Legal Aspects of Delegation

Janet Nally Barnes, RN, JD
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Today’s Objectives

- Define Delegation
- Differentiate between Accountability and Responsibility
- Define the Delegation Process
- Determine Legal Risks
- Examine Nurse Practice Acts and their roles
Current Healthcare Environment

- **Economic factors**
  - Mergers, network development, managed care involvement

- **Reimbursement issues**
  - Federal, state, and private payor reluctance to pay for healthcare services

- **Technological advancement**

- **Human factors/Patient needs**
Delegation Defined

- The transfer of authority to perform a specific nursing task in a specific situation to a competent individual
- The competent individual is responsible for the activity
- The nursing professional remains accountable for the delegation
Accountability and Responsibility: One and the Same?

- Accountability: The nursing professional is legally responsible (liable) for his/her actions as it relates to the overall nursing care of his/her patients.
Responsibility: The nursing professional or competent individual has an obligation to perform tasks reliably, dependably and at an acceptable level.
Effective Delegation

- Functions of the Professional Nurse
  - Responsible and accountable for the provision of nursing care
  - Responsible for assessment, diagnosis, care planning and evaluation
  - Always responsible for the patient outcome
  - Aware of limitations of other health team members
Effective Delegation

- UAP - unlicensed assistive personnel
  - valuable member of the healthcare team
    - “extra pair of hands”
  - trained to perform in an assistive role to the nursing professional
    - delegated duties and supervised by the nursing professional
Why Delegate?

- Professional nurses need assistance
  - Nursing “shortage”
  - Staffing issues - staff ratio debates
  - Patient acuity
    - acute care, home care, ambulatory and long term care settings
- Need to deliver safe, competent, quality care to patients
When May I Delegate?

- **Nursing scope of practice**
  - Specific activities are non-delegable

- **UAPs do not have a scope of practice**
  - Can perform activities that do not require nursing skill, judgment and results are predictable
When May I Delegate? (Cont.)

- Verbal delegation v. approved task list
- What is the patient’s condition?
- Is there potential for harm?
- Is the activity complex or complicated?
When May I Delegate? (Cont.)

- Is problem-solving or innovation required to perform the task?
- Can the outcome be predicted?
- What level of patient interaction is required?
The Five Rights of Delegation

- Right task
- Right circumstance
- Right person
- Right direction/communication
- Right supervision
Delegation Decision-Making Process

- Principle of protection of the public
- Boards of Nursing responsible for regulation of nursing
- Boards of Nursing must articulate clear principles
- Professional nurse has ultimate responsibility and accountability
Delegation
Decision-Making Process (Cont.)

- Professional nurse is actively involved
- Time and place for UAPs in healthcare
- Nursing is a knowledge-based process
Tasks may be delegated, knowledge cannot

Cannot “re-delegate” tasks

Care must meet generally-accepted standards of care
The professional nurse determines and is accountable for the appropriateness of delegated nursing tasks.
Inappropriate delegation by the nurse and/or unauthorized performance of nursing tasks by unlicensed assistive personnel may lead to legal action against the nurse and/or UAP.
Delegation Decision-Making Process (Cont.)

- Delegation criteria
  - Nursing Practice Act
  - Delegator qualifications
  - Delegatee qualifications

- Assess the situation
  - Needs of the patient
  - Consider the circumstances
  - Adequate Resources
Plan for the specific task
- Specify nature, knowledge and skill required
- Documentation, demonstration of competence
- Determine implications

Assure appropriate accountability
- Delegator accepts accountability
- Delegatee accepts delegation
Delegation Decision-Making Process (Cont.)

- Supervise performance
  - Provide directions, expectations
  - Monitor performance
  - Intervene as necessary
  - Ensure documentation of task

- Evaluate the delegation process

- Reassess
What May I Delegate?

- Health-related activities that do not require nursing skill or judgment and produce predictable results
  - Standardized procedures
    - Activities of daily living
    - Collecting data
    - Collecting simple specimens
    - Transporting, restocking, clerical duties, etc.
What Cannot Be Delegated?

- Activities within the scope of nursing practice
  - Unstable patients
  - Activities requiring assessment, problem-solving, judgment, evaluation
  - Where outcome is unpredictable
  - Sterile technique, med administration, IV therapy, invasive procedures
Risks of Delegation

- Patient Safety
- Ethical
- Legal
Legal Risks of Delegation

- The Professional Nurse
  - Malpractice actions
    - Negligent delegation
    - Negligent supervision
  - Disciplinary action
    - Licensing Board
    - Employer

- The UAP
  - Malpractice actions
    - Negligent performance of activity
  - Disciplinary action
    - Licensing Board
    - Employer
Risk/Benefit Analysis of Delegation

- Assess the patient to determine if delegation is appropriate
- Verify that the UAP is competent
- Review the task w/the UAP
- Follow institution policy
- Monitor the patient
Risk/Benefit Analysis of Delegation (Cont.)

- Ensure accurate, timely documentation of the care rendered
- Regularly evaluate or monitor the UAP’s performance
- Bring concerns to appropriate individuals - nurse manager, supervisor
- Reporting obligations
Regulatory Guidance

- **Nurse Practice Acts**
  - Each state defines the practice of nursing
  - No single model nurse practice act
    - Leads to confusion as to what nursing care may be performed by professional nurses and what can be performed by UAPs
Generally, specific definitions for professional nurses, licensed vocational nurses, and advance practice nurses
Professional nurses (RNs) are independent practitioners of nursing in all states - supervision not required.

Licensed practical/vocational nurses are dependent practitioners and require supervision.
States’ responsibility:
  – to protect the public from harm
  – Permit the practitioner to practice within a legally-defined and protected scope of practice

Boards of Nursing regulate the practice of nursing and interpret statutes, rules and regulations regarding scope of practice
Boards of Nursing determine what level of licensed practitioner or unlicensed person can perform a specific task.

Generally, each state provides guidelines for processes of assignment, delegation and supervision.
Regulatory Guidance (Cont.)

- American Nurses Association and National Council State Boards of Nursing guidance statements
Don’t Forget . . .

- Responsibility of professional nurse to be knowledgeable of the nurse practice act in his/her state - “Ignorance is not a defense”
To Summarize . . .

- State Nurse Practice Acts define the practice of nursing and the legal restrictions for delegation.
- Professional nurses are accountable for the management and provision of nursing care, including any tasks delegated to UAPs.
- Priority is always the best interest of the patient.
To Summarize… (Cont.)

- Priority is always the best interest of the patient
- When used appropriately, delegation is a vital tool for the professional nurse and should ensure safe, competent nursing care
Resources

- American Nurses Association - http://www.nursingworld.org/
- Institute of Medicine - http://www.iom.edu/
Contact Hours

- The American Nurses Association is providing the nursing education contact hours for this audio conference seminar series. This program has been approved for 1.2 contact hours.