IOSR Journal of Nursing and Health Science (IOSR-JNHS)
e-ISSN: 2320–1959.p- ISSN: 2320–1940 Volume 7, Issue 1 Ver. VII. (Jan.- Feb .2018), PP 81-85
www.iosrjournals.org

Malpractice an Updated Concept Analysis and Nursing ImplicationinDeveloping Countries

Eyad Abu Al-Haijaa RN,MSN,CPHQ,CHRM[1], Omar Ayaad RN,PHD(c)[2], Muna Al-Refaay RN,BSN [3],Tareq Al-Refaay[4]

[1]Deputy Director of Quality and Patient Safety,King Hussein Cancer Center;[2]Nursing Quality Supervisor, King Hussein Cancer Cente;[3]Director of Nursing, Istishari Hospital;[4]Lawyer. Jordan
Corresponding Author: Omar Ayaad

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*

Date of Submission: 26-01-2018 Date of acceptance: 16-02-2018

I. Introduction andSignificance

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 regardingwrongful and casual error that could be applied to any profession and/or occupation, which means that the tortliability is based on the general legal obligation of do not harm others[1]. There is no reliable source for dataregarding 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 2011and the focus of these legal liabilities were primarily against physicians followed by other healthcare providers that include nurses [2]. 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 strategies[5] and the higher rates of malpractice insurance premiums[6].The rate of adverse events in developing countries was ranging between 2.2 % up to 18%[7], which is comparable to developed countries such the US, UK and Australia[8].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 years[4].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 12.786[5].

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 referent[10].

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 competency[11]. 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 harm[15]. 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 behaviors[14]. 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 care[17]. Clinical negligence was identified as a synonym for malpractice [16,17]and professional incompetency[16].

Defining Attributes:

Concept attributes are those characteristics that differentiate between concepts [9]. 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 concept[10]. 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 system[19] .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 minimizes 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 identifiedsuch 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 safety[16].

Define Empirical Referents:

This step is mainly concerned with real-life existence of the concept key attributes and characteristics[10]and therefore, a proven malpractice liability by a powerful and recognized authority such as regulatory bodies or judicial court against RNwill be the only evidences of malpractice[17].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 providedcare.
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 equipment[28].

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 errors[27].

Implication forNursingAdministrators:

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.

