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Professional Development
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"Should be mandatory for all nurses to attend."

Linda Nusdorfer, RN
University Health Network (2008)

Osgoode's 4th Annual Legal Risk Management for Nurses

Get practical advice on the key legal risks and dilemmas facing nurses on the frontline in 2010, including:

- The most recent medical malpractice cases involving nurses
- Effective risk management in reducing malpractice claims
- Professional misconduct update
- The latest on informed consent and substitute decision makers
- What are the consequences for breaching patient confidentiality?
- The issue of 'unsafe work' in health care organizations
- Police at the bedside - what are your obligations?
- Risk management case studies - common scenarios

Plus! Don't miss the Optional Post-Conference Workshops:

A. Medical Negligence and Charting: Best Practices for Getting it Right and Reducing Liability

B. Mental Health Law 101: The Fundamentals That All Nurses Should Know

Chair

Mary Jane Dykeman, Dykeman Dewhirst O'Brien LLP



DATE & TIME

June 17, 2010

8:30 a.m. - 4:15 p.m. EDT/EST

OPTIONAL POST-CONFERENCE WORKSHOPS

June 18, 2010

9:00 a.m. - 12:00 p.m. &
1:00 p.m. - 4:00 p.m.

LOCATION

Osgoode Professional
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Osgoode's 4th Annual Legal Risk Management for Nurses

"Excellent, informative, current, empowering and interesting - every nurse needs to know and hear again and again."

Liliana Canadic
Nurse Manager, Palliative Care/Oncology, Joseph Brant Memorial Hospital (2008)

"Extremely applicable to the nursing profession. Very useful and informative conference."

Stacey Johnson, RN
ER Education Coordinator
St. Joseph's Health Centre
Toronto (2008)

As under-pressure health care systems continue to ask nurses to do more with less, those involved in frontline care must be acutely aware of their potential legal liabilities.

This intensive one-day *Osgoode Professional Development* course builds on and updates the successful programs offered in past years. It will explain what the law is and how it applies from the special perspective of the professional nurse. Equipped with this information you will be in a better position to make sound, professional judgments, and avoid the potential liability traps that exist in your everyday work.

Key subjects are again included: medical malpractice, professional misconduct, consent to treatment, privacy and tackling harassment and violence in the workplace. In addition, a new case study session has been added to deal with common risk scenarios. Don't miss this opportunity to be better informed and have your questions answered by some of Ontario's leading health law experts.

Plus! Take advantage of our two post-conference workshops:

A. Medical Negligence and Charting: Best Practices for Getting it Right and Reducing Liability

B. Mental Health Law 101: The Fundamentals That All Nurses Should Know

These two interactive sessions will allow plenty of time for questions and will provide you with in-depth instruction and practical approaches you can put to work right away.

Register now by visiting www.osgoodepd.ca, calling 416.597.9724 or 1.888.923.3394, emailing opd-registration@osgoode.yorku.ca or faxing 416.597.9736.

Chair

Mary Jane Dykeman, Dykeman Dewhirst O'Brien LLP

Faculty

Patrice F. Band, Barrister & Solicitor
Simcoe Chambers

Janice E. Blackburn, Bersenas Jacobsen
Chouest Thomson Blackburn LLP

Kate Dewhirst, Dykeman Dewhirst O'Brien LLP

Michael B. Fraleigh, Fogler, Rubinoff LLP

Pat Fryer, Patricia Fryer & Associates Inc.

Maria McDonald, Dykeman Dewhirst O'Brien LLP

Michael K. McKelvey, Borden Ladner
Gervais LLP

Phuong T.V. Ngo, Gowling Lafleur Henderson
LLP, Ottawa

Kim Parker, Risk Manager, Risk Management
& Patient Relations, Mount Sinai Hospital

Lonny J. Rosen, C.S., Gardiner Roberts LLP

Elyse Sunshine, Gardiner Roberts LLP

Kristin L. Taylor, General Counsel, Centre for
Addition and Mental Health (CAMH)

