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David Ginsburg

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by David Ginsburg

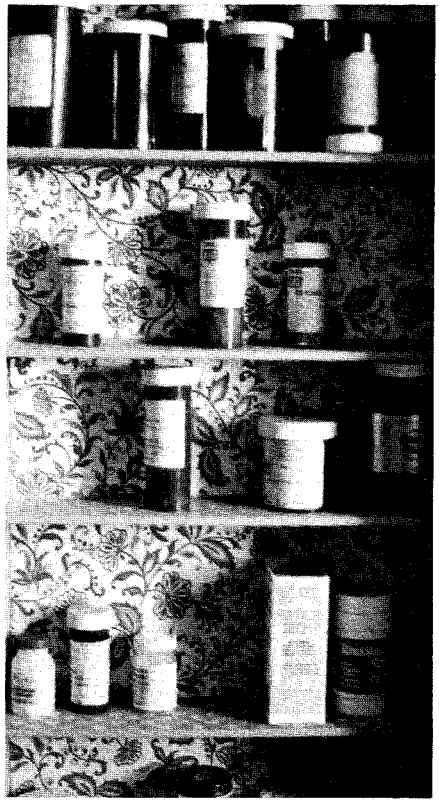
Pharmacists and nurses have been seeking to gain greater recognition for their professional abilities. However, with this increased recognition also comes greater liability. Today when a person is injured due to some form of medical negligence, he feels entitled to compensation. Medical professionals other than physicians are held liable because the public is beginning to understand and recognize that many medical injuries can be prevented by their intervention.

Medication Errors

In the hospital the greatest source of malpractice claims are medication errors. Bennett, *The Legalities of Critical Care* 54 (March-April 1981). A typical medication order in a hospital originates at the nursing station when the physician writes the order in the patient's "chart." By using NCR (no carbon required) paper, a duplicate copy of the physician's order can then be removed from the chart and sent to the pharmacy. At the same time the order is being sent to the pharmacy the nurse will transcribe it into the nursing medication record, known as the Kardex. When the pharmacy receives the order, a pharmacist will also transcribe it into the pharmacy medication record known as the patient profile. After the medication has been supplied by the pharmacy it is sent to the patient's floor and administered to the patient by the nurse.

Problems can occur anywhere from the time the drug is first ordered by the physician until it is administered to the patient. The physician may order an inappropriate medication, the pharmacist may dispense the wrong drug, or the nurse may improperly administer it. If an error is committed by the pharmacist or the nurse in dispensing or administering the medication to the patient, the physician may be held vicariously liable. The physician can also be held directly liable in tort for his own negligent act when ordering an inappropriate medication. Even though there is a duty to follow the orders of a physician the person executing that inappropriate order can be held liable because this duty is not absolute when an order is questionable. *Kucera, Legal Briefs, Journal of the American Assoc. of Nurse Anesthetists* 488 (October 1980). When an order is questionable, some sources recommend deferring to the authority of the physician who wrote the order. However, since physicians can make mistakes, a more appropriate alternative is for the pharmacist or nurse to contact the physician and clarify the order in question.

The knowledge that a reasonable and prudent pharmacist or nurse should possess is the standard used to determine when a drug order should be recognized as questionable by them. Kucera, *Legal Briefs, Journal of the American Assoc. of Nurse Anesthetists* 392 (August 1980). The nurse may have greater contact with the patient or with that particular type of patient being treated. Based upon this knowledge and experience, the nurse may be in a better position than the physician to realize that the patient cannot tolerate a certain treatment or administration of a drug, or that the patient requires an alternative therapy. It may be something as simple as requesting the physician to order liquid medications instead of tablets because the patient has difficulty swallowing; or it may be questioning the physician on an order which could potentially be lethal to the patient because the order is unclear as written, or inappropriate.



In *Norton v. Argonaut Insurance,* 144 So.2d 249 (La. App. 1962), a physician ordered Lanoxin 3 cc but failed to specify whether the injection or the oral liquid was intended. The amount of drug in each product is different with the injection having a greater concentration. The nurse in *Norton* chose the injection when the oral liquid was intended by the physician, and the injection proved to be fatal to the patient. Even if a reasonable and prudent nurse would not have known that the amount of drug in the injection was lethal, she still had a duty to question the order because only a volume, not milligram strength, was specified nor was the route of administration given.

