Staying out of court: Your documentation could be the key

By Paula Mayer, RN, LNC, and Chris Mayer, RN, LNC

Paula and Chris Mayer of Mayer Legal Nurse Consulting presented recently in Regina at the NENA conference. After our presentation an ER nurse asked: "What are the chances of me being involved in a lawsuit, being an ER nurse in rural Saskatchewan? Seriously, there aren't any lawsuits in Saskatchewan, are there?" We were not at all surprised by these questions, as it is a common misconception among nurses in our part of the country that lawsuits don't happen here. It is obvious from our observations of the documentation of ER nurses we have worked with, and now supervise, that litigation is not considered in daily practice.

The short answer is that there is a very good chance of being named in a lawsuit. The number of medical malpractice claims, while not excessively high compared to our neighbour to the south, is expected to rise over the next several years. In 2010 in Canada, there were 930 lawsuits initiated. In the state of Massachusetts alone that same year, there were more than 10,001. So, while the legal risks of ER nursing in Canada are much lower than in the U.S., that risk still does exist.

Adverse events can occur anywhere, and poor outcomes are not limited to any specific type or size of hospital, nor are they limited by geography. Medical malpractice claims arise when a patient seeks to recover previous levels of functioning after suffering damages sustained while under the care of a health professional.

There is another question that comes up frequently when speaking with ER nurses from across Canada: how do I protect myself from a lawsuit?

Things like:

- being familiar with and following facility policies
- establishing relationships with your physicians, fellow team members and patients
- maintaining current ACLS, TNCC, ENPC or PALS, and CTAS
- earning your CEN-C certification
- taking pride in your work as an ER nurse
- remaining current with best practice
- and knowing how to use the equipment you work with.

These are all important factors in maintaining your standard of practice.

But if we had to pick one common thread in all the medical malpractice cases I've studied, we would have to say the single most important way to protect yourself as a nurse lies in your documentation. Timely, accurate, concise, detailed documentation is something your patient has a right to. Your documentation serves as a tool for communication amongst team members. It provides a reference for future care providers. It can protect you in a lawsuit or board review. In fact, case law has been set from the Supreme Court of Canada that states, "Failure to adequately maintain charts by the nurse is a distinct ground of negligence" (Joseph Brant Memorial Hospital vs. Koziol, 1978). These are all very good reasons to take a look at your documentation practices and see where you can improve.

We started our careers in the United States and from day one we learned to document properly without question, because litigation is a more prevalent part of health care there than in Canada. Documentation was a lifesaver for us early in our careers. Here is one example from our experience. Paula was an ER nurse with less than three years of experience working in the U.S. when she had an adverse event with a patient that profoundly influenced the direction of both our careers. This adverse event threatened her licensure, her job, our future plans, and she could very well have faced litigation. Her documentation alone is what saved us from all these life-altering consequences. This case impressed upon us early in our careers the importance, the absolute necessity of proper documentation in nursing practice. So, we are making it our mission to impress this upon our fellow nurses and to help them avoid the inevitable consequences of poor charting practices. Litigation is not something Canadian nurses give a great deal of thought to on a daily basis, because the incidence of lawsuits is lower. Lower. Not nonexistent. That is the important definer for those who do not consider litigation a possibility.

In our current roles as managers of two emergency departments we see evidence of poor documentation all of the time. Even though we have provided our nursing staff with education, inservicing, presentations and verbal reminders of the importance of documentation, when we do chart audits we find again and again failures to:

- document assessments
- document pain scale ratings
- reassess and document responses to interventions meant to manage pain
- document incidents that occur with patients
- document repeat vital signs
- label monitor strips and affix them to the chart
- document events that occur with the patient.

Instead, we are finding that presenting complaints are documented briefly ("cough times a week" and other such brief and cursory descriptions). Physical assessment findings are documented barely at all. Chronological events occurring (to x-ray, ambulated to BR to void, physician in to assess) are not documented at all. When Paula first started doing these audits, triage levels were not being assigned at all, despite having provided all her staff with CTAS training. After a great deal of feedback most of the nurses are now assigning

triage levels, but that's only one aspect of charting in one ER. The question in our minds is: What is happening in other ERs around the country?

Don't look at our ER nurses and think they're so much different than other ER nurses. They are not. We have worked in three other emergency departments in Canada and found the exact same problem. All of the medical malpractice cases we've studied in our work as Legal Nurse Consultants have one consistent theme: ER nurses across Canada are consistently falling below the standard of care when it comes to documentation. This leaves all of us vulnerable to litigation.

We're not suggesting that you practise defensive nursing, where litigation becomes the reason you do everything. We're simply suggesting that you document the good care you're providing, in such a way that any layperson off the street could pick up your chart and figure out what is going on with your patient. It could one day save your licensure and/or your career. It did ours.

References

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Wallace, Dr. G. (2011). *CMPA Risk Management Education, Clinical Risk, Negligence and Claims Management in Health Care*. Toronto, ON: Osgoode Hall Law School, York University.

About the authors

Paula Mayer and Chris Mayer are partners in Mayer Legal Nurse Consulting.

Paula is the manager of Canora Hospital in the Sunrise Health Region in Canora, Saskatchewan. She has been an RN for 18 years, with a wealth of experience in ER. She won a NENA Award of Excellence in ER Administration in 2011 for her quality improvement work in her ER and throughout her health region. Paula has been studying health law and risk management at Osgoode Hall Law School at York University in Toronto. She is a member of LNCAC.

Chris is the manager of Kamsack Hospital in the Sunrise Health Region in Kamsack, Saskatchewan. He has been an RN for 18 years, with a wealth of experience in ER. He is a member of the ER QI committee in the health region, and former chair of the ER QI subcommittee. He is a member of LNCAC.

Paula and Chris presented at the 2011 NENA Conference on "Medical Legal Risks of Emergency Nursing."

Check out their website at ***www.Mayerlegalnurseconsulting.com****, or email at* ***info@mayerlegalnurseconsulting.com****, or call 306-590-8980. They are available for seminars and presentations on legalities in nursing.*

outlook

NENA at work

Expression of interest

This is your opportunity to be a part of the NENA team, as we create our 2013 National Conference Committee.

We will be filling the positions of conference chairperson and seven committee members.

The 2013 conference will be held in British Columbia, in the spring of 2013 (exact dates and location to be determined by the committee). This committee, led by the chairperson, is charged with planning the 2013 NENA National Conference. Committee members will be responsible for conference theme and design, conference registration, calling for and reviewing abstracts, selection and confirmation of topics and speakers, introducing/coordinating speakers at the conference, accommodation and catering arrangements, obtaining conference sponsorships, coordinating vendor display arrangements and other tasks, as identified.

Members of this committee are encouraged to attend all scheduled planning meetings, as this is crucial to the success of the conference. Most meetings will be conducted through the use of teleconference, Skype, live meeting, etc.

Selection of the committee will be based on the following criteria, but not limited to:

- NENA member
- previous provincial activity
- previous conference planning experience preferred
- at least one member from host city or close to it
- in person meetings not required, but may occur if deemed necessary
- commit to participation x two to three years
- must attend the conference and be in host city for week prior to conference
- resume/curriculum vitae must be sent with application
- references may be requested at a later date.

We invite NENA members to submit their applications using the above criteria and telling us why we should choose you to be on the committee. Members from across the country are encouraged to apply.

Deadline for applications is January 31, 2012.

Applications to be submitted to **secretary@nena.ca**. *NENA relies on its members to shape the direction of our affiliation. Your contributions are invaluable, and we thank you for all of your support.*