Michele Warner, Borden Ladner Gervais LLP

Agenda

Thursday, June 17, 2010

8:00 Registration and Continental Breakfast

8:30 Introduction from the Chair

Mary Jane Dykeman, Dykeman Dewhirst O'Brien LLP

8:35 Medical Negligence Claims Against Nurses

Michael B. Fraleigh, Fogler, Rubinoff LLP

Michael K. McKelvey, Borden Ladner Gervais LLP

- The standard of care - what is the current legal standard of care in a malpractice suit?
- Does an error in judgment mean that the standard of care has been broken?
- What is the standard of care in emergency situations?
- Breach of the standard of care
- Causation - was the harm suffered caused by the breach of the standard of care?
- Vicarious liability - the hospital, doctor and nurse - who's on the hook and for what?
- Case studies - the most recent medical malpractice cases involving nurses
- Defences to a malpractice claim: denial of the facts; expiration of the limitation period for the claim; a missing element and contributory negligence
- The importance of good documentation: record keeping as standard nursing practice
- What are the typical problem areas in charting?
- Making corrections to charts - dos and don'ts
- What are the legal consequences of disclosing an adverse event?
- Effective risk management in reducing malpractice claims - what can you do to bolster a risk management culture in the workplace?

9:30 Ensuring Patient Privacy: How to Deal Appropriately with Confidential Information

Kate Dewhirst, Dykeman Dewhirst O'Brien LLP

- What is confidential information?
- *Personal Health Information Protection Act (PHIPA)*
- Nurses as "agents" of health information custodians
- Is the obligation to maintain confidentiality indefinite?
- What are the situations where consent to disclose information is not required?
- Disclosure where the patient is the victim of a crime - e.g. spousal abuse
- Police at the bedside? Is there a duty to disclose information to the police?
- Reminders for nurses in documentation - patients have a right of access to your notes
- Update on the latest orders from the Privacy Commissioner

10:30 Refreshment Break

10:45 Consent to Treatment and Informing the Patient: The Nurse's Perspective

Lonny J. Rosen, C.S., Gardiner Roberts LLP

Phuong T.V. Ngo, Gowling Lafleur Henderson LLP, Ottawa

- What is "informed consent"? What information needs to be disclosed?
- Responding to the patient's questions
- The recent cases on consent to treatment
- The role of causation in informed consent
- The patient's rights to refuse treatment and the assessment of capacity to do so
- Prior expressed wishes of the patient whether written or oral - what weight do they carry?
- Substitute decision makers - what's the ranking order?
- What factors are taken into consideration to determine a patient's "best interests"?
- Powers of Attorney for personal care
- Consent and children - when is a minor capable of giving consent?
- The role of parents in health care decisions. When can a parent provide consent? What if the child is adopted or the parents are separated or divorced?
- Applications to the Consent and Capacity Board
- Research studies and consent - what are the issues?

11:45 Keeping Staff and Patients/Clients/Residents Safe: Tackling Harassment and Violence in the Workplace

Pat Fryer, Patricia Fryer & Associates Inc.

Maria McDonald, Dykeman Dewhirst O'Brien LLP

Harassment and violence occur in all organizations, but the incidences of such behaviour appear to be higher in health care organizations. This not only causes obvious injury and distress to health care staff, it also leads to increased sickness, absence and poor morale. Costs can include visits, orders and fines from the Ministry of Labour and the Human Rights Commission. It also decreases the quality of care for patients/clients/residents.

- Definitions of harassment and violence and the legal issues (i.e. domestic violence)
- Liability of employers and their Boards of Directors
- Responsibilities of employers and Boards of Directors
- *Occupational Health & Safety Act* - what it says; the issue of "unsafe work" in health care organizations
- How to conduct an effective Risk Assessment for Violence and the tools you need to do so
- Drafting and implementing harassment and violence policies in both unionized and non-unionized environments including how to deal with restraining orders
- Effective strategies to deal with abuse by patients and their families

12:45 Networking Luncheon

Agenda

1:30 Professional Misconduct Update: What Every Nurse Should Know

Elyse Sunshine, Gardiner Roberts LLP

- What's the tie-in between negligence liability and professional misconduct?
- Can you be found negligent if you have complied with standard medical practice?
- What are the sources of professional standards?
- What is professional misconduct, and what are the most common types of professional misconduct occurring today?
- How does the College deal with professional misconduct – an overview of the College's complaints process and disciplinary proceedings
- What are the sanctions for professional misconduct?
- The appeals process
- The nurse as a witness
- Reporting obligations with regard to findings of professional misconduct under the *Nursing Act*
- Incapacity and incompetence
- Practical tips for preventing professional misconduct claims

2:15 Criminal Liability and Police Investigations

Patrice F. Band, Barrister & Solicitor, Simcoe Chambers

Thankfully, a criminal charge against a nurse is rare. However, it can and does happen. Patrice Band will discuss how it happens and what you should do if it happens to you.

