

Malpractice an Updated Concept Analysis and Nursing Implication in Developing Countries

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Abstract: Malpractice crisis is one of the emerging challenges of the current healthcare system. Therefore, nurses are required to understand what malpractice is and develop or adopt effective strategies to prevent its occurrences. This paper aimed to update the baseline knowledge of the concept of malpractice using Walker and Avant (2011) eight steps concept analysis method and to guide nurses' practice in developing countries with regards to safe nursing practice. It was found that the concept of malpractice is related to professions and professionals, characterized by unintentional misconduct and resulting in injury and harm. The most common factors leading to nursing malpractice were improper communication, documentation, patient assessment, use of equipment, and deviation from standards of nursing practice, as well as lack of patient advocacy role. Nursing administrators play an important role in preventing the incidences of malpractice by forecasting proper plan of actions to prevent the occurrences of malpractice.

Keywords: Malpractice, Nursing, Developing Countries

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I. Introduction and Significance

The Arabian countries civil legislation in general did not establish a set of rules to govern the legal relationship between the patients and their healthcare providers but relied on the general rules of civilian liabilities regarding wrongful and casual error that could be applied to any profession and/or occupation, which means that the tort liability is based on the general legal obligation of do not harm others¹. There is no reliable source for data regarding the rates of nursing malpractice in these countries but a recent newspaper announcement declaration from the Kingdom of Saudi Arabia, estimated a one third increase in the cases of malpractice in 2016 in comparison with 2011 and the focus of these legal liabilities were primarily against physicians followed by other healthcare providers that include nurses². Whereas the healthcare systems in developed countries are facing medical malpractice crisis represented by the overwhelming rate of medical malpractice liabilities^{3,4}, the health care cost containment strategies⁵ and the higher rates of malpractice insurance premiums⁶. The rate of adverse events in developing countries was ranging between 2.2 % up to 18%⁷, which is comparable to developed countries such as the US, UK and Australia⁸. While there is no clear data regarding the rates and trends of malpractice cases in developing countries, in developed countries there is a tremendous increase in malpractice lawsuits over years⁴. Review of the American Nurses' disciplinary information between 1996 and 2006 reported an increase in the percentages of nurses disciplinary actions from 11 % to 19% and the number of reported nursing violations from 7.737 to 12.786⁵.

II. Method

Avant & Walker (2011) eight steps model was used to analyze the concept of malpractice. This model is considered an analytical strategy to delineate the concept attributes, characteristics and to clarify any surrounded ambiguity. The steps were: Select concept, Identify the purpose of the analysis, identify uses of the concepts, Determine defining attributes, Develop a model case, Construct additional borderline, Identify antecedent and consequences, and Define empirical referent¹⁰.

III. Results

Select concept:

The concept of this analysis was malpractice. The concept was chosen because of its related importance to patient safety, nursing profession, nurses and health care organization. Malpractice may lead to catastrophic end to the patients, nurses, health care organizations and the healthcare system.

Purpose:

The purpose of this concept analysis was to instate a professional discussion regarding the concept of malpractice

The identified uses of malpractice:

To successfully understand and differentiate the concept of malpractice from other related concepts such as negligence, a dictionary definition was useful. Malpractice was defined by Collin English Dictionary (2000) as "immoral, illegal or unethical professional conduct or neglect of professional duty"¹¹. Mosby Medical and Nursing Dictionary (1982) defined malpractice as unintentional professional negligence that resulted or was the proximate cause of patient harm due to lack of professional skills or competency¹¹. Marquis & Huston (2008) and Yoder-Wise (2007) defined malpractice as a professional misconduct, professional negligence that did not meet the known and established standards of care and resulted in patient harm or injury^{13,14}. Furthermore, Hodgson (2010) emphasized that the legal concerns arise once there is a positive causation between the provided care and the resulting harm¹⁵. From the provided definitions the four elements of malpractice are 1- Profession, 2- Breach of the professional standard of care, 3- Unintentional act by professionals, 4-Proven patient harm caused by the breach of the standard of care. According to Collin English Dictionary (2000), negligence was defined as "a civil wrong whereby the defendant is in breach of a legal duty of care, resulting in injury to the plaintiff"¹⁰. This definition implies a violation of the legal duties that caused harm or injury to the affected person. While Moby's medical and nursing dictionary (1982) defined negligence as "the commission of an act that a prudent person would not have done or the omission of duty that a prudent person have to fulfilled, resulting in injury or harm to another person"¹². Yoder-Wise (2007) further framework negligence within the unintentional conduct and carelessness behaviors¹⁴. In summary, negligence can be defined as a legal term that implies a person failure to act in the reasonable and prudent manner that resulted or caused person harm or injuries. The review of the literature reveals the uses of malpractice concepts mainly in the law and legal system. However, Weld & Bibb (2009) further identified the use of malpractice concept in nursing risk management, and in raising the quality of nursing care¹⁷. Clinical negligence was identified as a synonym for malpractice^{16,17} and professional incompetency¹⁶.

