of standards of nursing practice, from the perspective of legal obligations. He notes that every nurse should be aware of the issue of principles and techniques of work, job descriptions, job done the right way and authority and know his or her discretions, neglect and negligence to avoid legal complications.

Alexander (1391) writes about the legal responsibility of the nursing profession:

Negligence in the nursing profession fulfills three conditions:

(1). Nurses have a duty to care for the patient. Basically, as soon as the patient care is accepted this requirement begins. However, this task is usually on the shoulders of the doctor, but sometimes it happens that a nurse is the primary responsible person.

(2) Breach of duty from side of the nurse usually has four aspects (recklessness, carelessness, lack of skill and lack of compliance with government regulations) that have been reflected upon. (3) These violations have inflicted harm on someone.

4. Conclusions and Recommendations

Nurses are the largest and one of the most important groups in the health care system at all three levels of prevention, treatment and rehabilitation. Specifically at health care centers, they are often the first group to meet with patients and deal with them and in many cases they use their advisory opinion.

Yet in recent years due to increased morbidity and mortality rates and hospital costs, special importance has been given to medication errors. In the emergency department because of ill patients, poor physical conditions, congestion, using of drugs that need attention, this matter becomes more manifest.

Lisby (2005) investigates the incidence of medication errors in hospitals in Denmark and show that they are reported in 43% of staff. A study by Mrayyon and colleagues (2007) conducted in Jordan showed that 42/1% of nurses had at least one medication error.

Results showed that the shortage of nurses compared to patients in the ward is one of the causes of medication errors. In a study conducted by Dibbi et al (2006) in Saudi Arabia, the human factor has been mentioned as the most common reason for errors (46/5 percent).

Startton's study (2004) shows that small ratio of nurses to patients is the main cause of medication errors. In multiple studies evaluating nurses' point of view in relation to medication errors, bustle and noise, feeling tired from work or lack of sufficient support, careless nurses, increased workload, rookie of the nurse are mentioned as the most important factors in the incidence of medication errors, especially in specialty sections.

The findings suggest that lack of pharmacological information is one of the human factors in connection with medication errors. The study by Grogneq et al (2005) concluded that lack of knowledge of nurses of medications had the most important role in the incidence of medication errors.

While in the study by Startton and Associates, nursing staff shortages have been implicated in the occurrence of these errors. In multiple studies, lack of in-service training and lack of knowledge of graduates has been mentioned as the cause of these errors. According to most studies, medication errors in children occur more frequently than in adult's. Therefore, researchers are encouraging to do more research to identify the types of medication errors in children. Studies show that only serious and harmful events caused by medication errors are reported while less severe errors may be reported.

In Iran, findings from the research are scattered regarding frequency of medication errors. Research findings in nursing students in Tehran, Sanandaj nurses, and nursing in Arak have shown that error has been committed once by 17.9 per cent, 16/7% and 10% of them respectively.

One of the shortcomings of this research work has been lack of information on real hit of errors because they are not reported. As Joulai and colleagues reported few medication errors are reported and they have warned for the need of studying barriers to reporting.

Most hospitals consider only voluntary reports in identify errors in the record and considering the nature of freedom involved in reporting and the type of reaction to errors (punitive approach), the amount of the errors reported will be less than reality. Therefore, proper identification of errors is an important step in preventing them from happening again. But comprehensive medication errors are identified and reported in various health care professional staff, such as physicians, pharmacists and ..., but medication errors among nurses occur more often compared to other medical and health professionals.

In Iran, errors have been reported to be caused by reasons such as abnormal working hours, such as evening and night shifts, holiday shifts, two shifts in a row, long working hours and excessive responsibilities of nurses, little working experience and deficiency in working force.

Accordingly, the researchers of the study have to determine nurses' perspectives on the causes of medication errors and obstacles in the reporting of medication errors and obstacles pertaining to children have to be determined and lack of progress towards resolving the above should be reported and it is proposed that the sense of responsibility in nurses is increased.

In a study that was conducted with participation of nurses in the California Medical Center , the most common place of medication errors has been reported to be when checking concordance of patient's name with the patient's prescription card.

Ulamino and colleagues also in a study in 2007 showed that the most common cause of medication errors reported have been in controlling the patient name on drug cards (45/8 percent). In this study, errors were found in transferring written medication orders of physician to electronic orders.

Ghasemi in 1384, reported the most important factors in medication errors to be deficiency in nursing force (100%), the high number of shifts (7/83 percent), personal problems and personal care (9/79%), the presence of visitors or crowded wards (9/79 percent), inappropriate environmental conditions (3/73 percent), illegible doctor or nurse commands on the cardex (8/69 percent), inexperienced and new staff (64 percent) and lack of aware personnel (55/8 percent).

The second important cause of error pertaining to nurses and children in Mashhad has been reported as medication dose error and incorrect setting of infusion instruments by nurses (1/64 percent), while in the study in Northern California the least cause (24 percent) was reported as installment or faulty adjustment of infusion equipment by nurses and prescription of the wrong dose of drug by the doctor is not mentioned as a reason for error.

According to Study of Karen and colleagues in 2004, distractions and interruptions at work and the ratio of

nurses to patients both increase risk of medication errors while with these two factors reported in the eighth and ninth position in 10 factors.