- What are the most common offences that nurses may be charged with in connection with their professional duties?
- Police investigations – search and seizure, surveillance and interviewing witnesses
- What should you do if you are charged? – the dos and don'ts
- An overview of the criminal trial process
- Appeals against conviction and/or sentence
- Criminal convictions and reporting obligations under the *Nursing Act*
- The problem of concurrent investigations

3:00 Refreshment Break

3:15 Risk Management in Practice: Case Studies

Mary Jane Dykeman, Dykeman Dewhirst O'Brien LLP

Kim Parker, Risk Manager, Risk Management & Patient Relations, Mount Sinai Hospital

Mary Jane Dykeman and Kim Parker will present and lead the attendees through two common risk management case studies directed at each of: 1) detection and disclosure of medical error; and 2) difficult patient and family behaviour.

This interactive session will focus on equipping nurses to deal with what are stressful but hopefully rare situations.

4:15 Program Concludes

Post-Conference Workshop A

Medical Negligence and Charting: Best Practices for Getting it Right and Reducing Liability

Friday, June 18, 2010, 9:00 a.m. - 12:00 p.m.

Michele Warner, Borden Ladner Gervais LLP

Kristin L. Taylor, General Counsel, Centre for Addition and Mental Health (CAMH)

Creating and dealing with documentation is an integral part of nursing procedure. Accurate charting is a key to facilitating patient care.

However, the quality of recorded information can be used to defend or prosecute a nurse in disciplinary hearings or it may be used as evidence in civil or criminal proceedings. Good documentation is often a key factor in responding effectively to allegations of negligence and/or professional misconduct.

- Why is documentation so important?
- The plaintiff's use of documentation in any legal action
- The defendant's use of documentation in any legal action
- The hospital's duty to ensure proper charting is completed – the need to develop policies and clear standards of acceptable practice
- The need to provide training in documentation and developing effective documentation tools
- The types of documents that are relevant: full charts; medication records; schedules; appointment papers; employment files/reviews; hospital policies and procedures, notes and other memoranda regarding a particular event
- How to record information accurately and effectively
- Practical tips and guidance for drafting clear and accurate notes
- What are the typical problem areas in charting?
- The importance of recording at the time of the event
- Recording only what you saw or did
- Avoiding subjective conclusions and assumptions
- Why should you avoid recording the actions of other health care providers?
- The benefits of recording chronologically
- Blanks in the chart – what should you do?
- Late entries – dos and don'ts
- Making corrections to the chart – what to avoid
- "Severing" incorrect information from the chart
- Preparing hospital incident reports – what should you bear in mind?
- Staff's personal notes – legal status, and perils and pitfalls to avoid
- Charting by exception
- Electronic charting – what are the general requirements?
- The latest cases on documentation – case studies

Michele Warner is a graduate of the University of Toronto Faculty of Law, and was admitted to the Ontario Bar in 2005. Prior to her law degree, Ms. Warner studied social work at Wilfrid Laurier University, obtaining a Master of Social Work Degree in 1996. She is currently an associate in the Health Law Group at Borden Ladner Gervais LLP and is involved in representing hospitals and health care providers in proceedings before the courts and a variety of administrative tribunals. Her practice also involves providing legal advice to hospitals, children's mental health centres and health care providers concerning policies, risk management and statutory compliance issues.