Defining Attributes:

Concept attributes are those characteristics that differentiate between concepts⁹. Malpractice can be defined as the unintentional act that was done by a Registered Nurse (RN), characterized by a violation or deviation from the nursing standards of care and practices and resulted in patient harm or injury. The harm may be psychologically, spiritually or physically. From this definition the attributes of malpractice are:

- a) Unintentional act
- b) RN
- c) Breach of the known and established nursing standards of practice due to lack of knowledge, skills and/or professional competency.
- d) The causal relationship is proved between the professional misconduct and the patient Psycho/Spiritual/ Physical harm or injury.

Develop a model case:

50 years old male patient known a case of colorectal cancer was admitted to the palliative care unit with a chief complaint of pain. An order to start morphine continuous infusion at 2mg per hour with demand dose of 2mg every 10 minutes. The pump was connected to the patient by the RN where unintentionally did not insert the appropriate demand dose lock level. After 3 hours, the patient developed respiratory arrest, coded, then transferred to the Intensive Care Unit where he passed away within a couple of hours from the transfer, as a result of respiratory failure. Upon intensive investigation, it was found that:

- a) The PCA lock level was not entered, and this lets the patient take morphine greater than the prescribed dose.
 - b) The demand dose was fixed at 20 mg instead 2 mg.
 - c) The patients received 20 times more than the ordered dose of morphine
- This RN conduct was Unintentional. However, it resulted in patient harm with a proven relationship. It has breached the standard nursing care and hospital policies and procedures (P&P).

Contrary case:

An order was written to transfuse two units of packed red blood cells; each unit has to be transfused over three hours. The RN double checked the packed red blood cells unit at bedside, review physician order and patient blood compatibility test with a second RN and then administered the blood with close monitoring. The

RN follows the organization P&P effectively and appropriately. The appropriate blood was administered to the appropriate patient at the appropriate time.

Antecedent and Consequences:

Antecedents are those actions, behaviors or incidents that precede the occurrence of the concept. Consequences are those actions or behaviors that follow the occurrence of the concept¹⁰. Unfortunately, the retrieved literature did not identify explicitly or implicitly the antecedents of malpractice except Weld and Bibb (2009) who documented the two main antecedent of malpractice as "lack of adequate education and training and lack of thoroughness and attention to detail on behalf of the nurse"¹⁷, and Ellis and Hartley (2004) who documented the faulty system¹⁹. The majority of the yielded literature was concerned with listing malpractice elements, described real malpractice cases, discussed the costs and proposed high-risk area of malpractice lawsuits. From our point of view, we believe the system failure to prevent or minimize the risk of malpractice and medical errors is the own prevalent antecedent to malpractice. Accordingly, it is the system responsibility to properly prepare competent nurses and other healthcare practitioner, develop strategies to detect errors before its occurrences or to minimize its consequences, and learn or propose solutions capable of minimizing the risk of malpractice.

Consequences:

The consequences that followed the occurrences of malpractice can be classified according to three levels: Injured/Harmed patient, Responsible Nurse, and the healthcare organization or institution:

Patient-level:

1. Death / permanent harm or injury is the most catastrophic event or bad outcome that might happen.
2. Temporary patient harm.
3. Direct/ indirect costs: direct costs such as money paid to recover from the injury. The indirect costs, such as the inability perform the income-generating job, recurrent sick leaves or delay in processing job tasks as a result of the injury or harm.

Nurse Level:

1. Malpractice Costs: resembled by the direct costs that may be paid to the patient as compensation and indirect; such as, the recurrent leaves to attend the lawsuits, work suspension, compensated costs for lawyers and increased insurance costs.
2. Malpractice suits may be shifted into criminal suites.
3. Emotional distress or psychological harm that may affect the performance of the negligent nurse.

Healthcare Organization:

1. Costs: money paid to the claimant patient or family as a result of negligent RN conduct.
2. Negative outcomes resembled by decreasing the number of patients or employees to join the institution, as a result of the negative look or image perceived by the society and professional staff.

On the other hand, positive outcomes can also be identified such as the action plans that will be developed according to the malpractice failure area. Those plans will improve the current system processes and improve patient safety¹⁶.

Define Empirical Referents:

This step is mainly concerned with real-life existence of the concept key attributes and characteristics¹⁰ and therefore, a proven malpractice liability by a powerful and recognized authority such as regulatory bodies or judicial court against RN will be the only evidences of malpractice¹⁷. Any errors that do not match the below criteria will not be considered malpractice^{13,17-23}:

1. Nursing care that was provided to the patient by RN
 2. Violation or deviation from the standard of practice that is determined by the nurses' standard of acts, and/or the organization P&P.
 3. The patient was injured as a result of the provided care.
 4. The casual relationship must be proved by the claimant.
- Croke(2003) listed six main area that denotes malpractice claims. Those areas were: communications, documentation, patient assessment and monitoring, violations of standards of care, patient advocate roles, and improper usage of equipment²⁸.