These differences will probably be due to the method of research and collection of information and dispute management system as well as errors in reporting and kind of addressing reaction to errors of nurses in the two different countries.

In the study by Tiseto et al. (2003) nurses' work volume is considered as the most important cause of medication errors. Other causes of medication errors from the perspective of nurses in this study were calculating the wrong dose of medication by nurses, poor quality and damaged labels or packaging of the caps, tired nurse, confusing two drugs with similar names, and the ratio of patients to nurses, nurses' distraction and finally, the doctor's illegible hand writing.

In a study reported in Tehran, the most common drug error was administration of the wrong drug and its speed of infusion. Controlling medication errors is of particular importance, because in addition to being costly, it has a negative impact on patient safety. The most important priority is the country's health care system that is well known.

In connection with reporting medication errors to the head, it appears to be about 45 percent of medication errors. Cases of nursing errors likely represent a serious risk for the patient and for some reason they do not report the errors. The results of Karen's study showed that nurses report errors in 67% of cases for children and in 56% of cases in adults.

In a study conducted in 2002 in a population of 1,300 nurses in several hospitals it was reported that 57 percent of medication errors are reported by nurses. The reason for this difference can be in approach. In this study, direct observation, visits and reports of medication errors were compared were 476 errors were noted during direct observation, 24 offenses by ward inspection and only 1 reported error. Yet, in the present study nurses questionnaire was used instead of direct observation or inspection.

The study by Ulanimo showed reported drug errors to be 9/28% and the reason for rest of errors not being reported is described as lack of specific guidelines on how to report and what they should report.

In the study four reasons for failing to report errors was listed. Errors that cannot be detected, errors that are detected but do not cause harm to the patient and fear of reprimand and hospital factors in the system that people are discouraged from reporting. Iran has lack of reporting medication errors and there is no defined process and a system of reward and punishment for it.

Many researches in nursing pharmacology have mentioned information as a serious solution to reducing medication errors and concluded that updating their information about drugs, especially new drugs can be an important factor in reducing medication errors by nurses.

The results showed that in the review regarding reporting, the most important issue was refusal of reporting errors by nurses.

The majority of studies suggest that reports of medication errors among nurses are less than the actual amount. Nearly three quarters of the 27.7 percent of participants had not reported their mistake which is similar to a study at Children's Hospital. Obviously, low rate of medication errors are favored by managers and directors, but it must be noted that minimizing the gap between errors and reporting is considered a benchmark for patient safety.

The fear of consequences of these errors in evaluation scores and blaming of nurse managers and legal problems are the most common causes of not reporting. In multiple studies, there is fear of negative reaction by managers and colleagues, being labeled as inadequate, negative attitude of the patient, justice and fear of being blamed are mentioned as the most important causes in common studies.

Decreasing fear of medical staff to report the error can reduce reporting burden and strengthen it. Also part of the results of this study showed that in 70/6 percent of nursing documentation in terms of quality, 4/29 percent of average standard level of principles and indicators were observed at a good level. In a study, Ringers and colleagues evaluated quality of 540 nursing documentations and reported that only 11 percent of these cases contain essential information. Similarly, Aryaei reported that all nurses' reports contained essential information about nursing care.

The research findings of this study support and show that we have good quality nursing documentation system that also has been influential on level of medication errors by nurses. Mohammad Hanif evaluated the quality of 30 medical records and reported that 16% of nursing documentation was of good quality, and only 1/35% of these documents did not contain the necessary information.

Possible reasons for this contradiction may include documentation, sample size variability, controlling different lists, different methods and different research studies in various sectors.

The findings also suggest that: neglect of duty, drug injection in the wrong place, inserting intravenous catheters for long-term, cooperation in the crime of illegal abortion, ending life of the patients (euthanasia), manipulation of the patient, the patient's secrets and refusing to help emergency patients are the most common complaints from nurses.

Health care system is a polygon that in addition to patients and medical staff, the government also plays an important role. Fifth Development Plan for the treatment Polygon forecast has been made. But still in the hospital, the entitlements of patients face with problems.

We cannot deny poor treatment of patients by nurses and hospital staff at times and patient's rights require more monitoring done in this regard. But when nurses take a look at responsibilities and rewards, we see that they are faced with many problems. These problems can be summarized and the nursing job has great responsibility, but the benefits are low.

After the patient and the medical team, we considered the government's role in the health system. The size and influence of government in our country is great. The health system also has areas dominated by the state. Therefore, solving the problems of patients and nurses should be done by the government.

By increasing the number of nurses and providing them the rights and privileges that match their job responsibilities, it can be hoped that the services offered to patients are more consistent with their rights. With careful monitoring and prediction of disciplinary penalties for nurses in such circumstances, we can ensure guarantee of patients' rights.

According to the findings, most nurses do not report medical errors, therefore nurse managers need to pay attention to the causes of errors as priority in order to eliminate and reduce them.

Also in penal provisions regarding criminal liability of nurses attention has not been paid to this important matter. We propose legislation on health care based on its literature to allow for necessary coordination in the implementation of medical laws, so public order will be guaranteed related to community health, more than ever.

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