Kristin L. Taylor is the newly appointed General Counsel for the Centre for Addiction and Mental Health. Kristin has been practising Health Law for eight years, most recently as a partner at Borden Ladner Gervais, where she began her practice in 2001. Kristin is a graduate of the Dalhousie Law School in Halifax, Nova Scotia (LLB 1999). Her practice has included work in areas including litigation, risk management, corporate governance and hospital management. Kristin has advised and represented a variety of health care institutions on a wide scope of issues ranging from coroner's inquests, by-law review, privacy implementation, physician credentialing, quality of care measures, risk management and general contract advice. Kristin has also been the Faculty Chair of the Ontario Hospital Association's Principles and Applications of Health Law since 2003, and is a Co-Editor of the Canadian Health Law Practice Manual.

Post-Conference Workshop B

Mental Health Law 101: The Fundamentals That All Nurses Should Know

Friday, June 18, 2010, 1:00 p.m. - 4:00 p.m.

Janice E. Blackburn, Bersenas Jacobsen Chouest Thomson Blackburn LLP

Mary Jane Dykeman, Dykeman Dewhirst O'Brien LLP

Whatever your speciality/area of expertise, you may encounter patients suffering from a mental disorder. As such, it is vital that you have a sound understanding and appreciation of the applicable legal principles involved in this area. This interactive workshop will provide an introduction to, and an explanation of, the applicable law.

- Overview of the mental health law system in Ontario
- Sources of mental health law
 - *Mental Health Act*
 - *Public Hospitals Act*
 - *Health Care Consent Act, 1996*
 - *Criminal Code*
 - *Common Law*
 - *Substitution Decisions Act, 1992*
 - *Personal Health Information Protection Act (PHIPA)*

- What is the interplay between the various statutes?
- What are the legal responsibilities of institutions and health care professionals to patients who suffer from a mental illness?
- Risk management strategies for keeping staff and patients safe – tips and tools
- Becoming a psychiatric patient
 - voluntary patients
 - involuntary patients
 - informal patients
- Notice and rights advice
- Principles of consent to treatment
 - what is the test for capacity?
 - substitute decision making and powers of attorney
- Emergency treatment exception
- How do matters get before the Consent and Capacity Board?
- Safeguarding the privacy of mental health patients

Janice E. Blackburn is a founding partner of the Toronto law firm, Bersenas Jacobsen Chouest Thomson Blackburn LLP. Ms. Blackburn has practised in the mental health and forensic psychiatric fields since 1986. Acting as counsel to hospitals and health professionals, Ms. Blackburn appears before administrative tribunals in the health field including Coroner's Inquests, the Consent and Capacity Board and the Ontario Review Board; at all levels of appellate courts including the Court of Appeal for Ontario and the Supreme Court of Canada. Ms. Blackburn teaches post-graduate trainees in forensic psychiatry at McMaster University; lectures for the University of Toronto Medical School and trains Assistant Crown Attorneys to act at Ontario Review Board hearings. Ms. Blackburn also provides advice to and in-house seminars to health care institutions on a variety of legal and practical issues.

Mary Jane Dykeman is a partner at Dykeman Dewhirst O'Brien LLP, a Toronto health law boutique that advises health sector clients on matters relating to privacy, mental health, health research, consent and capacity, systemic risk management, corporate governance, physician privileges and regulation of the health professions. She currently acts as external counsel to a number of teaching and community hospitals and community mental health agencies on a broad range of health law, risk management and corporate matters. She is a frequent writer and speaker on health law and policy issues, including co-editor (along with her law partner, Kate Dewhirst) of *Risk Management in Canadian Health Care*. She developed and edited the *Canadian Health Law Practice Manual* for almost a decade (joined in later years by Kate Dewhirst) and is also the co-author of *Canadian Nurses and the Law*. Ms. Dykeman teaches mental health law on Osgoode's LLM program and has taught on the Queen's LLB program. She is the Program Director for OPD's new certificate program in mental health law. In June 2008, she was honoured by OPD for Outstanding Contribution to Continuing Legal Education.

Registration

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Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute a full refund (less \$50 administration fee) is available if a cancellation request is received in writing 14 days prior to the program date. No other refund is available.

Dates & Times

Conference: June 17, 2010 - 8:30 a.m. - 4:15 p.m. EDT/EST

Workshop A: June 18, 2010 - 9:00 a.m. - 12:00 p.m.

Workshop B: June 18, 2010 - 1:00 p.m. - 4:00 p.m.

Please arrive a half hour early for sign-in and material pick-up.

Dress is business casual.

Location

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