

RISK MANAGEMENT QUARTERLY NEWS

FALL 2010



Nurses Behaving Badly

Generally when we think of doctors and nurses, we think of selfless caregivers. We think of those individuals committed to a higher calling; who often, without regard for their own safety, care for and assist those who are sick and dying. Frequently referred to as “angels of mercy” by their patients and patient’s families, wings and halos invisible to the naked eye, they help the healing and the helpless. In a perfect world, this is the mental image we would like to hold on to; however, as we are reminded all too often, nurses are quite human. Sometimes they make mistakes. Sometimes they are careless...but sometimes nurses just behave badly.

When nurses intentionally act outside the scope of their practice serious consequences can result. Fines, reprimands, suspension or even incarceration can result for inappropriate, careless or illegal actions or behavior. Our litigious society questions all we do. Read now a few examples of nurses and certified nursing assistants who found themselves on the wrong side of the law.

Episania Fitzgerald was working her shift at an ALF in Florida, when she decided she had better

places to be than work. In her haste to leave, she asked one of the residents to take charge of the others in her absence. Ms. Fitzgerald, the sole staff member on duty then walked out, leaving the 21 residents alone and unsupervised. When she returned 2 ½ hours later, she found the facility teeming with firefighters and deputies. Evidently an 88 year old female resident had fallen on the bathroom floor and could not get up. 911 was called, and when the medical personnel found no staff member on site they



called deputies to investigate. Ms. Fitzgerald told the authorities she left the facility to provide home health care elsewhere. Upon further investigation, Vicodin was found on her person. Ms. Fitzgerald was arrested and charged with one count of abuse and neglect of the elderly; a second-degree felony, and one count of possession of a controlled substance, also a felony. Abandonment of a patient is serious, and every healthcare provider

should know how their state defines this issue.

Another Florida nurse, Ronald Culhane, LPN was arrested on charges that he neglected an elderly resident and falsified the resident’s records. Part of Nurse Culhane’s duties on the 3-11 shift was to administer medications. Upon investigation, The Medicaid Fraud Control Unit’s Patient Abuse, Neglect and Exploitation (PANE) team discovered that Nurse Culhane failed to give Coumadin to a 90-year-old resident on at least nine occasions, but would initial the MAR as being given. He was charged with one count of neglecting an elderly adult; a third-degree felony, and nine misdemeanor counts of falsifying medical records. He faced a maximum penalty of five years in prison and a \$5,000 fine for the felony charge. Additionally, he no longer has his LPN license.

An Oregon nurse, Sharon Souders, RN, was accused of using force and causing injury to a 76-yearold patient’s face when she tried to get the patient to take her medication. Nurse Souders was arrested on suspicion of first-degree criminal mistreatment, coercion and fourth degree assault. Her nursing license was also revoked.

An Arkansas nurse, Andrea Smith, LPN, admitted to wrongfully disclosing

SPECIAL POINTS OF INTEREST:

- ◆ Nurses Behaving Badly
- ◆ The Importance of Background Checks
- ◆ Ponce de Leon Welcomes Shawnee Wallace to the Risk Management Team

individually identifiable Health information for personal gain. She was the first in her state to be convicted under the Health Insurance Portability and Accountability Act (HIPAA). Nurse Smith assessed a patient’s medical records and then gave the private medical information to her husband who called the patient and stated he intended to use the information against him in “an upcoming legal proceeding”. Smith was fired and faced a maximum of 10 years in prison, a fine of no more than \$250,000, or both, as well as a term of supervised release of not more than three years.

Using hidden cameras approved by residents and their families, six LPN’s and seven CNA’s in New York were charged in March of 2010 with endangering the welfare of an elderly resident, felony falsification of business records and multiple misdemeanor violations of the public health laws. According to investigators, those charged “routinely failed



Nurses Behaving Badly continued

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to turn and position an immobile resident often leaving the resident in the same position for an entire shift. Nursing staff failed to administer medications, as well as treat the resident's bed sores.”

Another hidden-camera investigation led to criminal charges of two LPN's and six CNA's in March of 2010. Again family members approved the use of a hidden camera in a resident's room. CNA's failed to provide range-of-motion exercises, and nurses failed to administer insulin, treat skin and wounds, and check vital signs. Additionally, five CNA's were charged with endangering the welfare of an incompetent or physically disabled person; a misdemeanor. Furthermore, they were accused

of repeatedly failing to use a mechanical lift to transfer the resident in and out of bed, risking injury.

New York's Sate Attorney General, Andrew Cuomo, had investigators use hidden cameras to find criminal acts of mistreatment at nursing homes throughout the state. As of April 2010, 30 nursing home employees and a corporate owner have been convicted based on surveillance recordings; another has settled a civil lawsuit filed by the Medicaid Fraud Control Unit.

In each situation, it was clear these medical professionals acted without regard or consideration of their patient's health and safety. And for those of you

that think ignorance will save your license or your job, think again. Even if you don't act with willful disregard, you can find yourself in trouble when you don't do your job to the best of your ability. Make certain you don't administer care without consent; this constitutes battery. Making up vital signs because you don't have time to obtain them, is falsifying records. Withholding medication and /or treatment is abusive. Think before you act, but most importantly, think before you choose *not* to act. Know the policies and procedures of your facility, and understand the scope of your practice. Learn by the examples shown here what NOT to do.

The Importance of Background Checks

As more American's enter LTC each year, the focus of family and friends becomes the safety of their loved one. “Who is taking care of Grandma?” “Did dad get his medication?” “Mom had so many bruises on her arm yesterday...”.

While state laws vary regarding background checks on licensed and non-licensed employees, the best possible way to assure the safety of residents in LTC is to

know their caregivers; this means doing background checks and contacting references prior to hiring a new staff member. State agencies do their best to report employees with criminal pasts, but the bureaucracy and red tape within most state health departments can lead to lengthy delays in notification. You may have an employee with a criminal past working in your facility for months before you learn the truth. Can you afford the risk?

Is it worth endangering residents and fellow staff? It is the responsibility of every healthcare worker to provide a safe environment for those in their care; and it is the *personal* responsibility of every RN, LPN and C.N.A. to conduct themselves in a professional and lawful manner. Background checks are not meant to persecute, simply protect.

Think about it..



Ponce De Leon Welcomes Shawnee Wallace To The Risk Management Team

Vice President of Risk Management's Corner

- It is with great pleasure that we welcome Shawnee Wallace to our Risk Management Team. Shawnee will be joining us as a risk consultant, and this position will encompass LTC facilities throughout the country.

- Shawnee brings with her 12 years experience that incorporates both bedside nursing as well as a clinical specialist in the medical device industry. Shawnee has gained both experience and knowledge from the healthcare industry that will make her an asset to our risk management department.

Let me be the first to say how excited we are to have Shawnee on our team.

- Susan Bugg
Vice President of Risk Management

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