Limitations:

The limitations of this paper were literature limited to nursing, English language, and to the previous ten years.

IV. Implications

Implication on Patient Care:

The main undesired outcome that affects the patients was patient's death or permanent injury. The Institute of Medicine documented a 98000 patient death as a result of medical errors²⁷.

Implication for Nursing Administrators:

Nursing administrators are playing a vital role in decreasing the number and severity of medical and nursing errors, decreasing the malpractice lawsuits, and improving patient safety. They are educators, advocators, trainers, supervisors, and a liaison person between the higher institution administration and their subordinates. In addition to that, they are the key players of ensuring safe practice and safe environment for patients. These roles are very complex and sophisticated and need a qualified nursing administrator.

Proposed Solutions:

Solutions are those actions that initiated and implemented by individuals as a response to annoying causes of a problem of their interest. Although the retrieved literature did not support underlying causes of malpractice, it is advised to act upon the identified factors that led to malpractice. The factors were: Failure to follow the standard of care, Failure to use equipment reasonably, Failure to communicate, Failure to document, Failure to assess and monitor, and Failure to act as a patient advocate^{28,29}.

A comprehensive and detailed investigation is needed to better understand the circumstances surrounds those failures, and this should not disregard the uniqueness of every malpractice case. Every case has to be investigated thoroughly to identify areas for system improvement. More than an author has proposed solutions to deal with such failure areas such as Austin (2008), Croke(2003), Yoder-Wise (2007), and Marquis and Huston (2008)^{13,12,28,30}. It is advised to:

- [1]. Improve communication:Therapeutic communication is the strongest relationship that has to shape the patient-nurse relationship.
- [2]. Follow the healthcare institution P&P:The institution P&P are the formal documents that staff has to follow. Those P&P guide your work and govern the relationship between you, the patients and other healthcare professionals.
- [3]. Be familiar with the established standards of practice:Scope and standards of practices are the legal boundaries that guide and protect your practice.
- [4]. Situational awareness during medication administration: It is important to follow the institutional P&P of medicationadministration and at least the five rights of medication administration:Right drug, route, dose, time, and patient).
- [5]. Maintain and update your competency and skills.
- [6]. Be familiar with the legal system and laws that relate to the profession and the field of practice
- [7]. Delegate responsibly:Clinical nurses and managers shall carefully delegate task and duties. It is recommended to follow the five rights of the responsible delegation of tasks: Right person, task, circumstances, direction and supervision.
- [8]. Document Properly:Documentation is an essential and sensitive indicator of the staff professionalism. Documentation is a reflection of the spirit of care, and it is the universal mode of information transmission. It is important to follow the institutional documentation requirements.
- [9]. Follow the nursing process:Nursing process will guide nurses in the proper care delivery. Nursing process steps are comprehensive steps that are continuously cycling with a big aim of better health.

V. Conclusion

Malpractice is a significant and important concept that every nurse should be aware of. It is recommended to practice within the standard and scope of professional nursing practice, follow the institution P&P, effectively communicate with patients and healthcare team, proper assessment and monitoring of patients, and to act as a patient advocates.

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Examination malpractice is any form of deliberate cheating on examinations which provides one or more candidates with an unfair advantage or disadvantage. It is illegal and can be perpetrated by a single individual or groups. It can occur outside or inside the classroom. There are many different forms of examination malpractice, including copying from another student's test, copying from an answer sheet, bringing in cheat notes, plagiarism, colluding to obtain test answers, impersonating another student during a test and refusing to stop taking the test when the test is over. All these scenarios To analyze the concept of contamination and discuss the implications for nursing practice, research, and education. Published research articles, official governmental publications, policy reports, and textbooks. Various attributes of contamination are described using the Walker and Avant method of concept analysis and include: (a) exposure to a contaminant, and (b) contaminant exists in a dose sufficient to cause adverse health effects. The major antecedents of contamination include the presence of a contaminant, dose, duration of exposure, route of exposure, and individual human differences. Nursing malpractice, or nurse negligence, occurs when the negligence of a nurse causes injury to a medical patient. This usually occurs in a hospital setting, but it can also happen in a retirement home, convalescent home, or at a private residence- in short, wherever a nurse works. Like malpractice that involves doctors, nursing malpractice occurs when the nurse does not fulfill the duties in a way that a competent nurse would practice in the same situation. How Can Nursing Malpractice Be Proved? In order to prove nursing malpractice, it's usually necessary to prove that the nurse was neglig