References

[1]. Creskoff S, Howard M. Medical Malpractice Law "Best Practices" for Jordan: A Preliminary Study with Recommendations for Next Steps. Amman Jordan USAID-Jordan Econ Oppor Off. 2007.
[2]. Wayne Jones, Shabnam Karim and LMD. An Overview of Medical Malpractice in the Kingdom of Saudi Arabia. 2014.
[3]. McMichael B, Horn R Van, Viscusi W. Sorry is Never Enough: The Effect of State Apology Laws on Medical Malpractice Liability Risk. 2016.
[4]. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2883693. Accessed December 31, 2017.
[5]. Kenward K. Discipline of nurses: A review of disciplinary data 1996-2006. JONA's Healthc Law, Ethics, Regul. 2008;10(3):81-84. doi:10.1097/01.NHL.0000300787.36649.77.
[6]. Harvey HB, Cohen IG. The looming threat of liability for accountable care organizations and what to do about it. JAMA - J Am Med Assoc. 2013;310(2):141-142. doi:10.1001/jama.2013.7339.
[7]. Karl JB, Born PH, Viscusi WK. The relationship between the markets for health insurance and medical malpractice insurance. Appl Econ. 2016;48(55):5348-5363. doi:10.1080/00036846.2016.1176119.
[8]. Vincent C, Neale G, Woloshynowych M. Adverse events in British hospitals: preliminary retrospective record review. BMJ. 2001;322(7285):517-519. doi:10.1136/bmj.322.7285.517.
[9]. Wilson RM, Runciman WB, Gibberd RW, Harrison BT, Newby L, Hamilton JD. The Quality in Australian Health Care Study. Med J Aust. 1995;163(9):458-471. http://eutils.ncbi.nlm.nih.gov/entrez/eutils/elink.fcgi?dbfrom=pubmed&id=7476634&retmode=ref&cmd=prlinks%5Cnpapers3://publication/uuid/82A70B92-AB8B-4AD2-A44F-F45DC132B93A.
[10]. Walker LO, Avant KC. Strategies for Theory Construction in Nursing 5th Edition.; 2011. doi:10.1097/00002800-200611000-00014.
[11]. Dictionary CE. Collins English Dictionary. 21st Century Edition. Collins, An Imprint of Harper Collins Publishers, Glasgow.; 2000.
[12]. Mosby. Mosby's Medical Speller. Mosby; 1982.
[13]. Marquis BL, Huston CJ. Leadership Roles and Management Functions in Nursing: Theory and Application: Seventh Edition.; 2013. https://www.scopus.com/inward/record.uri?eid=2-s2.0-84971372934&partnerID=40&md5=3ebbb82f4d44d89ed9d1ad09bf33fc5c.
[14]. Yoder-Wise P. Leading and Managing in Nursing-E-Book.; 2014. https://books.google.com/books?hl=en&lr=&id=Dm_XBQAAQBAJ&oi=fnd&pg=PP1&dq=Leading+and+Managing+in+Nursing-E-Book&ots=Fj2x3oBOEJ&sig=eU-RSTdseO1e3gq4TPqk_sHIrRw. Accessed December 31, 2017.
[15]. Nursing JH-BJ of, 2010 undefined. Negligence: the different focus of medical and legal concerns. search.ebscohost.com.
[16]. http://search.ebscohost.com/login.aspx?direct=true&profile=ehost&scope=site&authtype=crawler&jrnl=09660461&AN=48360753&h=ISkl%2Fde0RT3nR8LqWAbJcs7UzP%2BF5hHhlH8Y6vJ039q0Os3rLcPjWO5cNIzMqpHCvRmfSMzInjrG8vV%2FVGMq2Q%3D%3D&crl=c. Accessed December 31, 2017.
[17]. Weld KK, Garmon Bibb SC. Concept Analysis: Malpractice and Modern-Day Nursing Practice. Nurs Forum. 2009;44(1):2-10. doi:10.1111/j.1744-6198.2009.00121.x.
[18]. Tingle J. An introduction to clinical negligence: nurses and the law. Br J Nurs. 2002;11(15):1033-1035. doi:10.12968/bjon.2002.11.15.10531.
[19]. Ellis JR, Hartley CL. Managing and Coordinating Nursing Care. Lippincott Williams & Wilkins; 2009.
[20]. Ashley RC. The first element of negligence. AACN. 2003. http://ccn.aacnjournals.org/content/23/6/81.short. Accessed December 31, 2017.
[21]. Ashley RC. Understanding negligence. AACN. 2003. http://ccn.aacnjournals.org/content/23/5/72.short. Accessed December 31, 2017.
[22]. Ashley RC. The second element of negligience. AACN. 2004. http://ccn.aacnjournals.org/content/24/1/68.short. Accessed December 31, 2017.
[23]. Ashley RC. The third element of negligence. AACN. 2004. http://ccn.aacnjournals.org/content/24/3/65.short. Accessed December 31, 2017.
[24]. Ashley RC. The fourth element of negligence. AACN. 2004. http://ccn.aacnjournals.org/content/24/4/78.short. Accessed December 31, 2017.
[25]. Ashley RC. The fifth element of negligence. go.galegroup.com. 2004. http://go.galegroup.com/ps/i.do?id=GALE%7CA123449802&sid=googleScholar&v=2.1&it=r&linkaccess=fulltext&issn=02795442&p=AONE&sw=w. Accessed December 31, 2017.
[26]. Nursing EC-ATAJ of, 2003 undefined. Nurses, Negligence, and Malpractice: An analysis based on more than 250 cases against nurses. journals.lww.com.http://journals.lww.com/ajnonline/Citation/2003/09000/Nurses,_Negligence,_and_Malpractice__An_analysis.17.aspx. Accessed December 31, 2017.
[27]. Homsted L. Institute of Medicine: to err is human: building a safer health care system. Fla Nurse. 2000;48(November):6. http://www.nap.edu/openbook.php?record_id=9728&page=R1. report
[28]. Croke, E. M. (2003). Nurses, negligence, and malpractice. Am J Nurs, 103(9), 54-63; quiz 64.
[29]. Murphy, R. (2004). Nurses Negligence and Malpractice Calims. ASBN Update
[30]. Austin, S. (2008). Seven legal tips for safe nursing practice. Nursing, 38(3), 34-39; quiz 39-40.

Eyad Abu Al-Haijaa. "Malpractice an Updated Concept Analysis and Nursing Implication in Developing Countries"." IOSR Journal of Nursing and Health Science (IOSR-JNHS) , vol. 7, no.1, 2018, pp. 81-85.