Sometimes a pharmacist is in a better position than the physician to monitor the patient's drug therapy. Three years of a pharmacist's education deals almost exclusively with drugs, while most medical schools usually offer only one formal course in pharmacology. By applying this knowledge and making use of the patient medication profiles, the pharmacist should be able to determine when a drug order is questionable. He should be able to determine when the dose of a drug is unusually high, if there is the potential for an adverse drug reaction or a potential interaction when two or more drugs are administered concurrently. Because of his knowledge in drugs, a pharmacist could become one of the most important members of the health

care team. *Rite Aid of New Jersey v. Board of Pharmacy,* 121 N.J.Super. 62, 204 A.2d 754 (1973).

Accurate Records

The physician's order is the first step to establishing an accurate record of patient care. It is also important for nurses, pharmacists and other hospital employees to keep accurate records. Suppose in the *Norton* case the nurse realized that the injection would be lethal and did administer the oral liquid as intended, and the patient died, but of other causes which resembled those of Lanoxin toxicity. Reviewing the order in the patient's chart would not reveal which dosage form of Lanoxin should have been administered. If the nurse merely recorded in the Kardex that Lanoxin 3 cc was administered the same problem exists of not being able to determine which dosage form was administered. Therefore, accurate documentation by nursing is also very important not only to provide a reliable record of patient care but to avoid liability as well.

Another problem for nurses are orders which are not written in the chart but are given verbally by the physician, usually by telephone. Most hospitals have procedures for nurses to accept verbal orders which are later written by the physician. In such situations good nursing records are needed to show how that order was understood and followed because when harm results to the patient from following a verbal order, a dispute can arise between the physician and the nurse as to whether an inappropriate order was given or the order was misunderstood and not followed correctly by the nurse. A mechanism for preventing such discrepancies has been for hospitals to tape record all telephone orders when given. Other hospitals require one nurse to accept and record the order and another nurse to review and initial it. Whatever method is employed to record a physician's order, the purpose is still to create an accurate record of the care and treatment received by the patient because it is not uncommon for litigational problems to surface for a long time after the alleged incident had occurred.

Pharmacist's Responsibility

Unlike a hospital pharmacy, in a retail pharmacy many of the prescriptions are received by telephone conversations with the physician. This makes accurate documentation in a retail pharmacy even more important than in a hospital pharmacy. Most states do not require retail pharmacies to maintain patient profiles, such as those used in hospital pharmacies. Cerullo, *The Pharmacist's Responsibility to the Patient, Trial* 31, (June 1981). Therefore the duty to monitor potential drug interactions and detect drug allergies is arguably required only in those states requiring pharmacies to maintain such patient profiles. However, Judge Learned Hand once stated in an opinion that "a calling may unduly lag in the adoption of new and available devices." *In Re: T.J. Hooper,* 60 F.2d 737, 740 (2nd Cir. 1932). Even before the advent of patient profiles, a pharmacist could be held liable for a patient experiencing an adverse drug interaction. In *Fuhs v. Barber,* 36 P.21 962 (Kan. 1934), a pharmacist dispensed a sulfa-containing skin treatment to a woman who was already being treated topically with sugar of lead. The two drugs reacted with each other and caused a great deal of skin discoloration, some of which was permanent. Most of the discoloration was able to be removed but only after the patient underwent two months of painful treatments. The pharmacist knew of the potential for these two drugs to interact and cause a skin discoloration, but he did not caution the patient to first remove the sugar of lead from the skin and wash the affected area thoroughly before applying the sulfa drug. He was therefore held liable for the injury sustained by the patient.

The American Pharmaceutical Association is a professional organization that establishes standards for the profession of pharmacy. Among those standards is that all pharmacies maintain patient profiles and monitor potential drug interactions. *Standards of Practice for the Profession of Pharmacy, American Pharmacist* Vol. 19 No. 3 (March 1979). Even if the majority of the pharmacy community does not maintain patient profiles because there is no compensation for doing so, or the state has no mandatory requirement, association standards may be offered as evidence of negligence.

Conclusion

The problem is that many nurses and pharmacists in and out of hospitals are not encouraged to practice their professions to the utmost of their training and ability. In many situations they are actually discouraged or prevented by understaffing, lack of compensation and lack of recognition within their own professional community. Nevertheless, they can be liable for malpractice if an injury to a patient should result.

As more malpractice suits with greater money damages are instituted and decided against pharmacists, nurses, and the institutions they represent, perhaps it will be economically more feasible to insist upon their broader role of participation in patient care. Proper care and treatment of the patient should be first and foremost. But just rendering proper patient care is no longer enough to avoid liability. There also must not be an appearance of impropriety maintained between the physician, patient and other health care professionals. Good communications and accurate documentation of all care and treatment to the patient are essential to maintain this appearance and to achieve better patient care.